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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 1250 of 2003
Cuttack, this the 22nd day of May, 2008

Manabodh Meher. Applicant
-Versus-
Union of India & Ors. Respondents.

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not? yes
1. WHETHER it be circulated to all the Benches of the Tribunal or not? yes

(C.R.MOHAPATRA)
MEMBER(ADMN.)

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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C O R A M:-

THE HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)
AND
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)

Manabodh Meher, Aged about 34 years, So of Singha Meher,
resident of Talipada, Po/Ps/Dist. Bargarh, working in the Group
'D' Post in the office of Kendriya Vidyalaya, Po/Dist. Bargarh.

... Applicant

By legal practitioner - M/s. Dillip Kumar Sahu,
S.K.Dash, Prahlad Sahu,
Counsel.

-V e r s u s-

1. Union of India represented through its Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Bhubaneswar, At/Po. Bhubaneswar, Dist. Khurda.
2. The chairman, Vidyalaya Manaement Committee, Kendriya Vidyalaya, At/Po/Dist. Bargarh.
3. The Principal, Kendriya Vidyalaya, Bargarh, At/Po/Dist. Bargarh.
4. The Education Officer, K.V.S, Regional Office, K.V.S. Pragati Vihar Colony, Mancheswar, Bhubaneswar-751 017.

.... Respondents

By Legal practitioner - Mr. Ashok Mohanty, Senior
Counsel & Mr. S.P.Nayak,
Counsel.

O R D E R

MR. JUSTICE K. THANKAPPAN, MEMBER(J):

Aggrieved by Annexure-A/13, order of punishment

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dated 11.11.2002 and Annexure-A/14, order of Appellate

Authority dated 10.03.2003 a Group 'D' employee of Kendriya Vidyalaya, Bargarh has filed this Original Application U/s.19 of the Administrative Tribunals Act, 1985. Applicant prays that Annexure-A/13 the removal order passed by Respondent No.3, the Principal, K.V. Bargarh and confirmed by Annexure-A/15, the Appellate order passed by Respondent No.4, the Education Officer, K.V.S., Regional Office, Bhubaneswar are to be quashed on the grounds that these orders are not based on any proper and legal enquiry.

2. The case in brief is that the Applicant was served with a charge memo dated 13.12.2001 while he was working as a Group 'D' employee in the K.V., Bargarh, under Respondent No.3 alleging misconduct coming under Rule-3 (1)(i) (ii) (iii) and Rule 22 (a) (bb) (c) and (d) of Central Civil Services (Classification, Control and Appeal) Rules, 1964. There were five specific allegations of misconduct against the Applicant including assaulting the Principal of the Institution in Class Room after consuming Alcohol on 19.11.2001. All the charges were enquired into by the I.O. who after enquiry submitted its report holding the charges proved, copy of which is at

Annexure-A/10. On the basis of the findings reached by the IO, the Disciplinary Authority, Respondent No.3, finding that all the charges leveled against the Applicant were proved beyond reasonable doubt, imposed a major penalty of removal from service as per Annexure-A/13 dated 11.11.2002. On considering the grounds urged in the appeal preferred by Applicant, the Appellate Authority rejected the appeal and confirmed the order passed by the Disciplinary Authority by Annexure-A/15 order dated 10.03.2003.


3. Now challenging the above orders, Learned Counsel appearing for the Applicant submits that the findings reached by the IO are not based on any evidence and without considering the defence statement put-forward by the Applicant. Further Learned Counsel submits that the Appellate Authority had not considered the grounds urged in the appeal including that the disciplinary authority has not given sufficient opportunity to explain his case before imposing penalty on the basis of the findings reached by the IO. Hence, Learned Counsel submits that Annexure-A/13 and Annexure-A/15 are liable to be quashed.

At the same time, Learned Counsel appearing for the Respondents, relying on the counter-affidavit filed for and on behalf of the Respondents maintained that the enquiry report is based on evidence collected during enquiry and there was no violation of the principles of natural justice or any of the procedures prescribed under the Rules by the IO. It has been stated by Learned Counsel for the Respondents that the Appellate Authority had considered all the grounds urged in Annexure-A/14, appeal memorandum including that of the contentions of the Applicant that he had not been given sufficient opportunity to explain his case before the Disciplinary while imposing the punishment of removal from service on the Applicant. According to the Respondents, there was no violation of any of the procedures established by Rule/Law and adequate opportunity was afforded to the Applicant to establish his innocence by the IO as also by the Disciplinary Authority while imposing the punishment of removal from service.

4. It is worth-mentioning that the common thread running through in all the decisions of the Hon'ble Apex Court is that the courts/Tribunal should not interfere with the

administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or normal standards (**V.Ramana v. S.P. SRTC and Others** [2005] 7 SCC 338). Also it is trite law that Courts/Tribunal should not go into the correctness of the choice made by the administrator and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision".

[See also **Hombe Gowda Edn. Trust & Anr v. State of Karnataka and Ors**(2005 (10) SCALE 307=2006(1) SCC 430; **State of Rajasthan and another v. Mohammed Ayur Naz** (2006 (1) SCALE 79= (2006) 1 SCC 589, and **Union of India v Dwarka Prasad Tiwari**, (2006) 10 SCC 388.

 Further in the case of **State of Tamil Nadu and another v S. Subramaniam**, 1996 SCC (L&S) 627 it has been held by the Hon'ble Apex Court that Courts or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. **Judicial review is not an appeal from a decision but a review of the manner in which**

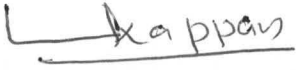
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the decision is made. It is meant to ensure that the delinquent receives fair treatment and not that the conclusion which the authority reaches is necessarily correct.

5. On anxious consideration of the contentions of Learned Counsel appearing for both sides and on perusing the entire records made available to this Tribunal, we find that there has been no irregularity, illegality or impropriety in the matter of conducting the enquiry and passing the order of punishment by the Disciplinary Authority confirmed by the Appellate Authority. We also find that sufficient opportunity was given to the Applicant during the enquiry to defend his case. This Tribunal has also assessed the entire case of the Applicant and it was the case of the applicant in his defence that he had not consumed Alcohol as alleged in the charge memo but he had consumed Ayurvedic medicine ^{Mr. M. S.} 'Madhu Sanjibani Sura' along with other medicines as advised by his treating physician to control his Low Blood Pressure. But the evidence taken by the IO would clearly indicate that the Applicant was absent during the 2nd and 3rd period on the relevant date and had manhandled the Principal. The complaint filed in this connection, by the

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Principal, KV, Balasore was registered as UI 431/02/Crl.Tr.No.51/05 and the same was dismissed on 20.05.2006 as evident from Annexure-A/16, the judgment of the Learned Judicial Magistrate, First Class Bargarh. But dismissal of the complaint by itself can not be taken as a ground to hold that the findings reached by the IO were not on evidence. Both the proceedings are different and distinct. Findings given and decision reached by the Learned Judicial Magistrate, First Class, Bargarh under Annexure-A/16 cannot be a reason to interfere with the findings reached by the IO on the basis of evidence recorded during enquiry.

6. In the light of the discussions made above, this Tribunal is of the view that the present OA is devoid of any merit and is liable to be dismissed. Accordingly, this OA stands dismissed by leaving the parties to bear their own costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

KNM/PS.