

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.601 of 2006
Cuttack, this the 3rd day of February, 2010

Mukul Ch. Mukherjee Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

10

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Shree Mukul Chandra Mukherjee, aged about 44
years, son of Late Sailesh Chandra Mukherjee,
At-Sahadev Khunta, Po/Dist. Balasore.

.....Applicant

By legal practitioner: M/s.A.A.Das,M.B.Ray,S.Mohanty
B.R.Swain, Counsel

- Versus -

1. Union of India represented by the Secretary Government of India, Ministry of Human Resources Development Department, Admn. Block, IGSIDM IP Estate of Education, Government of India, New Delhi-110 002.
2. Navodaya Vidyalaya Samiti, represented through its Chairman, Admn. Block, IGSTON, A-28, Kailash Colony, New Delhi.
3. Joint Commissioner, Navodaya Vidyalaya Samiti, Admn. Block IGSTDN, A-28, Kailash Colony, New Delhi.
4. Deputy Director (Admn.), Navodaya Vidyalaya Samiti, Ministry of Human Resource Development, Regional Office, 160 Zone II, M.P.Nagar, Bhopal-257 1100.

....Respondents

Legal Practitioner :Mr. U.B.Mohapatra, SSC

R

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant was a Trained Graduate Teacher (Math) in the Jawahar Navodaya Vidyalaya Samiti. During his incumbency as TGT (Math) in JNV Zincnagar, Orissa, vide Memorandum dated 15.12.1994, a set of charges under Rule 14 of CCS (CC&A) Rules, 1965 was issued to him alleging as under:

"Article-I

That the said Shri M.C.Mukherjee while functioning as TGT (Math) at JNV Zincnagar during the period from 28.10.1992 to 05.07.1994 and at JNU Chiplima, Dist. Sambalpur from 06.07.1994 and till date has misused his official post as a teacher and attempted to establish illicit relationship with Kum Leezanjali Nayak a student of Class-IX;

Thus, he violated the provision of rule j® (ii) of CCS (Conduct) Rules, 1965 which attracts disciplinary action against him under the said provision of rule;

Annexure-II

That the said Shri M.C.Mukherjee while functioning as TGT (Math.) at JNV Zincnagar, Dist. Sundergarh has misused his official post and forced two girls of Class IX to report him beyond class hours and even at his residence violating the rules;

Thus he violated the provisions of rule 3(I) (iii) of CCS (Conduct) Rules, 1964 which attracts disciplinary action against him under the said provision of the rules;

Article-III

That, during the aforesaid period and while functioning in the aforesaid Vidyalaya, Shri M.C.Mukherjee has not attended the Ganesh Puja Celebrations conducted in the Vidyalaya and instead was in the girl's hostel with Ku.Smita Patel by the pretext of collecting copies;

Article-IV

That during the aforesaid period and while functioning in the foresaid Vidyalaya, the said Shri M.C.Mukherjee, TGT (Math), requested for his change of place of head quarters to some other JNV and accordingly the head quarters has been changed from JNV, Zincnagar to JNV, Sambalpur but he has not reported and disobeyed the orders of the higher authorities;

Thus, he violated the provisions of rule 3(I) (iii) of the CCS (Conduct) Rules, 1964 which attracts disciplinary action against him under the said provision of the rule;

Article-V

That, during the aforesaid period while functioning in the aforesaid Vidyalaya Shri M.C.Mukherjee, TGT (Math.) deserted his duties and abstained from the Vidyalaya w.e.f. 05.03.1994.

Thus he violated the provisions of rule 3(I) (iii) of the CCS (Conduct) Rules, 1964 which attracts disciplinary action against him under the said provision of the Rules."

2. As is seen, while the regular enquiry was in progress by Shri H.K.Dixit, duly appointed IO upto to recording of evidence, suddenly the regular enquiry was converted to summary inquiry. Based on the

report of the said Summary Enquiry and after due process of rules, vide order dated 06.09.2002, the Applicant was imposed with punishment of termination. He preferred the Appeal and the appeal having been rejected vide order dated 13.01.2003, Applicant approached the Guwahati Bench of the Tribunal in OA No.73 of 2003. The Guwahati Bench of the Tribunal in order dated 01.04.2004 disposed of the matter with the following observation/direction:

“8. Thus, we are not satisfied with the procedure adopted by the Respondents in this case. The same is not in consonance with the provisions of the rules. The order passed by the Disciplinary Authority on the basis of the Enquiry Report submitted by the Enquiry Officer with the suggestion to pass an order of termination of the applicant from service under summary procedure is against all the canons of justice and is violative of principles of natural justice. The Rule 14 of CCS (CCA) Rules, 1965 does not permit the Enquiry Officer to suggest to resort to Summary procedure. The role of the Enquiry Officer is only to record the findings whether the Article of charges are proved or not proved. But the Enquiry Officer cannot suggest that instead of following regular procedure under Rule 14 of the aforementioned Rules summary procedure should be adopted. Because it is the sole discretion of the Director, NVS to decide the same and if he is satisfied that regular enquiry cannot be conducted for which he has to record reasons also in writing, only then regular enquiry can be dispensed with and summary procedure of

termination of service can be resorted to. In case the same has not been done in the instant case, we find the order of termination dated 06.09.2002 issued in exercise of powers under Notification dated 20.12.1993 is violated and cannot be sustained and the same is liable to be quashed.

9. Accordingly, we hereby quash the impugned order of terminating of the applicant dated 06.09.2002 passed by the Disciplinary Authority as well as the order dated 13.01.2003 passed by the Appellate Authority rejecting the appeal preferred by the Applicant. The Respondents are directed to reinstate the applicant in service. We remand back the case to the Respondents with a direction to proceed with the enquiry from the stage it had been converted from regular enquiry into a summary enquiry and the enquiry should be completed within a period of six months from the date of receipt of the copy of the order in accordance with rules, instructions and judicial pronouncements on the subject. In case, the Respondents wants to convert the regular enquiry into a summary enquiry the same should be done in accordance with law and after serving the applicant with due notice. It is for the authorities to decide whether the applicant is to be kept under suspension or not during the pendency of the enquiry proceedings."

3. As it further appears, in compliance of the order of the Tribunal dated 01.04.2004, applicant, vide order dated 11.6.2004, was reinstated and on reinstatement he was posted to Bhopal Region. Thereafter, he was again placed under suspension. Enquiry was commenced by appointment of another IO

and PO. The IO fixed the enquiry to 14.09.2004 on which date the IO asked the CO and PO to submit the written brief. On consideration of the written brief, IO submitted its report holding charge I as partially proved, charge III not proved and rest of the charges proved. Thereafter, vide letter dated 17/19.11.2004 copy of the report of the IO was supplied by the DA to the Applicant inviting his objection to the said report of the IO. On receipt of the reply of the applicant, the disciplinary authority (Respondent No.4) vide order dated 22/23.03.2005 imposed the punishment of 'removal' on the Applicant. On 16.04.2005, Applicant preferred appeal. The appeal of the applicant having been rejected and communicated to him in letter under Annexure-A/7 dated 10.03.2006, he has approached this Tribunal in the present Original Application under section 19 of the A.T. Act, 1985 seeking quashing of the order of punishment under Annexure-5 dated 22/23.03.2005 and order of the Appellate Authority rejecting the Appeal of the Applicant under Annexure-7 dated 10.03.2006 with further direction to the Respondents to reinstate him in service with all benefits for the same being illegal, arbitrary, mala fide

and in gross violation of the Rules and audi altera partem.

4. Respondents filed counter denying the assertion of violation of any of the Rules and principles of natural justice. It is the contention of the Respondents that as the charges against the Applicant were serious in nature and were established beyond reasonable doubt, the Applicant was rightly imposed with the punishment of removal, which according to the Respondents needs no interference by this Tribunal. By filing rejoinder, Applicant besides reiterating his stand taken in the OA has tried to establish that the allegations against the Applicant are false, fabricated and he has been made a scapegoat though he is fully innocent and dedicated teacher of the Institution.

5. Heard Learned Counsel for both sides and perused the materials placed on record. By drawing our attention to various materials placed with reference to the pleadings, it has been contended by Learned Counsel for the Applicant that there was no free and fair enquiry to the charges against the Applicant. It was contended that the Tribunal vide

order dated 1.4.2004 quashed the impugned order terminating the services of the applicant dated 06.09.2002 passed by the Disciplinary Authority as well as the order dated 13.01.2003 passed by the Appellate Authority rejecting the appeal preferred by the Applicant and remanded the matter back to the Respondents to proceed with the enquiry afresh. But the Respondents instead allowing the same IO to conduct the enquiry afresh, entrusted the matter to another person who started the enquiry from the stage the enquiry was converted to summary enquiry. The earlier enquiry was conducted in a perfunctory manner without giving any opportunity to the Applicant to cross examine the witness examined and without supplying the documents based on which the prosecution sought to prove the charges. But instead of complying the lacunae left out by the IO, the present IO started the enquiry from the stage the enquiry was converted to summary enquiry and closed the enquiry in one day only by taking the written brief of the applicant and PO. Further contention of the Learned Counsel for the Applicant is that by the manner of conduct of the enquiry, apprehending likelihood of bias

of the IO, applicant submitted representation seeking transfer of the proceeding and change of IO. But no consideration was given to his request and ultimately he has been visited with the harsh punishment of removal. His next contention is that although applicant submitted an exhaustive appeal taking all these grounds, the appellate authority without giving due consideration to the points raised by the applicant in his appeal, in a cryptic order rejected the appeal of the applicant. Non-payment of Subsistence Allowance at the right time, not allowing defence assistant according to the choice of the Applicant and shifting of the enquiry from one place to other are also the other limbs of argument advanced by Learned Counsel for the Applicant to get the impugned order set aside. According to the Learned Counsel for the Applicant as there was injustice and miscarriage of justice caused to the applicant in the decision making process of the matter, this OA needs to be allowed. .

6. On the other hand, Respondents' Counsel strongly refuted the above stand of the Applicant by stating that Applicant is estopped under law to challenge the validity and legality of the process

undertaken during the regular enquiry conducted prior to the order of the Guwahati Bench of the Tribunal; because this point was also under consideration before the Guwahati Bench of the Tribunal and after taking note of all aspects of the matter, the Learned Tribunal quashed the impugned order of punishment passed both by DA & AA and remitted the matter back to proceed with the enquiry from the stage it had been converted from regular enquiry to summary enquiry. Also it was contended by Learned Senior Standing Counsel appearing for the Respondents that if the Applicant was in any way aggrieved by the order of the enquiry he ought to have challenged the same in the OA filed before the Guwahati Bench as also in this OA. He having not done so, the plea that the IO did not allow him to cross examine the witness examined or documents were not supplied is of no consequence. He has, however, denied the allegation of non-supply of the documents to the applicant. It has been contended that after taking the deposition of the prime witness/affected girl student in course of enquiry, the applicant was allowed opportunity to cross examine which he refused to do. After the closure of the enquiry

holding the applicant guilty of the offence/charges, applicant requested to allow him to cross examine the student which, in exercise of the provision contained in Notification dated 20.12.1993 denied by the competent authority as allowing to cross examine to the young girl student would have caused undue emotional imbalance to her. It was contended that taking into consideration the sensitivity of the documents relating to immoral sexual behaviour, instead of allowing copies of the documents to him, he was allowed to be present in the office and peruse the documents. On the basis depositions made by the victim in front of the applicant in the enquiry and on the basis of the evidences available on record, the IO logically established the charges against the applicant. Respondents' Counsel, therefore, prayed for dismissal of this OA.

7. We have given our thoughtful consideration to various arguments advanced by parties and perused the materials placed on record. Before advertig to the submissions raised by the parties in seriatim, we may record that the role of teachers is central to all processes of formal education. The teacher alone could

bring out the skills and intellectual capabilities of students. He is the engine of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energized with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefiter. The ill trained or sub standard teachers would be detrimental to our educational system; if not a punishment on our children. The teachers are in fact the local guardian of the young students especially in the boarding schools like the present one. Therefore, it is always expected that the character and integrity of the teachers should be beyond reasonable doubt, a teacher has to be a role model in society

8. Now coming to the merit of the matter, it is recorded that the Applicant virtually challenges the manner of conducting the enquiry by the IO based on which he was removed from service which was subsequently set aside by the Guwahati Bench of the Tribunal. In other words it is the contention of the Applicant that the IO conducted the enquiry and held the charges established on the basis of the oral

evidence and documents without giving him opportunity to cross examine or supplying those documents and, therefore, after the order of the Guwahati Bench, the authorities instead of starting the enquiry from the stage it was converted to summary enquiry ought to have conducted the enquiry from the threshold. We are not inclined to accept this argument of the Applicant as while quashing the order of punishment, the Guwahati Bench of the tribunal specifically directed for conducting the enquiry from the stage regular enquiry was converted to summary enquiry. In compliance of the said order of the Guwahati Bench the Respondents conducted the enquiry from the stage the regular enquiry was converted to summary enquiry. Applicant participated in the enquiry by way of submitting his written statement of defence thereby accepting the order of the Guwahati Bench of the Tribunal. Opportunity was available to the Applicant to seek quashing of the earlier report of the IO before the Guwahati Bench. But for the reasons best known to him he did not avail of the said opportunity. As such, the Applicant is estopped to seek reopening of the matter which was set

at rest by the order of the Guwahati Bench of the Tribunal. The grievance of the Applicant clearly comes within the purview of doctrine of waiver and acquiescence. In such an event, plea of principles of natural justice is deemed to have been waived and he is estopped from raising the question of non compliance of principles of natural justice. Even if for the sake of argument it is accepted that the applicant was not allowed to cross examine the girl student or he was not supplied copies of documents sought by him, yet this argument falls to the ground in the absence of showing as to how he was prejudiced due to non-supply of documents (though allowed him to peruse) or allowing him to cross examine the young girl student whose statement was taken in the presence of applicant but he did not avail of that opportunity. It is trite law that principles of natural justice cannot be put in a straight jacket formula. Its application depends upon the facts and circumstances of each case. To sustain a complaint of non compliance of the principles of natural justice, one must establish that he has been prejudiced thereby for non compliance of principles of natural justice. It is the specific case of

the Respondents that cross examination and supply of documents was restricted taking into the nature and sensitivity of the matter of involvement of a young girl student. In **Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr v. Ranjee**, AIR 1977 SC 965, the Hon'ble Apex Court observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure all. If fairness is shown by the decision-maker to the man proceeded against the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breech of natural justice can be complained of. In **Aligarh Muslim University v Mansoor Ali Khan**, 2001 (1) SLJ 409 (SC) and **M.C.Mehta v Union of India, others** (1999) 6 SCC 237 and reiterated in the case of **Union of India & Others v Bishamber Das Dorga**, 2010(1) AISLJ 109 (SC) in which it has been held that an order passed in violation of natural justice need not be set aside unless it is shown that non observance has caused prejudice to the person concerned which is silent in the present case. Similarly non-payment of Subsistence Allowance at the right time is of no

consequence as in spite of non-payment the applicant participated in the enquiry. In regard to the allegation that the applicant was not allowed to represent through defence assistant of his choice, it is seen from the record after such denial applicant nominated another person who defended the matter on behalf of the Applicant. In this connection we may profitably note as held by the Apex Court that there is no vested or absolute right in any charge sheeted employee to representation either through a counsel or through any other person unless the statute or rules/standing orders provide for such a right. Moreover, the right to representation through some one even if granted by the rules, can be granted as a restricted or controlled right.

9. The common thread running through several decisions of the Hon'ble Apex Court is that the Court/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). It is held

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(l) SCC 430; **State of Rajasthan and another v. Mohammed Ayur Naz** (2006 (l) SCALE 79= (2006) 1 SCC 589, and **Union of India v Dwarka Prasad Tiwari**, (2006) 10 SCC 388.

10. It is seen that the taking into consideration all relevant submissions, the Disciplinary Authority passed the order of punishment in a well reasoned order. On appeal, the Appellate Authority confirmed the said order of punishment. The plea that the order of the appellate authority is unreasoned and therefore is liable to be set aside is of no help as we find that the order of the DA and AA are in agreement with the findings of the I.O. It has been held by the Apex Court in the case of **National Fertilizers Ltd. and Anr V P.K.Khanna**, 2005 (7) SCC 597 that when order of Disciplinary authority and the appellate authority are

27

in agreement with the IO no interference is called for on the ground of being unreasoned one. The Applicant has not challenged the IO report in this OA. He has raised the allegation of mala fide exercise of power without any substance. It is incomprehensible as to why IO, DA and AA became enemical with the Applicant whereas there are several other teachers working in the School. The charge of illicit behaviour with young girl student is in no way inferior to the charge in criminal case which having been established the imposition of punishment of removal is held to be absolutely justified.

11. In view of the above, this OA deserves to be dismissed and is accordingly dismissed. No costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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