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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A.NO.1009 of 2002

Cuttack, this the 30th day of November, 2004

Benudhar Mohapatra

Applicant

Vrs.

Kendriya Vidyalaya Sangathan and others

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not? 73
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 74

(M.R. MOHANTY)
MEMBER (JUDICIAL)

30/11/2004

(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI M.R.MOHANTY, MEMBE(JUDICIAL)

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Benudhar Mohapatra, aged about 44 years, son of late Dandapani Mohapatra, resident of Jagannathpur Sasan (Kotrajhari), P.O.Sarankul, Disstrict Nayagarh, at present working as P.R.T.(Primary Teacher) in Kendriya Vidyalaya Sangathan, Khurda Road, At/PO/PS/Dist.Khurda

.....Applicant

vrs.

1. Union of India, through Kendriya Vidyalaya Sangathan (K.V.S.), represented through Dy.Commissioner Administration-cum-Appellate Authority, Kendriya Vidyalaya Sangathan, 18 Institutional Area, S.J.S. Marg, New Delhi
2. Disciplinary Authority-cum-Asst. Commissioner, Kendriya Vidyalaya Sangathan, Bhubaneswar Regional Office, H.P. - 7, B.D.A. Locality, Laxmisagar, Bhubaneswar 6, Dist.Khurda
3. Enquiry Officer-cum-Principal, Kendriya Vidyalaya No.I, Bokaro Steel City, Bokaro, Jharkhand.
4. The Principal, Kendriya Vidyalaya, Khurda Road, At/PO/P.S/Dist.Khurda

..... Respondents

Advocates for the applicant - M/s S.S.Das, P.K.Nayak, K.C.Khuntia,
D.N.Mohanty

Advocates for the respondents - M/s. Ashok Mohanty, S.P.Nayak.

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ORDERSHRI B.N.SOM, VICE-CHAIRMAN

Shri Benudhar Mohapatra, working as Primary Teacher in Kendriya Vidyalaya, Khurda Road, has filed this Original Application, being aggrieved by the order of Respondent No.1 rejecting his appeal against the order passed by the disciplinary authority (Respondent No.2) imposing on him the penalty of reduction of pay by two stages from Rs.5250/- to Rs.5000/- in the time scale of pay of Rs.4500-125-7000/- for a period of two years with effect from 1.12.1999. Aggrieved by this order, the applicant had approached this Tribunal earlier in O.A.No.86 of 1999, when the Tribunal directed the applicant to file an appeal to the appellate authority and further directed the appellate authority to consider the appeal on merits and dispose of the same through a speaking order within a period of 90 days from the date of such appeal petition.

2. The grievance of the applicant is that in pursuance of the direction of the Tribunal dated 1.2.2001, as referred to above, he had filed an appeal before the appellate authority who disposed of the same on erroneous appreciation of the facts, as a result of which his service interests have been greatly jeopardized. He has alleged that the appellate authority had acted as if he himself was the complainant and had relied upon the statements submitted on behalf of the prosecution even though the facts were otherwise. The appellate authority had also not considered in proper light the objection that the applicant had raised against the enquiry report, the shortcomings in the enquiry report, as pointed out by him, and the utter haste in which the disciplinary authority had closed the

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disciplinary proceedings. The applicant has further submitted that the appellate authority did not see the "irregularity and illegality" committed in the departmental proceedings and therefore, denied justice to him. Even though he had repeatedly pointed out in his representation that he was denied certain valuable documents for inspection and that his request for producing Shri Vishwanath Das to whom, it was alleged, he had written a defamatory letter against one Mrs. Preeti Roy, a senior teacher in Kendriya Vidyalaya, Chilka. The appellate authority did not render justice to him by curing the defect in enquiry. The appellate order is an example of non-application of mind and an attitude which was partisan and therefore, justice was denied to him. He has, in the circumstances, approached the Tribunal to quash the order passed by the appellate authority, at Annexure 8 and also to exonerate the applicant from all the charges brought against him, being without basis/evidence.

3. The Respondents have opposed the Original Application, stating that none of the reliefs sought for by the applicant is admissible as he was given full opportunity to defend his case. They have sought to explain that the delay of eight years in conclusion of the disciplinary proceeding was on account of the non-cooperation of the applicant with the disciplinary proceeding and on that ground he cannot get any relief. They have submitted that the enquiry was conducted strictly in accordance with the provisions laid down in the Central Civil Service (Classification, Control and Appeal) Rules, 1965 and the applicant was found to have been involved in activities unbecoming of a teacher of

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Kendriya Vidyalaya Sangathan and therefore, he could not escape the rigor of the CCS (CCA) Rules, 1965. They have also submitted that all the documents were produced during the course of enquiry and that he had been given ample opportunity by the Inquiry Officer to prove his innocence. As regards denial of the request of the applicant for re-examination of the witnesses, they have submitted that the Inquiry Officer was competent to decide the admissibility or otherwise of such a request and on that ground the applicant could not take any objection to the decision taken by the Inquiry Officer to overrule his request. Finally, they have submitted that the appellate authority, after going through all the records of the case, had come to the conclusion that the applicant had not been able to categorically deny the allegation of character assassination brought against him in the charge memo and accordingly, was justified in confirming the penalty imposed by the disciplinary authority.

4. We have heard the learned counsel for the rival parties. The applicant by filing a rejoinder has refuted the contentions raised by the Respondents in the counter. He has also submitted a written note, which has been taken into account. He has relied on the following case-laws in support of his contentions:

- (1) (2001)1 SCC 65, *Union of India v. K.A. Kittu and others*;
- (2) (2002) 7 SCC 142, *Sher Bahadur v. Union of India and others*;
- (3) (2003) 3 SCC 633, *Bhupinder Pal Singh v. D.G. of Civil Aviation and others*;
- (4) (2000)10 SCC 373, *Deepak Puri v. State of Haryana and others*;

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(5) AIR 2001 SC 24, *Kumaon Mandal Vikas Nigam Ltd. v. Girija Shankar Pant and others*; and

(6) AIR 2000 SC 1151, *U.P.State Road Transport Corporation and others v. Mahesh Kumar Mishra and others*.

We have carefully gone through the rival contentions and also the case-laws referred to by the applicant.

5. The applicant has raised two important points. Firstly, that the copy of the charge memo also contained an annexure listing out the documents with which the allegations were proposed to be proved, but the documents referred to therein were not supplied to him in spite of his request, thus seriously prejudicing his interest. Secondly, that in spite of his repeated requests, vide his letter dated 22.11.1991, for supply of the photocopy of the alleged letter purported to have been written by him to one Shri Vishwanath Das along with English translation was not made available to him. Further, that although by his letter dated 25.2.1999, he requested the Inquiry Officer to allow him to cross-examine the prosecution witnesses, his prayer was negatived by the Inquiry Officer arbitrarily.

6. Three charges were leveled against the applicant, namely, that he had written "a derogatory letter to Sri Vishwanath Das, PRT, KV, VSP Visakhapatnam" assassinating the character of Smt. Preeti Roy, PGT (Eng.), KV, INS Chilka; that he had "instigated Master Apoorva Kumar Choudhary," a student of Class XII for revolting against other staff members; and that he "did

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not complete the portion in Chemistry for Class XII during the academic year 1990-91". The Inquiry Officer in his report has found the allegations leveled against him in Article II and Article III as not proved and held that "on the basis of the findings Mr.B.D.Mohapatra has been found guilty of assassinating the character of a newly married lady who was away from her husband and thus he tried to destabilize the happy married life of the couple." In the enquiry report, no mention has been made regarding the request made by the applicant for supply of copies of certain documents. However, it has been mentioned in the report that the applicant had inspected the original of the letter alleged to have been written by him to one Shri Vishwanath Das and that a photocopy of the said letter was also given to him on his request. In the circumstances, we hold that the allegation of the applicant that he was not given a copy of the letter purported to have been written by him is not valid. Similarly, no material has been placed before us by the applicant to show that he had formally requested the Inquiry Officer to produce Shri Vishwanath Das as witness and the enquiry report also does not throw any light on any such request made by the applicant although the Inquiry Officer has stated in the report that on the concluding day of the enquiry, the applicant had submitted a letter to the Inquiry Officer requesting him to allow re-examination and cross-examination of all the witnesses. The Inquiry Officer did not think it necessary to grant his request on the ground that ~~he felt~~ that that was a ploy on the part of the applicant to linger on the enquiry which was going on since 1991.



7. From the above facts of the case, it appears that the contention of the applicant that he was denied certain documents vital for defending his case does not stand proved. As we find from the enquiry report that a copy of the letter alleged to have been written by him to one Shri Vishwanath Das was inspected by him and a photocopy was handed over to him during the enquiry, the allegation of non-supply of this document is found to be baseless. In the circumstances, his reliance on *Deepak Puri's case (supra)* has no relevance because in the said case the charged officer, who requested for supply of copies of certain documents including the attested copy of the complaint, was denied those documents and therefore, the Hon'ble Apex Court held that it had seriously prejudiced the interest of the charged officer and the principle of natural justice was totally denied causing serious prejudice to him. Their Lordships had, therefore, entertained the appeal at the interlocutory stage of the disciplinary proceeding and directed the Respondents to supply the required documents within a given time until which the enquiry was not to proceed.

8. At the end, the questions which remain for our answer are, whether denial of re-examination of the witnesses by the Inquiry Officer had seriously prejudiced the defence of the applicant and whether imposition of punishment on the applicant was based on "sufficiency of evidence".

9. The Inquiry Officer in his report has admitted that the applicant had made a request that all the witnesses be re-examined and cross-examined, which was considered by him, but he did not agree on the ground that it would cause

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further delay in conclusion of the disciplinary proceedings. In terms of the provisions made in Rule 14 of the Central Civil Service (Classification, Control & Appeal) Rules, 1965, the Government servant who has been permitted to assist the accused official should be permitted "to examine, cross-examine and re-examine witnesses" and make submissions before the Inquiry Officer on behalf of the accused official, if the accused official makes a request in writing in this behalf. This provision has been made in terms of the Government of India, Ministry of Home Affairs, O.M.No.6/26/60-Ests., dated 8.6.1962. In terms of the aforesaid provision made in Rule 14 by virtue of the Government order referred to above, the request for re-examination of the witnesses was within the right of the charged official. In terms of the procedure laid down in this regard, the Inquiry Officer has the discretion regarding allowing examination of witnesses, i.e., he may refuse permission. But such a discretion can be exercised only if he comes to the conclusion that the cross-examination/re-examination of the departmental witnesses would be irrelevant to the proceedings in hand and such a finding should be a formal and judicial finding and not done in an arbitrary or perfunctory manner. As stated earlier, the Inquiry Officer refused permission on the ground of perceived delay in conclusion of the enquiry and not on the ground that further re-examination/cross-examination of witnesses would be irrelevant to the purpose. In the circumstances, we hold that the decision of the Inquiry Officer was not rational or apt because under no circumstances the charged official could have

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been denied reasonable opportunity to defend himself nor the Inquiry Officer had found that the request frivolous or irrelevant to the issue.

10. It is also found that the charge in Article I leveled against the applicant could have been proved only if the letter alleged to have been written to one Shri Vishwanath Das by the applicant was admitted by Shri Das in the confrontal enquiry. It has been admitted by the Inquiry Officer/disciplinary authority/appellate authority that the addressee of the letter, i.e., Shri Vishwanath Das was never brought as a witness in the enquiry. In the circumstances, it is trite to hold that the prosecution was conclusively proved and that the letter was written and posted by the applicant and received by the addressee, i.e., Shri Vishwanath Das who in turn had handed it over to Shri Tapan Kumar Chand, the husband of Smt. Preeti Roy. The allegation of defamation/character assassination could not have been proved without following the above procedure. To this extent, we hold that the case of the prosecution suffered on the ground of lack of sufficiency of evidence as propounded in *Sher Bahadur's case (supra)*. The expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. That being the point of law settled by the Hon'ble Apex Court, we find that by not producing the addressee of the letter, Shri Vishwanath Das, in enquiry for proving that he had received that letter

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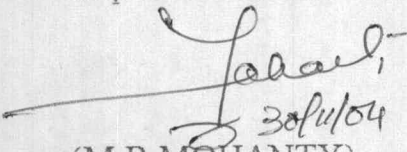
from the applicant and that he had handed it over to the husband of Smt. Preeti Roy, the allegation brought against the applicant was proved without having any evidence to link him with the alleged misconduct. In *Sher Bahadur's case (supra)*, the Hon'ble Apex Court had held that if the charge cannot be linked to the charged officer the allegation of misconduct fails. The ratio of that case squarely applies in the instant case also.

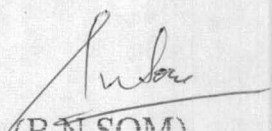
11. From the above it is clear that the disciplinary proceeding against the applicant was vitiated because of denial of his right to re-examine/cross-examine the witnesses without valid ground and also for lack of sufficiency of evidence. It has also not been brought out either in the enquiry report or in the order passed by the appellate authority as to why the letter alleged to have been written by the applicant could not be put to the handwriting expert for certifying whether the applicant was the writer of the letter and why the addressee of the letter, Shri Vishwanath Das was not produced as a witness in the enquiry. The appellate authority in his order had reflected on the gravity of the allegation that the disciplinary action against the charged official was called for as "a teacher has to conduct himself not only during school hours but beyond school hours also" and that the teachers by virtue of their status and position in the society, conduct should be above board. We fully endorse the need for adopting high value system by the teachers in the school. But in judging whether an individual has fallen off the post of a teacher, the requirements of principles of natural justice cannot be brushed aside.



12. In the circumstances, we hold that to meet the ends of justice the disciplinary case be remanded to the disciplinary authority to find out the truth of the matter as to whether this letter was written by the applicant by obtaining handwriting expert's opinion and also calling Shri Vishwanath Das as the witness in the enquiry to unearth the truth. Further enquiry in the matter is necessary not only to protect the honour of the school and the teaching community but also to protect the honour of the applicant who should not be punished merely on suspicion/unsubstantiated allegations. We order accordingly. Pending finalization of the further enquiry, operation of the punishment is stayed.

13. With the above observation and direction, the Original Application is disposed. No costs.


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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