

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 205/2003

Jodhpur this the 29th January, 2014.

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms Meenakshi Hooja, Member (A)**

Shri Chandgi Ram S/o Shri Harlal by caste Jat Dhaka aged 57 years
resident of Ward No. 20, Lalgarh Jattan, District-Sri Ganganagar.

.....,Applicant

(Through Adv. Mr S.P. Arora)

Versus

1. The Kendriya Vidyalaya Sangathan through Commissioner, 18, Industrial Area, Shahid Jeet Singh Marg, New Moharoli Road, New Delhi- 110016.
2. The Kendriya Vidyalaya through Principal, Lalgarh Jattan, District- Sriganganagar.

.....,Respondents

(Through Adv. Mr Avinash Acharya)

ORDER (Oral)

Per Justice K.C. Joshi

The OA No. 205/2003 was presented by the applicant Shri Chandgi Ram and the same was decided by the Division Bench of this Tribunal vide order dated 17.12.2004 by which the application of the applicant for condonation of delay was dismissed by this Tribunal and the OA being barred by limitation was dismissed. Against the above order dated 17.12.2004 the present applicant preferred a D.B. Civil Writ Petition No. 2982/2005 and the same was allowed by the Hon'ble Rajasthan High Court and the impugned order dated 17.12.2004 in OA 205/2003 and MA

36/2004 was set aside and delay in filing the OA was condoned and the OA was restored for consideration of the CAT on its merit. As the delay has already been condoned by the Hon'ble High Court, therefore, we are deciding this OA on its merit.

2. The short facts of the case as averred by the applicant are that the applicant was appointed as a class IV employee on 29.07.1986 under the respondent No. 2 and the suspension order of the applicant was revoked vide order dated 05.02.2001 (Annex. A/1). The applicant was suspended on 22.08.1991 and the suspension order was revoked after the settlement of industrial dispute and the withdrawal of his dispute no. LCC/95 pending before Labour Court, Bikaner. After revocation of order of suspension of the applicant, the respondent No. 2 vide order dated 30.04.2002 (Annex. A/2) proposed to impose penalty of compulsory retirement and further a representation was called from the applicant against the departmental inquiry report submitted by the IO, within 15 days. The applicant submitted his representation on 09.05.2002 (Annex. A/3) against the order dated 30.04.2002. The applicant has averred in the application that no departmental inquiry was ever held against the applicant and no statements of witnesses were recorded in his presence nor any opportunity provided for cross-examination. In the settlement before Labour Court, Bikaner on 15.01.2001 as at Annex. A/4, it was accepted by the respondent No. 2 that they will not have revengeful attitude and will not initiate any departmental proceedings in the case of the applicant in future. However, the respondent No. 2 vide letter dated 24.06.2002 (Annex. A/5) accorded punishment of compulsory retirement w.e.f. 01.05.2002 and while passing

the order Annex. A/5, the respondent No. 2 did not consider the facts mentioned in Annex. A/3 and passed the order without application of mind. Further vide letter dated 08.07.2003 (Annex. A/6) respondent No. 2 informed the applicant that he had not completed qualifying service for compulsory retirement and therefore, he is not entitled for any pension.

The applicant by way of this application has sought following relief(s) :

- (1) **The orders dated 24.06.2003 i.e. Annex. A/5 and 08.07.2003 i.e. Annex. A/6 be set aside.**
- (2) **The applicant be reinstated with all consequential benefits.**
- (3) **In alternate the Respondents be directed to grant pension.**
- (4) **any other relief for which the applicant is entitled, be granted.**

3. By way of reply the respondent-department denied the claim of the applicant to get any relief and further averred that the applicant has not challenged the legality of the order Annex. A/1 and departmental inquiry was duly conducted as per law and statements of large number of witnesses were recorded, but the applicant did not opt to appear in inquiry proceedings inspite of several letters and remained absent from Headquarters without permission. After holding the departmental inquiry the applicant was imposed punishment of compulsory retirement as a major penalty. Therefore, order Annex. A/5 is as per law and does not require any interference at this stage.

4. Heard both the parties.

5. Counsel for the applicant contended that he has challenged the legality of the order Annex. A/5 and A/6 by which he was compulsorily

retired w.e.f. 01.05.2002 and this order was passed on 24.06.2002 and Annex. A/5 does not refer the contents of the representation Annex. A/3 and was passed retrospectively i.e. on 24.06.2002 while compulsorily retiring the applicant w.e.f. 01.05.2002. The order itself is per se illegal because it does not contain the essential facts which are required in a order of punishment passed under the CCS (CCA) Rules, 1965. He further contended that as the action of the disciplinary authority under the CCA Rules is quasi judicial and the order passed by it is also quasi judicial and therefore, even in the absence of a requirement by the statute, it is always imperative for disciplinary authority to record reasons because fulfillment of such requisite of recording of reasons is a part and parcel of the requirement of complying with principles of natural justice. Counsel for the applicant further contended that the requirement of recording good and sufficient reasons, requisite carries with it another requirement of communicating those reasons to the affected person and the order Annex. A/5 does not contain any reason for imposing punishment of compulsory retirement, therefore, Annex. A/5 is illegal. In support of his argument he relied upon the judgment of Hon'ble Rajasthan High Court passed in Sujata Malhotra vs State of Rajasthan & Ors reported in Western Law Cases Vol. 2 Raj. 2001 p. 604.

6. Per contra counsel for the respondents contended that Annex. A/2 was a letter to provide second opportunity of the applicant, as first opportunity was granted after framing of charges in the inquiry and later vide Annex. A/2 the applicant was again directed to file representation against the proposed penalty and Annex. A/3 is the representation of the

applicant which was considered and after due consideration, order Annex. A/5 was passed. He further contended that the applicant remained absent for a long time during course of the inquiry and therefore, the inquiry was completed in absence of the applicant after serving him due notice.

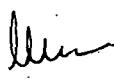
7. We have considered the rival contentions of both the parties and also perused the record.

8. The respondent-department in its reply has averred that after holding the detailed inquiry the applicant was imposed the penalty of compulsory retirement as a major penalty and Annex. A/5 is the order which has been produced by the applicant and challenged in this OA. We are in respectful agreement to the Hon'ble Rajasthan High Court judgment passed in Sujata Malhotra vs State of Rajasthan & Ors reported in Western Law Cases Vol. 2 Raj. 2001 p. 604 as cited by the counsel for the applicant that departmental inquiries are quasi judicial proceedings and before imposition of any penalty the disciplinary authority must have explained reasonable, good and sufficient reasons and communicate the same to the applicant but in this particular case, the Annex. A/5 is lacking any ground and reasons for which the penalty of compulsory retirement was imposed on the applicant. The order Annex. A/5 was passed on 24.06.2002 w.e.f. 01.05.2002 i.e. from retrospective date. In our considered view, therefore, the order Annex. A/5 cannot be sustained in the eye of law; therefore, we set aside the same i.e. the order of imposing the penalty of compulsory retirement on the applicant as major penalty.

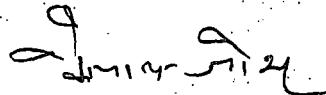
9. So far as legality of order Annex. A/6 is concerned, we are not inclined to set aside this order because after setting aside order Annex. A/5, the competent authority should decide regarding any payment to be made for entire period of suspension, absence during suspension and after revocation of suspension and further the period spent after issuing order of compulsory retirement as at Annex. A/5.

10. Therefore, declining to set aside the order Annex. A/6, we direct the applicant to make a representation to the respondent-department, within 1 month from the receipt of this order, to consider his case for his dues for the period as referred to in para 9 and thereafter respondent-department shall pass an appropriate order as per law, within 3 months from the date of receipt of such representation.

11. Accordingly, OA is partly allowed in terms of above directions, with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member

SS/


(JUSTICE K.C.JOSHI)
Judicial Member