

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 224 of 2013

Tuesday, this the 19th day of March, 2013

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

B. Harikrishnan, Catering Assistant,
 JNV Davangere, Karnataka – 577 001,
 Residing at 2C Muthoot Presidency,
 NCC Nagar, Peroorkada,
 Thiruvananthapuram – 695 005.

Applicant

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

1. The Deputy Commissioner, Navodaya Vidyalaya Samiti, (Hyderabad Region), Department of School Education & Literacy, Government of India, 1-1-10/3, Sardar Patel Road, Secunderabad-500 003.
2. The Commissioner, Navodaya Vidyalaya Samiti, Department of School Education & Literacy, Government of India, A28, Kailash Colony, New Delhi – 110 048.

Respondents

(By Advocate – Mr. P. Parveshwaran Nair)

This Original Application having been heard on 19.03.2012, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Judicial Member

The applicant, B. Harikrishnan working as Catering Assistant in the respondent organization was proceeded against departmentally for alleged unauthorized absence from duty, habitual over-stayal on leave without prior permission of the competent authority and also for remaining in aberration

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condition due to intoxication during duty hours. The proceedings initiated in the year 2007 culminated into a penalty order of removal from service vide Annexure A1 order dated 30.6.2011, against which the applicant preferred an appeal on 12.8.2011 vide Annexure A2. As there was no response, his request for consideration of his appeal was renewed vide Annexure A3 letter dated 30th November, 2012. Since there has been no response from the respondents even thereafter, he has moved this Original Application seeking the following reliefs:-

- “1. Direct the 2nd respondent to consider and pass orders on Annexure A2 appeal at the earliest
2. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
3. Award the cost of these proceedings.”

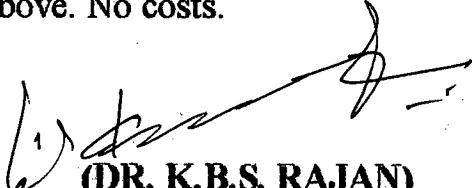
2. At the time of admission hearing the counsel for the applicant presented the case and submitted that since the respondents have not considered the appeal so far, the OA be allowed. Counsel for the respondents was also present at the time of admission hearing.

3. Under normal circumstances vide Section 20(2) of the Administrative Tribunals Act any representation if not decided within six months can be considered as deemed rejection and the OA can be admitted for dealing with the subject matter on merit itself. In the instant case the relief claimed for by the applicant is only to the extent of direction to the respondents to decide the appeal. As such without going into the merits of the matter, this Original Application is disposed of with a direction to the respondents to decide the pending appeal of the applicant within a period of two months from the date

of communication of this order. Since the appeal is comprehensive the appellate authority shall keep in mind the law laid down by the Apex Court in the case of B. Ramchander Vs. Union of India – 1986 (3) SCC 103 and Narender Mohan Aryan Vs. United India Insurance Company Limited – 2006 (4) SCC 713 wherein it has been emphasized that the appellate authority has to apply its mind to the entire case and ascertain to consider i) whether the procedure laid down in the rules has been complied with and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or any failure of justice, ii) whether the findings of the disciplinary authority are warranted by the evidence on record, and iii) whether the penalty imposed is adequate, and thereafter pass orders nullifying or confirming or enhancing etc. the penalty, or remit back the case to the authority which imposed the same.

4. The Original Application is disposed of as above. No costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(DR. K.B.S. RAJAN)
JUDICIAL MEMBER

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