

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 268 of 2006

Wednesday, this the 8th day of November, 2006

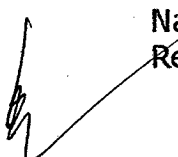
C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Dr. K. Haridas,
Principal (Under Suspension),
Jawahar Navodaya Vidyalaya, Vithura,
Thiruvananthapuram : 695 551,
Residing at JNV Campus,
Chettachal P.O., Vithura,
Thiruvananthapuram : 695 551 ... Applicant.

(By Advocate Mrs. Sumathi Dandapani)

v e r s u s

1. The Commissioner,
Navodaya Vidyalaya Samithi,
[An Autonomous Organisation under the
Ministry of Human Resource Development],
Department of Secondary & Higher Education,
Government of India,
A/28, Kailash Colony,
New Delhi - 110 048.
 2. The Joint Commissioner (Personnel),
Navodayalaya Vidyalaya Samithi,
A/28, Kailash Colony,
New Delhi - 110 048.
 3. The Chairman [Deputy Commissioner],
Vidyalaya Management Committee,
Jawahar Navodaya Vidyalaya Samithi, Vithura,
Thiruvananthapuram : 695 551.
 4. The Deputy Commissioner,
Navodaya Vidyalaya Samithi,
Regional Office, Hyderabad : 500 001.
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5. Shri K.O. Ratnakar,
Principal,
Navodaya Vidyalaya,
Gandhinagar, Gujarat : 382 043 ... Respondents.

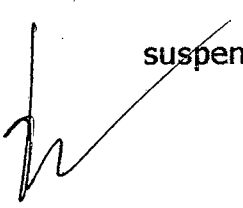
(By Advocate Mr. M.K. Damodaran)

The Original Application having been heard on 2.11.06, this Tribunal on 8.11.06.. delivered the following:

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant, working as a principal in Navodaya Vidyalaya, Vithura, Trivandrum has been named as the first accused in Crime No. 349 of 2005 of the Palode Police Station, charged for the offences punishable under Sec. 120 B, 379, 406, and 409 read with Sec. 34 of IPC. Consequent of his initial arrest by the police, which extended beyond 48 hours, the applicant was kept under 'deemed suspension' on 8 Nov. 2005 (Annexure A-8). In accordance with the existing provisions relating to review of suspension, suspension of the applicant has, recently been extended for 180 days from 22-07-2006, vide order dated 22-08-2006 (Annexure A-12).

2. The applicant has preferred Annexure A-10 and A-11 representations, respectively dated 02-12-2005 and 21-04-2006, both addressed to the Commissioner, Navodaya Vidyalaya Sangathan, requesting for revocation of suspension. These two have not been so far responded to.



3. According to the respondents, vide para 3 of their counter dated 12.06.2006, charge sheet has not been filed before the competent court.

4. The counsel for the applicant relies upon the observations of the Apex Court in para 29 of the judgment in the case of ***Union of India v. Rajiv Kumar, (2003) 6 SCC 516***, wherein it has been held, "*The period of suspension should not be unnecessarily prolonged but if plausible reasons exist and the authorities feel that the suspension needs to be continued.*" Counsel for the applicant also submitted that the applicant has just two years to go for retirement and that he being from West Bengal has to face a lot of problem and hardship at Kerala especially, because of his suspension. In fact, revocation of suspension and transfer outside Kerala, according to the counsel may perhaps assist the applicant.

5. Counsel for the respondents on the other hand submitted that the applicant has not exhausted the statutory remedies and as such, the OA may be hit by the provisions of Sec. 20 of the A.Ts Act, 1985.

6. Arguments were heard and documents perused. The counsel for the respondent is right in her contention that unless remedies are exhausted, the OA be not entertained. The Apex Court has, in its judgment in the case of ***S.S. Rathore v. State of M.P., (1989) 4 SCC 582***, held as under:-




"Section 20(1) of the Administrative Tribunals Act, 1985 provides:

20. (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

16. The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available there under is a condition precedent to maintaining of claims under the Administrative Tribunals Act. " (Underlining supplied)

7. In the instant case, the applicant, no doubt, has penned Annexures A-11 and 12 representations for revocation of suspension, but the same has been addressed to the authority which has put the applicant under suspension and not to the appellate authority. The Appellate Authority, according to the counsel for the respondents is the Committee of the Samiti, formed under the provisions of Education Code. If so, the appeal should have been addressed to the Chairman of the Committee, so that the same would be considered.

8. The Samiti follows the provisions of CCS(CC&A) Rules, 1965 and as such, Govt. Of India Instructions appended to the said Rules would also be applicable to Navodaya Vidyalaya Samiti. One such Government instruction is order dated 7th September, 1965, as modified by order dated 4th February, 1971 and the same reads as under:-



'(10) Speedy follow up action in suspension cases and time limits prescribed.-

1. Instances have been noticed where inordinate delay has taken place in filing charge sheets in Courts in cases where prosecution is launched and in serving charge sheets in cases where disciplinary proceedings are initiated.

2. Even though suspension may not be considered as a punishment, it does constitute a very great hardship for a Government servant. In fairness to him, it is essential to ensure that this period is reduced to the barest minimum.

3. It has, therefore, been decided that in cases of officers under suspension, the investigation should be completed and a charge sheet filed in a Court of contempt jurisdiction in cases of prosecution or served on the officer in cases of departmental proceedings within six months as a rule. If the investigation is likely to take more time, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence, etc., or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order. [G.I., M.H.A., O.M. No. 221/18/65-AVD, dated the 7th September, 1965.]

4. In partial modification of the above orders, it has been decided that every effort should be made to file the charge-sheet in Court or serve the charge-sheet on the Government servant, as the case may be, within three months of the date of suspension, and in cases in which it may not be possible to do so, the Disciplinary Authority should report the matter to the next higher authority explaining the reasons for the delay. [G.I., C.S. (Dept. Of Per.) .M. No. 39/39/70-Ests.(A), dated the 4th February, 1971.]

9. The above instructions underline the principle that apart from the fact that continued suspension would entail hardship to the the suspended officer, the suspended official would be unnecessarily paid the subsistence without taking anything in return by way of service. In case the presence of the officer may not be congenial for gathering witnesses etc., suspension could

be revoked and the individual may be transferred. In the instant case, the order of suspension was of November, 2005 and by now one year has already lapsed. It is not exactly known, whether the charge sheet has already been filed before the Criminal Court. If so filed, then it would be in the fitness of things that the review committee while considering the review of suspension, takes into account the stage of criminal case against the applicant and arrive at a conscious review. However, since the next review would be only in early January, 2007, meanwhile, the respondents should consider the representation filed by the applicant, vide Annexures A-10 and 11 which may be treated as appeal under the provisions of the CCS (CC&A) Rules, 1965, and dispose of the same on merits (limitation not to come in the way of the applicant) and if the appellate authority comes to a conclusion, taking into account the stage of criminal proceedings, that the applicant's suspension could be revoked, then due orders be passed and in that event, it is left to the authorities to shift the applicant if they so desire. In case the appeal is not allowed, then, needless to mention that the authorities shall pass a speaking order.

10. In view of the above discussion, the OA is disposed of with the following directions:-

- (a) Respondent No. 1 shall forward the two representations at Annexures A-10 and A-11 to the appropriate Appellate Authority along with a copy of this OA, which shall be treated as a

supplement to the appeal and the appellate authority may consider the appeal and pass a reasoned and speaking order.

(b) While so considering the appeal, the appellate authority may also take into account the Government of India Instructions extracted above as also the fact that the applicant has only two years of service for superannuation.

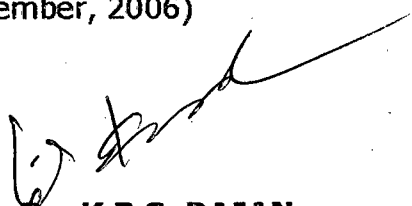
(c) This drill may be performed within a period of two months from the date of communication of this order.

(d) In case the suspension continues, then, the review committee as per the extant rules and procedure, review the case before the expiry of the current period of suspension.

(e) In case of revocation, it is for the authority to either retain the applicant in the present place of posting or effect transfer of the applicant. While doing so, the fact that the spouse of the applicant is also serving as a teacher (as spelt out at the time of hearing) be also kept in view.

11. No costs.

(Dated, the 8th November, 2006)



Dr. K B S RAJAN
JUDICIAL MEMEBR

cvr.