

Central Administrative Tribunal, Lucknow Bench,

Lucknow

Original Application No. 178/2008

This the 11th day of September, 2008

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

HON'BLE DR. A.K. MISHRA, MEMBER (A)

Rati Ram Maurya aged about 47 years son of late Sri Chhotey Lal Maurya, resident of MM-1/1155 K, Vishal Khand, Gomti Nagar, Lucknow (lastly posted and working as PGT (Physics) Kendriya Vidyalaya Lucknow Cantt. District- Lucknow

Applicant

By Advocate: Sri R.C.Singh

Versus

1. Kendriya Vidyalaya Sangathan, New Delhi through its Commissioner.
2. Joint Commissioner (Admn.), Kendriya Vidyalaya Sangathan, New Delhi
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow Region, Lucknow.
4. Principal, Kendriya Vidyalaya, Lucknow Cantt, Lucknow.
5. Sri Jai Prakash Yadav, Principal, Kendriya Vidyalaya, Lucknow Cantt, Lucknow.
6. Sri B.K. Tripathi, Inquiry Officer and Principal, Kendriya Vidyalaya, A.M.C. Lucknow.

Respondents

By Advocate; Sri Surendran P.

ORDER

BY HON'BLE DR. A.K. MISHRA, MEMBER (A)

The applicant, who is a P.G.T. under respondent No.1, has filed this Original Application challenging the order of respondent No.3 imposing the punishment of compulsory retirement on him.



2. According to the applicant, his trouble started after he was transferred to Lucknow and made to work under respondent No. 5, who is the Principal, Kendriya Vidyalaya, Lucknow Cantt. Lucknow. He has made a number of allegations including those of malice and personal bias against the respondent No. 5. According to him, the disciplinary proceeding, which has resulted in the imposition of compulsory retirement on him, was initiated at the instance of respondent No. 5. He has also alleged that the inquiry taken up under Rule 14 of the CCS(CCA) Rules also suffered from a number of infirmities. The punishment order which is based on such an enquiry report is vitiated and, as such, is liable to be quashed.

3. The respondents have taken a preliminary objection on the ground that applicant has not availed himself of the remedies by way of appeal as provided under Rule 23 of the aforesaid rules. Since the alternative remedy is available, this application is not maintainable. Section 20 of the AT, Act, 1985 says that the 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.

4. It was contended in the preliminary objection that Article 80 of the Education Code of Kendriya Vidyalaya Sangathan provides for application of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter



referred to as the Rules) to the employees of Kendriya Vidyalaya Sangathan. For better appreciation, Article 18 (a) of the Education Code of Kendriya Vidyalaya Sangathan is extracted below:-

Article 80. Extension of the Application of Central Civil Services (Classification, Control and Appeal) Rules, 1965:

(a) All employees of Kendriya Vidyalayas, Regional Offices, ZIETs and Headquarters of the Sangathan shall be subject to the disciplinary control of the Sangathan and the Central Civil Services (Classification, control and Appeal) Rules, 1965 , as amended from time to time, will apply mutates mutandis to all members of the staff of the Sangathan except when otherwise decided. (In the above rules, for the words "Government Servant" wherever they occur, the words "Employee of Kendriya Vidyalaya/ Kendriya Vidyalaya Sangathan," shall be substituted).

5. The counsel for the applicant contended that the CCS (CCA) Rules might be applicable to the serving employees of the Sangathan, but it had no application in respect of a person who had ceased to be an employee, which is the case with the applicant . He mentions that Article 81 (c) of the aforesaid Education Code provides for appeal in respect of ex-employees of the Sangathan who were dismissed under provisions of Article 81 (a) and (b) of the Code. Since the disciplinary proceedings against the applicant were not



initiated under Article 81 (a) and (b) , the facility of appeal under Article 81 (c) is not available to him. According to him, no alternative remedy is available to a person who has ceased to be an employee of the Sangathan on account of the disciplinary action taken against him. As discussed earlier, Article 80 provides for substitution of the words "Employee of the Kendriya Vidyalaya/ Kendriya Vidyalaya Sangathan" wherever, the words "Government Servant" occurs in the aforesaid Rules whose provisions would be made applicable to the employees of the Sangathan.

6. A careful examination of the CCS (CCA) Rules and Article 80 of the Education Code of Kendriya Vidyalaya Sangathan, would not leave any room for doubt that the right to appeal against a penalty imposed under Rule 11 is available to an employee of this Sangathan. The argument that he was no longer an employee of the Sangathan on account of compulsory retirement and as such did not have the right to make appeal does not hold much water particularly when seen from the context that explanation to Rule 23 of the Rules clarifies that a person who has ceased to be in service would also be entitled to prefer an appeal. Similarly the right to file a revision a revision application is available to him under Rule 29 of the Rules.

7. We will now examine whether the present application can be admitted even if the alternative remedy available to



the applicant have not been exhausted. The counsel for the applicant cited the following decisions:-

- i) **Whirlpool Corporation of India Vs. Registrar of Trade Marks, Mumbai 1999 (17) LCD 219.**
- ii) **R.R.Pandey Vs. U.P. Power Corporation Ltd. and others 2004 (22) LCD 20.**
- iii) **Sheikh Mushtaque Ahmad Vs. Union of India and others (1997) 36 Administrative Tribunals Cases, 148**

8. The ratio of these judgments holds that there is no bar to entertain an application even if alternative remedy had not been exhausted, but the Court /Tribunal has to be very circumspect and consider whether the facts of the case before them would justify such a course of action. It is only when major issues like violation of fundamental rights, denial of principles of Natural Justice. Lack of jurisdiction of the authority passing the order, or vires of a legislation are involved that the extra ordinary jurisdiction could be invoked.

9. In the following cases, Hon'ble Courts have held that where the alternative remedies are available, the writ petition for the same relief is not maintainable

- i). In B. Paremeshwara Rao Vs. Telecommunication and others reported in AT 1989-91 Vol II page 250 , it was held by the Full Bench of the Tribunal that a Writ petition would



not lie before the Tribunal unless the alternative remedy of filing an appeal had not been exhausted by the appellant.

ii). In *S.S. Rathore Vs. State of M.P.* (1989) 4 SCC 582, Hon'ble Apex Court has held that the Departmental remedies are to be exhausted before the disciplinary order can be challenged in court. Hon'ble Supreme Court had an occasion to discuss Section 20(1) of the AT Act, 1985 before coming into such a conclusion

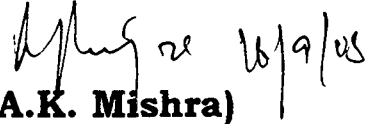
iii). Hon'ble Rajasthan High Court in the case of *Vinok Kumar Jain Vs. The Chief Executive, National Co-operative Union of India* reported in 2004(3) SLR , 481 has held that Writ Petition, without availability of alternative statutory remedy, is not maintainable.

10. From the facts of the case described, we do not find any extraordinary ground which would justify the dispensing of the alternative statutory remedy available to the applicant. The grounds which have been taken in this application could as well be made in an appeal to be filed before the appellate authority, which can examine the grounds in the context of the facts of the case and come to an appropriate finding. Since the major argument that the applicant being an ex-employee of the Sangathan does not have any alternative remedy is found to be without basis, we would rather go by the injunction of Section 20 (1) of the AT



Act, 1985 and direct that the applicant may exhaust the statutory remedy which is available to him.

10. In the result, this application is dismissed. No costs.


(Dr. A.K. Mishra)
MEMBER (A)


(M. Kanthaiah)
MEMBER (J)
16.09.08

Hls/-