

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 55 OF 2006[Patna, this Wednesday, the 10th Day of January, 2007]C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

HON'BLE SHRI S.N.P.N.SINHA, MEMBER [ADMN.]

N.K.Verma, S/o Shri Ramlochan Sharan, PET Kendriya Vidyalaya,
Samastipur.By Advocate :- Shri [Dr.] S.P.Singh.APPLICANT.

Vs.

1. Union of India, Ministry of HRD [Department of Education], Govt. of India, New Delhi-110 001 through Commissions Kendriya Vidyalaya, Sangathan.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110 016.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, P.O.: Lohia Nagar, Kankarbagh, Patna- 800 020.

By Advocate :- Shri G.K.Agarwal, ASC.RESPONDENTS.O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- Heard Shri [Dr.] S.P.Singh, learned counsel appearing for the applicant and Shri G.K.Agarwal, learned Addl. Standing Counsel appearing for the respondents. This matter has been heard on the point of issuance of notice, on admission.

2. The applicant while was working as PET at Kendriya Vidyalaya [KV, for short], Khagaul, was proceeded against in a departmental inquiry and was punished with reduction of two stages in the time scale of pay, with cumulative effect. His appeal did not bring him any relief.

B.M.C.

Thereafter he preferred revision before the concerned authority who, after serving a notice upon him, enhanced the punishment with dismissal from service whereafter the applicant preferred OA 189 of 2004 which was disposed of by order dated 29.06.2005 [Annexure-A/2]. This Tribunal, discussing certain judicial decisions, quashed and set-aside the findings of the Inquiry Officer as well the orders of the disciplinary, appellate and the revisional authorities. The matter was remitted back to the disciplinary authority to come to a finding on the basis of the materials available on record and to make available a copy of the same to the applicant.

That order was complied with vide order dated 22.11.2005 recorded by the disciplinary authority, the Assistant Commissioner, who again recorded order of punishment directing that the pay of the delinquent be reduced by two stages in the time scale of pay for a period of two years, further directing that the delinquent would not earn increment in pay during the period of reduction and on expiry of the same, the reduction will have the effect of postponing future increases in pay. He also directed that the period between 28.05.2004 up to the date of issuance of the order would be treated as dies non, disentitling him to any pay and allowance during the period. The disciplinary authority also ordered that the delinquent would be given a suitable placement forthwith, depending upon availability of vacancy.

3. It is admitted fact that the applicant had a statutory remedy available to him, i.e., by preferring an appeal. Obviously, the applicant has rushed to the Tribunal with this application without preferring the appeal.

4. The learned counsel for the applicant when confronted with this



position submitted that taking recourse to the available remedy was not mandatory under Section 20 of the Administrative Tribunals Act and the applicant could come up directly to the Tribunal for any sufficient reason.

5. When asked as to what sufficient reason has compelled the applicant to come to the Tribunal without availing of the statutory remedy, the learned counsel submitted that the reason was that no basis for framing of the charges, on which departmental proceeding was held, did ever exist which is why the applicant has moved this Tribunal directly. On the other hand, the learned counsel for the respondents submitted that enough materials were on the record to prove the charge, hence this contention was not acceptable to the respondents.

6. Relevant portion of Section 20 of the Administrative Tribunals Act may be reproduced below :-

“[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

[2] For the purposes of sub-section [1], a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

[a] if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

[b] where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal



preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired."

7. It is in connection with provision in sub-section [1] of Section 20 that the learned counsel for the applicant has argued that this provision is not mandatory as it enjoins that a Tribunal shall not *ordinarily* [emphasized] admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules. However, unless a compelling legal and factual reason is shown to urge this Tribunal to entertain an application directly, without resorting to the statutory remedies available, and if the application ^{are} ordinarily ~~is~~ held maintainable without availing of such a remedy, this would amount to making the provisions under Section 20 of the Act to be a nullity. While emphasizing the word 'ordinarily', the words 'shall not' cannot be overlooked.

8. The reason given by the learned counsel for the applicant has been contested by the learned counsel for the other side and at best that can be said to be an argument in favour of the applicant which can be placed in appeal as well.

9. Learned counsel for the applicant has also relied upon a decision of the Apex Court in the case of L.K.Verma Vs. HMT Limited; AIR 2006 [SC] 975. Learned counsel has pointed out that in para 13 of the judgment their Lordships of the Apex Court have held that though an appeal was maintainable, under the rules, before the State Govt. but it was well settled that availability of an alternative forum for redressal of grievances



itself cannot be sufficient to come to a conclusion that the power of judicial review vested in the High Court is not to be exercised.

That observation related to the constitutional power of High Courts and the Supreme court, of judicial review which could not be limited by some provisions in the relevant rules. However, this Tribunal which decides every matter coming before it on facts as well on law, is creation of an enactment of Parliament and is bound by the provisions under the A.T.Act and cannot act beyond these provisions or the rules made thereunder.

10. In our opinion, therefore, this is not a case which should be admitted without the applicant availing of the statutory remedy, i.e., by preferring an appeal.

11. The learned counsel for the respondents also agreed that if the Tribunal does not find this application fit to be considered at this stage, it can remit back the matter to the appellate authority for a decision thereon.

12. Obviously, if the matter is remitted that may be beyond the statutory period for filing an appeal, but since it appears that the appeal was not filed under some advice, may be legal advice, in our opinion the applicant should not be barred from that remedy.

13. In the result, we dispose of this application by directing that this application may be treated as a memo of appeal and duly considered by the appellate authority by also giving an opportunity to the applicant to be heard in person if such a prayer is made within 15 days of the receipt of the order by the appellate authority, and thereafter to decide the appeal by a reasoned order, in accordance with law. If within 15 days of the receipt of this

2/2006

order by the appellate authority, the applicant files additional grounds for consideration, that may also be treated as additional memo of appeal.

14. The applicant should make available a copy of this order as well a copy of the application with its annexures, to the respondent no.2 [The Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110 016] within 15 days of the receipt of a certified copy of the order.

16. With the aforesaid directions and orders, this application is disposed of.

[S.N.P.N.Sinha]/M[A]



[P.K.Sinha]/VC

skj.