

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
O.A. NO. 436/2005**

Date of Order: *20th October 2010*

C O R A M

**Hon'ble Mr. Justice Anwar Ahmad Member [Judicial]
Hon'ble Mr. Akhil Kumar Jain, Member(Administrative)**

Shiv Kumar Vaish alias S.K. Vaish Son of Late Bishnudayal, Kendriya Vidyalaya, Sonepur, District – Saran (Chapra).

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Applicant.

By Advocate: - Shri S.P. Singh

-Versus-

1. Union of India, Ministry of H.R.D. (Department of Education), Shastri Bhawan, New Delhi- 110001, through Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet singh Marg, New Delhi- 110016.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi- 110016.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Patna Region, P.O.- Lohianagar, Kankarbagh, Patna- 800020.

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Respondents.

By Advocate: - Shri G.K. Agrawal, ASC

O R D E R

Akhil Kumar Jain, Member [Administrative] :- The applicant in this OA is a Post Graduate Teacher (PGT in short) in Chemistry in Kendriya Vidyalaya, Sonepur. He was served with a memorandum of charge dated 12.08.2003 for not achieving target of 95% results set by KVS during the year 2002-03. It was alleged in the charge that lower percentage in the result indicates that the applicant is not conscious of his responsibility towards improving the result in Class-XII despite the instructions given to him from time to time, and that the aforesaid act on his part constitutes glaring deriliction of duty which is violative of Rule 3.1(ii) and (iii) of CCS(Conduction) Rules, 1965 as extended to KVS employees and in contravention of Article -61(A) of Education Code.

2. An enquiry under Rule-14 of the CCS(CCA) Rules, 1965 was



conducted by appointing an Enquiry Officer. On the basis of the enquiry report submitted by the EO, in which he found the charges framed against the applicant as established, the Disciplinary Authority vide order dated 05.11.2004 (Annexure A/1) imposed the penalty of stoppage of two future increments with cumulative effect for a period of two years upon the applicant. It was further mentioned in the order that since penalty of withholding three increments without cumulative effect for a period of three years was imposed upon him in past vide order dated 06.03.2003 and the said penalty was in currency, the penalty imposed would operate after the expiry of the previous order of penalty dated 06.03.2003.

3. Heard the learned counsels for both sides.
4. We note that there is hardly any disagreement on the basic facts of the case.
5. The contention of the applicant is that the target of 95% fixed by the respondents was arbitrary. Though the applicant tried his best to achieve the goal and arranged extra classes in the beginning and also guided students in Autumn break and Winter break, the attendance of the students in the extra classes was thin and only few students were benefited who attend these classes. The applicant approached the Principal to enforce the attendance of the students, but to no effect. The applicant achieved only 68% pass in the said examination because the students selected for admission by the respondents were slow learners. Moreover, on the date of examination of Chemistry, due to some obstruction on the way of reaching examination centre, students were late and could not concentrate fully which affected the result. The applicant made serious efforts and in 2004-05, the result was 100%. The applicant has alleged discrimination against him as others on the same footing were not punished. The further contention of the applicant is that enquiry was conducted by appointing an Enquiry Officer, who was prejudiced. The enquiry proceeding was closed on 30.01.2004, whereas the enquiry report was signed by Inquiry officer on 05.06.2004. It has also been



alleged by the applicant that the enquiry report was prepared and written by some other person and the same was also signed by the Enquiry Officer. The applicant filed an appeal before the Appellate Authority. However, without considering the points raised in the appeal, the Appellate Authority has rejected the prayer by passing an unreasoned and un-speaking order. To substantiate his contention about the bias on the part of the Enquiry Officer, the learned counsel for the applicant drew the attention to Annexure A-5 of the OA containing Daily Order Sheet No. 3 of the proceedings dated 30.01.2004 of the enquiry. He submitted that it is clear from the said proceedings that instead of the presenting officer, it was the Inquiry Officer who examined the charged officer, i.e. the applicant. It was further submitted by the learned counsel for the applicant that a careful perusal of the enquiry report as contained in Annexure A/7 clearly indicates that the last three paragraphs of the report have been added later as the same have clearly been typed in different font and style. After signing the report, the Enquiry Officer becomes functus officio and cannot make any change in the report, or offer other comments, clarifications etc. thereon. Thus, the entire enquiry was vitiated and the decision of the authorities based thereon is also bad in law.

6. The case of the respondents is that Kendriya Vidyalaya Sangathan runs a large number of schools in the country. For maintaining the quality of education, targets are given by the KVS for achieving results. Same target is given to all teachers in a subject. The teachers who produce poor results are liable to disciplinary action under Rule 14 and 16 of the CCS(CCA) Rules, 1965. This is done in order to enforce efficiency and accountability in the system. The Post Graduate Teachers in the organisation are paid handsome salary and it is expected of them that they give better performances.. The applicant did not perform well and his poor performance brought poor result in Class XII examination in 2003. The Assistant Commissioner, being the Appointing and Disciplinary Authority, proceeded against the applicant departmentally for giving poor performance in the



year 2003. An enquiry was also conducted in accordance with laid down procedure in which he was afforded reasonable opportunity to defend himself. The Disciplinary Authority on perusal of the enquiry report and also after giving him reasonable opportunity to make representation on the enquiry report, which he did not, held him blameworthy and responsible for giving poor result, and imposed penalty withholding of two future increments with cumulative effect for a period of two years vide order dated 05.11.2004. The Appellate Authority, namely, Joint Commissioner, KVS, after considering the appeal, upheld the punishment order of Disciplinary Authority. As regards the question of bias, it has been stated that at no point of time during the enquiry, the applicant made any representation to the Disciplinary Authority in this regard. As to the delay in submitting the enquiry report, the learned counsel for the respondents submitted that the Enquiry Officer sent the enquiry report on 26.04.2004 to the Disciplinary Authority. On perusal of the report, it was found that he has not given finding therein and the report was therefore sent back to the Enquiry Officer for his finding. Thereafter, the Enquiry Officer recorded the findings and re-submitted the report on 05.06.2004. The applicant was supplied an enquiry report for making representation/submission thereon vide Memorandum dated 16.06.2004 and subsequently reminded vide letter dated 10.08.2004 and 05.10.2004, but he did not avail the final opportunity to comment on the enquiry report. In view of the above facts, the learned counsel for the respondents submitted that the OA merits rejection.

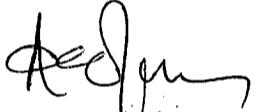
7. We have perused the records and considered the submissions made by the parties.

8. On perusal of the proceedings of the enquiry dated 31.01.2004, as contained in Annexure A/5, it is clear that though a presenting officer was appointed in the case, the enquiry officer himself examined the charged officer instead of the presenting officer. It is also admitted fact that after submission of the enquiry report, subsequent additions were made in the report. It is, therefore,



amply clear that enquiry proceedings were not conducted in accordance with the laid down procedures prescribed under the CCS(CCA) Rules, 1965 and as such the enquiry by the Enquiry Officer, his report, and the decisions of the Disciplinary Authority and the Appellate Authority, based on the said enquiry report also stand vitiated.

9. In view of the above, we are of the opinion that the Enquiry Report, and the orders passed by the Disciplinary Authority and Appellate Authority in the instant case merit quashing and setting aside. The OA is, therefore, allowed and the enquiry report and the orders passed by the Disciplinary Authority and the Appellate Authority are hereby quashed and set aside with liberty to the respondents to re-initiate the proceedings from the stage of enquiry by appointing a fresh Enquiry Officer. No order as to costs.


[Akhil Kumar Jain]
Member[A]


[Anwar Ahmad]
Member[J]

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