

IN THE 'CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.603/1999.

Mumbai, this the 19th day of February 2003.

Hon'ble Shri A.S.Sanghvi, Member (J),
Hon'ble Shri G.C.Srivastava, Member (A).

Mrs.Anuradha Arvind Barve,
Residing at : Raju Lokhande Niwas,
Sharda Nagar, Mudkhed,
Taluka & District Nanded.
(By Advocate Shri G.K.Masand)

...Applicant.

1. Union of India, through
the Secretary, Ministry of
Education, New Delhi.
2. Kendriya Vidyalaya Sangathan,
(L&C Section), 18, Institutional
Area, Shaheed Jeet Singh Marg,
New Delhi - 16.
3. The Commissioner,
Kendriya Vidyalaya Sangathan,
Nehru House,
Bahadursha Zaffer Marg,
New Delhi.
4. Asstt. Commissioner,
Kendriya Vidyalaya Sangathan,
Maharashtra Regional Office,
I.I.T. Powai, Mumbai.
(By Advocate Mrs. H.P.Shah)

...Respondents.

: O R D E R :

By A.S.Sanghvi, Member (J).

The applicant who was serving as a Music Teacher in Kendriya Vidyalaya, Karanja was served with a charge sheet ultimately resulting into a penalty of removal from service by the Disciplinary Authority vide orders dt. 26.3.1977. She had challenged the penalty of removal from service ~~order~~. Vide Civil Suit No.494/1981 in the Court of Civil Judge at Nasik. The suit had come to be dismissed by the Civil Judge, Nasik on 31.7.1981. The Civil Appeal No.360/81 preferred by her before the Asstt.

Judge, Nasik had also come to be rejected vide judgment dt. 19.1.1984. The Writ Petition preferred against the said judgment by the applicant also came to be dismissed by the Hon'ble High Court on 1.2.1995. The applicant preferred SLP before the Hon'ble Supreme Court and while disposing of the SLP vide orders dt. 16.11.1995, the Supreme Court directed the Disciplinary Authority viz. the Assistant Secretary, Ministry of Education, Government of India to reconsider the question of punishment. It was observed by the Hon'ble Supreme Court that the Disciplinary Authority may award such punishment as it deemed appropriate, except the punishment of dismissal and removal. It was also observed by the Supreme Court that this was subject to the condition that the petitioner shall not claim back wages for the period commencing from the date of her removal till today.

2. Pursuant to these orders of the Hon'ble Supreme Court, the Disciplinary Authority vide orders dt. 23.7.1996 imposed a punishment of reduction to the initial stage at Rs.165/- in the pre-revised scale of Rs.165-350 (Rs.1200/- in the Revised Scale of Rs.1200-2040) for a period of three years with cumulative effect w.e.f. her joining on reinstatement to her service. It is further directed that the applicant would not earn increment for pay during the period of reduction and that on the expiry of this period, the result would have the effect of postponing her future increments of pay. The intervening period from the date of removal from service i.e. 26.3.1977 until her joining on reinstatement would be treated as dies non and the applicant would not be entitled to back wages.

3. This order of punishment imposed by the Commissioner

acting as Disciplinary Authority of the applicant is challenged before us by the applicant on the ground that the same is harsh, unreasonable and unjustifiable.

4. We have heard Learned Counsel Mr.G.K.Masand and Mrs.H.P.Shah for applicant and respondents respectively and have carefully considered the rival contentions.

5. It is vehemently contended before us by Mr.Masand, Learned Counsel appearing for the applicant that the order is inconsistent with the charges levelled against the applicant and the order does not take into consideration the fact that the applicant has remained jobless right from 1977 and has given up her claim of back wages also. According to Mr.Masand, the order in effect completely wipes out her previous service also, thereby depriving her of any retirement benefits etc.

6. Mrs.Shah, on the other hand, has pointed out that the applicant had been removed from service and this order had been consistently upheld by all the Courts. The Hon'ble Supreme Court has also not intervened with the findings of the Enquiry Officer so far the guilt of the applicant is concerned. She has pointed out that the Supreme Court had left it to the discretion of the Disciplinary Authority to award such punishment as he thinks appropriate except the punishment of dismissal and removal and therefore, now it is not open to the applicant to challenge the punishment imposed by the Disciplinary Authority. According to her, the Disciplinary Authority had full rights to impose such a punishment which is imposed by him and that applicant cannot make any grievance on the punishment imposed on her.

7. We are in agreement with the submissions of Mrs.Shah so

far the question of discretion of the Disciplinary Authority is concerned. The Supreme Court's order is very eloquent and we cannot add or subtract anything in that order. A complete discretion was given to the Disciplinary Authority to award any punishment which he deemed appropriate except that of the dismissal and removal. Hence, we find that we cannot interfere with the punishment imposed by the Disciplinary Authority of reduction to the lower stage etc. However, the same cannot be said about the regularisation of the period on the part of the Disciplinary Authority. The intervening period from the date of removal from service i.e. 26.3.1977 to the date of her joining on reinstatement is treated as dies non by the Disciplinary Authority, which amounts to wiping out of her previous service and in all probability will clearly dis-entitle the applicant from any retirement benefits or pension etc. The regularisation of the period by way of dies non on the part of the Disciplinary Authority would clearly mean imposition of double penalty on the applicant as the Disciplinary Authority has already levied the penalty of reduction to the lower stage for a period of 3 years with cumulative effect. We are therefore, of the opinion that the regularisation of the period by way of dies non on the part of the Disciplinary Authority is clearly unreasonable and unjustified, in the circumstances of the case. We, therefore, without interfering with the treatment of the period as dies non direct that the same shall not be considered to be a break in service of the applicant and shall not come in the way of the

applicant for considering her previous service as a continuing service for all purposes i.e. seniority, claiming pension etc. With this direction, the OA is disposed of. No order as to costs.

G.C.Srivastava
(G.C.SRIVASTAVA)
MEMBER (A)

A.S.Sanghvi
(A.S.SANGHVI)
MEMBER(J)

B.