

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 124/99  
T.A. No.

199

DATE OF DECISION 6.4.2000

Khemchand Yadav

Petitioner

Ms. Gayatri Rathore

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. V. S. Gurjar

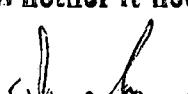
Advocate for the Respondent (s)

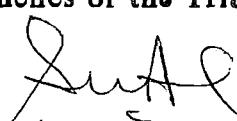
**CORAM :**

The Hon'ble Mr. S. K. Agarwal, Member (J)

The Hon'ble Mr. N. P. Nawani, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(N. P. Nawani)  
Member (A)

  
(S. K. Agarwal) 6/4/2000  
Member (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.124/99

Date of order: 6/4/2020

Khemchand Yadav, S/o Shri Nathu Singh Yadav, R/c 87, Yadav Bhawan, Bati Mathura (U.P.).

...Applicant.

Vs.

1. Union of India through Secretary, Ministry of Human Resources, Shastri Bhawan, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan (Vigilence Section) 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, 7, Tagore Nagar, University Road, Thatipur, Gwalior.
4. The Principal, Kendriya Vidyalaya, NTPC, Ante, Bikaner.

...Respondents.

Ms Gayatri Rathore - Counsel for the applicant

Mr. V.S. Gurjar - Counsel for respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Judicial Member

Hon'ble Mr. N.P. Nawani, Administrative Member.

PER HON'BLE MR. S.K. AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the order of termination dated 15.2.00 and the order of suspension dated 15.1.99.

2. Facts of the case as stated by the applicant are that on receiving a complaint against the applicant regarding sexual harassment of a primary school student, the applicant was suspended vide order dated 15.1.99 but when conducting the enquiry for the allegation against him, the services were terminated vide the impugned order dated 15.2.99. The allegation against the applicant are regarding immoral sexual behaviour towards one student Master Sawai Singh. It is stated that the impugned order is illegal, arbitrary and was issued without following the principles of natural justice. It is also stated that there was no medical evidence against the applicant and termination of the services of the applicant in the garb of the standing orders and without holding enquiry is bad in law, therefore, liable to be quashed. The applicant, therefore, filed this application for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that the applicant exhibited unnatural and immoral sexual behaviour towards a student of K.V.S, Master Sawai Singh. On preliminary investigation made by the Committee headed by Asstt. Commissioner, KVS,

charge against the applicant was established and ultimately the services of the applicant were terminated by the impugned order dated 15.2.99. It is also stated that Article 81(b) of Education Code, empowered the Commissioner of KVS to dispense with the regular enquiry if he is satisfied that it will not be practicable to hold an enquiry under CCS(CCA) Rules, 1965 and Commissioner of KVS decided to dispense with the regular enquiry against the applicant under CCS(CCA) Rules, 1965 and terminated the services of the applicant. It is further stated that the preliminary enquiry was held on 11.1.99 and after recording the statement of the child victim and his parents, the applicant teacher was found guilty and accordingly the services of the applicant were terminated vide the impugned order dated 15.2.99, which is perfectly legal and valid and this O.A having no merits is liable to be dismissed.

4. Rejoinder has also filed, which is on record.
5. Heard the learned counsel for the parties and also perused the whole record as also the written submissions filed by the learned counsel for the applicant.
6. The learned counsel for the applicant has vehemently argued that the applicant is a permanent government servant whose services could be terminated only after holding an enquiry and if he is found guilty of the charges. It is further argued that there was no good ground for dispensing with the enquiry. In support of her contentions, she has referred to:

- (i) RLR 1998(1) 738, Man Mal Sharma Vs. Bikaner Sahkari Upbhokta Bhandar
- (ii) S.B.Civil Writ Petition No.956/1982, Madan Lal Mudgal Vs. K.V.S & Ors.
- (iii) 1991 Supp(1) SCC 600, Delhi Transport Corporation Vs. DTC Mazdoor Congress & Ors.
- (iv) (1993) 3 SCC 259, D.K.Yadav Vs. J.M.A Industries Ltd.

7. On the other hand the learned counsel for the respondents has argued that it was a fit case to dispense with the enquiry and the impugned order of termination in the facts and circumstances of this case is perfectly legal and valid. In support of his contentions, he has referred to (1997) 2 SCC 543.

8. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

9. The general rule is that no employee shall be punished without issuing memorandum of charges and without giving an opportunity to defend himself. In cases where major punishment is proposed to be imposed, disciplinary proceedings, as provided under the Rules to be initiated. Rule 14(2) of the CCS(CCA) Rules



provides that:

notwithstanding anything contained in Rules 9 to 13: Where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit that disciplinary proceeding should not be dispensed with lightly or arbitrarily.

8. The services of a Govt servant can only be terminated after an inquiry in accordance with Rules but the inquiry can also be dispensed with when it is reasonable and practically not possible to hold the same as per the provisions given in the Rules.

9. In Satyabir Singh Vs. UOI, AIR 1986 SC 555, it was held that the finality given by Clause (3) of Article 311 to the Disciplinary Authority's decision that it was not reasonably practicable to hold the enquiry is not binding upon the Court and the Court would consider whether clause (b) of the second proviso or an analogous service (sic) had been properly applied or not.

10. In Salim Sardar Sheikha Vs. Central Rly. Workshop (1987) 5 ATC 417 (Bombay), it was held that legality and propriety of the decision can be examined by way of judicial review.

11. In Jaswant Singh Vs. State of Punjab & Ors, AIR, 1991 SC 385, Hon'ble Supreme Court held that the decision to dispense with the departmental inquiry cannot be rested solely on the ipse dixit of concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.

12. In the case of UOI Vs. Tulsiram Patel, Hon'ble Supreme Court has held that:

(i) The decision to do so (dispensing with enquiry) cannot rest solely on the ipse dixit of the concerned authority. It is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of whim or caprice. There must be independent material to justify the dispensing with the enquiry envisaged by Article 311(2).

(ii) The satisfaction must be that of the authority who is empowered to dismiss, remove or reduce the officer in rank and he must apply his mind to it. As Clause (3) clearly says, there must be decision of the authority empowered to dismiss etc., and then the reasonableness of the decision will be immuned from being challenged in a Court of law.

(iii) The authority empowers to dismiss, etc., must record his reasons in writing for denying the opportunity under Clause (2), before making the order of dismissal, etc.

(iv) The power must be exercised bona fide having regard to

(1)

relevant considerations.

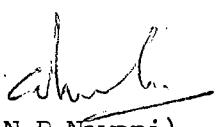
13. The matter regarding dispensing with the enquiry has also come up before the Single Judge of Punjab & Haryana High Court in Civil Writ Petition No.1956/82 and it was held that enquiry can be dispensed with only when it is not reasonably practicable.

14. In another judgment of the Rajasthan High Court, reported in RLR 1998(1) 738 in Man Mal Sharma Vs. Bikaner Sahkari Upbhakti Bhandar, it was held that services of a permanent employee cannot be terminated in terms of standing orders, which provide for termination of services automatically and without assigning any reason. Principles of natural justice have to be read into provisions relating to automatic termination and if such action is taken on the basis of rule without giving opportunity of hearing to the employee, it would be wholly unjust, unfair and arbitrary.

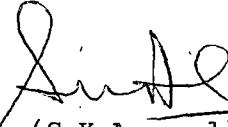
15. The case referred by the learned counsel for the respondents is distinguishable in the facts and circumstances of the case.

16. Although the charge against the applicant is serious and grave but reasons for dispensing with enquiry are not objective and proper. It also appears that the preliminary enquiry conducted in this matter is at the back of the employee, therefore, provisions of Rule 14(2) of CCS(CCA) Rules is not required to be invoked only for bypassing the departmental enquiry as it snatches the valuable right or opportunity of hearing of the applicant.

17. We, therefore, allow the O.A and quash the impugned order of termination dated 15.2.99 and direct the respondents to reinstate the applicant in service within a month from the date of receipt of a copy of this order, without any back wages. It however, will be open for the respondents to initiate the departmental proceedings against the applicant, in accordance with the Rules/ procedure. No order as to costs.

  
(N.P. Nawani)

Member (A).

  
(S.K. Agarwal)

Member (J).