

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 1010 of 2004

Gwalior, this the 21st day of November, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

R.S. Pandey, S/o. Shri K.B. Pandey,
Aged about 45 years, R/o. Plot – 53/6,
Ward No. 16, Near Yadav Dairy, Sindhiya
Nagar, Durg (CG). Applicant

(By Advocate – Shri Jitendra Pali)

V e r s u s

1. Union of India, through Secretary,
Department of Human Resources
Development, New Delhi.
2. Kendriya Vidyalaya Sangathan,
Through its Commissioner, 18,
Institutional Area, Shaheed Jeet
Singh Marg, New Delhi – 16.
3. Joint Commissioner (Admin.),
Kendriya Vidyalaya Sangathan,
(Vigilance Section), 18, Institutional
Area, Shaheed Jeet Singh Marg,
New Delhi -16.
4. Assistant Commissioner, Kendriya
Vidyalaya Sangathan, (Regional Office),
GCF Estate, Jabalpur-482011. Respondents

(By Advocate – Shri M.K. Verma)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the
following main reliefs :



"i. to issue suitable directions quashing the impugned order of dismissal dated 16.9.2004 as being illegal, arbitrary and biased,

ii. to quash the inquiry report dated 5.3.1999 as not being based on material evidence,

iii. to direct the respondents to reinstate the applicant in service with all consequential benefits payable to him."

2. The brief facts of the case are that the applicant was appointed on 27.8.1982 on the post of TGT Mathematics and he was promoted as PGT Mathematics on 28.10.1993. Soon after the applicant took up the Class XI-B on 23.10.1997, the IVth Unit test was conducted and a student namely Master Satish Upadhyay was absent during the test. It was subsequently came to the knowledge of the applicant that the said student has met with an accident at the school gate and had been hospitalized. On 27.10.1997 a circular was issued by the Principal to conduct retest of all those students who were absent during the IVth unit test. The applicant therefore arranged the retest in Mathematics on 28.10.1997. However, the said student Master Satish Upadhyay remained absent in this test also. Thereafter, the applicant was deputed as incharge of the examinations at the Jawahar Navodaya Vidyalaya, Panna and he remained at Panna from 10.3.1998 to 3.4.1998. The final results of Class XIth Science were declared on 31.3.1998 and the above student Master Satish Upadhyay was declared failed in Mathematics by one mark only. He was placed in the category of supplementary. Master Satish Upadhyay become quite upset at having failed by one mark and committed suicide. On 25.5.1998 a charge sheet was issued against the applicant alleging five charges against him including the charge of committing suicide by Master Satish Upadhyay on 31.3.1998. Shri L.P. Sharma was appointed as the enquiry officer. The enquiry officer submitted his report in which the articles of charges 1, 2, 3 and 5 stood proved and the 4th charge was partly proved Annexure A-5. The applicant submitted his representation on 9.3.1999. He submitted sufficient material with his representation to demonstrate that the enquiry was biased, motivated and its finds were contradictory to

the evidence on record. The Asstt. Commissioner vide his order dated 6.4.1999 imposed the minor penalty of withholding of three future increments due in August 1999 and August, 2000 and August, 2001 without cumulative effect (Annexure A-7). The applicant filed an appeal but he was shocked to receive the memo dated 26.6.2000 about the enhancement of the penalty. The applicant submitted a detailed representation before the appellate authority but vide order dated 21.11.2000 the appellate authority had imposed the penalty of dismissal from service on the applicant (Annexure A-10). The applicant preferred an OA No. 111/2001 and by order dated 8th January, 2004 the order passed by the appellate authority was quashed and the appellate authority was directed to pass an appropriate and reasoned order within 3 months. Thereafter the appellate authority had again passed the impugned order dated 16.9.2004 without complying with the directions given by the Tribunal. Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicant that in the IVth unit test which was conducted on 23.10.1997 Master Satish Upadhyay was absent but subsequently it was known that he met with some accident and he was hospitalized. Thereafter the Principal circulated a circular on 27.10.1997 to conduct the test of those students who were absent during the IVth Unit test. The applicant therefore arranged the retest in the subject Mathematics and in this also Master Satish Upadhyay remained absent. The applicant remained in Panna from 10.3.1998 to 3.4.1998. When the result was declared on 31.3.1998 of Class XI Science, Master Satish Upadhyay failed in Mathematics by one mark only and he was placed in the category of Supplementary. Instead of appearing in the supplementary examination he committed suicide for which the applicant cannot be held guilty in any way because the applicant had fixed the date on 28.10.1997 for retest in

Mathematics as per circular of the Principal dated 27.10.1998 but on that date also Master Satish Upadhyay remained absent. The enquiry report was biased, motivated and its findings were contradictory to the evidence on record. But even then the disciplinary authority did not consider the representation of the applicant in its true spirit and passed the impugned order dated 6.4.1999 imposing the minor penalty on him. The applicant preferred an appeal against it but the appellate authority issued a show cause notice dated 26.6.2000 mentioning the fact that the penalty awarded by the disciplinary authority is not adequate and sufficient. The applicant submitted his reply mentioning full facts and contentions, but the appellate authority had not considered the same and passed the order dated 21.11.2000 (Annexure A-10) of dismissal from service on the applicant. The applicant preferred an OA No. 111/2001 and by order dated 8.1.2004 the Tribunal quashed the order of the appellate authority and directed to consider the contentions of the applicants and thereafter pass a speaking, detailed and reasoned order. But the appellate authority has not considered it and has again passed the same impugned order imposing the penalty of dismissal from service. The appellate authority has not considered the contentions of the applicant. Hence, this Original Application deserves to be allowed.

5. In reply the learned counsel for the respondents argued that the appellate authority has passed the impugned order dated 16.9.2004 after taking into consideration all the facts and circumstances of the case of the applicant. All the charges against the applicant were proved except charge No. IV which was partly proved. The impugned order is passed in compliance of the order of the Tribunal. The IVth unit test was ordered to be held on 27.10.1997 and on that day Master Satish Upadhyay was present but the said test was not conducted by the applicant and he left for K.V. Katni after assuring the child that appropriate weight age for IVth Unit test would be given to him. This is supported by the statement of Shri Upadhyay father of Master Satish Upadhyay. The applicant also



tampered the relevant registers to show that Master Satish Upadhyay was absent on 27.10.1997. Master Satish Upadhyay was declared failed in Mathematics by one mark and thus he was given the supplementary result in his credit. On account of the negligence of the applicant Master Satish Upadhyay committed suicide. The applicant had failed to conduct the test till the end of the session inspite of the notice issued by the exam in-charge/Principal. The punishment awarded by the disciplinary authority was found to be inadequate by the appellate authority. Hence, the show cause notice had been issued to him and on receipt of the representation of the applicant the appellate authority has passed the order of the dismissal from service on the applicant and thereby again in compliance of the order of the Tribunal, the appellate authority after considering the contentions of the applicant confirmed his earlier order of dismissal from service on the applicant. The action of the respondents is perfectly legal and justified and hence, the OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records we find that the IVth Unit test was conducted on 23.10.1997. On that date Master Satish Upadhyay was absent during the test. A circular was issued on 27.10.1997 by the Principal to conduct the retest of all those students who were absent during the IVth Unit test and the same was held on 28.10.1997. Admittedly Master Satish Upadhyay was absent on 23.10.1997. The applicant arranged the retest in Mathematics on 28.10.1997 i.e. on the next date of the aforesaid circular issued by the principal but on that date also Master Satish Upadhyay remained absent. Out of five charges four charges leveled against the applicant were fully proved and the charge No. 4 was partly proved which is about the applicant indulging in private tuitions in the staff quarters allotted to him. The second charge is proved which is about the fact that the applicant had managed to tamper the entries made in the attendance register of Class-XI-B with the help of the class teacher by putting absent in respect of Master Satish Upadhyay from



21.10.1997 to 23.10.1997. The contentions of the respondents is that the IVth Unit test was ordered to be held on 27.10.1997 but the applicant had not conducted the test and Master Satish Upadhyay was also present on that date and further the applicant had left for K.V. Katni after assuring Master Satish Upadhyay that appropriate weightage for IVth unit test would be given to him. In this regard we have perused the report of the enquiry officer and find that the applicant had not conducted the retest during the end of academic session inspite of the notice issued to him by the Principal. The result of Master Satish Upadhyay was declared and he failed by one mark only. The disciplinary authority vide his order dated 6.4.1999 (Annexure A-7) had awarded the minor penalty on the applicant i.e. of withholding three future increments due in August, 1999, August, 2000 and August, 2001 without cumulative effect and it will not adversely affect his pension, after considering the report of the enquiry officer which was submitted to him wherein all the charges were proved except charge No. 4 which was partly proved. The appellate authority did not find it adequate punishment and issued the show cause notice and thereafter passed the order of dismissal from service on the applicant vide order dated 21.11.2000 and further on direction of the Tribunal, again the appellate authority has passed the same impugned order of dismissal from service on the applicant on 16.9.2004. We have perused the impugned order dated 16.9.2004 (Annexure A-1) and find that the appellate authority has considered the points raised by the applicant in his appeal such as about the death of the student for which the applicant was not responsible and with regard to this contention the appellate authority has mentioned that Master Satish Upadhyay committed suicide due to non-conducting of the unit test by the applicant till the end of the academic session inspite of notice issued by the Principal. Charges against the applicant are proved except

charge No. 4 which was partly proved. We further find that in OA No. 111/2001 earlier the Tribunal has considered the merit of the case and held that the appellate authority has not considered all the issues raised by the applicant in the appeal memo. Accordingly, the impugned order of the appellate authority was quashed and the matter was remanded back to the appellate authority to pass appropriate orders. Thereafter, the appellate authority has passed a speaking, detailed and reasoned order. There seems to be no irregularity or illegality committed by the respondents while passing the impugned orders.

7. In view of the aforesaid, the Original Application is liable to be dismissed as having no merits. Accordingly, the same is dismissed. No costs.

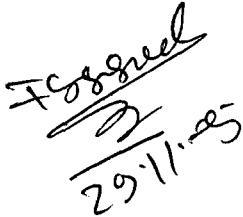

(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

"SA"

प्राप्तिकर्ता नाम ओ/ज्ञा..... जबलपुर, दि.....
प्राप्तिकर्ता नाम ओ/ज्ञा.....
(1) सरिया, उच्च व्यापार नाम प्राप्तिकर्ता, जबलपुर
(2) आमेल श्री/माता/मु..... नाम प्राप्तिकर्ता, जबलपुर
(3) प्रत्ययी श्री/माता/मु..... नाम प्राप्तिकर्ता, जबलपुर
(4) व्यापार नाम प्राप्तिकर्ता, जबलपुर, जबलपुर
सूचना एवं आवश्यक कार्यालयी नं.....
उप रजिस्ट्रार

D. Tendulkar
Dr B. L. Joshi
M. K. Verma
Dr V. D. R.


29/11/05