

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA NO. 918/03

~~Cave No.~~ this the 7th Day of December, 2004

CORAM

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

Shabbir Ahmad
S/o Baseer Ahmad
R/o Staff Quarter No.4/2
Kendriya Vidhyalaya No.1 Campus
West Land Khamaria, Jabalpur.

Applicant

(By advocate Shri Mukhtar Ahmad)

Versus

1. Kendriya Vidyalaya Sangathan
through Chairman, KVS, New Delhi.
2. Assistant Commissioner
Kendriya Vidyalaya Sangathan
Jabalpur.
3. Principal, KV No.1
Ordnance Factory, Khamaria
Jabalpur.
4. S.S. Pandey
Vice Principal/Inquiry Officer
KV No.1, Ordnance Factory, Khamaria
Jabalpur.
5. Education Officer
KVS Regional Office
Jabalpur.

Respondents

(By advocate Shri M.K.Verma)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (1) To quash the impugned orders dated 22.5.2000 and 12.12.02 Annexure A11 and A13 and to direct the respondents to give back wages, seniority etc. to the applicant.
2. The brief facts of the case are that the applicant was appointed as a Group 'D' employee at Kendriya Vidyalaya No.1, Ordnance Factory, Khamaria in 1989. Offences under Section s 420, 467, 468 & 471 of IPC were registered against the applicant



in pursuance of crime No.258/91 of Police Station, Khamaria. The charge sheet was issued on 27.10.97 (Annexure A1). The respondents did not initiate any inquiry since 1991 till 27.10.97. The enquiry officer was biased against the applicant, and therefore, he did not acknowledge the medical certificates and he proceeded with the enquiry against the applicant ex-parte. The applicant made a representation to the disciplinary authority for an opportunity of hearing. The applicant was suffering from malaria fever and the whole departmental inquiry was conducted against rules and without affording an opportunity of hearing to the applicant. The enquiry report was challenged in OA No.463/00 before this Tribunal and vide order of the Tribunal dated 6.6.2000, the Tribunal directed the respondents not to take any action on the enquiry report. The Tribunal was prima facie satisfied that the inquiry report was defective and suffered from a number of infirmities. Thereafter the respondents manipulated their records and prepared an order of dismissal on back date and it was served on the applicant after the passing of the interim order dated 6.6.2000. Therefore, the applicant amended his petition and challenged the order of dismissal dated 22.5.2000 (Annexure A11) but he was directed to file an appeal. The applicant preferred an appeal which was dismissed vide Annexure A13.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that on similar facts, a criminal trial is pending against the applicant and the respondents have conducted the departmental enquiry proceedings against him on the similar facts while the departmental enquiry proceedings should have been stayed in view of 1999 SCC L&S 810 Capt.M.Paul Anthony Vs.Bharat Coal Mines



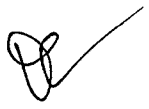
decided on 30th March 1999, and inspite of the illness of the applicant, the enquiry officer did not afford an opportunity of hearing to him. The applicant was suffering from acute malaria fever and he was advised rest and though he sent medical certificate, the enquiry officer conducted the enquiry ex-parte. The alleged incident is of 1991 while the respondents have issued the charge sheet on 27th Oct. 1997 i.e. after 6 years. They have delayed the proceedings and they did not extend the period also. The respondents have inflicted a major penalty of dismissal from service of the applicant by passing the impugned order by the disciplinary and appellate authorities which are not speaking orders.

4. In reply, learned counsel for the respondents argued that in 2004 (6) SCALE 467 Kendriya Vidyalaya Vs. V.T. Srinivas, decided on 5th August 2004, the Tribunal had stayed the departmental enquiry proceedings. This order was held to be non-sustainable. The applicant was given due opportunity of hearing by the enquiry officer. He considered each and every facts and circumstances and contentions of the applicant but he himself delayed the hearing of the enquiry proceedings hence the respondents were compelled to proceed with the enquiry ex-parte and further argued that the charge against the applicant being serious in nature, the enquiry was not commenced since the applicant had filed a writ petition No.4730/97 in the Hon'ble High Court, which later became TA No.58/99 challenging the proceedings itself and the delay in initiating the proceedings to solely attributable to the applicant. When the enquiry was initiated in 1997 if the applicant had cooperated in conduct of enquiry instead of approaching Hon'ble High Court/CAT the enquiry proceedings would have been concluded much earlier. On the



day of preliminary enquiry on 2.3.2000 the applicant was conspicuous by his presence and he had requested the inquiring authority to defer the inquiry on the ground that he had to attend the court of law on that day and at the request of the applicant, the proceedings were adjourned to 6.3.2000. Hence, denial of reasonable opportunity by the inquiry officer does not arise. The applicant could not produce any evidence. When his request to stay the proceedings was turned down he left the premises. The applicant was ab-initio not interested to face the enquiry and resorted to dilatory tactics to avoid the enquiry. The enquiry officer conducted the enquiry ex-parte and submitted the report to the disciplinary authority. The Tribunal did not want to interfere lest it should affect the decision of the appellate authority. Both the impugned orders passed by the disciplinary authority and the appellate authority are speaking, reasoned and detailed orders. Hence the respondents have not committed any irregularity or illegality in their action.


5. After hearing the learned counsel for both parties and a careful perusal of the records, we find that in view of the ruling cited on behalf of the respondents 2004 (6) SCALE 467 (Supra). The Hon'ble Supreme Court has held that "during the pendency of a criminal trial, the appellants decided to initiate departmental proceedings against the respondents. Thus a charge memo was framed and a charge sheet was issued to the respondents. The respondents challenged the decision of the appellants while the criminal trial on identical facts was pending against him. ^{by the} ~~The~~ Tribunal allowing the application of respondents directed that proceedings pursuant to the charge memo be stayed. ^{by the order was held to be non sustainable} ~~We~~ We have perused the ruling cited on behalf of the applicant i.e. 1999 SCC L&S 810 in which the applicant was already acquitted by the criminal court from the criminal charges while in the present OA the criminal trial is said to be pending. Hence the principles laid down



in the ruling cited on behalf of the respondents are fully applicable in the present case. The enquiry officer has given due opportunity of hearing to the applicant during the enquiry proceedings. His request for adjournment of a detailed enquiry was granted several times but he himself was not interested in the initiation of a departmental proceedings against him and he filed a writ petition before the Hon'ble High Court and also an earlier OA before CAT, Jabalpur Bench, as is clear from the records. The charges against the applicant are very serious in nature. The applicant had filed an appeal against the order passed by the disciplinary authority dated 22.5.2000 (Annexure A11) and the appellate authority has passed the order dated 4.12.03. We have perused the aforesaid orders which are speaking and reasoned orders. The appellate authority has mentioned almost all the contentions raised by the applicant in his appeal and he has answered all these contentions in the aforesaid order. Hence it cannot be said that the appellate authority has not applied his mind while passing the impugned order. As the charges against the applicant are very serious in nature, the punishment seems to be not harsh and it does not shock our conscience and the charges are proved. Hence this is not a case of no evidence and the Tribunal cannot reappraise the evidence.

6. After considering all the facts and circumstances of the case, we are of the opinion that the OA has no merit. Accordingly the OA is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman