

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 200 of 2002

Jabalpur, this the 6th day of May, 2004

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

B.K. Pradhan, aged 43 years,
son of late Shri Kashinath Pradhan,
resident of village Markargoradi,
Post Office Junei, District Puri,
(Orissa).

... Applicant

(By Advocate - Shri S. Nagu)

V e r s u s

1. Navodaya Vidyalaya Samiti,
through its Director, Indira
Gandhi Open Stadium, I.T.O.,
New Delhi.
2. Director, Navodaya Vidyalaya
Samiti, Indira Gandhi Open
Stadium, I.T.O., New Delhi.
3. Deputy Director (P&E),
Navodaya Vidyalaya Samiti,
Indira Gandhi Open Stadium,
I.T.O., New Delhi.

... Respondents

(By Advocate - Shri O.P. Namdeo)

O R D E R (Oral)

By Madan Mohan, Judicial Member -

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

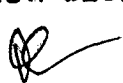
"(i) to quash the impugned penalty order dated
28.6.2001 (Annexure A-8) and the appellate order
dated 9.8.2001 (Annexure A-10) as being void,
illegal and arbitrary,

(ii) to declare that the action of the respondents
in initiating and conducting inquiry and punishing
the applicant is in blatant violation of the
principles of natural justice and fair play,

(iii) to direct the respondents to reinstate the
applicant in service with all consequential benefits
including fixation of pay, fixation of seniority,
grant of arrears of pay and retrospective conside-
ration of the applicant to any higher post to which
his junior have been promoted in the mean time and
with all consequential service benefits."



2. The brief facts of the case are that the applicant was appointed in substantive capacity as Audit Assistant by direct recruitment under the respondents, by order dated 17.3.1989. The applicant joined on 10.4.1989. On 29.9.2000 a charge sheet under Rule 14 of CCS(CCA) Rules, 1965 was issued to the applicant alleging four articles of charges. The statements of imputations were not supplied to the applicant. On account of charge sheet having been misplaced the applicant is unable to annex the same with the OA but the text of the articles of the charges have been reproduced in the enquiry report and also in the penalty order. Another aspect of the aforesaid charge sheet is that the charges levelled against him related to incidents which occurred in 1994 and 1996 and which appears to be of very trivial and frivolous nature. The applicant filed his reply dated 4.10.2000. He refuted all the four articles of charges. No documents enlisted in the charge sheet were supplied to the applicant. Moreover even the list of prosecution witnesses were also not given to the applicant alongwith the charge sheet. The enquiry officer was appointed on 8.11.2000, and whereafter the disciplinary proceedings were held. On 13.2.2001 the enquiry officer recorded that the applicant declined to cross-examine the prosecution witnesses and the enquiry officer very conveniently without earnestly playing the role of an arbitrator and impartial umpire grabbed this opportunity to declare the evidence of the prosecution closed. The enquiry officer further went on to record on 13.2.2001 itself, that since no list of witnesses or defence documents were submitted by the applicant, the defence of the applicant was declared closed. On the very day it has been recorded that an intimation has been received from one of the enlisted prosecution witness Shri S.V. Murthy, Principal, JNV,



Raipur, that he is inability to attend the proceedings on account of being pre-occupied in some other work, the enquiry officer did not make any attempt to afford another opportunity to this prosecution witness to appear on any next date. The deposition of this prosecution witness was necessary as the article of charge related to misbehaviour of the applicant with the said Principal. By office memorandum dated 21.5.2001 the copy of the enquiry report was supplied to the applicant, whereby all the four charges were held established on the unilateral prosecution evidence and by brushing aside the fact of total denial of basic requirement of natural justice to the applicant. Without any application of mind to the protests made by the applicant, though oral and once in writing, the disciplinary authority by the impugned order dated 28.6.2001 has inflicted the penalty of removal upon the applicant. The applicant preferred an appeal to the appellate authority. The appellate authority also without giving any heed to the submissions made by the applicant on the blatant violation of the rules of natural justice committed by the enquiry officer during the enquiry proceedings, rejected the appeal by a non-speaking order. The same was not communicated to the applicant. The fact of his appeal having been rejected, the competent authority has merely informed the applicant vide memo dated 9.8.2001. Aggrieved by this the applicant has filed this OA claiming the aforesaid reliefs.

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

4. It is argued on behalf of the applicant that the copy of the relevant documents were not supplied to the applicant and even the list of witnesses were also not



furnished to him and the applicant was not given the opportunity of cross-examining the prosecution witness. On 13.2.2001 the enquiry officer himself recorded that the applicant declined to cross-examine the witness. The Principal with whom the alleged misconduct was said to be committed by the applicant was not produced in evidence before the enquiry officer and no efforts were made to produce him on the next date and without adjourning the case on 13.2.2001 the enquiry officer closed the prosecution evidence and also closed the defence evidence. The attendance of the Principal would have been easily procured. He was not a foreigner to the institution. Thus the applicant was denied the rightful opportunity to cross-examine this witness who was the most important witness to take just decision in the disciplinary proceeding. The alleged incidents are said to be of the year 1994 and 1995 while the charge sheet was issued on 29.9.2000 i.e. after about 4-5 years. This itself shows the malafide intention of the respondents. He further argued that the order passed by the disciplinary authority is a non-speaking order in which the articles of charges are reproduced mainly and no reasons are given to come to the conclusion to pass such a severe punishment of removal from service of the applicant. The copy of the order of the Appellate authority has not been furnished to the applicant and instead simply he was informed vide a letter dated 9.8.2001 (Annexure A-10), that his appeal has been rejected.

5. The learned counsel for the respondents argued that the copy of the relevant documents were duly furnished to the applicant and opportunity of hearing was also given to the applicant. The applicant himself has refused to cross-examine the prosecution witnesses. Hence the




enquiry officer closed the evidence and the ^{applicant} ~~the~~ has also not adduced any defence evidence. Hence the enquiry officer has also closed the defence evidence of the applicant. There was no request on behalf of the applicant to call ^{alleged} the ~~Principal~~ again for evidence. The order passed by the disciplinary authority is a speaking order and the appeal of the applicant has been dismissed vide a speaking order. Though, the order of the appeal is not filed but the applicant was duly informed about the rejection vide letter dated 9.8.2001 (Annexure A-10). Hence no irregularity or illegality has been committed by the respondents while passing the impugned orders.

6. After hearing the learned counsel for both the parties and on careful perusal of the records, we find that the applicant was not given the opportunity to cross-examine the prosecution witness recorded by the enquiry officer on 13.2.2001. Their examination in chief were only recorded and the enquiry officer himself recorded that the applicant declined to cross-examine these witnesses while this fact is denied by the applicant. Though the respondents have argued that the applicant himself has refused to cross-examine these witnesses, the same is not tenable in absence of any evidence in this regard on their part. However, the main and important witness that is the Principal has not been produced during the enquiry proceedings and no cogent reasons is shown by the respondents ^{for the same} because his attendance was ^{can't} easily available being the employee of the institution. If on that very day of the enquiry i.e. on 13.2.2001, the Principal was pre-occupied with some other work his statement would have been recorded on the next date or on any other date. There was no ^{vacancy} possibility of time as the charge sheet was supplied to the applicant on 29.9.2000 on the basis of

the incident of 1994 and 1996 i.e. after about 4-5 years. Thus in view of these circumstances the attendance of the Principal should have been procured with whom the alleged misconduct was alleged to have been committed by the applicant. The applicant should have been given the opportunity of cross-examining this important witness. We have perused the order of the disciplinary authority which is not at all a speaking order, as in it the articles of charges are reproduced and no reasons are mentioned in it. When there was four articles of charges against the applicant and also when the disciplinary authority has imposed the severe penalty of removal on the applicant, the disciplinary authority should have discussed in his report about each and every charge separately or jointly. Copy of the order of rejection of the appeal of the applicant was also not supplied to the applicant. The learned counsel for the respondents also admitted this fact that the copy of order of rejection of appeal is not filed with the OA or with the reply. The respondents could have easily filed its copy with the return. In the absence of this order of rejection of appeal it cannot be said that whether this order was passed with reasons or whether it was a speaking order. The respondents have simply informed the applicant about the rejection of his appeal vide letter dated 9.8.2001 (Annexure A-10).

7. Considering all the facts and circumstances of the case, we are of the considered opinion that this Original Application deserves to be allowed and the impugned orders are liable to be quashed and set aside. Accordingly, the Original Application is allowed and the impugned orders passed by the disciplinary authority as well as by the appellate authority are quashed and set aside. The case is remitted back to the disciplinary authority from the stage of passing of the final order in the disciplinary enquiry ^{case}. The applicant is directed to submit a fresh detailed



representation
to the disciplinary authority within 15 days from the date
of receipt of copy of this order. If the applicant complies
with this, then the disciplinary authority is directed to
pass a fresh speaking, reasoned and detailed order after
taking into consideration all the issues raised by the
applicant in his representation within a period of three
months from the date of receipt of such representation.
No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठंकम सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्पित:-

(1) सचिव, उच्च न्यायालय दार एगोसिटेशन, जबलपुर

(2) आवेक श्री/श्रीमती/कु.....के काउंसल

(3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल

(4) वंथपाल, के.प्र.अ., जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

उप सचिव

S. Nayak.
DP Nandera

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