

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

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T.A. No. 16/2000

Jabalpur, this the 4<sup>th</sup> day of February, 2004

Hon'ble Shri M.P.Singh, Vice Chairman  
Hon'ble Shri G.Shanthappa, Judicial Member

B.P.Sharma,  
s/o late Sh. J.P.Sharma,  
R/o Nigam Gali,  
Nai Basti, Katni,  
Distt. Jabalpur (MP).

...Applicant

(BY Advocate: Shri B.da.Silva)

-versus-

1. The Chairman,  
Kendriya Vidyalaya Sangthan,  
18, Institutional Area,  
Lodhi Road,  
New Delhi.

2. The Commissioner,  
Kendriya Vidyalaya Sangthan,  
18, Institutional Area,  
Lodhi Road,  
New Delhi.

3. The Assistant Commissioner,  
Kendriya Vidyalaya Sangthan,  
Regional Office,  
G.C.F.Estate,  
Jabalpur (MP).

...Respondents

(By Advocate: Shri M.K.Verma)

O R D E R

By G.Shanthappa, Judicial Member -

The above application is filed seeking the relief to quash the proceedings of the departmental enquiry held against the petitioner in pursuance of Memorandum of Chargesheet dated 10.03.1988 (A/5) alongwith report of the enquiry (A/13). The applicant has also prayed to quash the punishment order (A/17) dated 13.12.1994 and further to direct to hold that the petitioner continues in the employment and may be directed to be reinstated alongwith back wages and

consequential benefits.

2. The brief facts of the case are that when the applicant was working as Principal at Damoh, the respondents intentionally and with malafide intention transferred the applicant to Truchy (Tamilnadu) where no post of Post Graduate Teacher existing hence he was again posted to Rajkot within six months.

2.1. The Principal made a committee for the purpose of educational tours for students on 2.12.1983 consisting himself as observer, the applicant as Manager and Shri M.S.Solanki as Incharge and Accountant and Shri M.K. Parmar as Assistant. Initially 32 students were registered for the said tour but later on two students were dropped. Meanwhile on 8.12.1983 the Principal withdrew himself, to accompany the tour, and to replace Shri H.N.Parmar as Assistant. On the basis of some complaint, the said Principal served a letter to the applicant and Shri Solanki. The applicant had submitted his clarification on 11.7.1984 and Shri M.S. Solanki had also submitted his explanation on 1.3.1984. In the meantime, the Hon'ble High Court of Madhya Pradesh was pleased to allow the case of the applicant (M.P. No. 486/1982) regarding his non-promotion. The applicant was again transferred to Balco-Korba (M.P.) as Vice Principal. The applicant was not assigned his proper seniority and also he was denied his promotion as Principal while his juniors were promoted., against which the applicant filed Writ Petition (MP No.500/1987) before the Hon'ble High Court of Madhya Pradesh against denial of promotion/seniority.

2.2. After five years of the said tour, the applicant was served with a chargesheet on 10.3.1988 under common proceedings proposing departmental enquiry under Rule 14 of CCS(CCA) Rules, 1965 and alongwith the chargesheet

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the Statement of Articles of charges as well as list of documents and list of witnesses including documents were served as per annexure A/5. The charges mentioned in the chargesheet issued to the applicant are as under:-

"Article-I

S/Shri B.P.Sharma and M.S.Solanki while working at Kendriya Vidyalaya Rajkot escorted a contingent of 30 students in the tour to Kathmandu on 20.12.1983. The unauthorisedly submitted five students in the tour programme.

The above manipulation was done with some ulterior motives without the knowledge of the Principal who had to abandon the programme due to sudden illness of his wife. This constitutes misconduct which is violative of Rule 3.1 (i)(ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of KVS.

Article-II


That the said officials and during the said period acted in a very irresponsible manner as they allegedly collected money ranging from Rs. 500/- to Rs. 600/- from each of the outsiders who participated in the tour without the permission of competent authority. Not only they collected the excess amount from the outsiders as against the tentative amount of Rs. 440/- fixed for KV students but also they swindled the amount and kept no record thereof. This action constitutes misappropriation of children's money which violates Rule 3.1(i)(ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of Kendriya Vidhyalaya Sangthan.

Article - III

S/Shri B.P.Sharma, PGT(Eco) and M.S.Solanky, TGT alleged to have forged the letter-head of Principal dated 20.12.1983 purported to have been written by Shri Keshav Prasad to some Guptaji in connection with the inclusion of five outsiders in the tour to Kathmandu and collection of money from them and sending Rs. 1000/- to him. This action is violative of Rule 3.1(i)(ii) & (iii) of CCS(Conduct) Rules, 1964 as extended to the employees of Kendriya Vidyalaya Sangthan.

Article-IV

While functioning as the manager of the contingent, Shri Sharma, allegedly took 39 persons (30KV students + 2 escorts + 2 Group 'D' employees & 5 outsiders) against the Railway concession tickets for 34 persons. Thus he with the connivance of Shri Solanky cheated the Railway Authorities by taking more persons. This action on the part of the officials is blameworthy and violative of Rule 3.1(i)(ii)&(iii) of CCS(Conduct) Rules, 1964 as extended to the employees of KVS.



Article-V

The said officials submitted bogus accounts against the advance drawn in connection with tour to Kathmandu. They submitted the accounts of 36 persons whereas they ought to have submitted the same in respect of only 34 persons i.e. (30 students + 2 escorts + 2 Group 'D' employees). Thus they swindled the fund. This action is violative of Rule 3.1 (i)(ii)&(iii) of CCS(Conduct) Rules, 1964 as extended to the employees of Kendriya Vidyalaya Sangthan."

2.3. After receipt of the chargesheet, the applicant submitted his objections denying the charges. After 3 1/2 years of the issuance of the chargesheet, the first sitting of the preliminary enquiry was conducted on 18.11.91 but that was postponed. The next sitting of the enquiry was fixed for 4.1.1993, but however, that was again postponed to 19.1.1993 to be held at Gandhi Nagar (Ahmedabad). After issuance of the chargesheet dated 10.3.1988, the enquiry was fixed on three dates i.e. 18.11.1991 at New Delhi, on 04.01.1993 at New Delhi and on 19.1.1993 at Ahmedabad but no enquiry was proceeded on all the three dates. In the meanwhile the DPC was held in the year 1987 for the promotion which was due to the applicant. The DPC did not consider the case of the applicant for promotion as the enquiry was pending against him. The entire enquiry proceedings was instituted with a malafide intention only to see that the applicant should not get the promotion. The respondents have malice against the applicant since he succeeded in the litigation in getting the directions from the court against the respondents for his promotion.

2.4. Applicant in his application further contended that since he was eligible for promotion, the respondents ought to have considered his case for promotion and in case of pendency of enquiry proceedings the sealed cover procedure were to be followed and the case ought to have been reviewed after six months for the consideration of promotion and in case found fit, ad-hoc promotion

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should have been given as per the instructions/guidelines issued by the Ministry of Home Affairs and in view of very pronouncements of the Hon'ble Supreme Court.

2.5. on 29.10.1993, the applicant was again transferred to Damoh and posted as Principal Grade II. Though the enquiry proceedings were started on 17.1.1994 and were to commence on 14.2.1994 and 15.2.1994 at New Delhi but however the same were subsequently changed to 10.2.1994 to 12.2.1994. Inspite of applicant's request, he was not allowed any defence assistance. A joint enquiry of the applicant and Mr. Solanky was started w.e.f. 10.2.94. In the said enquiry one ~~xxx~~ witness Shri Keshav Prasad was examined for the respondents and only two questions were asked by the Enquiry officer and the enquiry was concluded. The enquiry officer submitted his report against which the applicant submitted his objections on 19.2.1994. It is worth mentioning here that in the joint enquiry Shri Solanky did not participate and proceedings against him was dropped and the enquiry officer submitted his report as per Annexure A/13. The relevant portion at page 4 of the enquiry report in respect of Article-I is reproduced as under:-

"Shri M.S.Solanki Co No.II in his reply dated 25.3.1988 to the Memo No. F-8-37/84-KVS(vic.) dated 10th March 88 addressed to the Commissioner KVS has unambiguishly stated that five outsiders where physically presented while camping at Kathmandu and Shri B.P.Sharma on being questioned confirmed and conceded the physical presence of 5 outsiders in the contingent. But Shri Sharma asked Shri Solanki to keep it confidential. This original sin is confirmed and elaborated vide para no. 7 of the Supdt. of Police CBI/SPE Division Ahmedabad that five outsiders were taken to Kathmandu in the contingent without the permission of the competent authority and from this seminal sin led misappropriation, forgery and cheating as contained in Article, II,III,IV &V."



Contd. 6/-

2.6. The case of the applicant is that the reply dated 25.3.1988 was not given/ shown to the applicant to know the genuineness of the said letter written by Mr. Solanki nor he was afforded any opportunity to cross-examine him. Hence, the entire enquiry is vitiated on that basis. The specific contention of the applicant is that the enquiry officer himself cross-examined the said witness. In the statement of witness (A/11), the officer has recorded as under:-

"(3) Shri Keshav Prasad, the SW-I has clearly deposed during examination and cross-examination that he had received complaint about the inclusion of outsiders in the educational tour. He has also stated that he was not satisfied by the replies furnished by S/Shri SHARMA AND SOLANKI regarding inclusion of outsiders since the inclusion was done without the knowledge of Shri Keshav Prasad as stated by him, he was not able to throw light on the same. On the other hand, the C.B.I. which is the highest investigating agency of the Govt. of India, enquired into the whole affair and gave its findings vide Ex-S-1 and there is no room to doubt its genuineness.

(4) S/Shri B.P.Sharma and M.S.Solanky are jointly responsible for the manipulation which resulted in submission of irregular or incorrect statement of expenditure marked Ex.S-9(1) to S-9(xxiv) because it contains expenditure which actually was not done on these KV students who did not go. On the other hand it does not reflect the amount collected from the 5 outsiders and also chargeable from them. The expenditure on KV students only has to be charged into the a/c of the Vidyalaya and the amount of Advance of Rs. 6500/- drawn by Mr. Solanky has yet to be settled after admitting the admissible part of the expenditure.

(5) The letter dated 20.12.1983 written to Shri Guptaji on the letter-head of Shri Keshav Prasad, Principal itself supports the fact that some manipulation was done by these two charged officers. It is marked as Ex-S-10.

(6) The admittance of Shri Solanky to the Disciplinary Authority that 5 outsiders were included in the educational tour, under reference, dismantles the continued denial by Sh. Sharma that he knew nothing and whatever was done was done by Shri Solanky. The CBI report confirms the commitment of the misconduct much before the co-accused Shri Solanky accepted it.

(7) When one C.O. admits the findings of the CBI, the non-acceptance by the other CO has no meaning".



Against the above findings, the applicant was not afforded any opportunity to cross-examine the witness.

2.7. The enquiry officer has submitted his enquiry and assessment report alongwith analysis/of evidence. Analysis at page 86 of the enquiry report reads as under:-

"6....They are inalienably attached to each other. They cannot say that one was Manager-cum-Escort-in-Chief and other was Teacher-in-Charge(Account). They were totally responsible to the success of the tour, Manager is the person who is assigned to work with and through people for attainment of predetermined goal for success of the programme. It was the person who was responsible for optimising the use of men, money, material, information and time for the total success of the tour. Teacher-in-charge (Accounts) is the subordinate to Manager-cum-Escort-in-Chief. Neither B.P.Sharma can say that he was Manager cum Escort in Chief and he had nothing to do either with collection of any penny or submission of correct accounts, nor M.S.Solanki can say he was teacher in charge (Accounts) so he was not responsible for taking five outsiders. They were jointly responsible, in word and spirit.....

7. Findings:

on the basis of documentary and oral evidence adduced in the case before me and in view of reasons given above I hold that all five charges against B.P.Sharma Manager cum Escort and Shri M.S.Solanki Teacher in charge (Accounts) are proved beyond any shadow of doubt."

In the analysis the enquiry officer has analysed that "Mr. M.S.Solanki, co-accused no. 2, has accepted the original sin of company of five outsiders and to my mind prove of this original sin has gone undeniably and irrevocably to establish all the charges from Article-I to Article-V." The findings of the enquiry officer is that all the five charges against Shri Sharma and Shri Solanki are proved beyond any shadow of doubt.

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2.8. The applicant submits that no action has been taken against Mr. Solanki and the disciplinary authority has passed the impugned order of punishment on 13.12.1994 without assigning any reason and without considering the entire factual things and the averments made in the appeal alongwith the statement of applicant dated 30.5.94. Hence the impugned order of punishment dated 13.12.1994 (A/17) is illegal, void, ab-initio and is liable to be quashed. Against the said order, the applicant preferred an appeal on 12.12.1995. Since the applicant did not receive any communication for disposal of the said appeal, the applicant approached this Tribunal for quashing of the impugned order of punishment (A/17) and also the enquiry proceedings.

3. Per contra, the respondents have filed their reply denying the allegations and averments made in the T.A. Relevant contention taken by the respondents in their reply is that they have admitted the delay in conducting the enquiry and they have expedited the enquiry proceedings only on the basis of the directions of the Hon'ble High Court and have completed the enquiry proceedings on 12.2.1994. The applicant was duly intimated regarding the venue and the date of enquiry and it was the duty of the applicant to inform his defence assistant to be present on the said dates as the directions of the Hon'ble High Court were to be complied with and the departmental enquiry was to be completed expeditiously. It is contended that Shri Keshav Prasad was examined by the respondents as he was the only witness on whom the article of charges against the applicant were proposed to be sustained and thus there is no illegality in the examination of Shri Keshav Prasad the only witness on whom the respondents were to substantiate their case.





3.1. The applicant was informed well in advance about the date and venue of inquiry and it was his duty to inform his defence assistant to remain present during the inquiry. The Inquiry was to be completed expeditiously as per the direction of Hon'ble High Court's order dated 8.10.1993. It was the duty of the applicant to have kept his defence assistant present in the inquiry proceedings. The defence assistant in his wisdom decided to remain absent. As the inquiry officer was bound by the directions of Hon'ble Court, he had to proceed with the inquiry and the applicant was given ample opportunity of examining and cross-examining the witnesses, and as such, no prejudice was caused to him. The applicant actively participated in the inquiry by examining and cross-examining the proceedings annexed with the application as Annexure A.11. However, the applicant did not raise any objection for an adjournment because of want of non-availability of defence assistant and the said assertion is an after thought in order to get protective orders from this Tribunal. The assertion of the applicant that the letter dated 25.3.1988 written by Shri M.S.Solanki was not included in the list of documents in the charge-sheet and was relied upon by the respondent has no force as strict rules of evidence do not apply in departmental proceedings and admission of guilt by the other charge officer is not required to be proved in the enquiry proceedings as the same was written subsequently after the issuance of charge-sheet. Admission of guilt further does not warrants any inquiry as per the CCS(CCA) Rules, 1965.

3.2. The assertion of the applicant that there was no opportunity given to him for examining Shri M.S.Solanki has no force and hence denied. The respondent most humbly submits that letter dated 25.3.1988 written by Sh.Solanki

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was written by him subsequent to the service of charge-sheet and thus, the same was not included in the list of documents to ~~charge~~ be relied upon by the respondent during the inquiry. The respondent on the request of the applicant supplied a copy of letter dated 25.3.1998 ~~vide their letter dated 7.7.1998~~ and a reasonable opportunity was given to him to afford the comments on the said letter. The respondents have thus given reasonable opportunity to the applicant and has in fact supplied the relevant documents as demanded by him. Shri Solanki in his wisdom decided not to participate in the inquiry and thus in anycase, the applicant, could not have examined or cross-examined Mr. Solanki, Moreover, an admission of guilt of the charges by the other charged officer qua his guilt is genuine and has been made without any coercion or fraud. Moreover, as stated herein above, strict Rules of Evidence Act, <sup>1872</sup> ~~1874~~ do not apply in case of enquiry and as such the applicant was given the documents demanded by him for defending himself, and as such, there is no illegality in the said departmental proceedings. It is contended by the respondents that there is no malafide against the applicant and the appellate authority has passed the order rejecting the appeal of the applicant on 23.08.1995 and a copy of the same was duly communicated to the applicant. Hence, the respondents passed the impugned order without any bias or malafide and the enquiry was conducted in a fair manner by following all the procedure as contemplated under the rules. Therefore, the application of the applicant is liable to be dismissed.

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4. We have heard the learned counsel for the parties and have carefully perused the pleadings and relevant documents available on record.

5. The admitted facts of the case are that there was delay in conducting the enquiry from 1984 to 1994 and on the basis of the directions of the Hon'ble High Court of Madhya Pradesh a due notice for conducting the enquiry on 17.1.1994 was given to the applicant but on that date the enquiry could not be conducted and the same was adjourned. The enquiry was concluded in a hurried manner only in two days i.e. on 10.2.1994 and 12.2.1994 by examining only one witness. The enquiry officer did not give an opportunity to the applicant to submit his defence on the crucial document i.e. letter dated 25.3.1988. After perusing the statement of witness and other enquiry proceedings, we find that only one witness Sh. Keshav Prasad has been examined and there was no opportunity for the applicant to cross-examine him. Moreover, the cross-examination was conducted by the enquiry officer himself. The enquiry was completed after lapse of so many years as it was closed in a hurried manner that too without giving proper opportunity to the applicant and without submitting a copy of the crucial letter dated 25.3.1988. Hence the enquiry was not conducted in a fair manner, and the same is vitiated and not sustainable in the eyes of law. The analysis of the enquiry report and also the findings of the enquiry officer do not speak about the allegations against the

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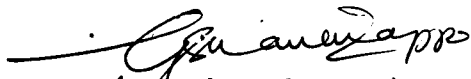


applicant. The applicant has submitted his detailed reply with all the flaws and lacunae committed by the enquiry officer as per Annexure A-18. On the basis of the enquiry report and submission of the applicant, the disciplinary authority has passed a cryptic order as per Annexure A-17 dated 13.12.1994. In the impugned order of punishment, the authority has neither given any reason nor has taken into consideration the contention of the applicant as well as the charges against Mr. Solanki. We have perused the impugned order and found that in a joint enquiry initiated against the applicant and Mr. Solanki, co-accused, no action has been taken against Mr. Solanki whereas the applicant has been punished which is, in our considered view, is arbitrary, unjust, illegal and is not sustainable in the eyes of law and the same is liable to be quashed. To the contention of the applicant that his appeal was not disposed of, the respondents submitted that they have passed the order on his appeal vide Annexure R/1 rejecting the same but they failed to produce the acknowledgement of having served the said order of the appellate authority on the applicant. Since the said order has not been served on the applicant and therefore, he has not challenged the same, we mould the relief of the applicant and consider the order of appellate authority as part of the application. We have perused the order of the appellate authority and found that the objections taken by the applicant have not been considered, and passed the order without assigning any reason. Hence the appellate authority's order is not a speaking and detailed order which is liable to be dismissed.

6. Taking over all facts of the case and documentary evidence on record, we are of the considered view that the

impugned enquiry proceedings against the applicant, impugned order of disciplinary authority dated 13.12.1994 (A-19) as well as the order of appellate authority dated 23.08.1995 (Annexure R-1) are not sustainable in the eyes of law which are malafide in nature only to curtail the promotion of the applicant.

7. In the result the transfer Application is allowed and the impugned orders are quashed and set aside. Since the applicant has already attained the age of superannuation he is entitled for all consequential benefits in pursuance to this order. No costs.

  
(G. Shanthappa)  
Member (Judicial)

  
(M.P. Singh)  
Vice-Chairman

/na/

पृष्ठांकन सं ओ/न्या..... जयपुर, दि.....  
प्रतिनिधि.....

- (1) उपाध्यक्ष, जयपुर.....  
(2) अध्यक्ष, जयपुर..... B. d. n. l. v. r.  
(3) उपाध्यक्ष, जयपुर..... M. K. V. r. m.  
(4) अध्यक्ष, जयपुर.....  
सूचना एवं आचार्य.....  
उप-रजिस्ट्रार 11/2/04

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