

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

.....

T.A. No.55/1999

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

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

B.P.Sharma s/o late Sh. Jagdish Prasad Sharma,  
Principal Gr.II,  
Kendriya Vidyalaya,  
Damoh (MP).

...Applicant

(By Advocate: Shri B.De.Silva)

- versus -

1. The Chairman,  
Kendriya Vidyalaya Sangthan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi - 110 016.
2. The Commissioner,  
Kendriya Vidyalaya Sangthan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi- 110 016.
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 said T.A. is arisen out of W.P. No. 3330/94 filed before the Hon'ble High Court of Madhya Pradesh, Jabalpur.

2. The relief claimed in the said application is for quashing of the impugned order dated 7.7.1994(A/5) and also the order dated 17.8.1994 (A/9) and for further direction to the respondents to allow the applicant to continue to work as Principal Gr.II at Kendriya Vidyalaya, Damoh.
3. The brief facts of the case are that the applicant



was initially appointed as Post Graduate Teacher (Economic) on 12.7.1965 and he was promoted as Principal Gr.II on 29.7.1984 (w.e.f. 17.8.1982) and was posted at Kendriya Vidyalaya, Balco , Korba and subsequently on his request, he was transferred to Kendriya Vidyalaya Damoh where he joined on 21.10.1992. While he was working as P.G.T., he was not promoted on the post of Vice Principal despite of being senior eligible and suitable. Aggrieved by that the applicant filed a Writ Petition MP No. 486/82 ~~and~~ which was decided in the month of March, 1984 in favour of the applicant. In compliance of the said order, the applicant was promoted but he was not assigned his due seniority by the respondents. The applicant again filed W.P. (M.P.) No. 500/87 before the Hon'ble High Court of Madhya Pradesh which was disposed of on 28.3.1990 by issuing a direction to the respondents to count the seniority of the applicant on the post of Vice Principal w.e.f. 17.8.1982 the date on which his juniors were promoted and to assign the proper seniority above the juniors and it was further directed to consider the claim of the applicant for promotion to the post of Principal as on the date when his juniors were promoted.

4. The respondents did not assign the applicant his due seniority from 1982 and also promoted the juniors without considering his claim and, therefore, the applicant again filed Writ Petition M.P. No. 2689/90 which was disposed of with a direction to the second respondent to decide the representation of the applicant within a period of one month from the date of receipt of that order.



5. When the respondents did not comply with the directions of the Hon'ble High Court of Madhya Pradesh the applicant preferred a contempt petition No. MCC434/91. Respondents, because of litigation against them, became wild and they wanted to harass and victimise the applicant.

6. When the applicant was working at Damoh, no allegation/show cause was issued by the appointing/competent authority i.e. Commissioner (Respondent No.2) nor any enquiry was ordered against the applicant during the said period. The respondents attempted to bring, in place of the applicant, <sup>one</sup> Shri O.C. Bhobariya who was promoted from Jaipur vide order dated 27.5.1994 only to disturb the applicant from continuing at Damoh. The <sup>applicant</sup> ~~approachant~~ approached the first respondent with a request not to disturb the applicant from <sup>the</sup> continuing ~~at~~ Damoh. The applicant was allowed to continue with his services at Damoh for a period of one more year.

7. The respondents have served an order of suspension dated 7.7.1994 (A/5) without any reasons. Whereas in the impugned order, the reason assigned is that "the disciplinary proceedings against the applicant is contemplated. Now, therefore, the undersigned in exercise of powers conferred by sub-rule (1) of Rule 10 of the Central Services (Classification Control and Appeal) Rules, 1965, as <sup>is</sup> extended to the employees of Kendriya Vidyalaya Sangathan, hereby places <sup>the</sup> applicant under suspension with immediate effect." It is further ordered that "during the period that this order shall remain in force and the headquarter of the applicant should be Kendriya Vidyalaya Sangathan, R.O. Jabalpur for purpose of drawal of subsistence allowance and that he shall not leave the headquarter without obtaining the previous permission of the undersigned."

8. The grievance of the applicant is that the

the disciplinary proceedings was pending but the respondents <sup>in their order</sup> have mentioned that the disciplinary proceedings <sup>ge.</sup> was contemplated. There was no such disciplinary proceedings contemplated <sup>which was pending</sup> against the applicant. <sup>ge.</sup>

9. It is relevant to mention here that there was a disciplinary proceeding against the applicant under the memo of charges dated ~~10.3.1998~~ <sup>10.3.1998</sup> i.e. on the frivolous charges. The said departmental enquiry was not concluded only due to the lapse on the part of the respondents. The said departmental proceedings was concluded in a hurried manner only by submitting the enquiry report by the enquiry officer on 6.4.1994. The disciplinary authority on the basis of the enquiry report passed the order on 13.12.1994. According to the applicant the impugned order is not sustainable in the eyes of law since the departmental enquiry was not concluded. Against the order of the disciplinary authority, the applicant preferred an appeal to the Chairman, Kendriya Vidyalaya Sangathan, New Delhi on 12.2.1995. Since the said appeal was pending, the applicant had filed the present application.

10. According to the applicant, the departmental proceedings was not <sup>contemplated</sup> ~~concluded~~ <sup>if contemplated</sup> as on 7.7.1994 hence the impugned order is not sustainable in the eyes of law.


11. Per contra, the respondents have filed their reply contending that since the disciplinary proceedings was contemplated against the applicant as on 6.4.1994, they have not committed any illegality or irregularity in issuing the suspension order (Annexure A/5).

12. We have heard the learned counsel for both the parties and have carefully perused the pleadings and other relevant material available on record.


*ge.*

13. The admitted facts are that the enquiry proceedings against the applicant was contemplated on 6.4.1994, the applicant had submitted his objections. The disciplinary authority, during the pendency of the case before the Hon'ble High Court, without carefully considering the enquiry report, passed an order on 13.12.94 imposing the punishment of compulsory retirement on the applicant. On the face of it, it is seen that the enquiry proceedings was initiated against the applicant under malice. The department had faced three litigation filed by the applicant i.e. W.P. MP No. 486/92; WP MP No. 500/87 and WP MP No. 2689/90. In the aforesaid cases, the applicant succeeded and finally when the respondents did not comply the directions of the Hon'ble High Court, the applicant filed contempt petition No. MCC 434/1991. Keeping in mind all these litigation, the respondents have immediately initiated the disciplinary proceedings against the applicant serving him the chargesheet. It is seen that the charges mentioned in the Memorandum of Charges are not grave in nature and only to deprive the promotion to the applicant, he was suspended. Moreover, ample opportunity was not given to the applicant in the enquiry proceedings to defend himself.

14. The disciplinary <sup>authority</sup> has neither considered the case of the applicant in detail nor verified the record, as on the date of passing of the order, the enquiry proceedings was not contempla-<sup>but</sup>ted/without assigning any reason passed the impugned order dtd. 07.07.1994 as per Annexure A--5. Hence the observation made in the impugned order is predetermined and is not sustainable in law, and the impugned order of suspension dated 7.7.94 (Annexure A-5) is illegal and not sustainable in the eyes of law.



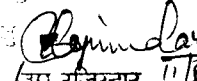
15. In view of the observations made in the preceding paragraphs, the T.A. is allowed and the impugned order of suspension dated 7.7.1994 (Annexure A-5) is quashed and set aside. The respondents are directed to grant him all consequential benefits. Since the impugned order of suspension has been quashed by this Tribunal as ordered above <sup>and</sup> the applicant has already attained the age of superannuation, the second relief of handing over the charge of the post of Principal of KVS Damoh has become infructuous. Before we may part, we may observe that the TA 16/2000 filed by the applicant against the order dated 13.12.1994 of compulsory retirement, has also been allowed by this Tribunal by a separate order of even date. No costs.

  
(G. Shanthappa)  
Judicial Member

  
(M.P. Singh)  
Vice-Chairman

/na/

पृष्ठोक्त नों को/का ..... दि.....

- (1) ..... दि.....
  - (2) ..... दि..... B. Chandra
  - (3) ..... दि..... M. L. Varma
  - (4) ..... दि.....
- सूचना एवं आवश्यक कार्यवाही के लिए   
रूप रजिस्ट्रार 11/2/04

*Final*  
*sm*  
*11-2-04*