

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR, BENCH, JABALPUR

Original Application No. 299 of 2000

Jabalpur, this the 19th day of December, 2003.

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

Vijay Kumar @ Bablu
Son of Shri Beni Prasad Balmik,
Aged about years,
R/o C/o Shri Govind Phare,
83, Lalit Colony, Nehru Ward,
Behind Central Jail, Jabalpur
District - Jabalpur(M.P.)

APPLICANT

(By Advocate - None)

VERSUS

1. Union of India,
Department of Human Resources
Development Through it's Secretary
New Delhi.
2. The Director,
Navodaya Vidyalaya Samiti,
A-39, Kailash Colony,
New Delhi
3. The Deputy Director,
Navodaya Vidyalaya Samiti,
160, Zone-II, M.P. Nagar,
Bhopal M.P. 462 016
4. The Principal,
Jawahar Navodaya Vidyalaya,
Barginagar Jabalpur
District-Jabalpur(M.P.)

RESPONDENTS

(By Advocate - Shri O.P. Namdeo)

O R D E R (ORAL)

By G. Shanthappa, Judicial Member -

None for the applicant. As this is an old matter of the year 2000, we are disposing of the same in the absence of counsel for the applicant, by invoking the provision of Rule 15 of Central Administrative Tribunal(procedure) Rules 1987, we perused the available pleadings and heard the learned counsel for the respondents.

2. The above OA is filed by the applicant seeking the relief to quash the order dated 15.11.1994(Annexure-A-2) and order dated 9.10.1996(Annexure-A-7) and the order dated 6.4.99 (Annexure-A-13) and further direction to the respondents to reinstate the applicant with all consequential benefits.

3. The brief facts of the case are that the applicant was appointed as Sweeper-cum Chowkidar under the respondents. The admitted facts are, that the applicant was unauthorised absent from 14.3.93 to 28.3.95 and he did not sent a communication of his absence ^{of} ~~for~~ ^{for} his duty during the said period. The respondents have issued a letter dated 15.11.1994 vide Annexure-A-2 to the applicant, in which the applicant is not attending his duty since 13.3.93. If the applicant does not attend his duty on or before 30.11.94 the service of the applicant will be terminated. Subsequently order of suspension was sent to ^{applicant's address which was last} known to the respondents.

4. The applicant has submitted an application on 28.3.95 for permitting him to join his duty, in which he has stated, that he was on leave from 14.3.1993 but he has not mentioned about the reasons for absence. A similar letter was also submitted on 21.4.1995. Thereafter he has filed a W.P. No. 3336/96. The W.P.No. 3336/96 has decided on 19.8.96 with a direction to the respondents to decide the representations of the applicant regarding joining for his duties. On the basis of decision of ^{Hon'ble} High Court the respondents have passed an order dated 9.10.96 (Annexure-A-7) is extracted as below :-

" That from the records and the reports submitted by the Principal of Jawahar Navodaya Vidyalaya Barginagar it is seen that Shri Vijay Kumar Sweeper cum chowkidar is a habitual absent from duty without seeking prior permission of the Principal, he has been issued number of Memorandum and warnings from all the Principals under whom he has worked namely Shri Patwardhan, Shri S.P.Singh and Ku. Neelam Shrivastava as a Incharge Principal who have opined that he was not performing his duty properly. It was also noticed that Shri Vijay Kumar was not doing the work. of Sweeper and he had engaged a sweeper by for this purpose and use to spy him from his pocket when was absent.

That on 12.03.1993, Shri Vijay Kumar had left the Vidyalaya premises without the permission of Incharge Brincipal and was absent without any intimation or prior permission when the regular Principal join the vidyalaya registered letter was sent on 06.04.93 asking him to join his duty immediately but no reply to the same was received and on 14.06.1993, his absent was published in the local News Paper

stating that in case he does not join his duties by or on positively his services would be deemed to have been abended and treated as terminated. That a letter was received from his father on 18.06.1993 intimating about his involvement and confinement in jail in a murder case for which he was said to have been arrested on 11.12/03/1993, on this a suspension order was sent to him regarding unauthorised absence on duty and involvement in criminal case. The said suspension order was received back unserved accordingly. The services were treated as abnded since it was a case of abendment of services and unauthorised absence for a long period on duty no departmental enquiry was conducted.

That the acquittal after remaining and confinement mere that 2 years is not a clear cut acquittal Vijay Kumar has been given benefit of doubt.

That in the above facts and circumstances and looking to the involvement in criminal case unauthorised absence and abendment of services is not desireable to reinstate or reappoint Vijay Kumar in the interest of the institution and the students as if such a person is given an appointment it will have adverse effects in the minds of the students and member of the staff.

The representation is disposed off accordingly taking into account the directions of the Hon'ble High Court in W.P. No. 3336/96.

5. Against the said order at Annexure-A-7. The applicant has preferred an appeal before appellate authority. The appellate authority has confirmed order of the disciplinary authority. The impugned order dated 6.4.1999(Annexure-A-13) passed by the appellate authrity^{which} is extracted as follows:-
ep.

" I am to refer to your appeal to R-I re-instatement as per the above court order dated 3.11.97 against the court even No.WP 2856/97 for the post of Sweeper-Cum-Chowkidar. The matter was considered by taking all aspects into consideration and it has been decided by the authority concerned that your appeal for re-instatement as Sweeper-Cum-Chowkidar in NVS has been rejected in the interst of the organisation which is con-educational fully residential instructions in nature. Accordingly your representation is disposed off herewith.

This issue is with the approval of Director, NVS and respondent No.1 of the about W.P.

The case of the applicant is that the respondents have not followed the procedure for terminating the applicant from ^{his} service. Hence the principle of natural justice has been violated by the respondents. Therefore his prayer for grant of relief in this OA shall be considered.

6. The respondents have filed their reply denying the allegations and averments in the OA the relevant paras are

4. That, on 12/3/1993 when the applicant was on night duty he left the Vidyalaya Premises without the permission of the incharge principal and was absent without any intimation or prior permission and when the regular principal joined the vidyalaya a registered letter was sent to him on 6/4/1993 asking him to join his duty immediately but no reply was received and accordingly absence was published in the local news paper stating that in case he does not join his duty by or positively on the date mention his services would be deemed to have been abandoned and treated as terminated for which management would not be responsible
5. That after publication of the said notice in the local news paper a letter was written from his father on 18/6/1993 intimating about his involvement and confinement in jail in a murder case for which he was set to have been arrested on intervening night of 11-12 March, 1993. That, on this a suspension order was sent to him regarding his unauthorise absence from duties confinement in jail in a criminal case. The said suspension order was back unserved accordingly his services were treated as abandoned since it was a case of abandoned services no departmental enquiry was conducted.
6. That, during the period of his confinement in jail no intimation was received to this effect that he is in jail and that trial is going on or he is attempting for bail.
7. That, on 28 /3/1995 the applicant submitted an application for permitting him to join on duty stating that he was on leave from 14.3.1993 and as such he permitted to join his duties but in the said letter there was no mentioning about the reasons for absence or decision of the criminal case. A similar letter was again submitted on 21/4/1995.
8. That, the petitioner filed a writ petition in the Hon'ble High Court which was registered as W.P. No. 3336 and vide order dt. 19/9/96 the Hon'ble Court directed that the representation regarding joining of duties be decided within a period of one month and a question of petitioner acquittal be also taken into consideration.
9. That, on receipt of said order the competent authority decided the representation on 9/10/1996 (Annx. A-7) and since the applicant was on long absence and without permission and confined in jail in a murder case a reasoned order was passed and looking to the facts and circumstances of the case and involvement of the applicant in criminal case and unauthorise absence for long period and abandoned service it was not desirable to reinstate or rejoin the applicant. This was more so in public interest and in the interest of institution and in the interest of students at large because if such persons are given appointment it will have adverse effect in the minds of students and the members of the staff. As Navodaya Vidyalaya are co education residential school where apart from teaching education under syllabus of C.B.S.E. care is also taking for upliftment, welfare and progress of the students and making themselves reliance and for this teaching and non teaching staff engaged and appointed are expected to remain in the campus of school where accomodation have been provided to them.

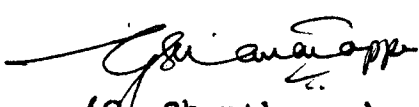
10. That, after disposal of the said representation on 9/10/1996 the applicant submitted an appeal/representation to the Direction of the Navodaya Vidyalaya. In May 1997 permission was also sent by the applicant thereafter a fresh petition was preferred in which directions were issued by the High Court in W.P. No. 2856/97 to the effect that the applicant appeal be decided within a period of 6 weeks. The said appeal was disposed off on 6.4.1999 and the same was rejected in the interest of organisation which is co educational fully residential in nature. The petitioner has not challenged the orders dated 6.4.1999 Annexure-A-13 and order dated 9.10.1996 Annexure-A-7 in this Original Application.

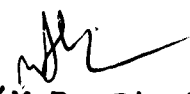
7. Heard the learned counsel for the respondents and carefully perused the record.

8. After hearing the learned counsel for the respondents and perusal of the records, we decide the OA on merits. The disciplinary authority has issued order dated 15.11.1994 (Annexure-A-2) and order dated 9.10.96 (Annexure-A-7) are passed without conducting the enquiry ^{as required under law. - Gt}. The respondents have also passed the order mentioning that there was no enquiry held. Therefore, ^{we decide,} the order dated 15.11.1994 (Annexure-A-2) and 9.10.96 (Annexure-A-7) is not sustainable in the eye of law.

Accordingly these orders are quashed. The appellate authority ^{has} also passed an order dt. 6.4.1999 (Annexure-A-13) which is not ^{Sp.} a speaking order and the appellate authority has also not followed the procedure of ^{enquiry} preliminary. Hence, the order dated 6.4.1999 (Annexure-A-13) is not tenable in the eye of law. Accordingly Annexure-A-13 is quashed. The matter is remanded to the respondents. The respondents are directed to hold an enquiry and follow the procedure and pass an appropriate order by following the principle of natural justice. Accordingly a direction is given to the respondents to hold an enquiry and pass appropriate order. While passing an appropriate order the applicant should be given an opportunity of hearing. This order should be complied within a period of 6 months from the date of receipt of copy of this order.

No costs.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

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Shashank Shethkar
Acho
of Namdeo Ach.

Signature
2/11/04

Issued
5/11/04