

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

25.09.2013

OA No.372/2013

Mr. S.K. Jain, Counsel for applicant.
Mr. Amit Mathur, Proxy counsel for
Mr. Kapil Mathur, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

(Dr. K.B. Suresh)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR

ORIGINAL APPLICATION NO.372/2013

DATED THIS THE TWENTY FIFTH DAY OF SEPTEMBER, 2013

CORAM:HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Bhanwar Singh Rathore,
Son of Shri B.S.Rathore
Aged about 44 years,
working now a days as Store Keeper Grade I,
Regional Institute of Education,
Ajmer.

.....Applicant

(By Mr S.K.Jain, Advocate)

Vs.

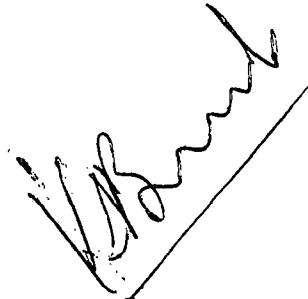
1.National Council of Educational Research and
Training,
Shri Arbindo Marg,
New Delhi

2.Principal Regional Institute of Education,
Ajmer.

3.Shri K.C.Kabliwal Enquiry,
Officer through Regional Institute of Education,
Ajmer.

4.Principal, Regional Institute of Education,
Ajmer Shri K.B.Rath.Respondents

(By Mr.Amit Mathur proxy to Mr.Kapil Mathur, Advocate)



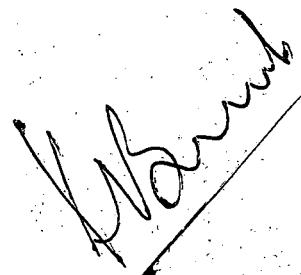
O R D E R (ORAL)

DR.K.B.SURESH, MEMBER (J):

Heard. Even after repeated opportunities having been granted, the respondents have not filed their reply. This is the second round of litigation. When the applicant was under apprehension that the Inquiry Officer was biased against him, he had moved an application for the change of the inquiry Officer. Apparently, the Disciplinary Authority rejected his appeal. Normally after rejection of that application, sufficient time was to be granted to the applicant to move an application before the higher authority to ask for change of the Inquiry Officer but there is little vagueness in the rules as to which authority shall pass the order consequent upon request for the change of the inquiry Officer. According to the learned counsel for the applicant, As per Rule 29, it can only the Reviewing Authority who can pass such orders. In this case the applicant did not get the opportunity to do so as the inquiry has been speedily concluded and thereafter the report was forwarded to the applicant.

2. It appears that the Postmaster returned the report stating that it was refused to be accepted by the applicant. Sufficient opportunity to the show cause notice was given which followed inquiry report. Then the applicant had approached the Tribunal by filing O.A.No.371/2012. The Tribunal vide order dated 31.05.2012 has passed an interim order to not to proceed with the inquiry consequences but then apparently on 29.05.2012, the Disciplinary Authority had passed an order against the applicant.

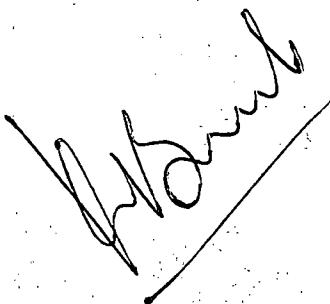
3. Finally the matter was heard on 15.02.2013 and the Tribunal observed in Para No.20 that the respondents' stand that the applicant did not give his reply even up to 02.06.2012 cannot be accepted. It held that it was the

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duty of the Disciplinary Authority under Rule 15(1) (A) of the CCS (CCA) Rules, 1965 to wait for the 15 days after receipt of notice by the applicant and then pass a final order. The Tribunal found that the order was not brought to his knowledge. It further held that the ruling submitted by the respondents is not applicable to the case. Therefore, the penalty order was quashed but chance was given to the respondents to issue fresh show cause notice and proceed further in the matter from the stage of inquiry.

4. It appears that the same notice was issued to the applicant and the same punishment was imposed on him thereafter. the grievance of the applicant is that whatever has been issued by the authority cannot be regenerated in a different form at this stage because he would say that the Inquiry Officer had been biased against him and he did get an opportunity to challenge it before the proper forum or before the Reviewing Authority. However, we think that casting duty of such responsibility of the Review on the President of India will not be justifiable but then we accept the view of the learned counsel for the applicant that whenever a complaint of bias is received, it should be addressed to the Vigilant Minister.

5. Therefore, the applicant's claim is that the fundamental of adjudicating authority is to decide fairly. The Appellate Authority may not be the competent authority to carry on with the inquiry relating to him. Practically the Appellate Authority has all the powers to hear this matter. If the Disciplinary Authority could have accepted the view of the applicant for the change of the Inquiry Officer then Appellate Authority can also decide whatever seems to be reasonable. But even otherwise also the matter can be decided in judicial review after opportunity are granted to both the sides. But at the same time, it is

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noticed that the applicant had been out of employment. Therefore, in view of the circumstances of the present case, we issue the following directions:

The learned counsel for the respondents has placed a copy of the appeal dated 14.05.2013 which had been filed by the applicant before the Joint Director, NCERT, New Delhi. The respondents would themselves point out the remedy and the issues which can be heard and order be passed. We accept the view of the respondents and, therefore, the following order is issued:-

- (a) The appeal shall be heard and decided within a period of one month after giving opportunity to the applicant.
- (b) The applicant would be entitled to normal TA & DA for the period of hearing as he is still out of service to the extent as was available to him while he was in service.
- (c) Within ten days of hearing, the Appellate Authority shall pass a reasoned and speaking order touching other aspects raised by the applicant, even for change of the Inquiry Officer. He shall examine the merit of the allegation raised by the applicant and shall pass a speaking order.
- (d) If the decision of the Appellate Authority is against the applicant then we reserve the right of the applicant to approach seeking re-agitation, if he so wishes.

6. Therefore, the OA is remitted back to the Appellate Authority to decide the matter.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

W.B.Suresh
(DR.K.B.SURESH)
MEMBER (J)

AHQ