

Reserved

**Central Administrative Tribunal, Allahabad Bench
Allahabad**

Original Application No.330/01040/2010

This the 1st day of November, 2018

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Rajesh Kumar Srivastava son of late Ram Chandra Srivastava Jawahar Navodaya Vidyalaya, Agsauli, District- Hathras r/o 137/212, Lakhpat Rai Lane, Bahadurganj, Allahabad-211003.

Applicant

By Advocate: Sri S.K.Singh Vashisth

Versus

1. Union of India through Secretary of Human Resources & Development, Department of Education, Government of India, New Delhi.
2. Director of Commissioner, Navodaya Vidyalaya Samiti, A-28 Kailash Colony, New Delhi-110048.
3. Deputy Director, Navodaya Vidyalaya Samiti, Regional Office, Lekhraj Panna, IIIrd Floor, Sector II, Vikas Nagar, Lucknow.
4. The Joint Commissioner, A-28, Kailash Colony, New Delhi-110048.
5. The Principal, Jawahar Navodaya Vidyalaya, Agsoli, Hathras.

Respondents

By Advocate: Sri N.P.Singh

ORDER

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)

Three girl students of Class VIII of Jawahar Navodaya Vidyalaya, Agsoli, Hathras lodged a complaint of inappropriate behavior and sexual harassment against the applicant Rajesh Kumar Srivastava, Music Teacher in the same school on 22.4.2001..

2. The aforesaid complaint was sent to the Principal of the School through one Sita Gupta, teacher of Section B of Class VIII.
3. Dr. V.K. Varshney, the then Principal of school issued a warning letter to the delinquent employee/ applicant on 26.4.2001,

whereupon the applicant submitted a detailed and robust explanation on 30.4.2001, denying all allegations.

4. Thereafter, the department instituted a formal inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCS (CCA) Rules, 1965). A memorandum of charge sheet dated 18.10.2001 was issued. During the course of formal inquiry, testimonies of victims and other witnesses were recorded. They were subjected to cross examination on behalf of delinquent employee/ applicant. Defence were also allowed to produce evidence. The statements of these witnesses are available on record as Annexure No. 10,11,12, 13.14.15 and 16 etc. The Inquiry Officer (I.O.) Sri V.D. Tripathi submitted a report concluding that the allegations against the applicant Rajesh Kumar Srivastava could not be proved. However, he suggested that applicant Rajesh Kumar Srivastava be warned and should be asked not to talk to female students and teachers in privacy.

5. The Disciplinary Authority disagreed with the findings of I.O. on the Article of Charge No.1 as leveled against the charged officer on the ground that all the three victim girls had confirmed their allegations during the course of inquiry. Memorandum of this disagreement dated 11.8.2003 is available on record as Annexure-24. Sri R.K. Srivastava was also served with a copy of I.O. report dated 23.6.2003. Sri R.K. Srivastava was also asked to file a written representation on the conclusion of disciplinary authority. Sri R.K. Srivastava filed a detailed representation against the conclusion of disciplinary authority on 1.9.2003, copy of which is available on record as Annexure A-25.

6. It is pertinent to point out that Article of Charge I pertains to the stated misbehavior of applicant Sri R.K. Srivastava with three victim girls which included the allegation that Mr.

R.K.Srivastava kissed one of girl and touched all three girls inappropriately. After considering the submissions of delinquent employee, disciplinary authority passed a detailed order spanning several pages and inflicted the punishment of removal from service with immediate effect.

7. Sri R.K. Srivastava filed statutory appeal against the removal order dated 27.10.2003 passed by the disciplinary authority namely Dr. P.S. Salaria, Dy. Director, Navodaya Vidyalaya Samiti, Regional Office, Lucknow. The Appellate Authority confirmed the order of disciplinary authority and rejected the appeal on 22.3.2004.

8. The applicant Rajesh Kumar Srivastava, then invoked the jurisdiction of this Tribunal by instituting an Original Application (O.A.) No. 1252 of 2004 (Rajesh Kumar Srivastava Vs. Union of India and others) which was decided on 31.7.2009. The Tribunal concluded that order of Appellate Authority is non-speaking one , therefore, the order of Appellate Authority dated 22.3.2004 was set -aside. The applicant was directed to file additional appeal and appellate authority was asked to decide appeal afresh by reasoned and speaking order meeting all the contentions raised by the applicant in his earlier appeal. Copy of the judgment of this Tribunal dated 31.7.2009 is available on record as Annexure A -18.

9. Appellate Authority, thereafter, passed a detailed order on the appeal of the applicant dated 25.11.2009 spanning several pages. The appeal of the applicant was again dismissed by the aforesaid order.

10. Feeling aggrieved, the applicant has filed the present O.A. No. 1040/2010 seeking following reliefs:-

- a) Issue an order or direction to the respondents to quash the order dated 11.12.2009 passed by respondent No.4.

- b) Issue an order or direction to the respondents to reinstate the applicant in service forthwith along with full service benefit with all present and back wages to be paid to the applicant with pendentelite and future interest.
- c) Issue an order or direction to the respondents which the Hon'ble Tribunal may deem fit and proper in the interest of justice.
- d) Award cost in favour of the applicant.

11. The respondents have filed counter reply disputing all the contentions of applicant claiming that a proper inquiry was conducted though it was not required as held by Apex Court in the case of **Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others (1997) 2 Supreme Court Cases, 534** in its judgment dated 30.9.1996.

12. The applicant, thereafter, filed Rejoinder Reply, reiterating and re-enforcing his contentions in the O.A..

13. Learned counsel for respondents has drawn the attention of this Tribunal towards Rule 29 of CCS (CCA) Rules, 1965 wherein provision of revision and review are available to the delinquent employee. The counsel has submitted that alternative remedy of revision was available to the delinquent employee but he has not availed the same and has straightway invoked the jurisdiction of this Tribunal second time. The learned counsel has submitted that this ground alone is sufficient reason for dismissal of this O.A.

14. Learned counsel for applicant has argued that the provision of revision is not mandatory and that the O.A. cannot be dismissed on this ground alone.

15. Be that as it may, we believe that considerable time has elapsed to dismiss the O.A. on technical ground. The alleged incidence took place in April, 2001. More than 17 years have elapsed. It is a very serious matter of sexual assault. This Tribunal had also entertained an earlier O.A. in this regard. The present

O.A. itself was filed in the year 2010. Therefore, we believe that time has come to decide this O.A. on merits, instead of rejecting it on some technical ground.

16. Heard Sri S.K. Singh Vashisth, learned counsel for applicant and Sri N.P.Singh , learned counsel for respondents.

17. Learned counsel for applicant has submitted that he was exonerated by I.O. and yet the disciplinary authority (D.A.) did not pay any heed and punished him by inflicting a serious punishment of removal from service. It is contended that disagreement note of disciplinary authority contains no reasons and was passed on surmises and conjectures. He has drawn the attention of this Tribunal towards the Rule 15(2) of CCS (CCA) Rules, 1965, wherein disciplinary authority is required to give tentative reasons for the disagreement, if any, with the findings of the I.O. on Article of charge to the delinquent employee. Argument is that order of D.A. is bereft of any reason, therefore, not sustainable in the eyes of law.

18. Entering into the merits of the case, counsel has further referred to the testimonies of various witnesses, saying that these testimonies do not disclose any punishable misbehavior of applicant. The learned counsel for applicant has also referred to testimonies of some other witnesses wherein they have admitted the acceptance of groupism and factions among the teachers of the school. Counsel has argued that present complaint is the result of this groupism and factionalism among the teachers of the school. Learned counsel has further submitted that all the three complaints are similar in the language indicating the prior meeting of mind between complainants which in turn demonstrate that he has been victim of a conspiracy. He has also submitted that the facts of case of Avinash Nagra (supra) are different from the case

of present applicant. Therefore, the conclusion drawn by the Apex Court in that case are not applicable in the instant case. Learned counsel for applicant has also argued that Rule 29 of CCS (CCA) Rules, 1965 is not mandatory. Therefore, he was entitled for filing the present O.A. without filing revision against the order of appellate authority.

19. Per contra, the learned counsel for respondents has submitted that the facts of the case of Avinash Nagra (supra) are similar to the facts of the present case. In any case, in the present dispute, full inquiry was conducted, complete opportunity of cross examination was afforded to the applicant which applicant availed. The disciplinary authority has given brief but adequate reasons for disagreement with the conclusions of I.O.

20. Learned counsel for respondents has submitted that appellate authority has also passed a detailed, speaking and reasoned order as desired by this Tribunal vide order dated 31.7.2009 passed in O.A. No. 1252/2004.

21. It is pertinent to point out that all the victim girls are the survivor of stated sexual assault and have reiterated their allegations during the course of inquiry. The testimonies of these girls have been filed by the applicant himself. The bare perusal of these testimonies would indicate that they were indeed victim of inappropriate behavior of applicant. These testimonies are credible and trustworthy. It is surprising that I.O. did not give any credence to the testimonies of these victims. He in fact, relied upon testimonies of other persons who were not even present at the time of stated sexual assault. He gave undue and unnecessary emphasis to the alleged fact of groupism and factionalism among the teachers. Groupism and factionalism among the teachers was not sufficient to discard the otherwise trustworthy testimonies of

victims. If some person has been subjected to any inappropriate behavior by any person, then the I.O. is not required to enter into the motives of filing complaint. If the evidence of victim is trustworthy and credible, then it was not necessary to discuss the question of factionalism and motives among teachers. Fact of the matter is that there is not a iota of evidence to demonstrate that the complaint of these three girls stem from factionalism among teachers.

22. The bare perusal of report of I.O. would indicate that it is based on perverse interpretation of available evidence.

23. The inquiry was concluded on 26.4.2002 (Annexure CA-1). During this inquiry, rival parties have produced their evidences. Both parties were allowed the cross examine witnesses. Once the recording of evidence was finished on 26.4.2002 at 11.00 a.m. as indicated by Annexure CA-1, there was no occasion for I.O. to procure additional evidence without giving any opportunity to other party to cross -examine the witnesses from which these additional evidence was procured.

24. In the instant case, after closure of inquiry a letter purported to be jointly written by Vijay Kumar Saxena and Dev Dutt, allegedly parents of two victim girls surfaced on record. This letter is a joint letter of Vijay Kumar Saxena and Dev Dutt but this letter was addressed to Dy. Director, Navodaya Vidyalaya Samiti and not to the I.O. This letter was not only accepted on record but a very significant weightage was given to this letter by I.O.

25. It is also stated that one affidavit purported to be sworn by one Sweta Saxena, daughter of Vijay Kumar Saxena and one of the victim had also been filed. The bare perusal of this letter (Annexure A-2) would reveal that it was signed on 27.4.2002 by one person purported to be Vijay Kumar Saxena, indicating that the letter

itself was prepared after conclusion of the inquiry but prior to the submission of inquiry report. The identity of this Vijay Kumar Saxena was never established. He was not called for evidence to authenticate so called letter. No effort was made by I.O to establish the authenticity of this letter.

26. As stated earlier, this letter was allegedly written by two persons. Second person is named as Dev Dutt. Strangely, there is no signature of this Dev Dutt on this letter. It has merely been signed by one person purported to be Vijay Kumar Saxena whose identity was not confirmed by I.O.

27. Along with this letter, one so called affidavit of Sweta Saxena was also filed. The bare perusal of this affidavit would indicate that so called affidavit cannot even be treated as affidavit. It has neither been notarised nor sworn before any Magistrate. No verification of this document was done. Strangely, this so called affidavit was signed by a person purported to be Sweta Saxena on 17.6.2002, after almost two months of closure of inquiry.

28. The inquiry records do not indicate under what circumstances these two documents arrived on record. However, inquiry report dated 23.6.2003 prepared by Sri B.D. Tripathi, I.O. itself says that these two documents were submitted by delinquent employee Sri Rajesh Kumar Srivastava. The I.O. did not care to inquire under what circumstances, the applicant managed to procure these documents. He did not ask Sweta Saxena about the stated contradiction emerged from submission of these documents.

29. Now, the situation is, that letter purported to be written by Vijay Kumar Saxena, father of Sweta Saxena was signed on 27.4.2002, after conclusion of inquiry on 26.4.2002. So called affidavit was signed on 17.6.2002 i.e. after almost two months of conclusion of recording of evidence. The question is after

conclusion of recording of evidence, why was the I.O. delaying the submission of his report because his report was submitted on 23.6.2002 after almost 14 months of conclusion of evidence. These two suspicious documents which surreptitiously surfaced on record after conclusion of inquiry, have been given prime place in the inquiry report dated 23.6.2003 by Sri B.D. Tripathi.

30. Surprisingly, the I.O. in the Article No. 1 has stated that except three victim girls, nobody has supported the allegation of sexual assault against the applicant. This is strange conclusion. Testimonies of girls itself say that at the time of sexual assault, only three girls and delinquent employee were present. In fact, at one point of time, the applicant sent two girls away for few minutes on some pretence and then kissed one of the girl who was alone. This fact has been brushed aside by the I.O. completely.

31. We have absolutely no doubt that disciplinary authority has rightly disagreed with the perverse findings of the I.O. The argument of learned counsel for applicant that disciplinary authority did not give any reason for disagreement is misleading and unacceptable for two reasons; First this dispute has already been taken before this Tribunal in the earlier O.A. No. 1252/2004 which was decided on 31.7.2009. In that judgment, the Tribunal had only disapproved the appellate order on the ground that it was a non-speaking order and had been passed without application of mind. We believe that once the earlier judgment of this Tribunal became final, this Tribunal is required to take the matter from the stage of impugned appellate order dated 25.11.2009 (Annexure A-1 to the O.A.)

32. But without entering into the aforesaid technicalities, the arguments of learned counsel for applicant is not sustainable on the second ground as well. The Rule 15 of CCS (CCA) Rules, 1965

merely contemplate that if disciplinary authority is not in agreement with the report of I.O. then D.A. is required to give tentative reasons for disagreement on any article of charges to the Govt. servant. The disciplinary authority is not required to pass a detailed order on such disagreement. It is sufficient if the reasons for disagreement are visible from the disagreement note. The disagreement note dated 11.8.2003 clearly delineate the reasons for disagreement. The note says that victimized girls have confirmed the allegations during the course of inquiry and this precisely was and should have been the reason for disagreement inasmuch as the inquiry officer completely disregarded the testimonies of victim girls without any reason whatsoever. The disagreement note is reproduced below:-

MEMORANDUM

1. Sri R.K. Srivastava, Music Teacher (U/S) JNV, Hathras was served upon a copy of the inquiry report dated 23.6.2003 in the disciplinary proceedings instituted against him in the case of alleged misbehavior with the three girl students of JNV, Hathras. The said Sri R.K. Srivastava made a written representation dated 24.7.2003 on the inquiry report which was received to the disciplinary authority on 25.07.2003.
2. The undersigned being a disciplinary authority on careful consideration of the report of the inquiring authority **disagreed with the findings of the inquiry officer** on the Article charge I as leveled against the charged officer.
3. The undersigned being a disciplinary authority, keeping in view of the material on record, statement of the witnesses during the regular hearing and the written brief on the presenting officer, has opined that Sri R.K.Srivastava is

guilty of misbehavior with the three girl students on 21.4.2001. The victimized students have confirmed their allegations during the course of inquiry. The views of the disciplinary authority are that a teacher must conduct himself in a manner especially towards a girl student so that no one can raise a little finger on his moral fiber. A teacher must enjoy the reputation of being upright and a person of undoubted character. Having regarded the sensitive nature of the relationship between a teacher and three girl pupils in a residential vidyalaya to whom he was supposed to teach like a father, Sri R.K. Srivastava has utterly failed to maintain his moral character.

4. He is therefore, informed that he should submit, if so desire, a written representation on the views of disciplinary authority within 15 days of receipt of this memorandum failing which a final decision will be taken in the disciplinary proceedings instituted against him."

33. Counsel for the applicant has submitted that the judgment of **Avinash Nagra (supra)** is not applicable in the instant case because of variation of facts. We need not go into this aspect for the simple reason that in the case of Avinash Nagra(supra), the Apex Court has approved the notification dated 23.12.1993 passed by Ministry of Human Resource Development wherein it is provided that a regular inquiry can be dispensed with if Director is satisfied, after summary inquiry, that there was a *prima facie* guilt of moral turpitude involving sexual harassment or exhibition of immoral behavior towards any girl student, the services of that employee can be terminated by giving him one month's or three month's pay and allowances in lieu thereof, depending upon

whether the guilty employee is temporary or permanent in the services of the Samiti.

34. In the present case, regular inquiry has not been dispensed with. A full-fledged inquiry was conducted. All procedures were adopted, the delinquent employee was allowed to cross examine the witnesses and to produce its own evidence in defence. Disciplinary authority gave disagreement note. He was allowed to file statutory appeal and he has already invoked the jurisdiction of this Tribunal twice. Therefore, the question of use of judgment of **Avinash Nagra(*supra*)** does not arise in the case of applicant.

35. We do not also approve of argument of learned counsel for applicant that language of all the three complaints are identical, therefore, they indicate a conspiracy. There is no doubt that all the three complaints are comparatively similar but they are not identical. These three victim girls must have discussed the facts among themselves. It is not easy for teenage girls of small town to make a complaint against their own teacher. Therefore, discussion among themselves is hardly surprising. We do not believe that this discussion can be treated as evidence of any conspiracy. There is nothing on record to demonstrate that applicant is victim of any conspiracy.

36. We have discussed the entire dispute at length though full-fledged discussion was not required. The Tribunals cannot interfere with the disciplinary matters or punishment because the Tribunals do not enjoy the appellate jurisdiction. We cannot interfere with the findings of the I.O. or competent authority unless they are arbitrary or completely perverse. The power to impose penalty on the delinquent employee is conferred with the competent authority. If the department has conducted the inquiry consistence with the rules and in accordance with the principles of

natural justice, then the Tribunals cannot interfere with the jurisdiction of competent authority. If the disciplinary authority lawfully imposes the penalty for proved misconduct, then Tribunals have no power to substitute its own discretion for that of disciplinary authority. We believe that sufficiency of penalty is not ordinarily within the domain of the Tribunal unless it has been imposed with malafide or inflicted without any evidence or on perverse interpretation of available evidence. We further believe that this Tribunal cannot interfere with the penalty if conclusions of competent authority is based on evidence.

37. We have carefully examined all material of record. A detailed inquiry was conducted wherein every possible opportunity was afforded to the applicant to defend himself. We are convinced that disagreement note of disciplinary authority is consistent with rule 15 of CCS(CCA) Rules, 1965. We are also convinced that considering the proof of misbehavior of the applicant, punishment is reasonable. We believe that this O.A. is not sustainable and is liable to be dismissed. Accordingly, O.A. is dismissed. No order as to costs.

**(MOHD. JAMSHED)
MEMBER (A)**

**(JUSTICE BHARAT BHUSHAN)
MEMBER (J)**

HLS/-