

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00353/2016

DATED THIS THE 28TH DAY OF JUNE, 2017

HON'BLE SHRI JUSTICE HARUN-UL-RASHID...MEMBER (J)
HON'BLE SHRI P. K. PRADHAN, MEMBER (A)

Sangram Maharana
Aged about 49 years,
S/o Shri Mrutunjaya Maharana
Post Graduate Teacher (PGT) Commerce,
Central School for Tibetans,
Mundgod-581 349,
Karwar Dist,
Karnataka,
Residential Address,
C/o Abdulla Pokaki,
Near Govt. Hostel,
Nehru Nagar,
Mundgod-581 349,
Karwar Dist,
Karnataka.

... Applicant

(By Advocate Shri K. Hanifa)

Vs.

1. The Director (Disciplinary Authority)
Central Tibetan Schools Administration
Ess Ess plaza, Plot No. 1,
Community Centre, Sector-3
Rohini, New Delhi-110 085.

2. The Chairman (Appellate Authority)
Central Tibetan Schools Administration &
The Joint Secretary,
Department of Secondary & Education and Literacy,
Ministry of Human Resources Development
Govt. of India, 'C' Wing,
Shastri Bhavan,
New Delhi – 110 001.

3. Union of India [Revisionary Authority]
Rep: by its Secretary,
Ministry of Human Resources Development,
Shastri Bhavan,
New Delhi – 110 001.

...Respondents

(By Shri Vishnu Bhat, Counsel for Respondent No.1 & 2)

ORDER (ORAL)

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The applicant has filed the present OA seeking the following reliefs:

- a. *Call for the relevant records leading to the issuance of Order F.No.53.07/2008 CTSA (Legal and Vig) dated 17.04.2015 at Annexure-A28 on perusal,*
- b. *Quash the Order F.No.53.07/2008 CTSA (Legal and Vig) dated 17.04.2015 at Annexure-A28 issued by the R-2 in respect of Para-(ii) in page-2 and Para-(iii) in page-3 impugned order is arbitrary, void, unjust, unfair and not reasoned and speaking order and against the Article 20 (2) of Constitution of India,*
- c. *Direct the Respondents to restore the pay of the applicant to his original pay with all consequential benefits to treat the intervening period from 22.07.2013 to the actual date of reinstatement as period of duty for all purpose and he shall be entitled for pay allowances and other consequential benefits for that period.*

2. The applicant submits that he joined as Post Graduate Teacher (PGT), Commerce at Central School for Tibetans in 2003 vide appointment order dated 09.01.2003 (Annexure-A1). While working there, he claims to have been forced to write an apology letter on 06.02.2004 on certain irregularities. He made a representation on 23.02.2004 to that effect (Annexure-A2). Thereafter he was served a memorandum dated 22.03.2004 (Annexure-A3) warning him to be careful in future. An inquiry was also conducted by Deputy Magistrate, Darjeeling in the matter. Subsequently vide order dated 28.07.2004 (Annexure-A6) applicant's services was terminated with immediate effect. He had challenged the said termination order before the Calcutta Bench of the Tribunal which quashed the said order without

prejudice to the right of the respondents to hold an inquiry in the matter by appointment of an Inquiry Officer and giving a reasonable opportunity to the applicant to defend himself (Annexure-A7). The said order of the Tribunal was upheld by the Hon'ble High Court of Calcutta. Accordingly the applicant was reinstated and posted as PGT (Commerce) at Central School for Tibetans, Mundgod, Karnataka (Annexure-A9). After his joining, his pay was fixed without giving salary for the intervening period, i.e., from 29.07.2004 to 20.06.2010 which was treated as non-duty. He requested for treating the said period as duty but it was not considered. Therefore the applicant again approached the Calcutta Bench of the Tribunal in OA No. 106/2011. Immediately thereafter the Respondent No.1 issued a charge memorandum dated 03.03.2011 with 4 Articles of Charges. During the hearing in the said OA No. 106/2011, he was orally advised by the Tribunal to withdraw the OA and accordingly the said OA was withdrawn. A regular inquiry was held by the respondents but certain relevant documents sought by the applicant was not provided.

3. According to the applicant, the Inquiry Officer in his report held Articles I and III as proved and Articles II and IV as not proved (Annexure-A20). On communication of the Inquiry Report dated 29.09.2012 to him, the applicant submitted his defence statement on 09.10.2012 (Annexure-A21). However the Respondent No. 1 passed an order dated 15.07.2013 (Annexure-A22) imposing the penalty of removal from service which shall not be a disqualification for future employment under the Government. Thereafter the applicant submitted an appeal on 25.07.2013 to the Respondent No.2. He sent reminder in November, 2013 for speedy disposal of the appeal which

was not done. Thereafter he filed OA No. 325/2014 before this Tribunal for quashing the punishment order. The Tribunal disposed the matter with direction to Respondent No. 2 to dispose of the appeal expeditiously within a period of two months next after affording an opportunity of being heard to the applicant. However the respondents still did not take action. Only after the applicant filed a Contempt Petition, Respondent No. 2 asked the applicant to appear for personal hearing on 17.12.2015. Thereafter he vide order dated 17.04.2015 (Annexure-A28) he modified the punishment order imposing a penalty of reducing his pay by 3 stages for a period of 3 years with further direction that during the said period he will not earn any increment of pay and that after the expiry of said period the reduction will have the effect of postponing of his future increments of pay. Further the intervening period from 22.07.2013 to the actual date of reinstatement shall be treated as period not spent on duty. Aggrieved by the punishment order, the present OA has been filed by him.

4. The applicant further mentioned that the Appellate Authority has observed in his order that no adverse comment or complaint against the applicant have been observed after his reinstatement in 2010, still he imposed punishment. He also submits that when a memo dated 22.03.2004 was issued warning him, on the same charges, initiating proceedings against him on same issue was unjustified. Further the main person Shri A.K. Gupta who forcibly obtained the apology letter from him did not appear before the Inquiry Authority in spite of 3 notices and hence he could not be cross-examined by him. He is also of the view that the Inquiry Officer was biased and his request for change of the Inquiry Officer was not considered. He was not given

adequate opportunity to provide relevant documents to defend the allegation leveled against him and the entire order of dismissal from service was passed without application of mind. Therefore he submitted that he is entitled to the relief sought by him.

5. The respondents have filed a reply statement in which they have submitted that while working as PGT, Commerce the teaching performance and work and conduct of the applicant during the probation period was not satisfactory. He had also demanded money from the students on Teachers Day and further during the Pre-Board examination time he had called the students to his home and asked them to pay money for passing them in the examination. He also forced some students to take private coaching from him. In the probation report of the applicant the performance, work and conduct of the applicant was stated as not up to the mark. In view of the complaints, his services was terminated vide order dated 28.07.2004 in terms of Para 1(i) of the offer of appointment. However the said termination order was set aside by the Calcutta Bench of the Tribunal giving liberty to the respondents to proceed against him as necessary by giving opportunity to the applicant to defend the allegations. The Hon'ble High Court of Kolkata while directing the respondents to reinstate the applicant in service directed that the respondents have liberty to hold regular inquiry on the allegations by appointing Inquiry Officer and giving opportunity to the applicant to defend the charges. Consequent upon reinstatement of the applicant on 21.06.2010 his pay was fixed in the revised pay structure of the revised Pay Commission in PB-2 Rs.9300-34800 + Grade Pay of Rs.4800 and the intervening period from 29.07.2004 to 20.06.2010 was treated as non-duty vide order dated 04.08.2010.

6. The respondents submit that, as per the liberty granted to the respondents, a chargesheet dated 03.03.2011 was issued to the applicant with 4 Articles of Charges. Thereafter an inquiry proceeding was conducted as per rules and laid down procedure and opportunity was given to the applicant to defend the charges against him and the applicant participated in the inquiry. The inquiry proceeding was closed with the consent of the applicant. The Inquiry Authority also gave opportunity to the applicant to submit written defence brief. After taking into consideration all the facts, including documentary and oral evidence, the Inquiry Authority submitted his report in which he held Articles I and III as proved and Articles II and IV as not proved. A copy of the Inquiry Report was sent to the applicant asking him to submit written statement/representation within 15 days. The applicant submitted detailed representation against the Inquiry Report. Thereafter the Disciplinary Authority, after considering the Inquiry Report and findings and evaluating the records, found that the misconduct proved against the applicant were very grave and therefore imposed the penalty of removal from service vide order dated 15.07.2013. The applicant submitted an appeal to the Appellate Authority who gave an opportunity of personal hearing to the applicant on 17.02.2015. The applicant submitted another representation on that date and also made oral submission before the Appellate Authority in support of his contention. The Appellate Authority after considering all the facts and the contentions of the applicant took a lenient view and modified the penalty imposed by Disciplinary Authority. They submitted that the charges against the applicant are very serious. However the Appellate Authority took a lenient view and modified the penalty imposed on the applicant and he was

reinstated in service. Therefore the applicant is not entitled to any further reliefs.

7. The applicant has filed a rejoinder in which he has practically reiterated the points already contended in the OA.

8. Heard the learned counsel for the parties. The learned counsel for the applicant while reiterating the submission made in the OA submitted that the then Principal Shri.S.K.Gupta did not appear before the Inquiry Authority. He was the person responsible to force the applicant to submit the representation admitting his guilt. Hence due to his non-appearance before the authority the applicant did not have opportunity to cross-examine him in the charges which were based on his letter. He further submitted that the Disciplinary Authority did not apply his mind to the applicant's submission and hence the order of removal from service was unjustified. He also referred the case of Hon'ble Apex Court order RP Bhat Vs. Union of India reported in (1986) 2 SCC 651 in support of his contention. However we note that this and two other order mentioned by him will have no applicability in the present case. The learned counsel mentioned that even though the Appellate Authority has modified the order even then the punishment itself is unjustified as the applicant has done no wrong. Further the learned counsel submits that the Appellate Authority has treated the period between the dismissal on 22.07.2013 to the actual date of reinstatement as not on duty and has not allowed the backwages. The applicant is not at fault for this period and denying him salary for the same period and not treating him as on duty is grossly unfair. Therefore the applicant should be allowed pay for this period and should be treated as on duty.

9. The learned counsel for the respondents submitted that even during the probation period, the performance of the applicant was unsatisfactory. When there was a serious allegation against him, that too during probation period, he was removed from service in terms of conditions laid down in the appointment letter but based on subsequent order of Tribunal and Hon'ble High Court the applicant was reinstated. Thereafter a regular departmental proceedings was initiated. The Inquiry Officer made a detailed inquiry and the applicant was given opportunity to defend himself, the Inquiry Authority based on the oral and documentary evidences held two charges as proved. Even though the then Principal Shri A.K. Gupta did not appear before the Inquiry Authority, the fact remains that the applicant himself had submitted the representation in presence of witness admitting his guilt at that time. Further his performance during probation also corroborate same facts. The Disciplinary Authority had passed a detailed order. However the Appellate Authority after giving a personal hearing to the applicant and considering the subsequent conduct of the applicant following his reinstatement took a lenient view and set aside the penalty of removal from service and directed for his reinstatement. He also ordered that his pay shall be reduced by 3 stages for a period of 3 years during which he will not earn any increment and it will have an effect of postponing the future increment. The learned counsel for the respondents submits that the punishment imposed by the Appellate Authority is quite liberal considering the grave charges against the applicant. Therefore the applicant is not entitled to any further relief.

10. We have carefully considered the facts of the case and submissions made by either side. As evident from the records, based on the initial

misconduct and his admittance of the same, the applicant was removed from service. But subsequently based on the order of the Kolkata Bench of the Tribunal which was confirmed by the Hon'ble High Court of Kolkata, he was reinstated in service. However the respondents were given liberty to proceed departmentally against him. As such they issued a charge memo thereafter continuing 4 charges. We note that a detailed inquiry was held in which the applicant participated. The Inquiry Authority submitted a detailed report based on an analysis of the documentary as well as oral evidences. He held Articles I and III as proved and Articles II and IV as not proved. Therefore the applicant was given due opportunity to defend himself in the inquiry process and also asked to submit his representation against the Inquiry Report. The Disciplinary Authority analyzed the entire facts, I.Os report and submissions made by the applicant and imposed the penalty of removal from service. The said punishment was however modified by the Appellate Authority when an appeal was made to him and after giving a personal hearing to the applicant. The Appellate Authority after hearing the applicant and considering his submission took a lenient view and modified the penalty imposed by the Disciplinary Authority.

11. We have carefully considered the charges levelled against the applicant and also gone through the Inquiry Report and order of the Disciplinary Authority and the Appellate Authority. The applicant had repeatedly referred to non appearance of the then Principal before enquiry authority and the fact that the letter showing admission of guilt was obtained by exerting pressure. Simultaneously he submits that when a memo warning him was issued there was no need for initiating a proceeding. It is difficult to

appreciate that a teacher if he has not done any wrong will submit a letter of apology on specific charges and also accept a warning memo. Moreover, the conduct of the applicant during probation period was said as unsatisfactory. Therefore, we are unable to accept the contention of the applicant in the matter. We also do not find any reason to accept the contention of the applicant then the I.O was biased. Had he been biased he would have held all charges as proved. But he did not find two charges as proved based on objective assessment.

12. We note that two out of the four charges leveled against the applicant were held as proved during the inquiry. Considering the seriousness of the charges, we are of the view that the view taken by the Appellate Authority and the modified penalty imposed by him appears to be quite reasonable. There is also no case of any denial of natural justice. Therefore we are of the view that there is no justification for any interference by this Tribunal in the order of the Appellate Authority as far as the penalty imposed is concerned.

13. The applicant had submitted that the order of the Appellate Authority for treating the intervening period, i.e., from 22.07.2013 to the actual date of reinstatement to be treated as period not spent on duty and he shall not be entitled for any pay and allowances and other consequential benefits for this period is not justified. On this issue we note that immediately after the order of the Disciplinary Authority was passed on 15.07.2013 imposing the penalty of removal from service, the applicant submitted the appeal on 25.07.2013. This was followed by a reminder on 07.11.2013 but the appeal was not considered. Then the applicant filed OA No. 325/2014 before this Tribunal and the Tribunal vide order dated 20.02.2014 directed the Appellate Authority

to dispose the matter within two months after affording an opportunity of being heard to the applicant. However the appeal was still not disposed off in time. The Appellate Authority asked the applicant to appear for a personal hearing on 19.08.2014 which did not take place. Then he was called to appear for personal hearing again on 17.02.2015. Thereafter the order was passed on 17.04.2015 in which the order of the Disciplinary Authority was modified by setting aside the penalty of removal from service and directing the reinstatement of the applicant within 30 days. Therefore it is quite apparent that the Appellate Authority took a long time of nearly one year nine months to decide on the appeal and the applicant who was reinstated should not suffer on this account. The applicant cannot be said to be at fault for the period from his removal from service to his reinstatement and denied pay for this period. Even when a person is placed under suspension pending departmental proceedings or during enquiry, he is paid 50% of his salary as subsistence allowance. Therefore denial of pay and allowances for the said period when the applicant was removed from service till his reinstatement will be grossly unfair. We are of the view that it would be reasonable and appropriate that the applicant is allowed at least 50% of the pay and allowances for the said period which is normally available when a person is placed under suspension. The said period should also be counted towards his service period for pension and other benefits.

14. Therefore on detailed consideration of the matter and in the light of discussion in the preceding paras we hold that the order of the Appellate Authority as far as the penalty is concerned is fair and justified and there is no ground for any interference by this Tribunal in the same order. Accordingly the

prayer of the applicant to quash the penalty order passed by the Appellate Authority is rejected. However as far as the order of the Appellate Authority regarding pay and allowances for intervening period from the date of dismissal to the date of reinstatement is concerned we hold that the said order is not justified and the applicant shall be entitled to 50% of the pay and allowances and consequential benefits for the said period. Necessary order to that effect shall be passed by respondents and benefits shall be granted within two months from the date of receipt of a copy of the order.

15. The OA is disposed of with the aforesaid direction. No order as to costs.

(P.K. PRADHAN)
MEMBER (A)

(JUSTICE HARUN-UL-RASHID)
MEMBER (J)

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