

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 260/00801 of 2012
Cuttack, this the day of September, 2017

CORAM
HON'BLE MR. S.K.PATTNAIK, MEMBER (J)
HON'BLE DR. M. SARANGI, MEMBER (A)

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Ganjan Gagaria,
aged about 43 years,
S/o Sri Bairagi Gagaria,
resident of Vill/PO- Shantipara,
Dist- Bolangir, Odisha,
at present working as Post Graduate Teacher (Economics),
Kendriya Vidyalaya, Paradip Port Trust,
PO/PS-Paradip, Dist. Jagatsinghpur, Odisha.

...Applicant

Advocates: Mr. S.Mohanty .

VERSUS

1. Kendriya Vidyalaya Sangathan represented by
its Commissioner,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi-110016.
2. Deputy Commissioner & Disciplinary Authority,
Kendriya Vidyalaya Sangathan,
Regional Office, Pragati Vihar, Mancheswar,
Bhubaneswar-751017, Dist. Khurda, Odisha.
3. Principal,
Kendriya Vidyalaya, Paradip Port,
At/PO- Paradip, Dist. Jagatsinghpur, Odisha.
4. Chairman,

Vidyalaya Management Committee,
Kendriya Vidyalaya, Baripada-cum- District Magistrate,
Mayurbhanj, At/PO- Baripada, Dist. Mayurbhanj, Odisha.

..... Respondents

Advocate(s) : Mr. H.K.Tripathy.

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ORDER

S.K.PATTNAIK, MEMBER (JUDL.):

Heard Mr. S.Mohanty, Ld. Counsel for the applicant, and Mr. H.K.Tripathy, Ld. Counsel appearing for the Respondents-KVS, and perused the materials placed on records.

2. The applicant seeks quashing of memorandum of charge dated 12/15.10.2012 (Annexure-A/19) and disciplinary proceeding initiated vide memorandum dated 15.02/03.2012 (Annexure-A/2).

3. Applicant's case, in short, runs as follows:

The applicant while serving as Post Graduate Teacher (Economics) in KV Paradip Port, was served with a charge memorandum dated 15.02/03.2012 containing three articles of charges for a misconduct pertaining to students admission during the year 2011-12 while working as PGT, Economics, in KVS, ARC Charbatia. The applicant was served also with a memorandum dated 12/15.10.2012 to explain reasons under what circumstances he had compelled the Principal, KV, Paradip Port, to sign in N.O.C./Service/Vigilance Clearance Certificate dated 27.08.2012. The applicant

submitted his show cause and participated in the disciplinary proceeding, which has already been concluded and the applicant has been served with the inquiry report holding him guilty of the charges. The applicant has also furnished his explanation to the inquiry report. The ground taken by the applicant in this O.A. is that the disciplinary proceeding is liable to be quashed as the entire allegation does not spell out any misconduct and further it was initiated with a malafide intention only to deprive the applicant from getting the

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promotional post. The other ground taken by the applicant is that since the Principal and the Chairman both were involved in the selection process and were the final decision taking authority he had no role to play except placing the file and as such he is not liable for any misconduct and if there are any lapses in conducting the selection process, the Principal and the Chairman are to be blamed but the department has taken a partial view of proceeding against the applicant leaving the real culprits at large.

4. The Respondents contested the case by filing a counter. According to the Respondents, quashing of a memorandum of charge at the threshold is not legally permissible and there was no illegality or procedural lapses in conducting the disciplinary proceeding. According to the Respondents since the applicant was a member of the committee and was made in-charge, he is

personally liable for the irregularities in not pointing out the lapses and intentionally recommended ineligible persons for admission in the school.

5. The Official Respondents fairly admitted that, in the meantime, the disciplinary proceeding has come to an end and the applicant has already been served with the inquiry report and as there is stay of final culmination of the disciplinary proceeding, it is still pending before the appropriate authority for final disposal.

6. Before delving into the merit of this case, it may be stated at the outset that law does not permit quashing of a charge sheet in a routine manner as issue of a memorandum of charge does not give rise to a cause

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of action {(2013) 1 SCC (L&S) 121, Secretary, Ministry of Defence Vs. Prabhat Chandra Mirdha relied on}. It is the settled position of law that the disciplinary proceeding should be allowed to be culminated in accordance with the rules and procedures. To fortify this submission, the Respondents have relied on the decisions rendered in AIR 2004 SC 1467, Special Director and Anr. Vs. Mohd. Ghulam Ghouse & Anr., and (2010) 13 SCC 311, State of Orissa & Anr. Vs. Sangaram Keshari Mishra & Anr. The Tribunal can interfere in departmental inquiry if the employee can show that prejudice is caused to him due to violation of principles of natural justice and it may not be permissible to set aside the departmental inquiry merely on the basis

of apprehended prejudice {(2010) 2 SCC (L&S) 22, Union of India Vs. Alok Kumar relied on}.

7. Ld. Counsel for the applicant argued at length to convince the Bench that the disciplinary proceeding was initiated with a malafide intention. Since the misconduct was loud and clear and based on documents, it cannot be said that it was initiated with any oblique motive. The applicant himself in his reply dated 27.03.2012 (Annexure-3) has clearly admitted that he was assigned as Admission In-Charge in the constituted Committee for Admission by the order of the then Principal on 11.03.2011 for the session 2011-12 and was also entrusted with the task of scrutinizing the application form/record/affidavit and other documents filed along with the application forms. So, from the admission, it is crystal clear that the applicant was not a stranger to the selection process and rather was Admission In-charge and was a member

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of the Committee. Thus, his primary duty was to scrutinize the application forms and connected papers. Ld. Counsel for the applicant also drew the attention of this Tribunal to the subsequent lines of the show cause of the applicant wherein it has been stated that he was asked to sign as a member without giving any opportunity to scrutinize the papers. This is a matter to be threshed and adjudicated by the Disciplinary Authority. Ld. Counsel for the applicant further argued that since the Principal was main architect in doing

wrong, the applicant could not have ventured to put resistance on the action of the Principal. The applicant may not be in a position to protest but that will not reduce the gravity of the charge ones he is made In-Charge of the Scrutiny Committee. It is his duty to point out all illegalities and if he has failed, may be under the direction of higher authority, this amount to misconduct in failing to discharge the responsibility entrusted to public servant. The applicant is a senior teacher and it is not expected that he has no courage to state the truth while scrutinizing the application forms and if he fails he does so at his peril. In a nutshell, there is nothing illegal or irregular in initiating disciplinary proceeding calling for interference and that too this Tribunal is not empowered to interfere in the disciplinary proceeding in the midway and the appropriate authority should be allowed to culminate the proceeding in accordance with the established rules and procedures.

8. To sum up, we did not notice any element of malafide in initiating the disciplinary proceeding as there was clear cut allegation of

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omission, negligence and misconduct, that too with an oblique motive of allowing ineligible students to get admission. Hence ordered. O.A. being devoid of merit is dismissed. Before parting with this judgment, we make it clear that the then Principal and Chairman were equally responsible for the mess and Department should take appropriate administrative action against them to show

their bonafide, failing which it may amount to discrimination and making the applicant only a scapegoat finding him a soft target and letting higher officials from the cloud of misconduct. No costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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