

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00777/2017

DATED THIS THE 16th DAY OF APRIL, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri.D.Munishwer Rao, 54 years
S/o Late D.Muniswamy
Occn: Office Superintendent
Jawahar Navodaya Vidyalaya (JNV)
Maharaj Pet, Kargudari Post
Hangal: 581 104.
Haveri District.

....Applicant

(By Advocate Sri P.A.Kulkarni)

Vs.

1. Union of India
to be represented by its Secretary
Ministry of Human Resources Development
(Department of School Education and Literacy)
Government of India
North Block, New Delhi-110 001.
2. The Commissioner
Navodaya Vidyalaya Samiti
B 15, Institutional Area
Sector 62, NOIDA: 201 307 (U.P.)
3. The Deputy Commissioner
Navodaya Vidyalaya Samiti
Hyderabad Region
No.1-1-10/3, S.P.Road
Secunderabad: 500 003 (A.P.)
4. Joint Commissioner (Administration)
Navodaya Vidyalaya Samiti
B 15, Institutional Area
Sector 62, NOIDA: 201 307 (U.P.)
5. Principal
Jawahar Navodaya Vidyalaya (JNV)
Maharaj Pet, Kargudari Post
Hangal: 581 104
Haveri District.

...Respondents

(By Advocates Sri Gajendra Vasu for R1 & Sri M.Rajakumar)

ORDER(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The factual matrix of the applicant's case is as follows:

He was appointed as LDC at JNV Bloomes-Del (Portblair) District South Andaman (U.T.) and promoted as UDC and posted to JNV Auckoom Car Nicobar, Nicobar Dist. in South. On 12.7.2000 applicant was transferred on request and posted to JNV Panchavati Middle Andaman District where he was subjected to a major penalty proceedings under Rule 14 of CCS(CCA) Rules 1965 based on a false case. During the pendency of the above disciplinary proceedings, applicant was transferred to JNV Bijapur in Karnataka on 31.8.2006. Thereafter, he came to be promoted as Office Superintendent on regular basis in terms of order dtd.23.6.2014 and posted to JNV Haveri wherein he is working since 16.7.2014.

2. The applicant submits that on 9.7.2004(Annexure-A1), Principal JNV Panchavati issued a memo to the applicant asking for his explanation on the allegation that as per the complaint lodged by one Emanuel Dang Dang, husband of one Smt.Bishaka of Panchavati village, the applicant is maintaining an illegal relationship with his wife Bishaka for the last one year and caught red-handed on 3.6.2004 in his house in the company of his wife. Infact Mr.Emanuel himself has given a statement before AC/SDM that he has not given any complaint in writing. Applicant submits his explanation on 10.7.2004 denying the allegation in toto(Annexure-A2). Applicant's case is that Sri Emanuel was working as a Labour/Watchman in his site wherein he was constructing a building and committed so many irregularities there and when pointed out by the applicant, Sri Emanuel revolted by levelling a false complaint against him. Thereafter, Principal issued a memo on 10.7.2004(Annexure-A3) asking the applicant to be careful in future failing which disciplinary action will be

initiated. However, on a report called for by the Deputy Commissioner and Chairman VMC JNV Andaman District Portblair, the Principal of the JNV Panchavati submits a report on 10.7.2004(Annexure-A4). The Assistant Commissioner North and Middle Andaman Mayabunder stated to have held preliminary enquiry and submits a report to the Dy.Commissioner Portblair in respect of the complaint on 5.11.2004(Annexure-A5) even though the matter was closed at the end of the Principal by asking the applicant to be more vigilant in future. The Dy.Commissioner NVS Hyderabad Region initiated a major penalty Rule 14 proceedings against the applicant vide charge memo dtd.28.3.2005(Annexure-A6) wherein a lone charge i.e. 'the applicant while working as UDC in JNV, District Middle Andaman has entered in illicit contacts with Smt.Bishaka a tribal lady, wife of Sri.Emanuel thereby violated the CCS(Conduct) Rules 1964 which is an act of grave misconduct', is levelled against him. Applicant submits his written statement on 21.4.2005(Annexure-A7) denying the allegation in toto.

3. The applicant submits that one Sri K.Sadagopan, in-charge Dy.Commissioner NVS Hyderabad Region had issued a second show cause notice on 8.4.2010(Annexure-A8) to the applicant by forwarding the Inquiry Officer's(IO) report dtd.29.3.2010. Even though Smt.Bishaka deposed before Asst.Commissioner and SDM Mayabunder District North in the preliminary enquiry vide document marked as S1(e) in favour of the applicant, the IO surprisingly refuses to take the statements into record by taking a stand that no corroborating evidence is available in support of her statement and has noticed that Smt.Bishaka has denied any allegation levelled against herself and applicant and in the end by dividing the lone charge into point(A) & point (B) recording that charge is established and it is with the benefit of doubt. According to the applicant, the findings recorded by the IO are

not only perverse but also one sided as he carried a brief of the administration so as to confirm the false accusation levelled against the applicant. The applicant submits his representation on 8.5.2010(Annexure-A9) to the second show cause notice explaining as to why and under what circumstances IO's findings cannot stand the test of law. But Sri.K.Sadagopan, in-charge Dy.Commissioner accepting the IO's report passes a penalty order of withholding of two future increments in the time scale of pay with cumulative effect with immediate effect(Annexure-A10). The applicant submits that the punishment order passed by in-charge Dy.Commissioner is beyond his powers and therefore, a nullity in the eye of law right from its inception. A statutory appeal dtd.25.11.2011(Annexure-A11) addressed to the Joint Commissioner(Admn.) NVS Headquarters is still pending without disposal.

4. The applicant further submits that he was extended the benefit of 2nd MACP w.e.f. 1.9.2008 vide office order dtd.4.11.2011(Annexure-A13) after obtaining the vigilance clearance certificate dtd.14.10.2011(Annexure-A12). However, Regional Office, Hyderabad unilaterally withdrew the benefit by issuing office order dtd.16.2.2016(Annexure-A14) on the ground that it was inadvertently granted when the disciplinary case was pending against the applicant. Aggrieved by the same, the applicant submitted representations dtd.12.6.2016, 1.8.2016 & 4.8.2017(Annexures-A15, 16 & 17 respectively). Representation dtd.1.8.2016 is answered by NVS Hyderabad Region vide office order dtd.6.9.2016(Annexure-A18) wherein the Regional Office Hyderabad takes a stand that the appeal is not received in that office till date. The applicant submits that the appeal is addressed to the Joint Commissioner NVS at Headquarters and not submitted to the Regional Office Hyderabad. If the Regional Office, Hyd. is the authority to dispose of the appeal, a duty was cast upon the authority to whom the appeal was addressed to transmit the

same to the appropriate appellate authority. The applicant submitted another representation dtd.19.4.2017(Annexure-A19) which was turned down by the authority on 9.8.2017(Annexure-A20). On 2.9.2017, the applicant has forwarded the appeal through proper channel to Regional Office Hyderabad(Annexure-A21) but there is no response from the authority in this regard.

5. The applicant contends that the in-charge Dy.Commissioner is not empowered to exercise the statutory right of imposing penalty under CCS(CCA) Rules. The power is only vested in the regular Dy.Commissioner. He relies upon the Constitutional Bench judgment of the Hon'ble Apex Court in the case of *Ajab Singh vs.Gurubachan Singh* in AIR 1965 SC 1619 and also in the case of *Harichand Agarwal vs. Batala Engineering Company Ltd.* reported in AIR 1969 SC 483(Annexures-A22 & A23 respectively). An act of the authority which is legally wrong is unenforceable even in the absence of challenge against such order. More so in situations of the present type there is no valid order at all for enforcement. He submits that by passage of time a wrong cannot become right in law. Rule 28 of CCS(CCA) Rules 1965 makes it clear that the orders of disciplinary authority are subject to outcome of the appellate authority and only the appellate authority order is available for implementation. According to the applicant, the appeal at Annexure-A11 having not been decided so far, the punishment order at Annexure-A10 which is void-ab-initio cannot be said to have attained finality. There is no justification for the authority in keeping his appeal pending since 2011. The applicant submits that vide office order dtd.13.6.2014(Annexure-A24), he stands promoted to Group 'B' cadre of Office Superintendent. Surprisingly, thereafter the MACP benefit granted to him is sought to be withdrawn by the authority vide Annexure-A14 tracing its action to the currency of the disciplinary proceedings in question. Therefore, he filed the present

OA seeking to set aside the punishment order dtd.31.10.2011 as void-ab-initio right from its inception and to quash the office order dtd.9.8.2017 with a further direction to the authority to restore the 2nd MACP benefit extended vide office order dtd.4.11.2011 with all consequential monetary benefits.

6. Per contra, the respondents in their reply statement submitted that the applicant while working as UDC at JNV, Middle Andaman (UT) has entered in illicit contacts with a tribal lady and hence the disciplinary proceedings were initiated against him under Rule-14 of CCS(CCA) Rules 1965 vide charge sheet dd.28.3.2005. After completion of the departmental enquiry, he was awarded the penalty of withholding of two future increments in the time scale of pay with cumulative effect vide office final order dtd.31.10.2011 passed by Shri K.Sadagopan, the then Dy.Commissioner in-charge of Hyderabad Region. Shri K.Sadagopan has exercised the disciplinary powers delegated to the Dy.Commissioner, NVS. As a result of which, annual increments fell due to him on 1.7.2012 and 1.7.2013 were withheld. The allegation of the applicant that he preferred an appeal against the penalty order is addressed to the Joint Commissioner (Admn) NVS Hqrs is to be admitted subject to strict proof and he should produce authentic prrof to say that his appeal against the penalty order was submitted to the appellate authority at NVS Hqrs. In fact there was no vigilance clearance for grant of financial benefits under MACPS w.e.f. 1.9.2008 to the applicant as disciplinary proceedings were pending against him from 28.3.2005 to 31.10.2011. Thereafter, a major penalty was imposed on him and the currency of penalty was over only on 30.6.2014. Thus his plea for benefits under MACPS w.e.f. 1.9.2008 is baseless and against the guidelines of MACPS. Subsequently, his case for promotion from UDC to Office Superintendent(OS) was considered by the DPC held on 30.10.2012 and its recommendations were kept in sealed cover as

disciplinary proceedings were pending against him. On completion of the disciplinary proceedings and expiry of the period of penalty imposed on him, he was promoted to the post of OS and posted at JNV, Haveri on 16.7.2014. His representations related to grant of MACP benefits when there was no vigilance clearance in his case, were duly considered and disposed of without any relief. The major penalty on the applicant was imposed on substantial, circumstantial and material evidence following the law laid down and procedure as per the CCS(CCA) Rules and hence the same is in order and legally sustainable. Therefore, there is no merit in the OA and is liable to be dismissed.

7. Heard the Learned Counsel for both the parties and perused the materials and the written arguments notes submitted by both the parties in detail. The case of the applicant is against the order of penalty of withholding two future increments with cumulative effect vide Annexure-A10. He claimed that he had made an appeal against this order of punishment vide Annexure-A11 which the respondents denied having received. Subsequently, vide Annexure-A13 dtd.4.11.2011, he was given 2nd MACP w.e.f. 1.9.2008 but on objection by audit, the same came to be withdrawn vide Annexure-A14. Subsequent representations against this withdrawal have not been acceded to by the respondents and the applicant has finally challenged the order dtd.9.8.2017 vide Annexure-A20. After filing the OA, the Learned Counsel for the applicant has raised the issue of the incompetency of the authority which passed the punishment order vide Annexure-A10 holding that the order was signed by a Dy.Commissioner in-charge who was not placed in full additional charge to exercise the powers of the disciplinary authority. We had ordered the respondents to produce the order in which the said person was placed in-charge of the post of Dy.Commissioner, the disciplinary authority. The order produced by the respondents

is issued on 30.3.2010 wherein it has been ordered as follows:

"Consequent upon retirement of Shri V.Nageshwara Rao, Deputy Commissioner, NVS, Regional Office, Hyderabad w.e.f. 31.03.2010, on attaining the age of superannuation, Shri K.Sadagopan, Assistant Commissioner, NVS, Regional Office, Hyderabad will look after the charge of Deputy Commissioner until further orders."

8. From the above order, it is clear that the authority which passed the order vide Annexure-A10 was holding the substantive post of Asst.Commissioner, NVS, Regional Office, Hyderabad and he was only ordered to look after the charge of Dy.Commissioner until further orders. The applicant has quoted a few cases where it has been held that a Govt. servant appointed to be in-charge of current duties of an office cannot exercise any substantive powers of the office and he cannot also discharge any statutory functions assigned to the post. The disciplinary authority has the power to order the removal of a Govt.servant and therefore it is obvious that the authority should have full statutory powers to order the punishment of a major penalty. This is an infraction which has come about in the year 2011. We also had the advantage of looking at the original file of the respondents relating to the conduct of the applicant. To say the least, the applicant does not deserve to be working in any institution with respectability and responsibility in the society let alone be a part of an educational institution. There have been a number of complaints against him with respect to the illicit relations with female members of the community and inappropriate behaviour with the staff of the respondents. In the particular case where he has been punished also, there is substantial and circumstantial evidence in terms of holding the applicant as guilty. There have been many instances before this particular incident corroborated by the complaints from the place where he had worked and from the community leaders in those places, many of them happening to be tribal and other communities. A detailed perusal of

the inquiry report reveals that the Inquiry Officer raised certain doubts relating to the sequence of the events. However, since we are of the view that the final order issued by the in-charge Dy.Commissioner cannot be sustained since he was not holding the post of the disciplinary authority in full additional charge and competent to pass such order, the respondents are directed to keep the impugned order vide Annexure-A10 in abeyance as that has cumulative effect and initiate fresh action from the point on which this infraction has taken place and take an appropriate decision keeping in mind the gravity of the complaints made against the applicant. A more thorough disciplinary proceedings is called for and this may lead to more severe punishment on the applicant keeping in view the various allegations made against him throughout his career. This they may do so within next three(3) months. They may also take a decision on the MACP withdrawn from him on the conclusion of the disciplinary proceedings as directed above.

9. The OA is therefore disposed of as above. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00777/2017

Annexure-A1: Memo dated 9.7.2004
Annexure-A2: Explanation dtd.10.7.2004
Annexure-A3: Memo dtd.10.7.2004
Annexure-A4: Principal JNV Panchavati report dtd.10.7.2004
Annexure-A5: Mayabunder report dtd.5.11.2004 to DC Portblair
Annexure-A6: Rule 14 charge memo dd.28.3.2005
Annexure-A7: Written statement dtd.21.4.2005
Annexure-A8: Second show cause notice dtd.8.4.2010 along with IO's report dtd.29.3.2010
Annexure-A9: Representation dtd.8.5.2010 to the 2nd show cause notice
Annexure-A10: Punishment order dtd.31.10.2011
Annexure-A11: Memorandum of appeal dtd.25.11.2011
Annexure-A12: Vigilance clearance certificate dtd.14.10.2011 with reference to MACP exercise
Annexure-A13: Office order dtd.4.11.2011
Annexure-A14: Office order dtd.16.2.2016
Annexure-A15: Representation dtd.12.6.2016
Annexure-A16: Representation dtd.1.8.2016
Annexure-A17: Representation dtd.4.8.2017 along with forwarding letter
Annexure-A18: Office order dtd.6.9.2016
Annexure-A19: Representation dtd.19.4.2017
Annexure-A20: Office order dtd.9.8.2017
Annexure-A21: Representation dtd.2.9.2017 along with forwarding letter
Annexure-A22: Apex Court judgment dtd.2.2.1965 reported in AIR 1965 SC 1619
Annexure-A23: Apex Court judgment dtd.24.9.1968 reported in AIR 1969 SC 483
Annexure-A24: Promotion order dtd.23.6.2014 as Office Superintendent (Group ' B')

Annexures with reply statement:

-NIL-

Annexures with written arguments note filed by the applicant:

Annexure-1: Copy of the ILR 2006 Karnataka 3163
Annexure-2: Copy of the gist in AIR 1965 SC 1619
Annexure-3: Copy of order dtd.18.11.2016 passed CAT, BG in OA.311/2014

Annexures with written arguments note filed by the respondents:

-NIL-
