

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00190/2015

Jodhpur, this the 11th day of January, 2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Rakesh Paliwal s/o Shri Goverdhan Lal Paliwal, aged 35 years, R/o 37, Sector-11, Hiranmagri, Behind Ramniwas Hotel, Udaipur at presently posted as Music Teacher, JNV, Thakarda, Dungarpur.

...Applicant

(By Advocate: Shri Govind Suthar proxy for Shri Mahaveer Bishnoi)

Versus

1. The Commissioner, Navodaya Vidyalaya Samiti, Noida (U.P.).
2. The Deputy Commissioner, Regional Office, Navodaya Vidyalaya Samiti, District Jaipur (Raj.)

...Respondents

(By Advocate: Shri Avinash Achariya)

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:

In view of the facts and grounds as mentioned above, the applicant most respectfully prays that this application may kindly be allowed and impugned order dated 04.06.2013/05.06.2013 (Annex.A/1) and the memorandum dated 16.06.2014 (Annex.A/2) may kindly be quashed and set aside and applicant may kindly be exonerated from the charges levelled against him.,

Any other appropriate order, which deems just and proper in favour of the applicant, may kindly be passed.

2. Brief facts of the case, as stated by the applicant, are that he is working as TGT Music Teacher. When he was working at Jawahar Navodaya Vidyalaya (JNV), Jojawar, Pali, on 10.8.2010 he submitted an application dated 10.8.2010 for sanction of study leave/extra ordinary leave for the purpose of pursuing his B.Ed. training course, but he was not granted the same. Pursuant to leave applications, the Principal JNV, Jojawar, Pali vide letter dated 20.9.2010 informed that as he did not take permission for appearing in the B.Ed. examination, therefore, no Extra Ordinary Leave (EOL) is allowed to him for the purpose of B.Ed. course. The applicant again submitted application requesting that earlier he appeared only in qualifying examination of B.Ed. After passing the qualifying examination, he immediately applied for study leave for pursuing B.Ed. training course. When leave of any kind was not granted by the concerned authority and looking to fact that the applicant was required

to deposit his fee for pursuing B.Ed. course on or before 8.9.2010, he deposited the fee and joined the training course with the expectation that leave would be granted for the purpose of pursuing B.Ed. training course. The applicant completed his B.Ed. training course. While pursuing B.Ed. course, the Principal, JNV, Jojawar, Pali issued various notices for joining duty, but same were not received by the applicant. After completing B.Ed. the applicant submitted application for joining his duties, but he was not allowed to join his duties. On 13.6.2011, respondents initiated departmental proceeding under Rule 14 of the CCS (CCA) Rules, 1965 and issued charge sheet dated 13.6.2011. The applicant denied the charges and filed reply. An inquiry was held and the inquiry report was submitted. After receipt of inquiry report, the applicant again submitted his representation against the inquiry report. After completion of inquiry, on the basis of inquiry report, the Disciplinary Authority vide order dated 4.6.2013/5.6.2013 imposed penalty of withholding of one increment for a period of one year without cumulative effect. The applicant filed appeal against the punishment order, but the same was rejected on the ground of limitation vide memorandum dated 16.6.2014. Aggrieved of the order dated 4.6.2013/5.6.2013

(Ann.A/1) and memorandum dated 16.6.2014 (Ann.A/2), the applicant has filed the present OA.

3. The respondents have filed reply on 24.3.2017. The respondents have submitted that the employees are only permitted to appear in examination for improvement of the qualification as a private candidate with prior approval/permission from the Principal upon the application made by the teaching and non-teaching staff in the prescribed application form. In the present case, though the applicant did not make the application in the prescribed form, the Principal, JNV, Pali issued letter dated 20.9.2010 clearly mentioning that the applicant before appearing in B.Ed. examination did not seek prior permission of the authorized officer and as per instructions issued by JNV, study on regular basis is not allowed and the extra ordinary leave cannot be granted. The applicant being member of the JNV should have sought prior permission from Principal in the prescribed application before appearing for B.Ed. entrance examination. Such permission was never taken by the applicant at any point of time in pursuance of the instructions issued by the Samiti before appearing and pursing B.Ed. Course. The applicant remained absent from his duties from 18.11.2010 and therefore, the Principal, JNV

Pali issued various letters on 26.11.2010, 10.12.2010, 20.12.2010 and 18.1.2011 through registered posts for remaining unauthorisedly absent from duty, which were deliberately not accepted by the applicant. When the applicant did not turn back, disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 were initiated and charge sheet was issued. Ultimately a penalty of withholding of one increment for a period of one year without cumulative effect was imposed upon the applicant vide order dated 4.6.2013/5.6.2013 (Ann.A/1). The applicant after a long delay filed appeal on 27.5.2014 and the Appellate Authority vide order dated 16.6.2014 rejected the appeal on the ground of delay of 11 months. Therefore, the claim of the applicant is not sustainable.

4. The applicant has filed rejoinder to the reply reiterating the submissions made in the OA.

5. I have heard the learned counsels of both parties and perused the material on record.

6. During the course of arguments, the applicant stated that the respondents have rejected his appeal on the ground of limitation in spite of his submitting reasons for delay but the same have not been dealt with by the

Appellate Authority in a fair manner. The learned counsel for the applicant further submitted that he would be satisfied at this stage, if his appeal is decided on merit.

7. In view of above submissions made by the learned counsel for the applicant, without going into other aspects of the matter at this stage, I am of the view that it will be in the interest of justice, if the Appellate Authority decides the appeal of the applicant on merit without going into the point of limitation.

8. Accordingly, while quashing and setting aside the order dated 16.6.2014 (Ann.A/2) the respondents are directed to consider the appeal of the applicant dated 27.5.2014 (Ann.R/3) on merit and pass appropriate reasoned and speaking order within a period of three months from the date of receipt of a copy of this order.

9. The OA stands disposed of in above terms with no order as to costs.

(HINA P.SHAH)
JUDL. MEMBER

R/