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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

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(THIS THE 05th DAY of September, 2019)

**HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)**  
**HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

Civil Misc. Review Application No. 330/00033/2019

In

**Original Application No. 330/01504/2017.**

Kamlesh Kumar Mishra, aged about 40 years, S/o Sri Ram Sundar Mishra, presently residing at H. No. 210/1/5/, Beniganj, Allahabad.

Applicant

VERSUS

1. The Commissioner, Navodaya Vidhyalaya Samiti (Head Quarter), B-15, Institutional Area, Sector-62, NOIDA, District- Gautam Budh Nagar, Uttar Pradesh.
2. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, A-135, Alkapuri, Gate No. 2, Bhopal.
3. The Principal, Jawahar Navodaya Vidhyalaya, Dantewada, Chhattisgarh.

.....Respondents

Advocate for the Applicant :- Shri Ashish Srivastava

Advocate for the Respondents:-

**ORDER****( Delivered by Hon'ble Ms. Ajanta Dayalan, AM)**

The instant Review Application has been filed by the applicant Kamlesh Kumar Mishra against the order dated 09.07.2019 (Annexure - 1) passed by this Tribunal in OA No. 1504/2017 (Kamlesh Kumar Mishra vs. Commissioner, Navodaya Vidhyalaya Samiti & Ors). Vide this order, the OA was dismissed being premature as the applicant had not availed the alternate remedy of appeal which was available to him.

2. In the review application, the applicant has stated that he was charged for immoral sexual behavior towards the girl students while being posted as TGT (Hindi) in Jawahar Navodaya Vidyalaya, Coochbehar. An inquiry was conducted as per notification dated 20.12.1993. In this notification, in cases of moral turpitude and where it

was not found practicable to hold an open inquiry, the Director of the Samiti was authorized to dispense with the full fledged inquiry as contemplated in CCS (CCA) Rules, 1965. Later, CCS (CCA) Rules were amended by incorporating Sub Rule 2 of Rule 14. The proviso to Sub Rule (2) of Rule 14 provides that in the matter of a complaint of sexual harassment, the Complaint Committee constituted under Rule 3 (C) of the Conduct Rules shall be deemed to be the inquiring authority. Further, its report is deemed to be the inquiry report and thereafter the disciplinary authority has to supply report of Complaint Committee to the delinquent employee and give him an opportunity of filing representation. It is stated that the services of the applicant have been terminated and he has been given liberty to file appeal against the same. It is further stated that termination is not defined as a penalty under Rule 11 of CCS (CCA) Rules, 1965 while Rule 23 provides that remedy of appeal lies against any of the penalties awarded under Rule 11 of the CCS (CCA) Rules, 1965. It is, therefore, concluded that the remedy of appeal is not available to the applicant under Rule 23.

3. It is also stated that there is apparent error on the face of record as no order on merit can be passed to an alleged premature original application. It is alleged that this Tribunal on one hand upheld the impugned termination order based on the notification dated 20.12.1993 and on the other hand dismissed the OA being premature.

4. We have perused the Review Application.

5. Review applications to review the order of the Tribunal are considered by the Tribunal under Rule 1 of the Order 47 of the Civil Procedure Code (in short CPC), which states as under:-

“1. Application for review of judgement

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgement notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation.-The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgement.]”

From above provisions of the Rule 1 of the Order 47, the scope of review by this Tribunal is limited to the grounds of (i) discovery of any new and important facts or evidence which after exercise of due diligence, was not within the applicant’s knowledge and which could not be produced at the time of consideration of the O.A.; or (ii) some mistake or error apparent on the face of the record; or (iii) for any other sufficient reasons.

6. The above provisions of Rule 1 of Order 47 have been elaborated and explained in various judgments of Hon’ble Apex Court including in the case of **Ajit Kumar Rath vs. State of Orissa and Ors – AIR 2000 Supreme Court 85**. All these pronouncements lay down restrictions on consideration of review applications.

7. Besides the above limitations in any review application, we note that in the instant case the applicant has basically taken main two grounds: -

(1) that the remedy of appeal under Rule 23 is not available to the applicant as the punishment of termination of services is not covered under the penalties specified under Rule 11 of CCS (CCA) Rules, 1965.

(2) that the case cannot be dismissed on merits when the OA is being dismissed being premature due to alternate remedies not having been exhausted.

8. Regarding the first ground i.e. the penalty imposed on the applicant not being covered under Rule 11 of CCS (CCA) Rules and hence, he does not have the alternate remedy of appeal available to him, we note that vide impugned order dated 21.09.2017, the applicant has been awarded punishment of termination of his services with payment of three months pay and allowances in lieu of notice period. This penalty has been awarded under the provisions of notification dated 20.12.1993 of Navodaya Vidyalay Samiti as it was not found expedient to hold regular inquiry under the provisions of CCS (CCA) Rules. This order of 20.12.1993 itself states that these Rules as amended from time to time are applicable to all members of staff of Samiti mutatis mutandis. This notification amends CCS (CCA) Rules only to provide special procedure in certain type of cases as specified in the order. Thus, all the provisions of CCS (CCA) Rules apply to staff of Navodaya Vidyalaya Samiti mutatis mutandis with the sole exceptions given in the notification. This issue has also been discussed in our original judgment.

9. The applicant seems to be now basing his argument about non-applicability of Rule 23 in his case only on the ground that the punishment awarded to him is 'termination of service' and not '(viii) removal from service' or '(ix) dismissal from service' specified in Rule 11 of CCS (CCA) Rules.

10. We, however, find that the basic penalty in the case of the applicant is having the effect of these penalties and mere change in nomenclature does not imply that Rule 23 is not applicable to him. Such an interpretation will be against the principles of natural justice and will

be detrimental to the cause of employees in general. Even in other cases of termination of service, appeal is considered by the appellate authorities of various other departments. Even the respondents in their averments in the counter filed in OA have specifically mentioned that the applicant has an alternative remedy of appeal under Rule 23 of CCS (CCA) Rules. Hence, this ground for seeking review by the applicant's side is not found valid.

11. The other ground taken by the applicant is that the case should not be discussed on merit when the OA has been dismissed on the ground of being premature as the applicant has not yet availed his right of alternate remedy available to him. In this connection, we note that in the judgment upto paragraph 17, we have discussed only the averments made by the applicant's and respondents' side. Our views and opinion are reflected only in para 18 and onwards. Here we have clearly discussed three issues which were identified and were found necessary to give any decision in the OA. These issues were as follows: -

(1). Whether CCS (CCA) Rules 1965 are applicable to Navodaya Vidyalaya Samiti or not.

This issue became relevant as the applicant was seeking protection available to him under these Rules whereas the respondents had submitted that the Samiti, being an autonomous body registered under Societies Registration Act, frames its own rules and in pursuance thereof they have issued notification dated 20.12.1993. This notification authorizes the Director, Navodaya Vidyalaya Samiti to terminate the service of an employee who is found prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student in case it is found impracticable to hold regular inquiry against him in accordance with CCS (CCA) Rules, 1965. We came

to the conclusion from the notification dated 20.12.1993 itself that CCS (CCA) Rules 1965 apply in toto to the staff of Samiti with the sole exception to the above effect specified in the notification dated 20.12.1993.

(2). The second issue before us was applicability of notification dated 22.10.2015 in the instant case specially in view of notification dated 20.12.1993.

The applicant had relied on notification dated 22.10.2015 as this gives the procedure for administrative action against employee involved in sexual harassment of women at work place and immoral sexual behaviour towards any student amounting to moral turpitude. The applicant contended that his case falls under case 1 of the order but the constitution of Vidyalaya Level Committee given in this notification had not been followed in his case. On the other hand, the respondents argued that this notification is only applicable in case of women working at work place and the same is not applicable in the instant case. We came to the conclusion that the notification dated 22.10.2015 is also applicable in the instant case involving moral turpitude against any student. This was clear from the title of the notification itself as well as cases covered under categories of case 1 and case 2 of this notification which relate to sexual abuse to student. Hence, we concluded that this notification is also applicable in the instant case.

(3). The other question before us was inter se applicability of both the notifications dated 20.12.1993 and 22.10.2015 in the present case.

Here we desired to see whether these two notifications –both being applicable to Navodaya Vidyalay Samiti - are in conflict with each other or there is a possible constructive interpretation of the two. We found

that both the notifications are not contrary to each other. This is because we found that 2015 notification basically aims to fast track proceedings under CCS (CCA) Rules 1965 and gives detailed procedure in this regard with specified time lines. This notification does not speak of 1993 notification. So we came to the conclusion that power of Direction to dispense with the regular inquiry still exists. In case he decides to exercise such power, notification of 1993 will be applicable. However, where the Director does not decide to dispense with the regular inquiry, the notification of 2015 will become relevant.

12. Having decided these three basic questions regarding the background in which the instant case is to be assessed, in last two paragraphs of our order i.e. paragraphs 23 and 24, we have concluded that the CCS (CCA) Rules being applicable in the instant case, right of appeal of the applicant remains intact. As he has not availed this right, the OA was dismissed being premature.

13. It will be seen from the above discussions that we have not discussed the merit of the specific case of the applicant regarding moral turpitude at all. We have only clarified the background of rules and regulations under which the case is to be considered and decided. Thereafter, having come to the conclusion that CCS (CCA) Rules 1965 apply in the instant case, we concluded that his right to appeal remains intact and have therefore, dismissed the OA being premature as this alternate remedy has not been availed by the applicant as yet.

14. It is, therefore, clear that second main ground for review put forth by the applicant's side is also not at all justified and there is no error apparent in the judgment at all. In fact, what the applicant is really trying is to re-argue his case on the same facts and grounds given in the

main OA. These grounds are not valid as per the settled law as laid down by the Hon'ble Apex Court and discussed in preceding paragraphs.

15. In view of all above, there is no error or mistake apparent on the face of the record which has been pointed out by the applicant in the Review Application. The grounds mentioned in the Review Application do not include any of the deficiencies specified under Rule 1 Order 47 of the CPC in order to justify the review of the impugned order. If the applicant is aggrieved by this order, he is free to take appropriate steps to agitate the matter in the higher forum. Hence, on merits, the Review Application is not maintainable.

16. In view of the above, the Review Application is dismissed being devoid of merit. No order as to costs.

MEMBER (A)

MEMBER (J)

Anand...