

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00897/19

Date of Order: 12.09.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Rajan Kumar, S/o Late Akhileshwar Pandey, at present employed as Principal, Jawahar Navodaya Vidyalaya, Kishanganj, Bihar.

.... **Applicant.**

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through the Secretary, Ministry of HRD, New Delhi- 110001.
2. The Commissioner, Navodaya Vidyalaya Samiti, B-15, Sector-62, Institutional Area, Noida, Uttar Pradesh- 201309.
3. The Deputy Commissioner & Inquiring Authority, Navodaya Vidyalaya Samiti, Lekhraj, Patna- 3rd Floor, Vikash Magar, Sector-2, Lucknow- 226022.
4. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Boring Road, Patna- 800013.

.... **Respondents.**

By Advocate: - Mr. G.K. Agrawal

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- The case of the applicant is for quashing the Memorandum dated 26.03.2019 alleging it to be having "inherent and non-curable defects" implicating the applicant in a disciplinary proceeding. He has also requested for quashing the letter dated 06.09.2019 issued by the Dy. Commissioner, Navodaya Vidyalaya Samiti whereby the next date of enquiry is fixed on 24.09.2019 at Lucknow.

2. The matter was heard at the admission stage. We find that a chargesheet has been issued vide Memorandum dated 26.03.2019 in which the applicant has been alleged to have “while discharging his duty as Principal of Jawahar Navodaya Vidyalaya, Fatehgarh Saheb (Pun.) during the period from 10.12.2012 to 07.11.2017 was in the habit of giving sexually coloured remarks, exhibiting other unwelcome physical, verbal, non-verbal conduct of a sexual nature, making comments with regard to personal life, features and physical appearance of female staff members.”

3. The learned counsel for the applicant has argued that paragraph-4 of the Memorandum mentions that “if he does not submit his written statement of defence on or before the date specified in Para 2 above or does not appear in person before the Inquiring Authority or otherwise fails or refused to comply with the provision of rule 14 of CCS(CCA) Rules 1965 or the orders/directions issued in pursuance of the said rule, the Inquirng Authority may hold the inquiry against her ex-parte”. This itself shows that the Disciplinary Authority had already pre-determined that there would be an enquiry by an Inquiring Authority even before getting the explanation of the applicant. The learned counsel also argued that the applicant has not been given reports of the Gender Harassment Committee and also of “Gyanendra Committee” which is reported to have given clean chit to the applicant. The OA also quotes the decision of the Hon’ble Supreme Court in **U.O.I. Vs. Ashok Kacker** [1995 SCC (L&S) 374] in support of his request for quashing the memo of charges at this stage.

4. We have gone through the records enclosed with the OA and find that there is enough *prima facie* evidence to support framing of charges against the applicant. A conditional mentioning in para-4 of the charge memo that an ex-parte decision will be taken in case of his not submitting written statement and not appearing before the inquiry authority does not *ipso facto* vitiate the whole memo of charges. We cannot presume that there will be any denial of opportunity to the applicant to defend his case in the enquiry process and the applicant should use this opportunity to come out clean if he, as he alleges, is not guilty of any of the charges mentioned in this charge memo. The decision cited by the applicant in *Union of India Vs. Ashok Kacker* is, in effect, against quashing the chargesheet at this stage. In the absence of any “inherent or non-curable defect” or any independent evidence to conclude that the disciplinary proceeding is motivated, there is no reason for the Tribunal to admit this OA with a prayer to quash the chargesheet even before the start of enquiry. The OA is, therefore, dismissed at the admission stage itself. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member