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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1914/2003

New Delhi this the 2nd February 2005

HON'BLE JUSTICE SHRI V.S.AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Shri P.K.Tewari,
S/o late Shri R.K.Tewari,
R/o Flat No.O-460, Jalvayu Vihar,
Sector 30, Gurgaon (Haryana) ...Applicant.
(By Advocate: Shri M.K.Bhardwaj)

Versus

1. Union of India
Through the Secretary,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi.
2. The Chairman,
Kendriya Vidyalaya Sangathan,
Room No.301, 'C' Wing, Shastri Bhawan,
New Delhi.
3. Kendriya Vidyalaya Sangathan
Through it's Commissioner,
18, Institutional Area, Shahid Jeet Singh Marg,
New Delhi-110 016. ...Respondents.
(By Advocate: Shri S. Rajappa for respondents no. 2 and 3
None for Respondent no.1)

ORDER (ORAL)

By Shri S.A.Singh, Member (A)

The applicant through this application is challenging the respondents order dated 25.6.2002 informing the applicant that no appeal lies against the order passed by Chairman, KVS and for quashing respondents order dated 28.5.2002 wherein penalty of 10% cut in pension for two years has been imposed after an enquiry.

2. The applicant while working as Assistant Commissioner KVS Bhubaneshwar Region was served with charge sheet for abusing his position. The applicant was retired on 31.5.1995 and charge sheet was served after two years of his retirement. After this, the applicant submitted his explanation and thereafter the respondents ordered a full-fledged departmental enquiry. The enquiry officer has submitted its report on

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20.12.2002. The Department forwarded this enquiry report to CVC. On approval of the CVC penalty of 10% cut in pension for two years was imposed on 28.5.2002. The Vice-Chairman KVS communicated information about this penalty. An appeal was filed by the applicant on 31.5.2002 for furnishing a copy of inquiry report and second stage advice of the CVC. In reply, the Education Officer (Vigilance) vide its order-dated 25.6.2002 informed that no appeal lies against the order passed by the Chairman KVS. Aggrieved by this petitioner filed the OA.

3. Through this OA, the petitioner-sought relief for setting aside orders NO. F.8/63/94/KVS (Vig.) dated 28.5.2002 passed by the Chairman and communicated under signature of Vice-Chairman KVS and to set aside/quash the impugned order dated 25.6.2002. He has also sought pay deducted on the basis of the order dated 28.5.2002 and consequential benefits.

4. The grounds taken by the applicant for above relief are that the disciplinary authority acted in a most arbitrary manner in getting approval from CVC without giving any opportunity to applicant to explain his viewpoint. The disciplinary authority in respect of the applicant is Vice-Chairman KVS under Rule 11 CCS (CCA) Rule, 1965 and Chairman of the KVS is the appellate authority. By imposing the penalty by Chairman KVS himself the applicant's right of appeal has been taken away. Applicant further alleged that the inquiry proceedings are based upon hearsay and not based on any evidence. The impugned order dated 28.5.2002 passed by the Minister was communicated under signature of Vice-Chairman. Further, no letter seeking petitioner's explanation on the quantum of punishment was delivered. The request for supply of these documents to enable him make an effective appeal has been erroneously turned down. The charge sheet consisting of two articles of charges was issued showing undue favour to the five candidates namely Avantika Rai, Km. Arunima Rai (for the post of TGT Hindi), Mamta Rath, Krishna Day and D.K.Sarangi (for the post of PPTS) by giving them weight age of CCA. In addition, accepting the experience certificates, which was not issued by a competent authority or from a recognized School nor were they countersigned by the District Education Officer. The candidates were selected by bringing them

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within cut off marks by accepting additional documents. The second article of charge was that 232 candidates belonging to General Category were called for interview against 24 PRTS vacancies reserved for Ex. Serviceman and five for Physical Handicapped in contravention of DOPT's instructions contained in letter dated 4.11.1977 and 30.12.1980.

5. The applicant pleaded that the inquiry officer erroneously came to the conclusion that the charge of favouring some candidates for appointment in KVS has almost been fully proved, which is without any evidence on record and was on the basis of presumption only. The applicant states that the Selection Committee, which was constituted as per instructions contained in para 6 of the KVS (HQ) letter No, F.1-4/92-KVS (RP-II) dated 1.5.1993 selected the candidates. The Selection Committee allotted the marks. Therefore, there is no question of undue favour by the applicant.

6. We have heard the counsel for the parties and gone through the records. The main ground of the applicant is that the disciplinary authority obtained the approval of CVC without giving an opportunity to the petitioner to explain his point of view. Moreover, by getting the order of punishment issued by the Minister of Human Resource Development, who was also happens to be the Chairman of the KVS, a valuable right of appeal to the Chairman, KVS has been curtailed. Further, it is submitted that when he was working as an Assistant Commissioner, the disciplinary authority of the petitioner was Vice Chairman, KVS and under the Rule 11 of CCS (CCA) Rules, 1965 the Chairman, KVS was the appellate authority. The respondents have pleaded that the applicant retired on 31.5.1995 from the post of Assistant Commissioner, KVS Bhubaneshwar and departmental proceedings were initiated after obtaining the sanction from Chairman, KVS, i.e., Minister of Human Resource Development under the provisions of Rule 9 of CCS (CCA) Rules, 1965 (Pension) Rules, 1972. Thereafter, a charge sheet was issued on 30.9.1997 under Rule 14 of CCS (CCA) Rules, 1965. An order of imposition of 10% cut in pension for 2 years was imposed on the applicant by the competent authority. Applicant asked for a copy of the inquiry report along with a copy of the 2nd stage advice of CVC. Accordingly, a copy of the inquiry report and a copy of the second stage advice of CVC were forwarded to the applicant vide



respondents letter dated 25.6.2002. The applicant was also informed in terms of Rule 22 (i) of CCS (CCA) Rules, 1965, no appeal lies against the order passed by the Chairman, KVS in the case of KVS employee, as the President passed the said order.

7. In view of the fact that a copy of the inquiry report along with a copy of the 2nd stage advice of CVC were forwarded to the last known address of the applicant, twice; it cannot be held that he has not been given an opportunity to put forward his point of view. The postal authorities returned these letters undelivered, with the remark that the addressee left the station. It was for the applicant to keep the respondents informed of any change in his postal address.

8. As far as the question of right of appeal having been taken away by having the order passed by the Chairman KVS is concerned we find that Rule 22(i) of CCS (CCA) Rules, 1965 reads as under:

“22. Orders against which no appeal lies
Notwithstanding anything contained in this Part, no appeal shall lie against-

(i) any order made by the President;”

From reading of Rule 22(i) of CCS (CCA) Rules, 1965, it is apparent that no appeal lies against any order made by the President and under rule 9 the order has to be under the name of the President after the applicant retired.

9. In view of the foregoing, we find that the OA is without merit and stands dismissed. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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