

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.3085 of 2003

New Delhi this the 13th day of April, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri R.K. Upadhyaya, Member (A)

Sannoo Singh,
S/o Shri Nagina,
1/1, Kendriya Vidyalaya Staff Quarters,
Sector 24, Noida (UP). ... Applicant

(By Advocate: Shri Bal Kishan Sewak)

versus

1. Commissioner,
Kendriya Vidyalaya Sangathan,
18, New Mehrauli Road,
New Delhi-110016.
2. Smt. Neeru Sharma
Disciplinary Authority &
Principal, Kendriya Vidyalaya,
Sector 24, Noida (UP)
3. Ms. Poonam Srivastava,
Inquiry Officer & PGT (Economics),
Kendriya Vidyalays,
Sector 24, Noida (UP). ... Respondents

(By Advocate: Shri H.Jayaraman proxy counsel for Shri
S.Rajappa)

Order(Oral)

Hon'ble Shri Shanker Raju, M(J)

The issue relevant for consideration is--whether the disciplinary proceeding can be interfered with at an interlocutory stage. The Apex Court in Union of India v. Upender Singh, JT 1994 (1) SC 658 observed that Tribunal has no jurisdiction to go into the correctness or truth of the charges and the only interference which is permissible is when the charges framed with imputation of particulars disclose either no misconduct or no irregularity is found in the charges framed are contrary to law.

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2.. In the conspectus of the above applicant impugns respondents' memorandum issued under Rule 14 of the CCS (CCA) Rules, 1965 as well as memorandum dated 9.12.2003 whereby a representation has been sought on the enquiry report.

3.. Learned counsel for applicant contends that the action of the respondents is mala fide based on caste discrimination. It is further stated that the statement allegedly made before the Police Officer or Court cannot become a subject of disciplinary proceeding unless adversely commented upon by the Court. It is further stated that allegations in the memorandum are false with a pre-determined mind to dispense with the services of applicant.

4.. It is further stated that the request of applicant for change of Enquiry Officer (EO) has not been adhered to and the enquiry is a mere camouflage and empty formality. It is further stated that he is not involved in the criminal case registered on the complaint of one Anek Singh and the statement allegedly made on 9.7.2003 is not voluntary and has been procured under duress.

5.. It is lastly stated that applicant being a member of the lower strata of the society has been victimised.

6.. On the other hand, respondents' counsel vehemently opposed the contentions. According to him a decision has been taken to hold the enquiry de novo by changing the EO, as such the OA has rendered infructuous. Moreover, it is stated that the correctness of the charge

cannot be gone into at an inter locutory stage and the Tribunal is precluded from assuming the role of a disciplinary authority. It is lastly contended that applicant shall be given due opportunity to prove his innocence during the course of the disciplinary proceedings, which would be conducted in accordance with rules.

7. We have carefully considered the rival contentions of the parties and perused the material on record.

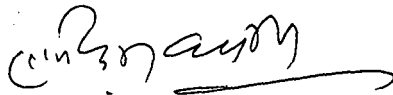
8. The charges levelled against applicant are that he made a statement on 9.7.2003 with a view to help one Anek Singh and on 10.7.2003 when applicant was called by the Principal to give factual position in so far as incident reported in his statement he refused to give the details and also in his reply dated 6.10.2003 he has intentionally blamed the enquiring authority and also made baseless and fabricated allegations against the Principal.

9. On careful consideration of the rival contentions we are of the considered view that the main grievance of applicant regarding change of EO has been redressed as the enquiry has been ordered to be proceeded de novo afresh by a new EO against whom applicant has no bias.

10. In so far as correctness of the charge is concerned, it is not denied that the statement has been made by force on 9.7.2003 but has not been made by applicant on his own volition. The aforesaid contention

is a contentious one which has to be established by way of defence in the proceedings. Applying the test of a common reasonable prudent man on perusal of the charge and the attached Annexures we do not find the present case either of no misconduct or the charges levelled are contrary to law. Applicant shall be afforded a reasonable opportunity in de novo proceedings to establish his innocence. At an inter locutory stage in the light of the decision of the Apex Court in Upender Singh (supra) this Tribunal has no jurisdiction to entertain the present grievance of applicant.

11. In the result, for the foregoing reasons though observing that as the respondents have decided to proceed applicant in a de novo proceedings, finding no justification to interfere at an inter locutory stage OA is dismissed. However, the respondents shall conduct the enquiry in accordance with rules with due opportunity to applicant. No costs.



(R.K. Upadhyaya)
Member(A)



(Shanker Raju)
Member(J)