

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.ORIGINAL APPLICATION NO.244/2014

Monday, this the 25th day of November, 2019

CORAM:- R.VIJAYKUMAR, MEMBER (A) ..

RAVINDER KAUR, MEMBER (J)

Bhagwan Swarup Paliwal (Ex. - Physical Education
Teacher) in Kendriya Vidyalaya Sangathan, (R/at:
B/13, Brahma Angan, Salunka Vihar Road, Pune-411048.
...Applicant

(By Advocate Shri Suresh Sharma)

Versus

1. The Chairman, Kendriya vidyalaya Sangathan, 18,
Institutional Area, 5, J.S.Marg, New Delhi-110016.
2. The Vice Chairman, Kendriya vidyalaya Sangathan,
18, Institutional Area, 5, J.S.Marg, New Delhi-
110016.
3. The Commissioner, Kendriya vidyalaya Sangathan,
18, Institutional Area, 5, J.S.Marg, New Delhi-
110016.
4. The Joint Commissioner, Kendriya vidyalaya
Sangathan, 18, Institutional Area, 5, J.S.Marg, New
Delhi-110016.
5. The Assistant Commissioner, Kendriya vidyalaya
Sangathan, Regional Office, I.I.T. Campus, Mumbai-
400706.

...Respondents

(By Advocate Shri V.S.Masurkar)

Reserved on :- 13.11.2019

Pronounced on:- 25.11.2019

ORDER

R. Vijaykumar, Member (A)

This application was filed on 27.03.2014

under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

Reliefs

- "a) to allow the application.
- b) to quash and set aside the impugned orders dated 24.05.2013; 01.02.2008, 28.01.2009 and 6th/8th July, 2011, passed by the Respondents.
- c). to direct the Respondents to reinstate the Applicant back in service with all consequential benefits.
- d) to pass any other appropriate order, which may be considered necessary in the facts and circumstances of the case.
- e) to award the cost of application".

2. The applicant was allegedly caught red-handed accepting a bribe of Rs.1,000/- for increasing marks in practical examinations for the subjects of Physics and Chemistry in respect of a student by the CBI on 4.10.2002 and an FIR was lodged on the same day by CBI, ACB, Mumbai. The applicant was arrested thereafter and he was placed under deemed suspension on 7.10.2002, following which, a charge sheet was issued to him on 29.8.2003 (Annexure-A6) with the following Article of Charge as contained in Annexure II of the Charge Sheet:

" WHEREAS Shri B.S.Paliwal while functioning as PET was assigned the additional duty of Assistant Co-ordinator for the examination of National Institute of Open School

during the year 2002 at Kendriya vidyalaya Army Area Pune for the purpose of collecting all the answer sheets alongwith award list and attendance sheets of the candidates who were supposed to appear as a direct candidate in the practical/theory examination to be held by National Institute of Open School, New Delhi. A candidate namely Master Yajur Anand son of Col. Vikas Anand appeared in Physics & Chemistry practicals on 25th and 27th September 2002 respectively in the above mentioned examination center i.e. Kendriya Vidyalaya, Army Area, Pune as a direct candidate.

WHEREAS at the behest of Shri B.S.Paliwal Shri Kiran Scindia proprietor of M/s.Success Institute, Pune made a telephonic call to Master Yajur Anand on 03.10.2002 saying that he secured only 05 marks in Physics practicals and 09 marks in Chemistry practicals out of maximum marks of 20 in each practical examination. If he is interested to get his marks increased he should contact Shri B.S.Paliwal and pay an amount of Rs.500/- for each subject i.e. Total Rs.1,000/-.

WHEREAS Col.Vikas Anand the father of Master Yajur Anand lodged the written complaint with CBI.

WHEREAS a criminal case was registered against Shri B.S.Paliwal and the CBI laid a trap on 04.10.2002. The complainant handed over the money to Shri B.S.Paliwal which was duly accepted by him and concealed it on the top of an almirah lying in his room which was duly recovered by the CBI team.

Thus by the aforesaid act Shri B.S.Paliwal has committed misconduct under Sub Rule 17 of Article 61A of the Education Code for Kendriya Vidyalayas and Rule No.3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964 as extended to KVS employees".

3. An Inquiry Officer (IO) was appointed by the Assistant Commissioner and Disciplinary Authority as

required under Rule 14 of CCS (CCA) Rules, 1965 and during the process of inquiry, eight State Witnesses (SW) out of 11 (including a minor) named in the charge sheet at Annexure IV were examined during the 4th, 6th, 10th, 12th and 16th sittings of the Inquiry Officer and four Defence Witnesses (DW) named by the Charged Employee (CE) did not turn up for examination. The applicant was provided all documents mentioned in Annexure-III of the charge sheet and inquired about his need for additional documents, as also on the nomination of the Defence Assistant in the first sitting held on 20.10.2003 out of 22 sittings that was held between 20.10.2003 and 27.02.2007 during the process of inquiry. During the second sitting held on 29.11.2003, the CE wished to nominate a Defence Assistant from Delhi, which was rejected due to the distance and the CE was advised to nominate some serving or retired employee in nearby places. This was done by the CE during the third sitting on 2.1.2004 and in the presence of the nominated Defence Assistant, the fourth sitting was held on 30.6.2004 in which SW-3 and SW-4 who had initially given marks were examined and were also cross-examined. For the fifth sitting on 25.9.2004 the CE did not turn up and sent four letters dt. 22.9.2004 requesting adjournment on medical grounds; withdrawal of the order decreasing his subsistence allowance; alleging

bias against the Disciplinary Authority and IO and lack of faith in the proceedings; and proposing removal of the then Defence Assistant and asking for approval of a former employee who was resident at New Delhi. Although witnesses were produced, they could not be examined and inquiry was suspended in view of these letters, pending orders of the Disciplinary and Appellate Authorities.

After noting in DOS proceedings that the Appellate Authority's orders rejecting these various requests of the applicant and received on 10.3.2005, the sixth sitting was duly notified and held on 17.6.2005 when two state witnesses (SW7, SW8) were presented and gave a written statement to which the CE declined to cross-examine without assistance of a Defence Assistant. The CE then requested permission to appoint a Delhi resident ex-employee as Defence Assistant which was rejected and the decision of the IO was upheld by the Disciplinary Authority in orders dt. 29.7.2005. During the seventh sitting on 10.8.2005, the two witnesses were again presented for cross-examination which was declined by the CE giving some excuses which were rejected by the IO as this was the third opportunity for the purpose. During the eighth sitting, the CE asked for additional documents running into 42 pages which were discussed and it was held that none of these documents were relevant to the

case or involved any challenge. During the ninth sitting held on 24.10.2005, the CE argued that he had filed a representation on the rejection of his request for Defence Assistant from Delhi and further, the Presenting Officer could not present SW-1 who was posted in the North Eastern Region. During the tenth sitting on 10.11.2005, SW-6 and SW-1 was examined, but neither of them were cross-examined because the CE refused to do so. The CE was also advised that his request for a Defence Assistant had already been rejected by the Disciplinary Authority and he had been asked to nominate any serving or retired person of KVS from nearby areas. During the eleventh sitting on 12.12.2005, SWs-10 and 11 of the CBI were not available. The CE submitted representations stating that he would be present in the inquiry, but would not sign proceedings as he was denied permission to appoint a Defence Assistant from Delhi. During the twelfth sitting on 21.1.2006, SW-10 deposed, but the CE expressed his inability to cross-examine and further, refused to affix his signature in token of having been present and for receiving the copies, and left the venue for which a copy of the DOS was sent to him by Registered Post. On the thirteenth sitting on 6.3.2006, the CE did not turn up and without intimation. During the fourteenth sitting on 8.5.2006, the CE did not turn up

and sent a representation without medical certificate. The CE was informed to make available defence witnesses for the next hearing. During the fifteenth sitting on 9.6.2006 SW-11 of the CBI was deposed in writing, but the CE refused to cross-examine. The CE was asked to present his witnesses during the next hearing. Thereafter, he left the place saying he would stay away from the inquiry under protest. During the sixteenth sitting on 17.7.2006, the CE attended, but did not present his witnesses and declined to sign the DOS. During the seventeenth sitting on 22.8.2006, the CE who had agreed to produce his defence witnesses, failed to turn up. During the eighteenth sitting on 29.9.2006, the CE failed to turn up and a letter dt. 20.9.2006 sent by him for grant of this final hearing was discussed in the context of the Presenting Officer's view that this was due to dilatory tactics. During the nineteenth sitting on 20.11.2006, for which opportunity had been granted in writing by the IO to the CE during the previous sitting, the CE did not turn up and sent an application with photo copy of medical certificate from Jog Clinic. A further opportunity was given in writing insisting that such medical certificate should come up from a Government Hospital in future. During the twentieth sitting on 6.1.2007, the CE did not turn up and sent a medical

certificate from Sasoon General Hospital. The proceedings were adjourned and intimation in writing sent to the CE. During the twenty first sitting on 11.1.2007, the CE did not report and sent an application along with a Medical Certificate from Sasoon Govt. Hospital. During the twenty second sitting on 27.2.2007, the CE did not turn up and again gave a certificate from Sasoon General Hospital. The proceedings were adjourned and intimation in writing sent to the CE. During the twenty second sitting, the CE did not turn up and sent a medical certificate from a private clinic viz. Jog Hospital. On consideration the inquiry process was closed and copies of DOS and proceedings were sent to the CE. It was noted that the CE was absent on five consecutive dates and therefore, an opportunity was given in writing to give his 'final say' within thirty days. The 'final say' of the CE was received and after communication of written brief of the Presenting Officer, the comments of the CE were also received after which Inquiry Report was submitted.

4. On this basis, the Disciplinary Authority passed orders in reference No.F.17(ii)12/2002-KVS(MR) /Admn dt. 1.2.2008 holding the charges as proved and imposing the penalty of removal from service. On his appeal dt. 8.3.2008, the Appellate Authority passed orders in

F.No.27062/14(AP)2008-IVS(Vig.) dt. 28.1.2009 confirming the orders of the Disciplinary Authority. Thereafter, it appears that the applicant filed a petition dt. 3.10.2010 which was considered as a Revision Petition and orders were passed in file F.27062/14/RP/2008/KVS(Vig.) dt. 6/8.7.2011, in which it was held that there was no basis for interference with the orders of the Disciplinary and Appellate Authorities. The applicant, thereafter filed a review application on 14.9.2012 and 23.11.2012 to the Chairman, KVS and Minister of HRD which was also rejected vide letter No.F.27062/14/RP/2008-KVS(Vig.)/508-512 dt. 24.5.2013.

5. Learned counsel for the applicant was heard at length. He argues that the CBI had filed a closure report on 11.9.2012 which has not been accepted by the Special Judge and therefore, the orders in review by the Hon'ble Chairman, KVS did not take into consideration this fact. He refers to the reasons given by the CBI for the closure as their inability to prove the guilt of the applicant and further, that no charge had been made out as decided in the case of **G.M. Tank vs State Of Gujarat & Anr**, Appeal (civil) 2582 of 2006, which, he claimed, squarely covered his case. He also argues that there was lack of natural justice in that the applicant was not allowed to appoint a Defence Assistant of his choice viz.

a person residing at Delhi. Further, he referred to the provisions of Section 14(18) of the CCS (CCA) Rules, 1965 under which it was necessary for the IO to call the CE and summarize the circumstances and evidence of the witnesses and hear what the CE had to say on the matter.

In this connection, he relied on the decision of the Hon'ble Apex Court in **Ministry of Finance & Anr. v. S.B.Ramesh**, SC Civil Appeal No.3091 of 1995 and

S.C.Girotra v. United Commercial Bank, 1995 Supp. (3) SCC

12. He further argued that the proper procedure for ex parte hearing had not been followed and appropriate notice had not been sent. Further, he referred to the evidence of SW-3 who had admitted that she had carried out the changes in the marks of the practical sheet in Physics practical test. He did not raise any objection in regard to the statement of SW-4 who had denied having changed the marks. With reference to the delay from date of orders by the Appellate Authority to filing of this OA which amounted to nearly five years for which no application for condonation of delay has been filed, he relied on a decision of the Hon'ble Apex Court in **Mohinder Singh Gill v. Chief Election Commissioner, New Delhi**, 1978 SCC (1) 05 presumably on the need to avoid miscarriage of justice by the emphasis on fair play in action and natural justice.

6. The learned counsel for the respondents challenged the claim of the applicant that the application had been filed within limitation. He argued that the Appellate Authority had passed orders on 28.1.2009 and the applicant, had thereafter filed a Review Petition on 3.10.2010 after more than 20 months from the orders of the Appellate Authority. There is no statutory provision in the CCS (CCA) Rules for such Revision Petition to be considered on which orders were passed by the Commissioner, KVS, New Delhi on 8.7.2011 or for Review Petition filed on 14.9.2012 and 23.11.2012, more than one year after the orders of the Revisionary Authority. The applicant was required under section 21(1)(a) of the Administrative Tribunals Act, 1985 to seek legal remedy before this Tribunal within one year of the passing of the orders by the Appellate Authority but instead filed this application after more than four years of delay. Hence, this application should be rejected on the grounds of limitation itself because in terms of the rulings of the Constitution Bench in **S.S. Rathore vs State Of Madhya Pradesh**, 1990 AIR 10, subsequent repeated representations characterized by the applicant as revision and review do not excuse the period of limitation.

7. The learned counsel, thereafter argued that the

CBI had forwarded their Investigation Report on 19.2.2003 to the respondents to initiate major penalty proceedings. The respondents had conducted the inquiry and the Disciplinary Authority had passed orders on 1.2.2008 and the Appellate Authority had also passed orders on 28.1.2009. The CBI filed their closure report in 2012 which was accepted by the competent court on 11.9.2012. On the aspect that the filing of criminal case takes away the jurisdiction of the Disciplinary Authority, he referred to the rulings of the Hon'ble Apex Court in **Noida Entrepreneurs Association v. Noida and Ors.**, (2007) 10 SCC 385. In view of the closure report, nothing was examined in court. It is also noted that since no charge sheet was ever filed, the question of preparing list of witnesses or documents did not arise in the criminal case for the purpose of comparison with the disciplinary case. Further, the criminal case itself was closed although only in 2012. Therefore, there is no prejudice of any kind that had been caused to the applicant by continuing with the disciplinary inquiry and arriving at its conclusion and the relationship sought to be. **State of N.C.T. of Delhi v. Ajay Kumar Tyagi**, (2012) 9 SCC 685. The respondents were, therefore, required to follow the CCS (CCA) Rules scrupulously in terms of the decision of the rulings of the Hon'ble Apex Court in **Capt. M.Paul Anthony**

v. Bharat Gold Mines Ltd. & Anr., (1999)3 SCC 679,

wherein they had to consider the aspects of preponderance of probabilities in establishing that the allegations against the applicant were proved.

8. On the aspect of the Defence Assistant insisted by the applicant from Delhi, he referred to the minutes of the first sitting on 20.10.2003 in which the CE had sought time to identify a Defence Assistant, the second sitting dt. 29.11.2003 when his request for nominating a Defence Assistant from Delhi was rejected due to long distance and upon being advised to nominate person in Pune or nearby places, the CE agreed. Further, after proposing Shri S.Y.Jha, Ex-Principal as Defence Assistant in the third sitting on 2.1.2004 and after examination and cross-examination of two witnesses, during the fourth sitting, the CE did not turn up for the fifth sitting on 25.9.2004 and wrote a letter intimating removal of Shri S.Y.Jha and again insisting on Shri R.G.Nangia, retired TGT, KVS from Delhi. Further, during the sixth sitting on 17.6.2005 two more witnesses were examined, but CE refused to cross-examine and insisted on nominating his Defence Assistant from Delhi, which was rejected by the IO and this decision was upheld by the Disciplinary Authority based on the representation of the CE in orders dt. 29.7.2005. During the seventh sitting held on

10.8.2005, the two witnesses were again presented for cross-examination for which the CE admitted that he had received the orders of the Disciplinary Authority and wanted time to identify a Defence Assistant from the nearby area or, if he failed to do so, he would himself conduct cross-examination. On the basis of the objections of Presenting Officer, the CE was asked not to prolong the matter. But he refused to cross-examine the two witnesses who had been recalled for cross-examination. Therefore, the argument of the applicant that he had not been given adequate opportunities for cross-examination are clearly unsupported.

9. On the plea that ex-parte procedure had not been followed by issue of notice, the learned counsel referred to the minutes of the twenty second sitting dt. 27.2.2007 which noted the absence of CE on five consecutive dates which were preceded by the sitting on 10.11.2005 when he refused to cross-examine two witnesses including the main complainant, and thereafter, during the next sittings on 12.12.2005 and 21.1.2006 he refused to sign the proceedings, remained absent on 6.3.2006 and 8.5.2006 and thereafter when the final witness was presented on 9.6.2006, left the place of inquiry stating that he would stay away from the inquiry under protest. Thereafter, he failed to produce witness on the next date

on 17.7.2006 and did not turn up on 22.8.2006 without giving any reason, all of which occurred prior to the absence from 29.9.2006. Notices of meetings had been sent to him along with minutes of proceedings for every sitting and none of the opportunities extended for production of defence witnesses were availed. Moreover, the medical certificates provided were not in continuity, but were for a period of 10-15 days and precisely covered the days on which sitting were fixed. All notices had been sent to the applicant to cooperate in the inquiry and therefore, there was no option for the IO, but to proceed with the inquiry in the face of all these tricks played by the CE and therefore, it could not be argued that the principles of natural justice had not been followed. The IO, who was essentially a layman, had also discussed all these aspects in his report. With regard to the provisions of para 14(19) which had been referred by the learned counsel for the applicant, he argued that when the CE never attends the inquiry or cooperates in any manner including for cross-examination, production of defence witnesses, signing of proceedings and by giving flimsy excuses or no excuses for being absent, there is no opportunity available for the IO to await the closure of the case by the government servant and then question him on the circumstances contained in the evidence against ..

him. He had therefore, communicated all these matters to him to provide his final say and upon receipt of this final say dt. 26.3.2007, the Presenting Officers brief was invited on the matter, which was received on 1.6.2007 was again sent to the CE for which he sent his comments on 2.7.2007. Therefore, he contended that all opportunities required by natural justice were provided to the CE.

10. Learned counsel for the applicant in rebuttal stated that the rulings of the Hon'ble Supreme Court cited relate to cases with different facts and circumstances. He thereafter reiterated these grounds on the issues that vitiated the inquiry.

11. Learned counsels have been heard and their views have been carefully considered. Pleadings on record have been carefully perused.

12. At the outset, this Tribunal is required to look into the preliminary aspect of limitation. The Act is very specific in Section 21(1)(a) that the applicant should have filed this application within one year from receipt of orders from the Appellate Authority dt. 28.1.2009. However, he actually filed this application only on 27.3.2013 and after removal of objections the case was heard for admission only on 29.4.2014. Even this period of objection is limited to 30 days under

section 17 of the CAT Rules of Practice, 1993 and only compounds the delay observed in this case after excluding the repeated representations filed by the applicant by way of a revision and review as ruled by the Hon'ble Apex Court in **S.S.Rathore** (supra).

13. The learned counsel would argue that the closure report of CBI that was accepted by the criminal court would bind the respondents in a disciplinary inquiry. But the law and the rules of evidence applicable in a disciplinary inquiry relies on preponderance of probabilities and the consequent evaluation of evidence is done in a manner quite different from a criminal case. The law is well settled on this point and the closure by the CBI for certain technical reasons that are relevant to the criminal case cannot necessarily be applied to a disciplinary case and in this particular instance, we are not convinced that there is any basis for such application. In this connection, the citations of respondents are moot. With regard to the manner in which the IO appointed by the respondents was compelled to adopt ex parte procedure, it has to be noted that the applicant was present all through the deposition of SWs until the last witness who was from the CBI. He, thereafter, refused to avail any opportunity to produce Defence Witnesses. He cross-examined only the first two

witnesses and refused to cross-examine the rest. Therefore, there is no evidence of any prejudice that has been caused to the CE by virtue of the action of respondents and if any prejudice is felt by the applicant, he was provided ample opportunities to put forward his views and even seek cross-examination if he felt it was necessary to strengthen his case. However, he did not do any such thing and instead, decided not to cooperate with the inquiry for which the minutes of various sittings provide adequate record.

14. The applicant has charged that Section 14 (18) of the CCS (CCA) Rules, 1965 has been violated. As argued out by the learned counsel for the respondents, if the applicant chooses not to cooperate with the proceedings and then not to participate at all giving all kinds of excuses to cover up his absence on the date of inquiry, the IO has to adopt an appropriate strategy as a responsible officer to complete the assigned job. After the completion of hearing and examination of the government servant, if he so presents himself, there is no provision asking for a 'final say' from the government servant in writing, but there is only a provision for communicating the Presenting Officer's brief to him for his comments before formulating his report by the IO. The IO has, in a measure of abundant caution, sent all

the materials to the CE for his "final say" and he was given 30 days for this purpose. In addition, the CE was also communicated the brief of the Presenting Officer and gave a reply in his defence. Therefore, these actions in the face of defiance of the CE, adequately meet the requirements of natural justice in our view and full opportunity has clearly been given to the applicant for his defence.

15. In the circumstances, we do not find any merits in this application and we also note that it is badly barred by limitation and dismiss this OA on both these grounds. However, in the circumstances, there shall be no order as to costs.

(RAVINDER KAUR)
MEMBER (J)

(R. VIJAYKUMAR) 26/11/14
MEMBER (A)

B.

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26/11/14

