

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.07.2012

+ **W.P.(C) 5996/2007**

ASHOK KUMAR SHARMA

... Petitioner

versus

THE VICE CHAIRMAN

KENDRIYA VIDYALAYA SANGATHAN & ORS

... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Arati Mahajan Shedha with Mr Gaurav Bisht

For the Respondents : Mr S. Rajappa

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the orders passed by the Central Administrative Tribunal, Principal Bench, New Delhi on 30.03.2007 and 02.07.2007 in O.A.1292/2006 and R.A. 114/2007, respectively. The petitioner before us had filed the said original application (O.A.1292/2006) being aggrieved by the order of dismissal from service passed against him.

2. The petitioner was working as an Audit Assistant (re-designated as Assistant Superintendent) with the respondent i.e., Kendriya Vidyalaya Sangathan. On 16.05.2000 a charge sheet was submitted by the respondent to the

petitioner which contained six articles of charge. The charges were as under:-

“ARTICLE-I	During 1999-2000 remained absent from duty willfully. Moreover on some occasions Shri Sharma putting his signature in the staff attendance register left the office without any information.
ARTICLE-II	During 1999-2000 failed to perform his assigned duties willfully.
ARTICLE-III	During 1999-2000 on 15.10.1999 abused the Administrative Officer during morning hours and also to Education Officer Shri M.S.Chauhan and Shri R.K. Nair, Superintendent (Admn) at about 1730 hrs. in the presence of staff members of Regional Office.
ARTICLE-IV	During 1999-2000 and 2000-2001 made false allegation against the Assistant Commissioner on 07.04.2000 to the effect that Assistant Commissioner always threatening him with the consequences in case applicant does not withdraw the case filed in CAT, Jabalpur, without any documentary evidence.
ARTILCE-V	During 1999-2000 while submitting his leave applications did not give his correct residential address and put the Sangathan in an embarrassing position.
ARTICLE-VI	During 1999 he misused the salary certificate issued in his favour on 25.06.1999 by the Assistant Commissioner, KVS, Regional Office, Jabalpur while getting loan from LIC Housing Finance Ltd., Bareilly without informing the facts to his head of office/Appointing Authority.”

3. The petitioner denied the said charges and an inquiry was held. The Inquiry Officer submitted a detailed report dated 09.02.2002 holding the charges as

having been proved. The petitioner was supplied with a copy of the inquiry report by virtue of the memorandum dated 26/28.04.2002 and he was required to submit a representation, if any, before a final decision was taken in the matter. The petitioner, however, sought time to collect certain information and documents by virtue of the representation dated 25.05.2002. Ultimately, he submitted his representation dated 09.08.2002. After the same was considered by the Disciplinary Authority, the said Disciplinary Authority passed an order dated 05.11.2002 and imposed the punishment of dismissal.

4. Thereafter, the petitioner filed a statutory appeal before the Appellate Authority. Since this appeal was not being disposed of, the petitioner approached the Tribunal by way of an original application being O.A. 463/2003 which was disposed of by the said Tribunal by an order dated 11.07.2003 directing the Appellate Authority to dispose of the petitioner's appeal. Ultimately, the Appellate Authority passed the appellate order on 29.09.2003 rejecting the petitioner's appeal. Subsequently, the petitioner filed a revision petition before the Revisional Authority. Once again, as the Revisional Authority had not disposed of the revision petition filed by the petitioner, the latter approached the Tribunal by way of O.A. No. 317/2005 which was disposed of by the Tribunal by virtue of the order dated 11.02.2005 directing the Revisional Authority to dispose of the revision petition. By an order dated 23.03.2006, the Revisional Authority

dismissed the petitioner's said revision petition.

5. Being aggrieved thereby, the petitioner filed the said O.A.1292/2006 in which the Tribunal passed the impugned order dated 30.03.2007 which was followed by the other impugned order dated 02.07.2007 passed in the petitioner's review application being R.A.114/2007.

6. The first point that has been urged by the learned counsel for the petitioner before us is that the inquiry report is based on an ex parte proceeding. She submitted that the witnesses namely SW-8 to 15 were examined in the absence of the petitioner and the petitioner also did not have any opportunity of cross-examining the same. Consequently, she submitted that the petitioner did not have an opportunity to defend himself and therefore the inquiry proceedings were vitiated. She submitted that initially the petitioner was present in the hearings before the Inquiry Officer, however, when the hearings were scheduled for 6th to 8th February 2002, the petitioner could not be present inasmuch as the petitioner had to attend the Special Court (CBI) at Lucknow on account of the fact that a non-bailable warrant had been issued requiring the presence of the petitioner at Lucknow on 05.02.2002. She submitted that although the petitioner had requested that the dates of 6th to 8th February 2002 be cancelled and some other dates in the last week of February 2002 be given for the inquiry proceeding, that request was not acceded to by the Inquiry Officer. Even the petitioner's application for leave

was not accepted and the petitioner had to proceed to Lucknow in the absence of any leave having been granted to him on account of his imminent arrest as the non-bailable warrant had already been issued for his presence on 05.02.2002 by the Special Judge, CBI at Lucknow. Thus, according to the learned counsel for the petitioner, the petitioner had ample justification for not being present in the hearings conducted on 6th to 8th February 2002. According to her, the inquiry proceedings ought not to have been held on those days and the Inquiry Officer ought to have acceded to the request of the petitioner for adjournment of the proceedings to the last week of February 2002. Since part of the inquiry proceedings were held behind the back of the petitioner and the petitioner was deprived of an opportunity of cross examining the witnesses, being SW-8 to 15, who were all examined between 6th to 8th February 2002, the learned counsel for the petitioner submitted that the inquiry itself was vitiated and the entire proceedings were liable to be set aside. She also submitted that while this plea was specifically taken before the Tribunal and the same can be discerned from the submissions recorded in para 4 of the impugned judgment, the Tribunal has not returned a specific/clear finding with regard to this aspect of the matter.

7. We have also heard Mr Rajappa who appeared on behalf of the respondents on this aspect of the matter. We have not heard arguments on the merits of the charges. We are only at this point considering the submissions of the learned

counsel for the petitioner that the Tribunal has not returned any finding with regard to the plea that the petitioner was not afforded an opportunity of defending himself. This plea has arisen in the backdrop of the factual submission that the petitioner was prevented by other circumstances beyond his control from participating in the inquiry proceedings on the dates given on 6th to 8th February 2002 and it is on these dates that the witnesses namely SW- 8 to 15 were examined and the petitioner was left with no opportunity to cross examine them.

8. We find that, whatever may have been the earlier conduct of the petitioner during the inquiry proceedings, the further hearings were scheduled for 6th to 8th February 2002. In the meanwhile, the petitioner sent a letter dated 23.01.2002 to the Inquiry Officer requesting him to extend the date to the last week of February since he had to attend the CBI court on the said date at Lucknow (U.P). This fact is not denied inasmuch as in the Inquiry Report itself there is a mention that the petitioner had asked for postponement due to the CBI inquiry at Lucknow/Bareilly. The Inquiry report further indicates that this request of the petitioner was not granted and he was tele-graphically intimated the regret and he was informed that he should attend the inquiry proceedings as scheduled. The Inquiry report also revealed that the Assistant Commissioner, KVS, Jabalpur had also not granted the petitioner any leave and, permission to leave the headquarter was not given either. But, as we have already indicated above, while recording

the submissions of the learned counsel for the petitioner, a nonailable warrant had been issued by the Special Judge CBI at Lucknow requiring the presence of the petitioner before his court on 05.02.2002. Thus, the petitioner, fearing that he would be arrested, left the head quarters on 04.02.2002 despite the fact that his leave had not been sanctioned. It is an admitted position that the petitioner had in fact appeared before the Special Judge CBI at Lucknow and this has also been noted in the impugned order of the Tribunal dated 30.03.2007 at page 5.

9. However, this aspect of the matter has not been given due consideration by the Tribunal inasmuch as the Tribunal after recording the factum of the petitioner's appearance before the Special Judge, Anti Corruption (Central) at Lucknow on 05.02.2002 has not discussed or returned any finding as to what would be the consequence of this. We, therefore, feel that it would be appropriate if the impugned order is set aside and the matter is remitted to the Tribunal for considering this aspect of the matter. Since, we are remitting the matter to the Tribunal, we feel that it would be appropriate that the parties are permitted to raise all issues and therefore Tribunal should grant a de novo hearing to the parties.

10. Consequently, we set aside the impugned order dated 30.03.2007 and 02.07.2007 and remit the matter to the Tribunal for a de novo hearing on all aspects of the matter and particularly on the issue of lack of opportunity on the part of the petitioner to defend his case.

11. The writ petition is allowed. There shall be no orders as to costs. The parties shall appear before the Tribunal on 26.07.2012 in the first instance. We also make it clear that we have not expressed any opinion on the merits of the matter.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

JULY 05, 2012
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