

GAHC010089882019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2758/2019

BISHNU PRASAD RABHA
PRESENTLY WORKING AS THE UPPER DIVISION CLERCK, KENDRIYA
VIDYALAYA NEIST (RRL), JORHAT, DIST- JORHAT, ASSAM, PIN- 785006,
THE PETITIONER IS PRESENTLY RESIDING AT C/O RUBUL GOGOI,
KALYANPUR, PULIBOR, P.O. RRL JORHAT, P.S. PULIBOR, DIST- JORHAT,
ASSAM, PIN- 785006

VERSUS

KENDRIYA VIDYALAYA SANGATHAN AND 7 ORS.
THROUGH THE JOINT COMMISSIONER (ADMN.), 18 INSTITUTIONAL
AREA, SAHEED JEET SINGH MARG, NEW DELHI- 110016

2:THE COMMISSIONER
KENDRIYA VIDYALAYA SANGATHAN 18 INSTITUTIONAL AREA
SAHEED JEET SINGH MARG
NEW DELHI- 110016

3:THE DY. COMMISSIONER
KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE
SILCHAR
CAPTAIN N.M. GUPTA SARANI
P.O. SILCHAR
DIST- CACHAR
ASSAM
PIN- 788001

4:SOMIT SHRIVASTAV
KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE
SILCHAR

CAPTAIN N.M. GUPTA SARANI
P.O. SILCHAR
DIST- CACHAR
ASSAM
PIN- 788001

5:AJAY PANT
DY. COMMISSIONER
KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE
TINSUKIA
CAMPUS OF KENDRIYA VIDYALAYA DULIAJAN
P.O. DULIAJAN
DIST- DIBRUGARH
ASSAM
PIN- 786602

6:M MANOHARAN
PRINCIPAL
KENDRIYA VIDYALAYA NO 1
TEZPUR
P.O. DEKARGAON
DIST- SONITPUR
ASSAM PIN- 784501

7:SIKHA GOGOI
PGT (ENGLISH)

KENDRIYA VIDYALAYA NEIST (RRL)
P.O. RRL JORHAT
DIST- JORHAT
ASSAM PIN- 785006

8:M.H. MAZUMDAR
TGT (WORK EXPERIENCE)
KENDRIYA VIDYALAYA NEIST (RRL)
P.O. RRL JORHAT
DIST- JORHAT
ASSAM PIN- 78500

For the petitioner	:	Mr. B. Chakraborty, Mr. D. Goswami, Advocates
For the respondents	:	Ms. R.S. Chowdhury, Mr. R. Chauhan, Advocates

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE SUMAN SHYAM

27-02-2024

(Vijay Bishnoi, C.J.)

1) This writ petition is filed by the petitioner challenging the order dated 05.04.2019 passed by the Central Administrative Tribunal (CAT), Guwahati Bench whereby the Original Application filed by the petitioner with the prayer for setting aside the impugned Memorandum dated 13.01.2015, has been dismissed.

2) In respect of certain charges, an enquiry was conducted against the petitioner by a committee constituted by the respondents. The enquiry committee had submitted its report to the effect that out of five charges levelled against the petitioner, charge No.5 was proved. After receiving the report of the enquiry committee, the disciplinary authority issued the Memorandum dated 13.01.2015 to the petitioner whereby the petitioner was asked to explain as to why the penalty of removal from service be not imposed upon him in view of the prevailing facts and circumstances. The petitioner was further directed to file reply to the Memorandum within a period of 10 days from the date of its receipt with the caution that if the petitioner failed to file his response then it would be presumed that he has nothing to say and appropriate orders would be passed. It is against the said Memorandum dated 13.01.2015, the petitioner has filed the Original Application before the CAT, which came to be dismissed vide the

impugned order.

3) During the course of argument, it has transpired that the disciplinary authority has still not imposed any penalty upon the petitioner pursuant to the *interim* order passed by the CAT as well as by this Court.

4) Though the present writ petition is filed by the petitioner on various grounds, however, during the course of argument, learned counsel for the petitioner has limited his prayer regarding the proportionality of punishment.

5) Having heard the learned counsel for the parties and after going through the material available, we are of the considered view that till date the disciplinary authority has not imposed any punishment upon the petitioner and in such circumstances, the action of the petitioner of filing Original Application against the Memorandum dated 13.01.2015, which is essentially a show-cause notice, was premature. Learned CAT has altogether ignored this aspect.

6) Since the disciplinary authority has not imposed any punishment upon the petitioner, we are of the view that this writ petition can be disposed of with liberty to the petitioner to file his response to the Memorandum dated 13.01.2015 within a period of **2 (two) weeks** from today. On receiving such response, the disciplinary authority may consider the same and then pass appropriate order without being influenced by any of the observations made by the learned CAT in its order dated 05.04.2019. It is informed by the learned counsel for the respondent that the disciplinary authority, who had issued the Memorandum dated 13.01.2015, has now retired.

7) In such circumstances, the respondents are at liberty to appoint another disciplinary authority for taking appropriate decision in the matter.

8) With these observations, this writ petition is disposed of. Needless to say

that if the petitioner is aggrieved by the order of the disciplinary authority, he is free to avail appropriate remedy available under the law.

JUDGE

CHIEF JUSTICE

Comparing Assistant