

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21876 of 2013

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Yogendra Prasad Sinha, S/O Late Kuldeep Ram, R/O E-III, Kalyan Vihar Colony,
Ambedkar Path, P.O- B.V. College, P.S- Rukanpura, Town & District - Patna.

.... Petitioner.

Versus

1. The Union of India, through the Secretary Human Resources Department,
Government of India, New Delhi.
 2. The Commissioner, Kendriya Vidyalaya Sangathan, New Delhi.
 3. The Joint Commissioner (Administration), Headquarter, Kendriya Vidyalaya
Sangathan, New Delhi.
- Respondents.

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Appearance :

For the Petitioner : Mr. Shivendra Kishore, Sr. Advocate.
Mr. Jai Kishore Poddar, Advocate.

For the Respondents : Mr. Kumar Ravish, Advocate.
Mr. G.K. Agrawal, Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 03-08-2015

Heard learned counsel for the petitioner and learned
counsel for the Kendriya Vidyalaya Sangathan.

The petitioner has challenged the order of punishment
before the Central Administrative Tribunal, Patna Bench, Patna
(hereinafter in brevity the ‘Tribunal’) without success and hence
this writ petition.

The petitioner was a teacher in the Kendriya
Vidyalaya Sangathan being a Post Graduate teacher in Geography
and, at the material time, he was posted at Kendriya Vidyalaya,
Silchar. Because of his misdemeanour, he was put under
suspension and, thereafter, orders were issued for his transfer with

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a rider that upon joining the new place of posting, his suspension would stand revoked. Instead of joining the new place, the petitioner then came home on grounds of medical unfitness. It is noted that he was hospitalized at Silchar but full facility of cardiac by-pass surgery was not there, he left Silchar for Patna. A departmental proceeding was initiated and charges were framed against him. Because of total non-cooperation, an *ex parte* enquiry was conducted and again there being no response, the punishment order was passed by the Inquiry Officer. The punishment was of reduction of one rank pay with cumulative effect. It was further held that the suspension period would be treated as off duty. The petitioner then joined his new post in the year 2006 and superannuated in 2008. In the disciplinary proceedings, he preferred appeal and the appeal was dismissed. Then, he moved before this Court by filing a writ petition. He withdrew the writ petition to approach the Tribunal. Having moved the Tribunal, the Tribunal, by a well considered order, dismissed his original application. Hence, this writ petition.

Mr. Shivendra Kishore, learned senior counsel appearing in support of the writ petition, submits that charges were never served upon the petitioner along with the evidence which the department sought to rely upon. Thus, there was basic

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infringement of not only the statutory rules but also the principles of natural justice vitiating the entire enquiry and the proceedings. The second submission is that the charges were vague and uncertain. In other words, he submits that the incidence of misbehaviour at some places is written as 14.09.2002, at some other places as 14.09.2003 and in some another place as 14.09.2004. Neither the time nor the exact place or location is stated. He further submits that due procedure of enquiry or opportunity to participate in enquiry was not granted. Thus, the action is totally in violation of statutory procedures and consequently of violation of principles of natural justice.

On the other hand, Mr. Kumar Ravish, learned counsel appearing for the Kendriya Vidyalaya Sangthan, submits that the petitioner's own communication to the authorities from Patna was that his relations had received the charge-sheet and the notice but had not disclosed to him so as to create more tension for him. This, if not direct, it is a tacit admission that the authorities had duly sent the charge-sheet to the petitioner which was received at the petitioner's home but not to the knowledge of the petitioner. His relations withheld it from him. For this, the authorities cannot be blamed. Learned counsel then points out that neither the petitioner nor the authorities were under any doubt about the

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incident, the place where it took or the date, the year 2002 or 2003 or 2004 are merely typing mistakes. It is not material infirmity and whenever it was brought to the notice that a typing error had taken place, a corrigendum was duly issued. What prejudice has been caused has not ever been shown?

Having heard learned counsels for the parties in this application for judicial review, we must state that the interference is limited. It is not the decision which is to be seen but the decision making process. The alleged violation of statutory rules or principles of natural justice are totally unsustainable. The authorities took all precaution and all steps to serve notices with evidence on the petitioner but the petitioner kept absconding or evading or avoiding. For his own default, he cannot blame the authorities. For three long years, he remained absent even though he was aware that his suspension order clearly mentions that upon joining the transferred place, his suspension would be automatically revoked. For long three years, the petitioner remained at home without working. What were the procedural infirmities in the proceedings, as noted above, petitioner cannot make grievance that charge-sheet and other documents were not served, for there is his own admission that his relations has withheld from him, not that they were never sent to him. He was fully aware and was

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repeatedly intimated the date of enquiry. He was given the enquiry report. He refused to respond. An employee cannot have the leisure of litigation in such a manner. There was no procedural infirmity.

The next submission is with regard to vague allegation. It is based on the ground that in some places the incident is said to be of 14.09.2002, at some places as 14.09.2003 and in some place as 14.09.2004 but there is no denial that corrigendum had been issued and each one clearly understood when the incident took place. There is another aspect to this. Neither in 2003 nor in 2004 was the petitioner serving. The proceedings itself started in 2003. The petitioner was aware of it. This hyper-technicality cannot be permitted when no prejudice is shown. Thus, we find that the proceedings had not been vitiated on grounds of vagueness. It is submitted that the suspension period would be treated as off duty. That means no break in service. We are sorry to say we cannot accept the submission. Whenever a delinquent is put under suspension and the departmental proceedings concluded, he is required to pass a consequential order as to how the suspension period would be treated, whether he would receive any remuneration, whether it would be with no remuneration but continuity of service. That is the right of a

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disciplinary authority and a duty to pass consequential orders. In absence whereof, the disciplinary proceedings would not be fully concluded. That is what the disciplinary authority did. As the petitioner defies the transfer order and in spite of being told that upon proper joining, the suspension would stand revoked, he did not join. Therefore, if the disciplinary authority held that period would be treated as off duty, we do not think that we can interfere in the matter.

Thus, we do not find any merit in this application. Accordingly, it is dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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