

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.11024 of 2016
Date of decision: 05.09.2016**

Laxmi Narain Yadav

.....Petitioner

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr.Puneet Jindal, Senior Advocate
(Free Legal Aid counsel) with Mr. Jaivir Singh Chandel, Advocate
alongwith the petitioner in person.

Ajay Kumar Mittal,J.

1. The petitioner through the present writ petition under Articles 226/227 of the Constitution of India inter alia prays for quashing the order dated 1.4.2016, Annexure P.41 passed by the Central Administrative Tribunal, Chandigarh Bench (in short, "the Tribunal") whereby the original application filed by the petitioner for cancelling the charge sheet, suspension and removal orders dated 27.9.2002 and 27.3.2003 respectively, allowing all the statutory benefits, has been dismissed.

2. A few facts relevant for the decision of the controversy

involved as narrated in the petition may be noticed. The petitioner was appointed as Yoga teacher in Kendriya Vidyalaya Sangathan (KVS) in the pay scale of ₹ 425-640 in the year 1981 as per III CPC and in IV CPC ₹ 1400-2600 at par with TGT. In January 1998, in IV CPC, he was given scale of ₹ 1400-2300. As per letter of KVS, New Delhi, Yoga teachers were given the pay scale of ₹ 4500-125-7000 i.e. pay scale of Primary Teacher. Feeling aggrieved, the petitioner made a representation to the Commissioner, KVS (HQ), New Delhi on 17.2.1998 while working at Kendriya Vidyalaya, Mehsana. The Deputy Commissioner (ACad) KVS (HQ), New Delhi vide letter dated 24.2.1998, Annexure P.1 stated that a proposal for grant of pay scale to Yoga teachers at par with TGT/PET had already been sent to the Ministry of HRD for approval. The petitioner was granted senior scale of ₹ 6500-200-10500 w.e.f 01.01.1996 vide office letter dated 26.4.1999, Annexure P.2. The petitioner was transferred from Kendriya Vidyalaya, Mehsana to Kendriya Vidyalaya Dimapur, Nagaland by the Commissioner, KVS (HQ), New Delhi vide office order dated 11.4.2000 in public interest. The petitioner challenged the said order before the Tribunal at Guwahati. Vide order dated 2.11.2000, Annexure P.3, the Tribunal disposed of the said application by permitting the petitioner to file representation against his transfer order to the appropriate authority. The Commissioner rejected the application/representation of the petitioner dated 7.11.2000 vide order dated 20.12.2000, Annexure P.4. The then Assistant Commissioner, KVS (RO), Ahmedabad vide order dated 30.3.2001, Annexure P.5 withdrew senior scale of ₹ 6500-200-10500 w.e.f 01.01.1996 and put the petitioner in the entry scale of ₹ 5500-175-9000. The petitioner challenged this action before the Tribunal at Guwahati who vide order dated 17.08.2001, Annexure P.6 disposed of the application with certain

observations. The petitioner again challenged the transfer order dated 20.12.2000 passed by the Commissioner before the Tribunal at Guwahati. Vide order dated 21.08.2001, Annexure P.7 the Tribunal issued direction to the respondents to sympathetically consider the case of the petitioner for transfer to Kendriya Vidyalaya, Patiala. The Commissioner, KVS (HQ), New Delhi vide order dated 04.12.2001, Annexure P.8 while disposing of the representation of the petitioner in terms of order of the Tribunal at Gauhati dated 21.8.2001, placed all Yoga teachers in the entry scale of ₹ 5500-175-9000. The petitioner again challenged the said order before the Tribunal at Chandigarh. The Principal, Kendriya Vidyalaya, Patiala deputed the petitioner for trekking duty at Narkonda, District Shimla from 21.5.2002 to 31.5.2002 vide order dated 20.5.2002, Annexure P.9. The petitioner joined the duty on 21.5.2002 and on 29.5.2002, Annexure P.10, the Principal recalled the petitioner from there by telephonic message. The Principal vide order dated 30.5.2002, Annexure P.11. again relieved the petitioner to attend in-service course of Yoga teachers to be held at Pune w.e.f 01.06.2002 with instruction to report to the Venue Principal, Pune in the afternoon of 31.5.2002. The petitioner immediately rushed to Mumbai and reported to the Venue Principal, Pune in the afternoon of 31.5.2002 and attended the course. The Tribunal quashed the order dated 4.12.2001 and granted senior scale of ₹ 6500-10,500 w.e.f 01.01.1996 to the petitioner vide order dated 19.9.2002, Annexure P.12. The Principal, Kendriya Vidyalaya wrote a letter on 21.9.2002, Annexure P.13 to the Commercial Manager (Rates) (NR) Baroda House, New Delhi for ticket verification. The office of the Chief Commercial Manager, New Delhi verified the ticket of the petitioner dated 30.5.2002, Annexure P.14. Thereafter, the Assistant Commissioner, KVS (EO) Chandigarh passed suspension order dated 27.9.2002, Annexure P.15

against the petitioner. Vide memo dated 10.10.2002, Annexure P.16, charge sheet was issued to the petitioner under Rule 14 of the Central Civil Services (CCS) Classification, Control and Appeal (CCA) Rules, 1965 on the allegations like, in drunken condition while on duty, submitting false TA claim and leaving the school during duty hours without any permission. The petitioner submitted his written statement on 21.10.2002 (Annexure P.17) to the disciplinary authority controverting the allegations levelled against him. The authority appointed the Enquiry officer. According to the enquiry report, first allegation was partially proved, second allegation was proved while third allegation was not proved. The petitioner submitted his representation on 17.3.2003 (Annexure P.18) against the findings of the Enquiry officer. The disciplinary authority imposed the penalty of removal from service on the petitioner with immediate effect vide order dated 27.03.2003, Annexure P.19. The petitioner filed appeal to the appellate authority vide representation dated 17.4.2003 (Annexure P.21). Vide order dated 20.11.2003, Annexure P.24, the appellate authority dismissed the appeal holding that the railway authority had verified the petitioner's Tatkal Sewa ticket vide order dated 25.9.2002. The petitioner made an application under Right to Information Act, 2005 for verification of ticket issued on 30.5.2002 from current counter for Rajdhani Express New Delhi to Mumbai AC III tier for the journey on 30.5.2002. The petitioner again made an application to the office of Chief Commercial Manager, IT IRCA Reven, Complex New Delhi for clarification of the said ticket. The details had not been found in the system and this fact was informed to the Principal vide letter dated 25.9.2002 by the office of the Chief Commercial Officer, IRCA Building, New Delhi. The petitioner further made an application to the office of Chief Commercial Manager/IT IRCA Reven Complex, New Delhi for

clarification of the above said ticket. The said office gave the clarification that their office could verify only the PNR particulars subject to availability of record which were booked in advance by the system. Verification could not be done for the handmade tickets which were not booked by the system. The review representation filed by the petitioner on 7.4.2011 before the Commissioner, KVS (HQ), New Delhi was also dismissed by the Joint Commissioner, KVS, vide order dated 17.8.2011. Vide letter dated 21.9.2011, Annexure P.30, the Assistant Commissioner (Vig. & PIO) KVS New Delhi informed the petitioner to prefer a review before the Hon'ble HRM and Chairman KVS under the provisions of the relevant rules. The petitioner filed review before the said authorities on 18.11.2011, Annexure P.31. The Assistant Commissioner (Vigilance Section) KVS, New Delhi wrote a letter on 31.01.2012, Annexure P.32 to the Senior Divisional Commercial Manager, Delhi Division for verification of the ticket who informed vide letter dated 21.2.2012, Annexure P.33 that as per rules, the railways keep records only for a period of three years and as such the verification of blank paper tickets as alleged to have been bought by the petitioner on 30.5.2002 could not be done. Vide letter dated 28.3.2012, Annexure P.34, the Additional Commissioner (ADMN) informed the petitioner that the HRM and Chairman, KVS dismissed the review petition as no new material facts had been made out. The petitioner filed representation dated 14.8.2014, Annexure P.35 before the Prime Minister of India. Vide letter dated 9.12.2014, Annexure P.36, the Assistant Commissioner Vigilance KVS (HQ) New Delhi informed the petitioner that as all the remedies had been exhausted by him, hence the representation dated 14.08.2014 stood rejected. Aggrieved by the order, the petitioner approached the Apex Court under Article 32 of the Constitution of India.

Vide order dated 01.10.2015, Annexure P.40, the petition was dismissed as withdrawn with liberty to the petitioner to approach the appropriate forum. The petitioner then approached the Tribunal at Chandigarh under Section 19 of the Administrative Tribunals Act, 1985. Vide order dated 1.4.2016, Annexure P.41, the Tribunal dismissed the application filed by the petitioner. Hence the instant writ petition by the petitioner.

3. After hearing learned counsel for the petitioner, perusing the averments made in the petition and the impugned order dated 1.4.2016, Annexure P.41 passed by the Tribunal, we find that the petitioner has not been able to prove on record any material to controvert the allegations levelled against him. It has been categorically recorded by the Tribunal that the applicant-petitioner had impugned the removal order dated 27.3.2003 by filing O.A.No.1253/HR/2003 which was rejected by the Tribunal vide order dated 3.8.2004. Even review application No.47 of 2004 was also dismissed on 1.4.2005. The petitioner again filed original application laying challenge to the termination order dated 27.3.2003 through the present original application where the petitioner has been rightly non-suited on the ground of res-judicata as the second petition on the same cause of action was not maintainable. Even before us, learned counsel for the petitioner has not been able to show anything to substantiate the claim made in the petition. The Tribunal after examining the overall facts and circumstances of the case has dismissed the application filed by the petitioner with the following observations:-

“3. The applicant has been heard in the matter. He stated that he had been removed from service by the respondents through order dated 27.3.2003. He had earlier filed OA before the Tribunal in this regard but the same was dismissed. He had then

approached the Apex Court and vide order dated 1.10.2015 (Annexure A.37), he had been allowed to withdraw the petition with liberty being granted to approach the appropriate forum. The applicant had then filed review petition against the order dated 27.3.2003, but the same had been rejected by the Chairman KVS vide order dated 23.3.2012 and this decision was conveyed to him on 28.3.2012 (Annexure A.31). The applicant stated that he had not got a fair hearing during the inquiry proceedings, as the respondents had not verified the ticket purchased by him through the Tatkal facility while travelling from New Delhi to Mumbai and on this account the charge against him regarding submitting false TA claim had been held to be proved and he had been removed from service.

4. We have perused the material on record carefully. The applicant is aggrieved by the order dated 28.3.2012 but the present OA has been filed in December 2015 and is thus barred by limitation. Moreover, through the present OA, the applicant has impugned the removal order dated 27.3.2003. This very plea was raised in OA No.1253/HR/2003 which was dismissed vide order dated 3.8.2004. The Review Application No.47 of 2004 filed by the applicant was also dismissed on 1.4.2005. Hence the present OA is also barred on account of res judicata and is not maintainable. In view of these observations, the OA is dismissed in limine. MA is also disposed of accordingly.”

4. Learned counsel for the petitioner has not been able to show that the findings recorded by the Tribunal are illegal or erroneous warranting interference in writ jurisdiction under Articles 226/227 of the Constitution of

India. Further, the impugned orders have been passed by the respondent authorities after considering the overall facts and circumstances of the case. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

September 05, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes