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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2403/2016, CM APPL. 10285-10286/2016**

Date of decision: 21st March, 2016

V.K. KAPOOR

..... Petitioner

Through: Mr. Manish Garg with Mr. Akshay
Bhardwaj and Mr. Hitesh Kr. Bagai,
Advs.

versus

THE CENTRAL BOARD OF SECONDARY EDUCATION & ANR

..... Respondent

Through: Mr. Amit Bansal with Ms. Manisha
Singh with Ms. Seema Dolo and Mr.
Akhil Kulshrestha, Advs. for R-1
Dr. Ashwani Bharadwaj, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

1. The petitioner, questioning the impugned order dated 10.11.2014 passed in T.A. No.06 of 2010, submits that the Ad-hoc Disciplinary Authority had not applied its mind to the charge-sheet, and therefore, the penalty of Compulsory Retirement is contrary to law. Secondly, the Tribunal has erred in not setting aside the order dated 09.07.2001 directing that the periods between 31.07.2000 and

07.09.2000 and 17.02.2001 and 18.07.2001 should be treated as *dies non*, as the petitioner had submitted medical and fitness certificate.

2. The present writ petition impugning order dated 10.11.2014 was filed on 16.02.2016 after a delay of nearly 15 months. Counsel for the petitioner, however, submits that he had received certified copy of the order dated 10.11.2014 only on 03.03.2015.

3. On merits, however, we find it is not a fit case which requires interference on the first aspect.

4. By memorandum dated 28.08.1998, the petitioner was charge-sheeted on the following articles:

"ARTICLE-I:

That the said Shri V.K. Kapoor, while functioning as Assistant Secretary in the Regional Office, Delhi, CBSE, during the year 1998, committed grave misconduct by submitting a joint application dated 14.05.1998 along with Shri Sudhir Kumar Sharma, Section Officer to the Chairman, CBSE that they were allegedly threatened by Shri Dharamveer, Assistant, CBSE, and further stated if no action was taken against Shri Dharamveer by 19.05.1998, they would go on hunger strike in the court-yard of the H.Qr. building w.e.f. 20.05.1998, which was in violation of the Conduct Rules applicable to the Board's employees.

It is, therefore, construed that by his above mentioned misconduct Shri V.K. Kapoor, Assistant Secretary failed to maintain devotion to duty and behaved in a manner unbecoming of a Board's employee, thereby violating the provisions of Rules 7.2, 7.3 and 7.20 of CBSE Service Rules, 1985.

ARTICLE-II:

That during the aforesaid period and while functioning in the aforesaid office, the said Shri V.K. Kapoor committed grave misconduct and misbehaviour with Prof. B.P. Khandelwal, Chairman, CBSE, Shri S.C. Gupta, Secretary, CBSE and Shri Shashi Bhushan, Deputy Secretary (V&A) at about 3.00 PM on 26.06.1998 in the chamber of the Chairman, CBSE on 2nd Floor, Shiksha Kendra, 2, Community, Centre, Preet Vihar, Delhi-110092 by barging into the chamber of the Chairman unauthorisedly and without permission and shouting at the aforesaid officers using absurd, filthy and unparliamentary language without any provocation in presence of a number of employees working in the personal staff of the Chairman and others listed as witnesses in Annexure- IV of the memo of charges. By his above conduct, Shri Kapoor obstructed the normal discharge of duties by the aforesaid officers; tried to intimidate them and put them under wrongful confinement which are serious offences.

It is, therefore, alleged that by his above mentioned grave misconduct, Shri V.K. Kapoor, Assistant Secretary failed to maintain devotion to duty and behaved in a manner unbecoming of a Board's employee, thereby violating the provisions of Rules 7.2 & 7.3 of CBSE Service Rules, 1985.

ARTICLE-III :

That during the aforesaid period and while functioning in the aforesaid office the said Shri V.K. Kapoor committed grave misconduct and misbehaviour with Prof. B.P. Khandelwal, Chairman, CBSE at about 10.45 A.M. on 29.6.1998 in his chamber on 2nd " floor, Shiksha Kendra, 2, Community Centre, Preet Vihar, Delhi- 110092 by entering his chamber unauthorisedly and without

permission and shouting at the aforesaid officer and putting off his clothes including his undergarments, thereby becoming nude, and sitting on the floor in his chamber and crying at the top of his voice in presence of a number of employees working in the personal staff of the Chairman and others listed as witnesses in Annexure-IV of the memo of charges. By his above conduct, the aforesaid Shri V.K. Kapoor obstructed the normal discharge of duties by the aforesaid officer namely Prof. B.P. Khandelwal, Chairman, CBSE and intimidated him as well as put him under confinement, which are serious offences.

It is, therefore, alleged that by his above mentioned grave misconduct Shri V.K. Kapoor, Assistant Secretary failed to maintain devotion to duty and behaved in a manner unbecoming of a Board's employee, thereby violating the provisions of Rules 7.2 & 7.3 of CBSIE Service Rules, 1985.

ARTICLE-IV:

That during the aforesaid period and while functioning in the aforesaid office, the said Shri V.K. Kapoor committed grave misconduct and misbehaviour by entering room No.304 of Shri Shashi Bhushan, Depu by-Secretary (V.&A.) at about 9.45 A..M on 3.7.1998 and shouting at the top of his voice using absurd, filthy and unparliamentary language against the Chairman, Secretary and Deputy Secretary (V.&A.) in presence of Shri Y.R. Sachdeva, Assistant Secretary (Admn.I). By his above conduct, Shri V.K. Kapoor clearly obstructed the normal discharge of duties by the aforesaid officers; tried to intimidate them and put them under confinement, which are serious offences.

It is, therefore, alleged that by his above mentioned grave misconduct, Shri V.K. Kapoor, Assistant Secretary failed to maintain devotion to

duty and behaved in a manner unbecoming of a Board's employee, thereby violating the provisions of Rules 7.2 & 7.3 of CBSE Service Rules, 1985.”

5. The List of witnesses included the then Chairman, Secretary and Deputy Secretary of the Central Board of Secondary Education (CBSE). In these circumstances, the controlling authority was asked to appoint an Ad-hoc Disciplinary Authority. Accordingly, Mr. Jawahar Srivastava, Deputy Secretary (Scholarships) in the Ministry of HRD was entrusted with role of acting as the disciplinary authority. The impugned order passed by the Tribunal specifically records that the charge-sheet was signed by the Ad-hoc Disciplinary Authority Jawahar Srivastava, though the same had been drafted by Shashi Bhushan, one of the witnesses who was working as Deputy Secretary (Vigilance and Administration), CBSE. In the said context, the Tribunal after examining the factual matrix has observed as under:

“10. We have heard the learned counsel for the Applicant Shri S.K. Gupta and the learned counsel for the Respondents Ms. Manisha Garg. The main argument of the learned counsel for the Applicant is that the initiation of the Articles of Charges against him, the proceedings held by the Enquiry Officer and orders of the Disciplinary and Appellate Authority are all against the principles of natural justice. However, we have gone through the entire documents on record. It is seen that the Disciplinary Authority of the Applicant/Prof. B.P. Khandelwal, the then Chairman, CBSE and the two officers working under him, namely, Shri S.C. Gupta, Secretary and Shri Shashi Bhushan, Deputy Secretary were the aggrieved parties (complainant) and the prosecution witnesses in the disciplinary

proceedings initiated against the Applicant. It was one of those witnesses, Shri Shashi ii Bhushan had drawn charge sheet against the applicant at the instance of the Disciplinary Authority, Professor Khandelwal. However, in view of the fact that lie was a material Witness and he was also the Disciplinary Authority, the entire file pertaining to misbehaviour and misconduct or the Applicant II CO the Education Ssecretary, Ministry of Human Resource Development and the controlling authority of the Disciplinary Authority to appoint an ad hoc Disciplinary Authority. Accordingly, the controlling authority vide order dated 17.08.1998 appointed Shri Jawahar Srivastava, Deputy Secretary in the said Ministry to be the ad hoc Disciplinary Authority. Thereafter, the Applicant was served with the charge sheet dated 28.08.1998. Even though the said charge was basically the one drafted earlier, we find that the ad hoc Disciplinary Authority has applied its mind and made appropriate corrections/changes. As the Applicant has denied the charges, Shri V.P. Suri, former Director of Education was appointed as the Enquiry Officer, Thereafter, the Enquiry Officer held the enquiry proceedings and submitted his report holding that the charges against the applicant have been proved. A copy of the said report was furnished to the Applicant and he filed his representation against it. Both the aforesaid report and representation were considered by the ad hoc Disciplinary Authority. Meanwhile. Prof. Khandelwal left CBSE and Shri Ashok Ganguli was appointed as the Chairman and he was allowed to function as the Disciplinary Authority in consultation with Controlling authority. Thereafter, the new Disciplinary vide its order dated 05.11.2001 imposed the major penalty of compulsory retirement from service upon the applicant. The Applicant filed appeal dated

13.01.2002 against the said order but the Appellate Authority rejected it vide order dated 11.08.2002. The contention of the Applicant's counsel that the procedure adopted by the authorities in the enquiry proceedings was in violation of sub-rule (2), (3) and (4) of Rule 14 of the CCS (CCA) Rules, 1965 which have been made applicable to the employees of Respondent No.1 is not correct. In this regard, it is to be kept in mind that the Disciplinary Authority of the Applicant was a complainant as well as a witness against the Applicant. Accordingly, the controlling authority of the Disciplinary Authority has appointed an ad hoc Disciplinary Authority and the charge drawn against the Applicant was sent to him for consideration. It was thereafter the ad hoc Disciplinary Authority has issued the Memorandum of Charge to the Applicant. Therefore, it cannot be said that the ad hoc Disciplinary Authority has not applied its mind before issuing the charges. Thereafter, it was the ad hoc Disciplinary Authority which has appointed Shri V.P. Suri, a former Director of Education as the Enquiry Officer to enquiry into the charges against the Applicant. The Present Officer was Shri B.R. Gupta, a Joint Secretary in CBSE. The Applicant has not given any valid reasons to doubt about their impartiality or fairness in holding the enquiry. The Applicant also had appointed his choice Defence Assistant Shri A.K. Roy. After a very detailed enquiry in the matter, the Enquiry Officer held that the first Charge that the Applicant had submitted a joint representation to the Chairman, CBSE in violation of the rules was not proved. As regards the second Charge that on 26.06.1998, the Applicant barged into the room of the Chairman and shouted at the top of his voice against the Chairman and the Deputy Secretary, threatened to sit on dharna and commit self-immolation etc. using absurd, filthy and

unparliamentary language without provocation is concerned, the Enquiry Officer concluded that 'the parts relating to the barging into the room of the Chairman by the CO on 26.06.1998 and creating of unruly scene in the room of the Secretary on 29.06.1998 in the evening by the CO are fully proved but that part relating to shouting of slogans and lying down before the Chairman's car by the CO has not been proved fully'. Again, the Enquiry Officer concluded that the 3rd Charge that the Applicant again barged in the chamber of the Chairman on 29.06.1998 and the 4th charge that he entered the room of Shri Shashi Bhushan, Deputy Secretary on 03.07.1998 and 'shouted at the top of his voice and threatened that if his transfer order was not cancelled within one hour, he would teach the entire administration a if lesson which they would not be able to forget in their whole life'; have also been proved during the enquiry. A copy of the aforesaid report was furnished to the Applicant and he availed himself of the opportunity to make a representation against it. By that time, Shri Khandelwal has demitted his office and Shri Ashok Ganguli joined as the new Chairman of CBSE. Thereafter, he took over the duties and responsibilities of the Disciplinary Authority and imposed the penalty of compulsory retirement from service vide order dated 05.11.2001. The Applicant has also filed the statutory appeal against the aforesaid order and the Appellate Authority duly considered it and thereafter rejected the if appeal. Hence, the order dated 05.11.2001 compulsorily retiring the Applicant from service became final."

A reading of the aforesaid finding would show that the Ad-hoc Disciplinary Authority had examined the draft charge-sheet and had duly applied its mind to the same and had made appropriate changes

and corrections.

6. The petitioner had denied the said charges. Mr. V.P. Suri, former Director of Education was appointed as the Enquiry Officer and had submitted his report. The enquiry officer gave benefit of doubt on the first article of charge and held that the petitioner should have been more discrete while signing the representation made by his subordinate. The second Article of Charge relating to barging into the room of the Chairman on 26.06.1998 and creating unruly scene in the room of the Secretary on 29.06.1998 were proved, but the part relating to shouting of slogans and lying down before the car of the Chairman was not fully proved. The third and fourth Articles of charges were fully proved.

7. A copy of the enquiry report was furnished to the petitioner and he had made a representation against the same. Said report and representation were then considered by Mr. Ashok Ganguli, Chairman, CBSE, as by then the earlier Chairman had retired. The Disciplinary Authority by order dated 05.11.2001 imposed major penalty of compulsory retirement from service. This order was confirmed by the Appellate Authority vide order dated 11.08.2002.

8. We have also examined the amended plaint enclosed as annexure P-13 to the present writ petition which was transferred to the Central Administrative Tribunal. Original plaint was filed in the year 2003. In paragraph 24 of the said plaint, the averment was that appointment of the Ad-hoc Disciplinary Authority was illegal. The petitioner had not specifically challenged or questioned that the Ad-hoc Disciplinary Authority had not applied its mind to the charge-

sheet and therefore, the entire proceedings were bad and contrary to law on account of procedural illegality. Thus, on the first aspect, we do not see any reason and ground to interfere with the findings of the tribunal.

9. On the second aspect, learned counsel for the respondent Ms. Manisha Singh, Advocate submits that the question of *dies non* was never urged or argued before the Tribunal. She submits that the contention that the periods between 31.07.2000 and 07.09.2000 and 17.02.2001 and 18.07.2001 have been wrongly treated as *dies non* was never raised during the course of oral arguments.

10. Learned counsel for the petitioner states that he is not aware of the said factual position as he was not the counsel for the petitioner who had appeared and urged the case in the Tribunal.

11. Be that as it may, in case the petitioner had argued and contested treatment of the said period as *dies non*, it will be open to the petitioner to file a review petition. Of course if the contention was not argued and pressed, the petitioner cannot raise any grievance. This observation has been made as validity of the order dated 9.7.2001 treating the period between 31.7.2000 to 7.9.2000 and 19.2.2001 and 18.7.2001 as *dies non* is an entirely different and distinct cause of action. This aspect and challenge to the order dated 9.7.2001 was permitted to be raised in the pending Civil Suit challenging the order of 'compulsory retirement', by the order dated 14th Sept., 2007 in L.P.A.No. 625/2001 arising from order dated 5th October, 2001 passed in a Writ Petition questioning the order dated 9.7.2001.

12. With the aforesaid observations, the writ petition is dismissed on the first question. Liberty is granted the petitioner to file a review application on the second aspect/question.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MARCH 21, 2016/acm