

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5514 OF 2021

Shri Bhagwan Swarup Paliwal ... **Petitioner**
versus
Central Administration Tribunal
Mumbai Bench, Mumbai and Ors. ... **Respondents**

PRIYA
RAJESH
SOPARKAR

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Mr. Priyal G. Sarda for the petitioner.

**CORAM: DIPANKAR DATTA, CJ. &
ABHAY AHUJA, J.**

DATE: NOVEMBER 30, 2022.

P.C.:

1. Original Application No.244 of 2014, on the file of Central Administrative Tribunal, Mumbai Bench, Mumbai (hereinafter "Tribunal", for short), has been dismissed by judgment and order dated 25th November, 2019. The aggrieved original applicant is the petitioner in this writ petition dated 29th July, 2022.

2. The petitioner was functioning as Physical Education Teacher-PET at Kendriya Vidyalaya Sangathana, Pune. It was alleged in a departmental charge-sheet dated 29th August, 2003 that the petitioner, upon a trap being laid by the Central Bureau of Investigation (hereinafter "CBI", for short), was caught red-handed while accepting bribe of Rs.1,000/- for increasing the marks in the practical examinations for the subjects of Physics and Chemistry in respect of an examinee on 4th October, 2002. Simultaneous with the disciplinary

proceeding, the CBI registered an FIR. It is undisputed that investigation of the FIR resulted in a closure report under section 173(2) of the Code of Criminal Procedure (hereafter "Cr. P.C.", for short) being filed on an unspecified date of 2012 before the competent criminal court, which it accepted on 11th September, 2012. In course of the disciplinary proceeding, which preceded filing of the closure report, the petitioner was put on notice and he had attended proceedings before the Enquiry Officer on a number of occasions. Towards the end of the proceedings, the petitioner stayed away allegedly on medical grounds. The witnesses produced on behalf of the prosecution proved the charge levelled against the petitioner of increasing marks in the subjects of Physics and Chemistry in respect of the concerned examinee. This resulted in submission of an enquiry report holding the petitioner guilty. After due opportunity, the disciplinary authority proceeded to pass an order of removal from service dated 1st February, 2008. An appeal having been carried from the order of removal, the appellate authority by its order dated 28th January, 2009 dismissed the appeal. A review petition filed by the petitioner also stood dismissed by an order dated 3rd October, 2010. The orders of the reviewing authority, the appellate authority and the disciplinary authority were subjected to challenge in the original application, instituted on 27th March, 2014, only after the closure report was accepted by the criminal court on 11th September, 2012, referred to above. The Tribunal dismissed the original application not only on the ground that the same was barred by time but also on the ground that the petitioner was extended reasonable and

adequate opportunity to raise effective defence and he had failed to avail the opportunity. The Tribunal, after due examination of the evidence led by the parties, also recorded that the final order of removal passed by the disciplinary authority was unexceptionable and did not warrant interference.

3. Appearing in support of the writ petition, Mr. Sarda, learned advocate for the petitioner has raised three grounds:

1. The petitioner's request for a defence assistant, who was a resident of Delhi, was arbitrarily refused;
2. The petitioner's request for adjournment of proceedings on medical grounds was also arbitrarily refused; and
3. In view of the closure report submitted by the CBI, the foundation for proceeding against the petitioner departmentally did not survive and, hence, imposition of penalty on the departmental side in consequence of the failed attempt of the CBI to trap him was illegal.

4. Since none of the contentions raised by Mr. Sarda has impressed us, we find no reason to entertain this writ petition.

5. The order of the Tribunal under challenge records in minute details the day to day proceedings in connection with the enquiry which the petitioner faced. It is indeed true that the petitioner initially desired that a retired Principal of a kendriya vidyalaya, who was a resident of Delhi, be permitted to act as his defence assistant. The prayer having been refused, the petitioner renewed the same prayer a couple of occasions though with the same result of refusal. Having failed to obtain a favourable order, the petitioner opted for a retired Principal of a kendriya vidyalaya, who was a resident of Pune, to be his defence assistant. Such prayer was allowed.

The said retired Principal (resident of Pune) assisted the petitioner in the enquiry on a couple of occasions, whereafter the petitioner himself withdrew such defence assistant. Thereafter, once again, he started praying that the retired Principal (resident of Delhi) may be permitted to assist him. Needless to observe, such prayer was once again refused. Despite such refusal, the petitioner attended further enquiry proceedings. Ultimately, however, he chose to abstain from attending the enquiry despite receiving notices. It is in such facts and circumstances that we need to consider whether the first contention of Mr. Sarda is justified or not.

6. If indeed the petitioner perceived rejection of his prayer for engaging the retired Principal (resident of Delhi) as defence assistant as arbitrary or in violation of principles of fairness, nothing prevented the petitioner from approaching the Tribunal then and there demonstrating the prejudice that he is likely to suffer for want of such Principal's assistance. No such attempt appears to have been made by the petitioner; instead, as has been noted above, he opted for a different defence assistant who was allowed to assist the petitioner. We, therefore, see little reason to hold that the petitioner was in any manner inconvenienced or put to difficulty or denied adequate opportunity to avail the services of any defence assistant of his choice. In such circumstances, we find no substance in the contention of Mr. Sarda that by reason of refusal to engage the defence assistant from Delhi, the proceedings ought to be held to have been vitiated.

7. Now, we take up the contention of arbitrary refusal of the prayers for adjournment on medical grounds. The Tribunal

has noted in its order that the petitioner had expressly observed that he would stay away from the inquiry as a mark of protest if the defence assistant of his choice (resident of Delhi) is not allowed to render assistance. This finding of the Tribunal has not been shown by Mr. Sarda to be incorrect. Be that as it may, it was thereafter that the bogey of medical unfitness was raised by him. We do not consider this conduct on the part of the petitioner to be *bona fide*. The real reason for staying away from the enquiry was not any real unfitness on medical ground but grounded on the petitioner's insistence not to participate in the enquiry without reversal of the order of refusal by the Enquiry Officer to permit him to be assisted by the defence assistant of his choice (resident of Delhi). There is no merit in the contention and the same stands rejected.

8. Finally, what remains is the contention related to filing of the closure report under section 173(2) of the Cr. P.C. Decisions of the Supreme Court are legion that even exoneration on the ground of benefit of doubt in a trial by a criminal court does not preclude the Disciplinary Authority to continue disciplinary proceedings arising out of the same incident. In the present case, the petitioner did not have to stand trial because a closure report was filed and there was no scope for taking cognizance of the offence. However, if at all the CBI were to file a charge-sheet and cognizance of the offence taken leading to a trial, what the CBI would have been required to prove is a violation of the provisions of the Prevention of Corruption Act, 1988 whereas the Disciplinary Authority was required to prove that the petitioner in course of discharge of his official duty had unauthorisedly increased

the marks which were originally awarded by the examiners in the subjects of Physics and Chemistry in favour of the concerned examinee. Neither was the charge similar nor is the standard of proof applicable to the two proceedings. It has been held by the Supreme Court in the decision reported in (1996) 6 SCC 417 (**State of Rajasthan v. B.K. Meena**) that:

"The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements."

9. We, therefore, see no reason to hold that merely because closure report was filed by the CBI under section 173(2) of the Cr. P.C., the same granted some sort of immunity to the petitioner to be absolved of the charge for which he was proceeded against departmentally.

10. None of the contentions merit acceptance.

11. It has not been demonstrated by Mr. Sarda that the findings returned in the report of enquiry by the Enquiry Officer are perverse or based on no evidence; therefore, we see no reason to even admit the writ petition.

12. The writ petition is, accordingly, stands dismissed, but without costs.

(ABHAY AHUJA, J.)

(CHIEF JUSTICE)