
(2025) 01 CAT CK 1564

In the Central Administrative Tribunal, Cuttack Bench, Cuttack

Case No : Original Application No. 260, 00331 Of 2020

Garjan Gagaria

APPELLANT

Vs

Commissioner, Kendriya Vidyalaya Sangathan, 18,
Institutional Area, Saheed Jeet Singh Marg, New Delhi,
110016. & Ors.

RESPONDENT

Date of Decision : 28-01-2025

Acts Referred:

Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 14

Citation : (2025) 01 CAT CK 1564

Hon'ble Judges : Sudhi Ranjan Mishra, Member (J); Pramod Kumar Das,
Member (A)

Bench : Division Bench

Advocate : D.P. Dhalsamant, H.K. Tripathy

Final Decision : Dismissed

Judgement

Sudhi Ranjan Mishra, Member (J)

1. The facts which are not in dispute are that on 14.02.2012 an advertisement was issued by the KVS inviting application for recruitment to Officers' cadre and non teaching posts for the year 2011-2012 wherein opportunity to apply and appear at the selection, was also provided to the employees of KVS, fulfilling the conditions made in the advertisement.

1.1 At that relevant time, applicant was working as PGT (Economics) at KV Paradip Port. In pursuance of the advertisement, he had submitted his online application on 22.02.2012. Charge sheet under Rule 14 of CCS (CC&A) Rules, 1965 was issued to the Applicant vide Memorandum dated 15.02/03.2012. On being called, the applicant appeared at the written examination on 22.04.2012 and on being qualified in the written test, he was called to appear at the interview along with the necessary document including NOC on 15.09.2012. He appeared with documents including NOC issued by the Principal, KV, Paradip stating therein that no disciplinary action is pending/contemplated against him.

1.2 Vide Memorandum dated 01.10.2012, the applicant was intimated that he has been selected for appointment against a temporary post of Principal in the KV and, accordingly, he was asked to submit his willingness by 15.10.2012 so as to join the post in question on or before 30.10.2012. He submitted his willingness to accept the offer on 03.10.2012 and also requested the Principal, KV, Paradip to relieve him on 04.10.2012 so as to take up the post of Principal. In letter dated 08.10.2012, it was intimated to him that since disciplinary proceedings were pending against him, a decision on his relief will be taken later. While the matter stood thus, vide memorandum dated 12.10.2012, the offer of appointment was withdrawn.

1.3 He approached this Tribunal by filing OA No. 801/2012 praying inter alia as under:

(i) setting aside/quashing memorandum dt. 12.10.2012 of Respondent no.1 withdrawing the offer of appointment given to the applicant for the post of principal, Kendriya Vidyalaya;

(ii) quashing the disciplinary proceeding initiated by Memorandum dated 15.3.2012;

(iii) directing the Respondents no.1 to 3 to relieve the applicant forthwith to join the post of principal, Kendriya Vidyalaya, Baripada;

(iv) directing Respondent no.4 to allow the applicant to join the post of principal, Kendriya Vidyalaya, Baripada;

(v) And pass such other order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice and allow this original application."

(emphasis added)

1.4 In OA No. 801/2012, the respondents by filing counter contested the matter and the applicant filed rejoinder and after completion of pleadings the matter was heard at length. In course of hearing, Ld. Counsel for the applicant has submitted that he confines the relief under 8(i) and (ii). After hearing, this Bench vide order dated 08.09.2017 refused to interfere in the matter and, accordingly, dismissed the OA. Fact remains that the said order has attained its finality in absence of any challenge by either of the parties.

1.5 Meanwhile, the disciplinary proceedings initiated against the applicant vide memorandum dated 15.02/03.2012 was concluded by imposition of minor penalty and the penalty so imposed ended w.e.f. 30.06.2019. Thereafter, the applicant submitted representation on 06.08.2019 for his appointment as Principal in KV.

The representation was rejected on 04.10.2019 stating therein as under:

1.6 Thereafter, the applicant filed another representation on 28.11.2019, which

was forwarded by Dy. Commissioner to Asst. Commissioner, KV, New Delhi vide letter dated 13.12.2019. Again applicant submitted another representation on 03.03.2020. Finally, in letter dated 26.05.2020 giving the details of the happenings, the Dy. Commissioner forwarded the appeal submitted by the applicant to the Asst. commissioner, New Delhi. While the matter stood thus, the applicant approached this Tribunal in the instant OA stating therein that the applicant was selected to the post of Principal in a positive act of selection but the offer of appointment was withdrawn due to pendency of disciplinary proceedings and since the disciplinary proceeding has been ended with imposition of minor penalty, he ought to have been considered for appointment to the post of principal since the penalty imposed on the applicant ended on 30.06.2019. Hence, he has prayed for the following reliefs:

"8.1 That the respondents be directed to appoint the applicant to the post of Principal after completion of currency of minor penalty period.

8.2 That direction be issued to the respondents to grant all the consequential service benefits.

8.3 And further be pleased to pass any other order....."

2. Respondents besides contesting and objecting the case of the applicant on merit have also raised serious objection on very maintainability of this OA on the ground of the principle of res judicata. Ld. Counsel for the respondents reiterated the stand taken in the counter in course of hearing and has submitted that since applicant's prayer to quash the order withdrawing the offer of appointment has been adjudicated in previous OA and the same was dismissed, the second OA for his appointment to the post of Principal is hit by the principle of res judicata and, thus, is not maintainable. In this regard, he has relied on the following decision:

- i. *Devilal Modi Vs. STO*, AIR 1965 SC 1150.
- ii. *State of Uttar Pradesh Vs nawab Hussain*, 1977 AIR 1680.
- iii. *Forward Construction co. & Ors Vs Pravbhat Mandal (Regd.) Anderson*, 1986 AIR 391.
- iv. *Smt. Pujari BGai Vs Madan Gopal*, 1989 AIR 1764.
- v. *Ashok Kumar Shrivastav Vs National Insurance Company*, AIR 1998 SC 2046.
- vi. *Y.B.Patil & Ors Vs. Y.L.Patil*, 1976 (4) SCC 66.
- vii. *Sr. Subramanian Swamy Vs State of Tamil Nadu & Ors*, SLP No. 10620/2013.
- viii. *Director of Settlements A.P. & Ors Vs. M.R.Apparao & Anr.* AIR 2002 SC 1598.
- ix. *Rajendra Kumar & Ors Vs Rambling & Ors*, AIR 2003 SC 2095.
- x. *District collector and Chairman, Vs Tripura Sundari Devi*, 1990 SCC (3) 655.

2.1 Insofar as merit of the matter is concerned, Ld. Counsel for the respondents

has submitted that the appointment to the post of Principal was not on promotion and, therefore, the stand of the applicant that after the punishment period is over, he should be appointed to the post of Principal de hors the rules/law. Further, it is contended that the applicant obtained the NOC from the Principal, Paradip stating therein that there was no disciplinary proceedings pending against him although disciplinary proceedings under Rule 14 was very much pending against him. The Principal, Paradip was not competent to issue such NOC because it is the Regional Office, who was competent to issue such certificate but the applicant managed to obtain such certificate illegally. It is also reiterated by him that there is no provision for restoration of the offer of appointment after the proceedings/punishment was over. The offer of appointment was rightly withdrawn as per the conditions stipulated in the advertisement itself. He has also submitted that the applicant did not challenge the order of rejection of his appeal dated 24.10.2019 and also the order dated 12.10.2012 withdrawing offer of appointment issued to him and, therefore, according to him, this OA is also liable to be dismissed on merit.

3. Ld. Counsel for the applicant by drawing our attention to the representation submitted by the applicant on 06.08.2019 (A/3) has submitted that in terms of the DoP&T OM No. 7/31/63-SPB-II dated 25.06.1965, five persons, namely S/Sri G.P.Jena, L.N.Pathy, Binod Kumar Sukla, B.K.Das and S.R.Das, were promoted after the period of currency of penalty was over and, therefore, by applying the same principle, the applicant ought to have been appointed to the post of Principal after the currency of punishment was over but the respondents committed gross discrimination in not appointing him to the post of Principal.

4. After giving due consideration to the arguments, we have gone through the pleadings in the OA, counter and rejoinder. We have also gone through the notes of submissions filed by the applicant and the DoP&T circular enclosed therein so also the decision relied on by him in the case of Escorts Farms Ltd. Vs. Commissioner, Kumanon Division, Nainital & Ors, AIR 2004 SC 2186, vis a vis the decisions cited by the Ld. Counsel for the respondents. We have also examined the records in OA No. 801/2012 dismissed on 08.09.2017.

5. Admitted fact of the matter is that the applicant was working as PGT(Economics). The advertisement was issued on 14.02.2012 inviting applications from open market recruitment to officers grade cadre and non-teaching course for the year 2011-12 wherein opportunity was also allowed to the existing employees of KV fulfilling the condition to participate in the process of selection. It is also not in dispute that disciplinary proceedings against the applicant was initiated under rule 14 of CCS (CCA) Rules, 1965 vide memorandum dated 15.02/03.2012. He was called upon to appear the interview scheduled to be held on 15.09.2012 along with all documents including NOC. He appeared with documents including NOC issued by the Principal, KV, Paradip stating therein that no disciplinary action is pending/contemplated against him although, as per the record, a major penalty proceeding was pending against

him. The Principal, KV, Paradip was also not competent to issue such certificate was not in dispute. However, on being selected, he was issued with the offer of appointment but, after detection of the illegality, the offer was withdrawn vide order dated 12.10.2012. Applicant challenged the said order withdrawing the offer of appointment along with the memorandum of charge sheet dated 15.03.2012 in OA 801/2012 and admittedly, the said OA was dismissed on contest and had attained finality. In the circumstances stated above, Ld. Counsel for the respondents has submitted that since the prayer of the applicant for withdrawal of offer of appointment had already been adjudicated, this OA seeking direction to appoint him in the post of Principal, KV hits the principle of *res judicata* and, therefore, this OA is to be dismissed. Ld. Counsel for the applicant has submitted that since the prayer for quashing the order of withdrawal of offer of appointment has not been dealt with in the final order in OA 801/2012, the point of *res judicata* can not be attracted.

We have examined the earlier order of this Tribunal in OA 801/2012 and found that the offer was withdrawn due to pendency of the disciplinary proceedings and the disciplinary proceedings was also sought to be quashed by the applicant in earlier OA but the Tribunal was not inclined to quash the charge sheet and dismissed the OA without forming any opinion on the prayer of the applicant for quashing the order of withdrawal of offer of appointment. At this stage, we would like to place reliance on the relevant portion of the decision of the Hon'ble Apex Court in the case of *Forward Construction co. & Ors Vs Pravbhat Mandal (Regd.) Anderson (supra)* that -

"...Explanation IV to S.11 C.P.C. provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided..."

5. Thus, in view of the law laid down by the Hon'ble Apex Court it can safely be concluded that the prayer to quash the withdrawal of offer of appointment is deemed to have been heard and decided. Thus, we find substance on the submissions of the respondents to the above effect.

6. According to Ld. Counsel for the applicant, after the currency of punishment was over S/Sri G.P.Jena, L.N.Pathy, Binod Kumar Sukla, B.K.Das and S.R.Das, were "promoted" as per DoP&T OM No. 7/31/63-SPB-II dated 25.06.1965 and,

therefore, on the same analogy, the applicant ought to have been "appointed" to the post of Principal after his currency of punishment was over. D.G. P&T Letter No. 7/31/63-SPB-II dated 25.06.1965 pertains to instructions dealing with allowing officials to appear in Departmental Examination/LDCE against whom departmental proceedings/criminal prosecution are pending wherein it has been provided that "if on the basis of the disciplinary proceedings any punishment is imposed (other than removal, dismissal or retirement in which case the question would not arise) the appointing authority should consider each case on its merits to see whether a person should be promoted in spite of the penalty imposed on the basis of the results of the examination which he has passed. If it decided to promote him, then he should be promoted only after the expiry of penalty (other than censure), but his seniority in the higher grade may be determined on the basis of the rank obtained in the competitive examination." It may be noted that promotion through departmental examination and appointment through direct recruitment are two different and distinct mode of selection. The applicant himself stated that the above named five persons were promoted after their currency of punishment was over whereas in the instant case it is not in dispute that the recruitment to the post of Principal, in question, was through a direct mode of selection and, hence, it is not understood how the DoP&T OM has any applicability in the instant OA. Therefore, the claim of the applicant for appointment to Principal after expiry of the currency of the punishment cannot stand in judicial scrutiny.

6.1. Apart from the above, the order of withdrawal of the offer of appointment dated 12.10.2012 remains valid and has not been challenged in the present OA nor the order of rejection dated 24.02.2019 of his appeal. No rule has been produced by the applicant to establish that whenever the offer of appointment issued to a candidate but the same has been withdrawn due to pendency of disciplinary proceedings, can be revived after conclusion of the disciplinary proceedings exonerating him from the allegation and/or of that matter after expiry of the punishment, if any imposed. Nothing has been placed on record by the applicant that the post, in question, can be kept vacant from 2012 till conclusion of the disciplinary proceedings/completion of currency of punishment. The DoP&T OM relied by the applicant has no application because as already discussed the advertisement was for direct recruitment. This Tribunal also cannot close its eyes to the fact that the applicant was called upon to appear at the interview in letter dated 28.08.2012 wherein he was advised to bring NOC/Service /Vigilance Certificate from his employer in the proforma made available by the KVS in the official website at the time of interview. The said certificate was obtained by the applicant from the Principal, KV, Paradip on 27.08.2012 stating therein that "no disciplinary action is pending/contemplated against him on date" but, as per the record, a major penalty proceeding was already initiated vide Memorandum dated 15.02/03.2012 and the same was very much pending against him. The respondents have stated in the counter that the said certificate was issued by the Principal, KV, Paradip, who was not only incompetent to do so

but also given false declaration that no disciplinary proceeding was pending. From the above, it is clear that this is an indirect effort on the part of the applicant, which he is not entitled to in a direct manner, obviously, therefore, the effort of the applicant is opposed to the law laid down by the Hon'ble Apex Court in the case of Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association and Ors, (2024) 1 SCC (L&S) 819, wherein the Hon'ble Apex Court has been pleased to hold that one cannot do indirectly what one cannot do directly ["Quando aliquid prohibetur ex directo, prohibetur et per obliquum"]. Therefore, this OA, for the reasons stated above, is also liable to be dismissed on merit.

7. Accordingly, this OA is dismissed by leaving the parties to bear their own costs.