
(2012) 08 DEL CK 0281
In the Delhi High Court
Case No : Writ Petition (C) 4663 of 2012

Mahavir Vats

APPELLANT

Vs

Kendriya Vidyalala Sangathan (HQ)-KVS and Another

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0281

Hon'ble Judges : M.L. Mehta, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Virender Mehta, for the Appellant; S. Rajappa, H. Yayaraman and Dr. Puran Chand, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order dated 26.03.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in OA No. 1093/2011. It transpires that the petitioner, who was working as an Upper Division Clerk with the Kendriya Vidyalaya Sangathan (KVS) Headquarters, New Delhi, was chargesheeted on 10.01.1994 on the following two allegations:

(i) That while working as UDC during 1992-1994 he simultaneously acted as Manager to Sevti Devi Memorial Vidyalaya, Mahavir Enclave, Palam, New Delhi and looked after the day-to-day affairs of the said Vidyalaya at the cost of his official duties and the said Vidyalaya was a source of income to him.

(ii) That the applicant was also functioning as the proprietor of Show Room Sales Agency of Bata India Ltd. at WZ-603, Palam Village, Main Road, Palam Colony, New Delhi-45 and the said agency was a source of income to him.

Thereafter the matter was considered by the enquiry officer and a report was submitted. The Disciplinary Authority after confirming the fact that the charges were proved against the petitioner imposed the punishment of removal from service by an order dated 18.02.1997. The Appellate Authority had also

confirmed this punishment on 15.10.1997.

2. Thereafter the petitioner filed a writ petition in this court challenging the order passed by the Disciplinary Authority and the Appellate Authority. However, during the pendency of that writ petition the jurisdiction was transferred to the Central Administrative Tribunal and consequently the matter stood transferred to the said Tribunal and was renumbered as Transfer Application No. 1094/2009 which was disposed of by the Tribunal by virtue of the order dated 17.12.2009 wherein the Tribunal observed and held as under:

9. In the above view of the matter, as we find that before taking up the working of honorary manager, applicant has applied for the same, which is in consonance of R.15 of CCS (Conduct) Rules. The second allegation of having agency in his name and gaining financially out of it has not come forth from any evidence during the course of inquiry. As such, conclusion of the authorities below is based on suspicion and surmises.

10. Be that as it may, these facts have not at all been gone into by the appellate authority while considering the appeal of the applicant against the dismissal.

11. As there has been non-application of mind to this aspect by the authorities and relevant considerations have not been taken in true perspective by the appellate authority, an order passed by it cannot be countenanced in law.

12. In the result, for the foregoing reasons, OA is partly allowed. Appellate order is set aside. Matter is remitted back to the appellate authority to reconsider the aspect of proportionality of punishment imposed upon the applicant having regard to our observations made above by passing a speaking order within a period of three months from the date of receipt of a copy of this order. No costs.

(underlining added)

3. Thereafter, the Appellate Authority once again considered the matter only on the question of proportionality and imposed the penalty of compulsory retirement. It is against that order that the petitioner filed the said OA No. 1093/2011 in which the impugned order dated 26.03.2012 has been passed whereby by the petitioner's said OA was dismissed.

4. After considering the arguments advanced by the learned counsel for the parties we find that the initial order passed by the Tribunal in TA No. 1094/2009 had, in effect, set aside the findings with regard to the charges against the petitioner and had only directed the Appellate Authority to consider the question of proportionality of punishment. We find that order a little strange inasmuch as if the Tribunal felt that the charges did not stand proved, there would be no question of punishment and therefore the question of proportionality would not at all arise. Anyhow, neither the petitioner nor the respondent filed any writ petition against that order and accepted the same. Subsequently, by virtue of the Appellate Authority's order, in the second round, the punishment has been altered to compulsory retirement and it is that order which became the subject

matter of challenge before the Tribunal which has been dismissed by the Tribunal by virtue of its order dated 26.03.2012.

5. We feel that the appropriate course of action to be adopted in the present case, and both the counsel agree to this, is to set aside the order of the Appellant Authority as well as that of the Tribunal and remit the matter to the Appellate Authority for consideration afresh both on the question of charges as well as on the question of penalty, if any. As a result, we set aside the said orders and remit the matter to the Appellate Authority. The Appellate Authority shall consider the matter as if the appeal has been filed before it for the first time against the Disciplinary Authority's order. The writ petition stands disposed of accordingly.