

(2023) 02 CAT CK 0005

In the Central Administrative Tribunal

Case No : Original Application No. 2941 Of 2016

M.L. Chaurasia

APPELLANT

Vs

Kendriya Vidyalaya Sangathan, 18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi (Through : The
Commissioner) & Ors

RESPONDENT

Date of Decision : 01-02-2023

Acts Referred:

Central Civil Services (Temporary Services) Rules, 1965 — Rule 5(1)

Citation : (2023) 02 CAT CK 0005

Hon'ble Judges : Harvinder Kaur Oberoi, Member (J); Dr. Chhabilendra Roul, Member (A)

Bench : Division Bench

Advocate : K.M. Singh, S. Rajappa, R. Gowrishankar

Final Decision : Disposed Of

Judgement

Dr. Chhabilendra Roul, Member (A)

1. The brief facts of the case are that Shri M.L. Chaurasia (Applicant herein) joined as a Post Graduate Teacher in Physics in the Kendriya Vidyalaya Sangathan (KVS) on 3.3.1998. A complaint was lodged by the then Principal of Kendriya Vidyalaya Shri K.V. Rangaphahar against the applicant for allegedly physically assaulting the principal on 22.12.1999 in the physics laboratory. The Assistant Commissioner of KVS, Regional Officer, Silchar placed Shri M.L. Chaurasia and his colleague Dr. Sanjay Kumar under suspension vide order dated 23.12.1999.

A preliminary inquiry was conducted into the complaint on 03.02.2000 by a two Member Committee consisting by an Education Officer and a Principal. The Committee submitted the report with the following findings:-

" Though there were no eye witnesses for the incident circumstantial evidences point towards the possibility of occurrence of the physical assault on the Principal

by Shri M.L. Chaurasia and Dr.Sanjay Kumar as the accomplice.”

2. Considering the preliminary report, the Assistant Commissioner of KVS, Regional Office, Guwahati, vide order dated 9.6.2000 terminated the services of Shri M.L. Chaurasia and Dr. Sanjay Kumar under Sub Rule 1 of Rule V of CCS (Temporary Services) Rules, 1965. Subsequently, as per the directions of Commissioner of KVS a fresh inquiry into the incident was conducted vide order dated 25.7.2000. In this case, the Inquiry Officer vide his report dated 18.9.2000 reported as follows:-

“It has been an act of aggression and assault on the Principal by Shri M.L. Chaurasia aided by Dr. Sanjay Kumar, although there was no other direct witness except the accused teacher and the Principal”

The matter was brought to the notice of the KVS Headquarters. The Vice Chairman KVS re-examined the inquiry report and held the view that Dr. Sanjay Kumar was not involved in the physical assault on the Principal but he was present during the incident in the physics laboratory along with Shri M.L.Chaurasia. Based on such view, Dr. Sanjay Kumar was reinstated in service of KVS by the Commissioner, vide order dated 2.5.2001. The period of his absence from the date of termination of service to the date of joining of duties upon reinstatement was tread as ?dies- non? . The appeal preferred by Shri M.L. Chaurasia was also considered by the Commissioner of KVS and it was decided to reinstate him in service subject to initiation of disciplinary proceedings under CCS Rules, 1965 as it was alleged that he was primarily involved in the alleged physical assault on the Principal. He was reinstated in the services of KVS vide order dated 4.2.2002 without prejudice to the departmental proceedings initiated against him. The period of absence from the date of termination of the service to the date of joining of duties upon reinstatement was treated as dies-non.

3. Subsequently Dr. Sanjay Kumar appealed to treat the period of dies-non as period of duty. The Commissioner of KVS, vide order dated 31.8.2007 accepted his appeal and treated the period of dies-non as duty. The request of Shri M.L. Chaurasia for regularization of intervening period including the period of suspension was also considered by the competent authority but his request was not acceded to as his reinstatement in service was subject to initiation of disciplinary proceedings against him by the Competent Disciplinary Authority. Shri M.L. Chaurasia preferred another appeal before the Disciplinary Authority i.e., Deputy Commissioner of KV, RO, Bhopal for regularization of the intervening period which was considered and disposed of by the Disciplinary Authority vide 23.07.2007 without giving any relief to Shri Chaurasia. In the meanwhile, the Disciplinary Authority vide order dated 23.07.2007 observed the following:-

“ It may not be proper and just to initiate disciplinary proceedings against Shri Chaurasia for having had an altercation with his Principal 7 years back, the onus of which cannot be established at this juncture. The disciplinary proceeding would only serve to demoralize a good and well meaning teacher. It is decided to

close the departmental proceedings against the said Shri M.L.Chaurasia PGT (Phy) K.V.No.2 Indore, but the decision on the appeal of the appellant taken by the Commissioner, KVS regarding treatment of period of absence from the date of termination of service to the date of joining as dies-non will remain unchanged.”

4. Based on the report of the Inquiry Officer, the competent authority regularized the services of suspension period from 23.12.1999 to 16.6.2000. Shri M.L. Chaurasia again submitted a representation dated 24.8.2015 before the competent authority for regularization of intervening period from the date of termination of service on 17.6.2000 to the date of joining duties 04.02.2002. The Disciplinary Authority disposed of his representation vide memorandum dated 23.11.2015 and upheld the decision of Commissioner of KVS regarding treatment of the period of absence from the date of termination of service to the date of joining of duties as dies-non.

5. Being aggrieved by abovementioned order, the appellant has filed the present Original Application seeking the following relief(s):-

(i) Call for the relevant records of the respondents relating to the impugned orders and perused the same;

(ii) Declare the memorandum No.F.6-25/2006-KVS(BPL)/Pt.File) dated 23.11.2015 (Annexure -A impugned) to the extent that respondents have rejected the request of the applicant to regularize the period from 17.6.2000 to 14.2.2002 which was declared as dies-non as illegal, arbitrary discriminatory;

(iii) Declare that the applicant herein is entitled for grant of similarly benefits as granted by the respondents to Shri Sanjay Kumar, TGT(SST) presently posted at PGT(Economics) at KV No.4, R.K. Puram, New Delhi viz., regularization of the period from 17.6.2000 to 14.2.2002 which was declared as dies-non with all consequential benefits and direct the respondents to re-fix the pay and perks of the applicant accordingly and consequential pay the arrears with interest thereon @ 18 % p.a. till payment thereof.

(iv) Order exemplary cost against the respondents and in favour of the applicant.

(v) May also pass any further order(s) direction(s) as be deemed just and proper to meet the ends of justice.

6. On admission of the OA notices were issued to the respondents and they have filed their counter affidavit.

7. The applicant in his OA has taken the grounds that the KVS authorities should have treated him equally with Dr. Sanjay Kumar whose period of dies-non was regularized and treated as on duty. As the disciplinary proceedings initiated against him were closed, the Disciplinary Authority should not have treated him differently than Dr. Sanjay Kumar. Because no findings regarding his involvement in the alleged physical assault was given in the inquiry report, he should have

not been punished on that account because of mere allegations of a physical assaults against the then Principal Shri K.V. Rangaphahar.

8. The learned counsel for the applicant has reiterated the position taken in the present O.A. He pleaded that the principle of equality demands that Shri M.L.Chaurasia should be treated as at par with Dr. Sanjay Kumar as initially the allegation of physical assault was against both of them and subsequently Dr. Sanjay Kumar was exonerated from the statement of witnesses during the preliminary inquiry. In case of Shri M.L.Chaurasia though there was a departmental inquiry it was not concluded and the Inquiry Officer just stated that because of passage of 7 years no purpose would be served for conducting further inquiry. Based on his report, the Disciplinary Authority on his own imposed the penalty of dies-non for the period of absence from the date of termination of Shri M.L.Chaurasia from the date of his rejoining on reinstatement. Hence applying the principle of parity, Shri M.L. Chaurasia's period of absence from service should have been treated on duty as it was done in case of Dr. Sanjay Kumar.

9. The respondents in their counter have argued that Dr.Sanjay Kumar was fully exonerated from the charges of assaulting the Principal of Shri K.V. Rangaphahar as he was just present in the physics laboratory alongwith Shri Chaurasia at the time of alleged assault by the then Principal. The Commissioner of KVS, after going through the inquiry report, found that discrepancies in statement of witnesses regarding the incident and involvement of Dr. Sanjay Kumar and a view was taken that he was not primarily involved in the physical assaulting of the Principal. Because of the facts and circumstances of the case, he was treated differently than Shri Chaurasia. The order of Disciplinary Authority and the orders on his representations and the subsequent appeal by Shri Chaurasia have been properly dealt with by the Disciplinary Authority and the Appellate Authorities. The Deputy Commissioner of KVS vide impugned order dated 23.11.2015 has agreed with the decision by the Disciplinary Authority and he did not want to interfere in those order of Disciplinary Authority because no appeal lies under the provisions of Temporary Service Rules at that belated stage.

10. The learned counsel for the respondents further drew the attention of this Bench regarding the reasons given in the report of the Disciplinary Authority while declaring the above mentioned period of Shri Chaurasia as dies-non. The then Disciplinary Authority relied upon the report dated 18.9.2000 where two member inquiry committee mentioned that there was preponderance of evidence of occurrence of physical assault on the principal by Shri M.L. Chaurasia and Dr. Sanjay Kumar as his compliance. The Disciplinary Authority held that Dr. Sanjay Kumar happened to be present in the physics laboratory at the time of incident and was not involved in the physical assault on the then principal. Hence, the facts and circumstances of the case points out to difference in the behavior and the activities on that date by Shri M.L.Chaurasia and Dr. Sanjay Kumar. Hence the differential treatment for the period of absence from duty of Dr. Sanjay Kumar and Shri Chaurasia was justified.

11. We have gone through the records of the case thoroughly and heard the arguments carefully. In the instant case the records of preliminary inquiry and the subsequent inquiry were not presented by either of the parties. The circumstances upon which the incident occurred and degree of involvement and non-involvement in the said assault was not brought out clearly. These facts may be ascertained from the statement of witnesses and the various inquiry reports submitted during the preliminary inquiry and the subsequent second inquiry. The Disciplinary Authority vide order dated 23.7.2007 has observed that no purpose would be served to continue the disciplinary proceedings against Shri Chaurasia for having altercation with the then principal 7 years back. The Disciplinary Proceedings should not serve to demoralize a good and well-meaning teacher. However, the Disciplinary Authority was reluctant to treat the period of absence from the date of termination of service to the date of joining on duty. Even, on the representation of Shri M.L.Chaurasia vide impugned order the Deputy Commissioner had not gone into the details reasoning as why he was not reviewing the order of the previous authority regarding the dies-non period merely stating that no appeal lies under the provisions of Temporary Services Rules at this belated stage. It may be mentioned here that Shri M.L. Chaurasia did not appeal against any order passed by the Disciplinary Authority under any Statutory Rules. He made a representation to consider his case at par with Dr.Sanjay Kumar for whom the period of dies-non was treated as the period on duty. As the chargesheet against Shri Chaurasia was withdrawn, he was placed at par with Dr.Sanjay Kumar. While rejecting the request of Mr.Chaurasia, the Deputy Commissioner vide the impugned order dated 23.11.2015 has not given a reasoned and speaking order. While declaring the period as dies-non amounts to imposing of penalty by the Disciplinary Authority when the disciplinary proceedings were withdrawn. This amounts to penalizing for misbehavior never proved. Moreover, the applicant needs to be treated at par with Dr. Sanjay Kumar, who was similarly placed and in whose case the period of absence from the date of termination to the date of his joining on reinstatement was treated as duty.

11. In view of the above, the impugned order dated 23.11.2015, vide which the respondents have rejected the request of the applicant to regularize the period from 17.6.2000 to 14.2.2002, which was declared as dies-non is quashed. This period shall be treated as duty at par with Dr. Sanjay Kumar.

12. The OA is disposed of in terms of the aforesaid directions. There shall be no order as to costs.

All pending MAs are also disposed of accordingly.