

(2003) 01 MP CK 0121
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7199 of 2002

Shastri R.K.

APPELLANT

Vs

Kendriya Vidyalaya Sangthan and Others

RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 LLJ 899 : (2003) 3 MPLJ 57

Hon'ble Judges : Bhawani Singh, C.J; Sugandhi Lal Jain, J

Bench : Division Bench

Advocate : Manoj Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

S.L. Jain, J.

This petition under Article 226/227 of the Constitution challenges the order dated November 22, 2002, (Annexure P. 1), passed by Central Administrative Tribunal, Jabalpur (hereinafter referred to as "Tribunal"), in Original Application No. 585/2002, whereby a prayer to set aside and quash the orders Annexure P.2 to P.8 was rejected by the Tribunal.

Brief resume of the facts is as follows: The petitioner is working as Trained Graduate Teacher (Sanskrit) in the respondent Sangthan, since 1983. In July 2001, when the petitioner was working as Trained Graduate Teacher (Sanskrit) at Kendriya Vidyalaya No. 2, Bhopal, he was placed under suspension as per order dated July 13, 2001, passed by the Assistant Commissioner, Kendriya Vidyalaya Sangthan, Bhopal region and a charge-sheet dated October 16, 2001, was issued.

It is alleged by the petitioner that he required certain documents for the purpose of submission of reply to the charge-sheet and he prayed for the same vide letter dated October 22, 2001 but instead of deliberating upon this letter, respondent 3, closed his right to written reply to the charge-sheet and by order dated November 1, 2001 proceeded to appoint Enquiry Officer and Presenting Officer.

The Enquiry Officer conducted himself in the most biased, predetermined and mala fide fashion. The petitioner, apart from the material cited in the charge-sheet, required additional documents and material for the purpose of his defence but the same were denied and in two sittings i.e. on June 26, 2002 and August 8, 2002, entire departmental enquiry was wrapped up. The witnesses were examined in a mechanical manner in his absence and in the absence of his defence assistant.

It is also alleged by the petitioner that subsequently, vide communication dated August 8, 2002, he was called upon to submit his defence brief as the enquiry stood concluded ex parte. The petitioner sought change in the Enquiring and Presenting Officers but without passing any order on his application, enquiry proceedings were expedited. Therefore, the petitioner approached the Central Administrative Tribunal, by filing Original Application No. 585/2002 wherein the Tribunal without expressing any opinion on the merits of the application directed the petitioner to approach the Disciplinary Authority by fresh representation within three weeks and Disciplinary Authority was directed to dispose of the representation within four weeks of the receipt of the representation. The Tribunal also directed that matter pertaining to the departmental enquiry be taken up from the situation wherein the petitioner approached the Tribunal.

The petitioner further alleged that at the stage, he approached the Tribunal, enquiry proceedings stood concluded and the petitioner was called upon to submit his defence brief to the enquiry officer, while his grievance before the Tribunal was pertaining to the period prior to that point of time. Orders impugned before the Tribunal were as follows:

- (1) Order dated November 1, 2001, which relates to appointment of Dr. R.P. Kashyab, as Enquiry Officer.
- (2) Order dated November 1, 2001, which relates to appointment of Shri N. K. Sharma, as Presiding Officer.
- (3) Order dated April 24, 2002, which relates to rejection of requisition for additional documents and fixing hearing of case on June 26, 2002, by the Enquiry Officer.
- (4) Order dated July 1, 2002, relates to asking the petitioner to submit a fresh list of witnesses in his defence showing in brief their relevance.
- (5) Order dated June 26, 2002, which relates to admission of certain documents by the Enquiry Officer and the rejection of request of the petitioner to stay the proceedings.
- (6) Order dated August 8, 2002, whereby Enquiry Officer directed the petitioner to submit his brief in respect of defence.
- (7) Order dated August 5, 2002, which is daily order-sheet.

We have heard Shri Manoj Sharma, learned counsel appearing for the petitioner

at length.

Shri Sharma contends that the petitioner was made to submit reply to the charge-sheet without relevant material and thus he was deprived of opportunity of effective hearing and this vitiates the entire enquiry proceedings.

Charge-sheet dated October 16, 2001 was served on the petitioner on October 18, 2001. He should either have admitted the charge or denied the charge within the stipulated period of ten days. The petitioner has neither asked for extension of time nor given any reply to the charge levelled against him. The claim of the petitioner regarding letter dated October 22, 2001 could have been decided during the enquiry. A perusal of letter dated October 22, 2001 reveals that by this letter petitioner only informed Assistant Commissioner, Kendriya Vidyalaya Sangathan that the reasons of his suspension were shown in the charge sheet, therefore, it is his right to avail the opportunity of appeal against the reasons for suspension. In this letter petitioner did not demand any document. It is not the case of the petitioner that documents mentioned in the charge sheet were not supplied to him. Vide application dated April 18, 2002 (Annexure P-12) petitioner requested for additional documents. The right of the petitioner is limited to the supply of material mentioned in the charge sheet only. It is not the case of the petitioner that there has been any violation in this regard.

Even otherwise, the Tribunal has given an opportunity to the petitioner to make a fresh representation to the disciplinary authority giving all the facts and reasons as to why he needs further documents. The Tribunal had further directed that if the petitioner makes such representation within three weeks to the disciplinary authority, it will consider the representation. Thus, the main grievance of the petitioner that the copies of certain documents were not supplied to him stands redressed.

Regarding the change of Enquiry and Presenting Officer also, petitioner has been given an opportunity to make a representation to the disciplinary authority.

Learned counsel for the petitioner also submitted that the grievance of the petitioner for which he approached the learned Tribunal has been left unaddressed inasmuch as if the matter is to be taken from the stage wherein the petitioner approached the Tribunal, his grievance would not be redressed because at that stage enquiry proceedings stood concluded and the petitioner was called upon to submit his defence brief to the Enquiry Officer, but it may be noted that the learned Tribunal by the impugned order has not taken away right of the petitioner to make a prayer for setting aside ex parte order.

In the cases of departmental enquiries High Court under Article 226 of the Constitution, does not exercise the power of Appellate Court/Authority. The jurisdiction of the High Court is very limited. It can exercise its authority within the limits of judicial review to rectify the mistakes of law or procedural errors leading to manifest injustice. In this case no such error is apparent. The Tribunal has given the petitioner an opportunity to submit the representation before the

disciplinary authority. Petitioner is free to submit all his grievances before the Appellate Authority and intervention by this Court is not necessary.

For the reasons stated above no interference in the order impugned is called for. The petition being devoid of merit is liable to be dismissed and is hereby dismissed in limine.