

Abdul Khadar Darga Vs. the Joint Commissioner (Admn.)

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Court : Central Administrative Tribunal CAT

Decided On : Nov-21-2003

Reported in : (2005)(2)SLJ32CAT

Judge : H a S.K., M K Gupta

Appellant : Abdul Khadar Darga

Respondent : The Joint Commissioner (Admn.)

Advocate for Pet/Ap. : Mr. P.N.D. Kurup

Judgement :

"(a) Call for the records from the respondents which ultimately resulted in the penalty of removal from service bearing No. F17(ii) 13/2000/KVS(MR) dated 21.3.2001 of the 2nd respondent as produced at Annexure-A1 and on perusal, quash the same along with Order No. 9-33/2000/KVS (Vig) dated 4.9.2001 placed at Annexure-A2.

(b) direct the 2nd respondent to reinstate the applicant in the Vidyalaya of the 4th respondent.

(c) direct the respondents to pay the applicant from the date of relieving to the date of reinstatement.

(d) quash the entire enquiry proceedings conducted by the Enquiry Officer along with the enquiry report, Annexure-A40.

(e) issue such other order or relief as this Hon'ble Tribunal deems fit in the interest of justice and equity.

2. Shri Abdul Khadar Darga, who had been working as a Teacher at Sambra from 1996 was transferred to Joshimath (Uttaranchal) vide order dated 25.10.1999. The said transfer order was challenged before this Tribunal in O.A. No. 903/99. Since the representation filed against the said transfer order was pending, the said O.A. was disposed of vide order dated 3rd December, 1999 with a direction that the applicant's representation for change of posting be considered keeping in view the observations made therein, i.e., policy of posting in neighbouring regions and pendency of disciplinary proceedings etc. As the said direction remained uncomplied with, Contempt Petition No. 5/2000 was preferred. Vide order dated 17.12.1999, Commissioner, K.V.S, rejected the applicant's request for change of posting. This Tribunal vide order dated 18.2.2000 came to the conclusion that its direction dated 3.12.1999 were not been complied with and as such directed Shri H.M.Cairae, Commissioner, K.V.S. to appear in person. As the Commissioner, who appeared in person, filed an affidavit and gave an undertaking stating that in the light of the directions of this Tribunal, he was prepared to re-examine the matter once again and pass fresh order, the contempt proceedings were adjourned. During the pendency of the said contempt petition, the applicant was transferred to Kendriya Vidyalaya, Ambarnath, and therefore, the said contempt proceedings were dropped vide order dated 27th March, 2000. The applicant joined Kendriya Vidyalaya, Ambarnath on 13.4.2000. Before the applicant was transferred on 25.10.1999, a charge memorandum under Rule 14 of CCS (CCA) Rules, 1965 dated 24th August, 1999 (Annexure-A5) had been issued, which contained 4 Articles of Charge. The said charges reads as under: Statement of Articles of charge framed against Sh. A.K. Darga, SUPW Teacher, KVAFS Sambra Belgaum That the said Sh. A.K. Darga, while functioning as SUPW Teacher in KV AFS, Sambra, Belgaum, during the period from August, 1996 to to-date manhandled Sh. M. Kalidas, PGT (Hist.) on 9th Dec. 1998 in the Vidyalaya Office at 3.05 p.m.

He has thus committed misconduct/misbehaviour under Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 as applicable to the employees of KVS. That during the

aforesaid period and while functioning as SUPW Teacher in the aforesaid Vidyalaya the said Mr. A.K. Darga abused Sh. M. Kalidas, PGT (Hist), on 9.12.1998 in the Vidyalaya premises using unparliamentary language in front of the teachers.

He has thus committed misconduct/misbehaviour under Rule 3(1)(iii) of CCS(Conduct) Rules, 1964 as applicable to the employees of KVS. That during the aforesaid period and while functioning as SUPW Teacher in the aforesaid Vidyalaya the said Mr. A.K. Darga conducted himself in unlawful manner and violated Article 55(23) of Education Code by collecting money from students.

He has, thereby committed misconduct/misbehaviour under Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 as applicable to the employees of KVS. That the said Sh. A.K. Darga during the aforesaid period and while functioning in the aforesaid Vidyalaya, has committed temporary Misappropriation of Rs. 1200 collected from students for Picnic without the permission of the Principal and failed to return the amount to the students. Thus, he failed to maintain absolute integrity and indulged in acts of unbecoming of Sangathan's employee and thereby contravened Rule 3(1)(i) & (iii) of CCS (Conduct) Rules, 1964 as applicable to KVS employees." In support of the said charges, 7 documents were listed in Annexure-III and six witnesses were named under Annexure-IV to Charge Memorandum dated 24th August, 1999.

3. Based on oral enquiry, the Enquiry Officer submitted enquiry report dated 17th September 2000, holding the said charges as proved, which was made available to the applicant vide letter dated 17th January, 2001, (Annexure-A40) with a direction to submit representation, if any, against the said findings. The applicant submitted a detailed representation dated 28th February, 2001 and thereafter Assistant Commissioner, K.V. Sangathan, Mumbai Region, vide order dated 21st March, 2001 (Annexure-A1) imposed penalty of removal from service. An appeal filed against the said penalty order was rejected by the Joint Commissioner (Administration), K.V. Sangathan, New Delhi, vide order dated 4th September, 2001 (Annexure-A2).

4. The applicant who is an ex-serviceman from Air Force and had 15 years service, joined Kendriya Vidyalaya, Vasco, in the capacity of Socially Useful Productive Work Teacher. Thereafter, he was transferred to Samba, Belgaum, on his request. While he was working at Samba, Belgaum, he was transferred to K.V.S. Joshimath, which is almost 2800 kms. away from the said place and as such the said transfer was challenged before this Tribunal in O.A. No. 903/99. While the applicant was working at Samba, Belgaum, 3rd respondent, i.e., Assistant Commissioner, K.V. Sangathan, Bangalore, issued Charge Memorandum dated 24th August, 1999, which were denied by submitting a reply dated 18.10.1999. A preliminary enquiry on the said charges was conducted on 28th March, 2000 at Kendriya Vidyalaya, Malleswaram, Bangalore and the proceedings were adjourned without fixing any date. The regular enquiry was held for the first time on 25th April, 2000. The charged official prayed for shifting the venue of inquiry from Bangalore to Samba, but it was not accepted by the Enquiry Officer on the ground that the reasons were not convincing. It was observed in the order sheet dated 25.4.2000 that the Enquiring Authority was free to fix any venue according to the requirement of the case and convenience of the parties from time to time. His request at this belated stage was turned down as all witnesses and defence witnesses were present. On 25th April, cross examination of 5 witnesses was started. On 4th May, 2000, cross examination of Mr. M. Kalidas was started, which remained inconclusive and accordingly, the proceedings were adjourned to 5th May, 2000. On 5th May, 2000, the applicant cross examined Shri Shivaji Rao Kednurkar, Shri K.S. Pujar and as such the proceedings were adjourned to 15th May, 2000. On 15th May, 2000, Smt. P. Vijaya was examined and the proceedings were adjourned for 16th May, 2000. On 15th May, 2000, the charged officer made a request to adjourn the proceedings on the ground of illness of his defence assistant, which was not agreed to by the Enquiry Officer though the charge officer stated that in the absence of defence assistant, he could not complete cross examination of the witnesses. On 16th May, 2000, the charged officer informed the Enquiry Officer that his defence assistant was admitted in a Private Nursing Home on 14th May, 2000 and since he was staying far away, for which the journey time is not less than 12 hours, he was not able to procure the documents which were available with him. The proceedings were ultimately adjourned to 19th May, 2000.

On 19th May. 2000, the proceedings were adjourned for want of presence of charged officer as well as defence assistant who were reported to be sick and under medical treatment, without fixing any date. Ultimately, next proceedings were held on 8th June, 2000 on which date, the applicant cross examined Shri S.R. Kednurkar, which cross examination runs into 12 pages. It appears that the said proceedings were closed on the said date at 6 p.m. and were adjourned to 9th June, 2000. On 9th June, 2000, the applicant along with his defence assistant continued to cross examine Shri S.R. Kednurkar. From the daily order sheet it appears that the proceedings on the said date were closed at 5.45 p.m. and were adjourned to 10.6.2000. It was also observed therein that the hearing would take place on 10.6.2000 at the same venue, and continue on day to day basis except on Sundays. On 9.6.2000, D.R. Kamble, Defence Assistant of the applicant submitted a communication stating that the Principal, Shri B.S. Patil summoned him to his chamber and asked him not to work as applicant's defence assistant, otherwise, he would be booked along with him. Shri Kamble also stated that his career was in danger. The said communication was also endorsed to Presiding Officer as well as to the charged officer. The Enquiry Officer noted in day to day proceedings dated 9.6.2000 that defence assistant had given a statement expressing his inability to continue as defence assistant but passed no further orders. Despite these facts, the proceedings were adjourned to 10th June, 2000. On 10th June, 2000, the applicant did not appear as he had fever and was under medical treatment, which fact was noted in the daily order sheet of the said date. Yet, the proceedings were adjourned to 12th June, 2000 without intimating the date of hearing to the applicant. On 12th June, 2000, since the applicant was not present, the Enquiry Officer proceeded ex parte and closed the case. The applicant submitted a detailed representation dated 22nd June, 2000 which was addressed to the Enquiry Officer, wherein the applicant made a prayer to recall order dated 12th June, 2000 and sought permission to cross examine the witnesses in the interest of justice and equity. In Para 23 of the said representation, it had been specifically pointed out that the list of witnesses and documents required, were given to the Enquiry Officer on 25.4.2000 and the Enquiry Officer deliberately avoided to receive the same. On 16th May, 2000, when the list of witness along with justification was placed, the Enquiry Officer

ignored saying that the same cannot be considered at that stage. The list of witnesses as well as the defence witnesses were remunerated in the said representation dated 22nd June, 2000. In Para 2 of the said representation, the applicant specifically pointed out that his brother had informed the Enquiry Officer's office that the applicant was sick and the medical certificate will be sent later on but he abruptly kept the telephone without receiving the full message.

In spite of his brother's request for receiver's identity, the receiver at the K.V. Malleswaram, did not disclose his identity. The medical certificates were also attached along with the said representation dated 22nd June, 2000. Since no reply had been received from the Enquiry Officer to the said representation dated 22nd June, 2000, the applicant submitted another detailed representation, almost identical memorandum, and termed it as appeal, dated 24th July, 2000 which was addressed to Assistant Commissioner, K.V. Sangathan, Bangalore. In the said appeal, a prayer was made to set aside the ex parte proceedings dated 12th June, 2000 with a further request to conduct the enquiry.

The applicant also made a prayer to permit him to cross examine the witnesses in the interest of justice and equity. On 24th July, 2000, the applicant also submitted a letter addressed to Enquiry Officer wherein he has stated that he had lost confidence in the Enquiry Officer because of the biased approach and pointed out that he had already submitted a petition to him on 22nd June, 2000, reply of which was still awaited as well as the similar letter being sent to Assistant Commissioner, K.V. Bangalore and Mumbai. Copy of the said letter was also endorsed to the respondents. When the matter was such, the Enquiry Officer rushed and submitted the enquiry report dated 17th September, 2000.

5. The applicant filed O.A. No. 659/2000 before this Tribunal wherein he challenged the entire enquiry proceedings including the ex parte order dated 12th June, 2000 and sought for directions to respondents to re-open the enquiry and provide him an opportunity to defend his case.

Since the appeal dated 24th July, 2000 preferred to the Assistant Commissioner, K.V. Sangathan, Bangalore had been pending, the said O.A. was disposed of vide order dated 11.8.2000, with a direction to the Assistant Commissioner, Bangalore,

to dispose of applicant's appeal within 60 days. Without complying with the said directions, the Assistant Commissioner, K.V. Sangathan, Mumbai forwarded a copy of the enquiry report on 17.1.2001 with a direction to submit representation against the same, if any, within 15 days of the receipt of the said letter. The applicant submitted a detailed representation dated 23.1.2001, addressed to the Assistant Commissioner, K.V. Sangathan, Mumbai wherein a reference was made to the letter dated 22nd June, 2000 as well as appeal dated 24th July, 2000 besides the order passed in O.A. No. 659/2000 dated 11th August, 2000, and requested to take up the case for fresh hearing ignoring the report of the Enquiry Officer and also sought permission to cross examine the witnesses in the interest of natural justice, equity and fair play. The said request dated 23rd January, 2001 was rejected by the respondents vide communication dated 12/16 February, 2001 by the K.V. Sangathan, Bangalore (Annexure-A13) stating that they were not aware of the order passed by the Tribunal on 11th August, 2001 otherwise, they would have replied immediately. It was also stated that sufficient opportunity had been granted to the applicant and he submitted a representation against the Enquiry Officer only on the conclusion of enquiry proceedings. Accordingly, vide communication dated 23rd February, 2001 (Annexure-A 12), the applicant was directed to submit his representation against the order, if any, by 28th February, 2001. As such the applicant submitted a detailed representation dated 28th February, 2001 (Annexure-A41) wherein numerous facts and grounds had been pointed out/taken including the request dated 22nd June, 2000 as well as the appeal dated 24th July, 2000. The said representation runs into 17 pages and is detailed and comprehensive. The applicant pointed out various irregularities committed by the Enquiry Officer besides variation in the listed documents and stated that he had not been given a fair chance to defend himself in the said enquiry. It was also stated that if the witnesses were to be called for cross examination no prejudice would be caused to the Management and, on the other hand, if they were not called, the applicant would be put to irreparable loss. On the merits of the charges, it was pointed out that organising picnic was a part of the applicant's duty and the Principal, K.V.S. Sambra, himself addressed a letter to the parents of the wards on 9th December, 1998 informing them that their wards had been selected for one day picnic under SUWP activity to be held on 17.12.1998 at

Bijapur and accordingly their consent was sought, which consent had also been furnished. It was further stated that the Principal, K.V. Sambra, had permitted the applicant to organise a picnic and accordingly applicant collected money from 12 students; the Principal, K.V.S. Sambra made certain remarks on the applicant's letter dated 15.12.1998 subsequently, which in fact were after thought and made deliberately only in order to implicate the applicant, which was never communicated to the applicant.

Organising picnic was not a misconduct, contended the applicant. As regards the incident of manhandling and abusing etc. Shri M. Kalidas, the applicant denied any such incident.

6. Learned Counsel for the applicant has urged that proceedings dated 12th June, 2000 by which ex parte proceedings were conducted by the Enquiry Officer, are violative of principles of fair play, natural justice and legitimate expectation; that Enquiry Officer did not take the proceedings seriously and conducted the same with closed mind and therefore, acted with malafides and bias approach; neither the Enquiry Authority, nor the Disciplinary Authority considered the gravity of the defence assistant letter dated 9.6.2000 whereby the defence assistant had pointed out that Principal, K.V. Sambra, Shri B.S. Patil had threatened him not to continue as defence assistant otherwise his service career would be in danger; the Disciplinary Authority as well as the Inquiry Authority failed to pass any order on the applicant's request dated 22nd June, 2000 and 24.7.2000; the directions issued by this Tribunal vide order dated 11th August, 2000 in O.A. No. 659/2000 remained uncomplied with; respondents acted in complete violation of the provisions of CCS(CCA) Rules; there had been procedural irregularities which caused serious prejudice to the applicant, which also resulted in failure of justice; he was denied the reasonable opportunity to place his defence effectively; the person who was responsible for the entire cooked-up case and allegation, i.e., Principal, K.V. Sambra was not allowed to be examined by the applicant; the findings of authorities were perverse and based on surmises and there had been no evidence against the applicant; even the Disciplinary Authority as well as the Appellate Authority orders were not speaking and detailed order; there had been violation of Rule 27 of CCS (CCA) and therefore, it was prayed that the entire

disciplinary proceedings enquiry report, penalty order as well as appellate order be quashed.

7. The respondents have filed their reply and strongly resisted the grant of any relief to applicant. Though the objection regarding territorial jurisdiction of this Bench to entertain the present application was raised on the ground that the penalty order was passed by the K.V. Sangathan, Mumbai and the appellate order was passed by the Joint Commissioner (Administration), New Delhi but the same was not pressed for as the applicant is residing at Belgaum, which falls within the territorial jurisdiction of this Bench as Belgaum is part of State of Karnataka, over which this Tribunal has jurisdiction.

8. The first and foremost contention raised by the learned Counsel for the applicant is that the Principal, KVS, Samba, called D.R. Kamble, Defence Assistant to his chamber and threatened him of dire consequences if he continued to assist the applicant in the disciplinary proceedings, which fact was brought to the notice of the Enquiry Officer as well as the Presiding Officer vide communication dated 9.6.2000. Despite the fact that the said aspect was noticed by the Enquiry Officer in daily proceedings dated 9.6.2000, the applicant was not given reasonable opportunity to engage any other defence assistant. Moreover, issuing instructions in such a manner to a defence assistant tantamounts to violating the principles of natural justice, fair play as well as acting in a high handed manner. A specific plea in this regard was raised by the applicant in Para 4.22 of the O.A., which has been admitted by the respondents in their reply by stating that the said aspect are in the matter of records. In this background it is contended that there was no fairness in procedure adopted by the Enquiry Officer and the other authorities in the said disciplinary proceedings. Our attention was drawn to the daily order sheet dated 9.6.2000 wherein the Enquiry Officer in specific has recorded that: "defence assistant has given a statement expressing his inability to continue as D.A." No opinion was expressed on the conduct of the Principal in issuing such threat, contended the learned Counsel. It was further pointed out that these factual aspects were brought to the notice of all concerned authorities and no remedial steps were taken at any stage. We may note that the representation addressed to the Enquiry Officer on 22nd June, 2000 as well as the

appeal dated 24th July, 2000 addressed to the Disciplinary Authority contained specific submission of this aspect. On perusal of the record, it is clear that no attention was paid by the authorities to such unfortunate incident where the senior officer of the respondents issued threat to the applicant's defence assistant and took no action against the concerned person. It was expected that the management and its officials would act fairly in conducting the disciplinary proceedings against the delinquent officials but unfortunately in the present case the senior officer of the management/respondents and a person of the status of Principal of the School issued unwanted threat to the defence assistant, which under no circumstances could be approved in quasi-judicial proceedings. From this incident one thing is clear that the respondents officials were not interested in the smooth functioning of the quasi-judicial proceedings and observance of the principle of natural justice.

9. The next contention raised by the learned Counsel for the applicant is that he had filed an appeal dated 24th July, 2000, which was addressed to the Assistant Commissioner, K.V.S. Bangalore, and since the said appeal had been pending, this Tribunal in O.A. 659/2000 issued direction to the respondents (Enquiry Officer and Assistant Commissioner, K.V.S. Bangalore) to dispose of the applicant's appeal dated 24.7.2000 within a period of 60 days vide order dated 11th August, 2000. It was pointed out that in the said O.A., the applicant had challenged the entire enquiry proceedings including the ex parte order dated 12th June, 2000 besides seeking a direction to the respondents to reopen the said proceedings and continue the enquiry in the interest of justice and equity. It is contended that the said directions dated 11.8.2000 remained uncomplied with. On the other hand, when the applicant pointed out about the non-compliance of the said directions in his further representation dated 23.1.2001 the Assistant Commissioner, KVS, Bangalore, vide communication dated 12/16.2.2001 (Annexure-A 13) addressed to Assistant Commissioner, KVS, Mumbai, stated that: "As regards CAT case and order dated 11.8.2000, this office was not informed about the case. We have high regard for the orders and direction of Hon'ble CAT and we would have replied immediately." It was further pointed out that the said letter was conveyed to the applicant by the Assistant Commissioner, KVS, Mumbai, vide communication dated 23rd February, 2001 (Annexure-A12) with a direction to submit

representation against the enquiry report by 28.2.2001 and as such till the said date the direction issued vide O.A.No. 659/2000 remained uncomplied with. We find force in the said contention. It is unfortunate that this direction remained uncomplied with even till date in as much as the penalty order dated 21st March, 2001 did not touch the said aspect though this aspect had been once again pointed out by the applicant in his reply dated 28th February, 2001. We may note at this stage that the copy of the order dated 11th August, 2000 was annexed to the representation dated 23.1.2001 and the communication dated 12/16 February, 2001 was with reference to the applicant's representation dated 23rd January, 2001. What prevented the respondents to comply with the said direction before imposing the penalty on 21st March, 2001 remains unexplained to us. It is a sad story on the part of K.V.S. which is a mammoth organisation, to ignore the direction of this Tribunal. No adequate care had been taken to comply with the directions issued by this Tribunal on 11th August, 2000. If the authorities were not informed about the said order prior to 23rd January, 2001, what prevented them to comply with the directions atleast after 23rd January, 2001 when the said order dated 11th August, 2000 passed in O.A. No. 659/2000 was made available to the respondents. Our attention was further invited to the submission made in the said representation dated 23.1.2001 wherein it was pointed out that the copy of the said order dated 11.8.2000 was sent by the applicant to the Assistant Commissioner, K.V., Bangalore vide letter dated 30th September, 2000. There is no denial of this contention. We may note at this stage that the reply statement in the present case has been filed by the Assistant Commissioner, K.V.S., Regional Office, Bangalore.

10. Learned Counsel for the applicant further contended that despite the fact that the Enquiry Officer noted in daily order sheet dated 10th June, 2000 that he received a telephonic message from someone that: "Mr. Abdul Khader Darga will not be attending the proceedings today. He has fever", yet he decided to adjourn the proceedings to 12th June, 2000. It was pointed out that 11th June, 2000 was a holiday being Sunday. With reference to the representation dated 22nd June, 2000 addressed to the Enquiry Officer, it was pointed out that the Enquiry Officer abruptly kept the telephone without receiving full message and inspite of his brother's request to inquire the identity of the receiver, the receiver at Kendriya

Vidyalaya, Malleswaram, did not disclose his identity. From perusal of order sheet dated 10th June, 2000, it is clear that the Enquiry Officer himself received the telephone message about the applicant's illness. In the said representation dated 22nd June, 2000, the applicant submitted his medical certificate in support of his illness and prayed for recalling the ex pane order dated 12th June, 2000. Similar request was reiterated when the applicant submitted an appeal to the Assistant Commissioner, KVS, Bangalore on 24th July, 2000. It is contended that the said representation and appeal remained unconsidered despite justification shown by the applicant's absence on 10th and 12th June, 2000. The Disciplinary Authority noted the said aspect in its penalty order dated 21st March, 2001 and in Paragraph 7 (iv) recorded that: "date of enquiry for 12.6.2000 was fixed by the Enquiry Officer on 10.6.2000 and informed Shri Darga accordingly." (emphasis supplied). Learned Counsel vociferously contended that the aforesaid statement and finding recorded by the Disciplinary Authority was against the record and misleading in as much as the applicant was never informed about the fixing of date of enquiry as 12th June, 2000. With reference to day to day proceedings dated 10th June, 2000, it was pointed out that the said proceedings were not sent to the applicant in any manner by any mode of communication. In Smt. S.R. Venkataraman v. Union of India and Anr., AIR ".....there will be an error of fact when a public body is promoted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith: and in actual experience, and as things go, these may well be said to run into one another.

9. The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence.....An administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power." (emphasis supplied).

On perusal of the records, we are of the considered opinion that the statement made and findings recorded in Para 7(iv) by the Disciplinary Authority in its penalty order dated 21st March, 2001 was based on false and mistaken belief as if the applicant was informed about the fixing of next date of hearing, i.e., 12th June,

2000, though the facts were otherwise. No material has been brought to our notice to show that the applicant was informed about the date of hearing as of 12th June, 2000. The law noticed herein above squarely applies in the facts and circumstances of the present case.

11. Learned Counsel for the applicant also strenuously contended that he had submitted the representation dated 22nd June; 2000 to the Enquiry Authority and 24th July, 2000 to the Assistant Commissioner, KVS, Bangalore, copy of which was sent to the Disciplinary Authority also but instead of considering the same, the Enquiry Officer with malafide intention and with bias approach submitted his finding as late as on 17th September, 2000. What prevented the authorities from considering and disposing of the said representation and appeal remained a mystery. It is not the case of the authorities that they had not received the said representation 'and appeal. In any case, when no penalty had been 'imposed till that time, what prevented the authorities concerned to deal with the same remains unexplained.

12. Mr. P.N.D. Kurup, learned Counsel for the applicant vehemently submitted that the Enquiry Officer did not act fairly, justly and reasonably and rather acted with bias and malafides. It is contended that despite the fact that the applicant had furnished a list of witnesses and documents on 25th April, 2000, the same was deliberately avoided by the Enquiry Officer. When the same was again presented on 16th May, 2001, the Enquiry Officer ignored the same by stating that the same could not be considered at that belated stage. This aspect has been narrated in specific by the applicant in his representation dated 22nd June, 2000 and appeal dated 24.7.2000. With reference to the enquiry report, particularly, the opening sentence wherein the Enquiry Officer stated that "the charged officer never bothered to furnish the list of defence witnesses", and in the next few sentences he amended the said statement and stated that the applicant submitted a list of documents and evidence on 8th June, 2000 which was not considered due to belated intimation, it was contended that on 8th as well as on 9th June, 2000, the applicant had been cross examining the witnesses produced by the respondents and the case of the management was still in progress and as such there was no delay at all in submitting the list of documents and witnesses. Even the request for

shifting the venue from Bangalore to Belgaum on the one hand, was rejected by the Enquiry Officer and on the other hand he unnecessarily commented that the applicant never co-operated in day to day hearing causing lot of inconvenience to the witnesses and wasting public money. It was pointed out that all the witnesses and records mentioned vide charge memo dated 24th August, 1999 were available at K.V., Samba, Belgaum. Therefore, there was no justification on the part of the Enquiry Officer on the one hand to reject the applicant's genuine request and on the other hand in making unwarranted accusation against the applicant. It was also pointed out that in the enquiry report itself, the Enquiry Officer specifically stated that he received a telephonic message about the applicant's fever and his not attending the proceedings on 10th June, 2000 and his comment that the called person never gave his identity, which was seriously disputed by the applicant. Vide representation dated 22nd June, 2000 addressed to the Enquiry Officer, in the opening paragraph itself it was stated specifically that the Enquiry Officer did not receive the full message and disclosed his identity. It was pointed out that the Enquiry Officer has not cared to take note of the said representation dated 22nd June, 2000, particularly, when he submitted the report on 17th September, 2000. In fairness the Enquiry Officer was expected to atleast note the facts correctly and fully, which had not been done.

13. We have perused the enquiry report and find that the said representation dated 22nd June, 2000, addressed to the Enquiry Officer had not been taken note of. We, therefore, find justification in the contention raised by the learned Counsel for the applicant that the Enquiry Officer did not act fairly and justly and was bent upon to hurriedly finish the enquiry without following the principles of natural justice and fair play.

14. The learned Counsel for the applicant next contended that the applicant had raised several contentions in his appeal dated 5.4.2001 but they were rejected in a casual manner by the Joint Commissioner (Administration), K.V.S. vide order dated 4.9.2001. It was pointed out that the Enquiry Officer submitted his report despite bias petition filed against him. Despite the order passed by this Tribunal on 11th August, 2000, neither his bias petition nor the appeal dated 24th July, 2000 was considered. Our attention was drawn to the provisions of Rule 27, CCS (CCA)

Rules, which requires that the Appellate Authority shall consider each aspect as noted in Clauses (a) (b) and (c) under Sub-rule (2) of the said rules. It is contended that the appellate order dated 4.9.2001 did not satisfy the said mandate in as much as the Appellate Authority did not consider as to whether the procedure laid down under the rules was complied with and the non-compliance with the said procedure resulted in violation of any provision in Constitution or failure of justice and also whether the findings of the Disciplinary Authority were warranted by the evidence on record. The relevant portion of Rule 27 of the above said rules is extracted below: (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider : (a) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice; (b) Whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and (c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; If we have regard to the aforesaid rule, it would be clear that the word "shall" in Sub-rule (2) of the aforesaid rule makes it mandatory and obligatory on the part of the Appellate Authority to consider each of the three clauses enumerated herein above. It is stated that except for the factor (c) i.e., whether the penalty is adequate/commensurate or not, the other aspects i.e., Clauses (a) and (b) of Sub-rule (2) had not been even noted by the Appellate Authority. Had the Appellate Authority cared to peruse the file relating to the enquiry, as well as his representations dated 22.6.2000 and 24.7.2000, the irregular manner in which the enquiry was held could not have escaped his notice. It is well settled law that omission to properly consider the grounds urged in appeal vitiates the appellate order. In such situation it can also be termed as lack of application of mind. (See 1990(13) ATC 49 & 1990(14) ATC 357.) Similarly, in 1993(24) ATC 43 (Ekm)=1992(3) SLJ 276 (CAT). M.S. Dasan v. Union of India, when the Appellate Authority failed to consider irregular procedure adopted by the Inquiry Officer, the appellate order was held to be devoid of application of mind.

At this stage, it would be relevant to note the contents of the said appellate order. We would do good, if we reproduce the said appellate order which reads as under:

"AND WHEREAS based on the consideration of facts and circumstances of the case on record, contents in the appeal including the grounds adduced by the applicant during his personal hearing, the undersigned has come to the conclusion that the penalty imposed by the Disciplinary Authority is commensurate with the misconduct of vitiating the atmosphere of the Vidyalaya by indulging in objectionable conduct towards his colleague. Further, he has defined the authority of the Principal by collecting money from the students without the latter's knowledge and approval and also depositing the money, when it was objected to, in the Pupils Fund Account to put the Principal in trouble as it would be fundamentally objectionable to the Audit." (Emphasis supplied) A bare perusal of the appellate order would make it clear that the Appellate Authority failed to consider the procedure followed by the Enquiry Officer in conducting the proceedings besides the fact of non-compliance with the same. It also did not record in specific whether the findings of the Disciplinary Authority were warranted by the evidence on record or not. Therefore, we find substance in the contention raised by the learned Counsel for the applicant that the mandate of Rule 27(2) has been grossly violated by the Appellate Authority as well.

15. The learned Counsel for the applicant has also raised a contention that the appellate order dated 4th September, 2001, contained a total false and misleading statement by stating that the applicant was given personal hearing by the Appellate Authority. After perusing the records, we find substance in the said contention. The aforesaid appellate order was passed by Shri Dinesh Singh Bist, Joint Commissioner (Administration), though the personal hearing was given by Deputy Commissioner (Administration) on 11th July, 2001. From perusal of file No. 9-33/2001-KVS (VIG), produced by the respondents, dealing with the applicant's appeal, we find that the said aspects are fully corroborated. The personal hearing was given by Deputy Commissioner (Administration), KVS on 11.7.2001, who had not passed the appellate order but it was passed by yet another higher authority, i.e., Joint Commissioner. Under no circumstances the hearing afforded by Deputy Commissioner (Admn.) could be equated with hearing granted by the competent Appellate Authority, i.e., Joint Commissioner (Administration). On this ground too, the appellate order is devoid of application of mind. We may note that various irregularities were noticed by the Deputy Commissioner (Admn.) in his note dated

20/21.6.2000, which did not form part of appellate order dated 4.9.2001. Had these aspects being noticed and considered by the Appellate Authority, the order might have been of totally different complexion.

16. On merits of the charge, learned Counsel for the applicant contended that Charge Nos. 3 and 4 were inter-related. With reference to Principal's letters dated 9th December, 1998, (Annexure-A23 to A34) which were addressed to the parents of ward indicating in specific about organising one day picnic on 17.12.1998 at Bijapur and seeking consent of the parents for participation of their wards in the said SUPW activity, it was contended that the picnic was scheduled for the said date and the applicant being the only concerned teacher under the said school and based on guide lines and syllabus issued by the K.V.S.the applicant alone was responsible for organising the picnic/students camp to undertake such activities. The applicant himself had admitted in his letter dated 15.2.1998 that he had collected Rs. 1200 from students of Class 11 for picnic and prayed to the Principal for his relieving for the said purpose. The Principal never informed about the denial of the permission. On perusal of the records it is undoubtedly clear that a picnic was fixed for 17.12.1998 and preparation for the said purpose must have been undertaken much in advance as the distance between Bijapur and Belgaum is 207 kms. For this purpose someone must have been authorised or directed to make preparation. If the applicant was not the one, then who else was required to make such arrangements, remains unexplained. It is further contended that the applicant had submitted a letter dated 15.12.1998 to the Principal and he was never communicated by the Principal about the contents so mentioned by the said Principal in the said letter. The note recorded by the Principal on the said letter dated 15.12.1998 states that "not permitted to go to picnic, in case money is collected from the students, please return the same to the concerned students. "As such, it is contended that even though the said aspect/contents were never brought to the applicant's notice but even there the Principal did not record that the applicant was "not authorised to collect the money". If the fact was that the applicant was not allowed to collect the money from students then why the same was not recorded at least on 15.12.1998, remains unanswered.

We find justification in the contention raised by the learned Counsel that the articles of charges (3) and (4) were baseless and concocted.

As we have already noted there is no communication produced during the enquiry to show as to which teacher was authorised to collect the money from students, particularly, when the Picnic was fixed for 17.12.1998 at Bijapur. On charge Article 1 as well as 2 the applicant denied the alleged incident about ill treating and manhandling Shri M. Kalidas.

17. We wish to make it clear that we have not reappreciated the evidence in the present case. We examined the report of the Enquiry Officer as well as other materials including the impugned penalty and appellate order only to ascertain as to whether the findings recorded by the Enquiry Officer as well as the Disciplinary and Appellate Authority were based on some relevant materials on records or not. It is well settled law that if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary man or the findings were perverse, the same could be interfered under the exercise of power of judicial review. It is further settled law that where a quasi-judicial Tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. If a decision is arrived at based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. In 1999(2) SCC 10=1999(3) SLJ 111 (SC), Kuldeep Singh v. Commissioner of Police and Ors., the Hon'ble Supreme Court "6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the Disciplinary Authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over the findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the

dictates of the superior authority. In *Nand Kishore Prasad v. State of Bihar*, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries.

If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence." (Emphasis supplied) *Rae Bareilly Kshetriya Gramin Bank v. Bhola Nath Singh and Ors.*, it was held that the judicial review is not akin to adjudication of the case on merits as an Appellate Authority.

The High Court though does not act as an Appellate Authority but exercise within the limits of judicial review to "correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice." *Sher Bahadur v. Union of India and Ors.*, the Hon'ble Supreme Court "7. It may be observed that the expression "sufficiently of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the Enquiry Officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence." *Madhukar S/o M. Lapalikar v. D. V. Hingwe and Ors.*, *State of Maharashtra v. B.K. Takkamore*, AIR "An administrative or quasi-judicial order based on several grounds, all taken together, could not be sustained if it was

found that some of the grounds were nonexistent or irrelevant and there was nothing to show that the authority would have passed the order on the basis of other relevant and existing grounds. But, an order based on several grounds some of which were found to be non-existent or irrelevant could be sustained if the Court was satisfied that the authority would have passed the order on the basis of other relevant and existing grounds and the exclusion of the irrelevant and non-existent grounds would not have affected the ultimate opinion or decision." The doctrine of natural justice, as held by the Hon'ble Supreme Court in *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.*, (2001) 1 SCC 182, is not only to secure justice but to prevent miscarriage of justice. In Baldwin's case the doctrine was held to be incapable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances. A question arises as to who is a reasonable man. In India, a reasonable man cannot but be a common man similarly placed. Strait jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. It is a fundamental requirement of law that the natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence. The judicial process itself embraces a fair and reasonable opportunity to defend though the same is dependent upon the facts and circumstances of each individual case. The word "bias" in popular English parlance stands included within the attributes and broader purview of the word "malice", which in common acceptation means and implies "spite" or "ill-will" (Stroud's Judicial Dictionary, 5th Edn., Vol. 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.

19. The aforesaid judgments are squarely applicable in the facts and circumstances of the present case as we have already noticed that the Disciplinary Authority order dated 21st March, 2001 in specific stated that the date of enquiry for 12th June, 2000 fixed by the Enquiry Officer was informed to the applicant, which is contrary to the records. Similarly, the Appellate Authority did not afford an opportunity of personal hearing, though wrongly so stated in the said appellate

order. We find that the findings on the said aspects are based on non-existent grounds. Since the applicant was not informed about the date of hearing of 12th June, 2000, if his contention would have been accepted then the authority itself might have remanded the matter to the Enquiry Officer for further enquiry. Moreover, the applicant's representation/appeal dated 22nd June, 2000 and 24th July, 2000 remained unconsidered despite directions dated 11th August, 2000 issued by this Tribunal in O. A. No. 659/2000 itself reads to one irresistible conclusion that the grounds which were relevant and existing have not been considered and non-existent or irrelevant material/grounds have been considered while passing the said orders.

Following the ratio laid down in the said judgment of B.K. Takkamore reiterated in Madhukar's case (supra), we are of the considered opinion that the quasi-judicial orders passed by the Disciplinary and Appellate Authorities could not be sustained as it is not possible to exclude the irrelevant or non-existing grounds, which has gone deep into the minds of the authorities concerned while passing the said orders, which has resulted in miscarriage of justice.

20. The entire chain of events and facts in the present case under consideration smacks of some personal clash and adaption of a matter unknown to law in hottest of haste. The procedure adopted by the Enquiry Officer in not even informing the delinquent official about the date of hearing, particularly, when he was informed that the applicant was ill and he so noted in the proceedings dated 10th June, 2000 cannot be said to be in consonance with the concept of natural justice and fair play. Similarly, directions issued by this Tribunal for disposing of the applicants representation/appeal vide order dated 11th August, 2000 in O.A. 659/2000 remained uncomplied with and when the said aspect was brought to the notice of the authorities, they tried to ignore it by stating in Para 7(i) of dated 21st March, 2001 that the same has now become infructuous, though the facts remain otherwise. All these events put together lead to one singular conclusion that it has resulted in miscarriage of justice and the whole issue had been dealt with in such a way that it cannot but be termed to be devoid of any justifiable reason.

21. Fairness in procedure is a test which has been emphasised by the Hon'ble Supreme Court time and again including in the aforementioned judgment of Girja Shankar Pant. It is the totality of the situation that ought to have been taken note and not some factual aspects in isolation. For the procedural irregularities committed by the Enquiry Officer as well as by the Disciplinary and Appellate Authority as well, we are of the considered view that the findings recorded by each of them have resulted in miscarriage of justice. It is well settled law that the orders passed without due application of mind being arbitrary deserves to be quashed.

22. In view of the findings recorded herein above, we have no hesitation to conclude that order passed by the Disciplinary Authority, Appellate Authority dated 21st March, 2001 and 4th September, 2001 respectively besides the Enquiry Officer's findings dated 17th September, 2000 are perverse, without application of mind violative of principles of natural justice as well as fair play besides based on procedural irregularities committed by each of them. Therefore, the said orders dated 21st March, 2001 and 4th September, 2001 are liable to quashed and set aside. We order accordingly.

23. The next question which would arise after quashing the aforementioned orders is whether the applicant is entitled to reinstatement with continuity of service with all benefits like backwages or not. In AIR 1979 SC 75, Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors., it was held that: "Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full backwages except to the extent he was gainfully employed during the enforced idleness. That is a normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full backwages which were very legitimately due to them". In Para-11 of the said judgment it was also held that: "11. In the very nature of things there cannot be strait-jacket formula for awarding relief of backwages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full backwages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that

stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour, it is not to be arbitrary, vague and fanciful but legal and regular (See *Susannah Sharp v. Wakefield*, 1891 AC at p. 179).

Similarly, in *PGI of Medical Education & Research, Chandigarh v. Rajkumar*, (2001) 2 SCC 54, following the aforesaid judgment of *Hindustan Tin Works (Pvt.) Ltd.*, in Para 12, it was observed that: "Payment of backwages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight jacket formula can be evolved, though, however, there is statutory sanction to direct payment of backwages in its entirety.

We may note that the aforesaid judgments were basically rendered in Labour dispute cases but principles laid down therein squarely apply to the facts of the present case as well.

24. Since the applicant had not worked after imposition of the penalty order dated 21st March, 2001 and more than 21/2 years has elapsed thereafter and keeping in view the ratio laid down by the Hon'ble Supreme Court in the above mentioned cases and applying the same to the facts and circumstances of the present case, we are of the view that interest of justice would serve if the applicant is allowed only 50% of the backwages since the date of removal from service till the date of reinstatement.

25. In view of the findings recorded herein above, we allow the O.A. and quash and set aside the orders dated 21st March, 2001 and 4th September, 2001 of Disciplinary Authority and appellate order respectively with a further direction to the respondents to reinstate the applicant forthwith and implement the rest of the aforesaid order within a period of period of 2 months from the date of receipt of a copy of this order. The applicant would be entitled to all other consequential

benefits. There shall be no order as to costs.

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