



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 2283/2018

This the 03rd day of March, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Sunita Mehra
Aged 52 years, Group B
W/o Shri Subodh Mehra
R/o 1-750, Palam Vihar
Gurgaon-122017.
(Presently working as PGT, Home Science
Sarvodaya Kanya Vidyalaya
Smalkha, New Delhi). ... Applicant

(through Sh. U. Srivastava, Advocate)

Versus

1. Government of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat
IP Estates, New Delhi-110002.
2. Directorate of Education
Through its Director
Government of NCT of Delhi
Old Secretarial Building
Delhi-110054. ... Respondents

(through Ms. Purnima Maheshwari, Advocate)



ORDER (Oral)

Justice L. Narasimha Reddy, Chairman:

The applicant was appointed as a Trained Graduate Teacher (TGT) in the Education Department of Delhi on 21.04.1993. Thereafter, she was promoted to the post of Post Graduate Teacher (PGT) on 05.08.2000.

2. The applicant was issued two charge memos on 21.03.2013 with certain allegations. She filed OA No.1827/2013 and OA No.1832/2013 challenging the same. The OAs were allowed on 15.01.2015 quashing the charge memos, but leaving it open to the competent authority to institute disciplinary proceedings against the applicant, afresh. 3rd charge memo was also issued on 03.07.2013, but in view of the order passed in OA No.1827/2013, it was withdrawn on 14.02.2017 by the respondents themselves. Thereafter, another charge memo was issued on the same day. That, in turn, was challenged in OA No.3706/2017. During the course of hearing of the OA, the respondents themselves withdraw the charge memo and they were permitted to issue a fresh one.



3. Accordingly, a fresh charge memo dated 04.05.2018 was issued to the applicant, with five articles of charge. They relate to the imposition of corporal punishment on the students of Class-11th and Class-12th, acquisition of property at Gurgaon, taking of housing loans from Union Bank of India, taking of loan of one lac from a family friend; all without intimation to the department; and filing of a complaint in the police station against the office of Director of Education alleging that she was graded "Average" in the ACR for the year 2009-2010.

4. This OA is filed challenging the charge memo dated 04.05.2018. The applicant contends that it was issued by an authority not vested with the power. Secondly, it is stated that in successive proceedings, either the charge sheets were set aside or were withdrawn by the Government itself and there was absolutely no basis for issuing the present charge memo. Certain other ancillary grounds are also pleaded.

5. The respondents filed a detailed counter affidavit. It is stated that the Director of Education is the appointing authority for the posts of TGT and PGT, under the rules that are in force and that he is conferred with the power to initiate the disciplinary proceedings. It is also stated that



the charge memos issued earlier, were either set aside or were withdrawn on technical grounds and at every stage, it was left open to the department to issue fresh charge memo.

The respondents contend that the charges leveled against the applicant are serious in nature and the truth or otherwise thereof can be examined only in the departmental inquiry.

6. We heard Shri U. Srivastava, learned counsel for the applicant and Mrs. Purnima Maheshwari, learned counsel for the respondents at length.

7. This is for the 3rd time that the charge memos are issued to the applicant, may be, on the same allegations. The first round was in 2013 and the second in the year 2017. The articles of charges read as under:-

ARTICLE-I

Mrs. Sunita Mehra, PGT (Home Science) while is working in SKV, Samalka, Delhi in the session 2010-2011 committed misconduct as much as she gave corporal punishment to the students of class XI & XII thereby violating the guidelines of Directorate of Education issued vide circular No. DE23 (216) Sch.Br/6232-40 dated 20/07/2010, Order No. F.DE/15/Act/court case/98/School Br./2423-4722 dated 25/01/2001 as well as National Commission of Protection of Child Rights, Govt. India guidelines issued vide letter No. NCPCR/Edu.1/07/39 dated 09/08/2007 and 26/05/2009.



Thus, by doing the said act, she has committed a gross negligence and acted in manner of unbecoming of a Govt. Servant, in violation of provision of Rule 3 of CCS(Conduct) Rules, 1964.

ARTICLE-II

That Mrs. Sunita Mehra, PGT(Home Science) while working in SKV, Samalka, Delhi acquired Property No.I-750, Palam Vihar, Gurgaon, Haryana in her own/family members name without any intimation to her office. As per provision of Rule18 of CCS (Conduct Rules), 1964, she was repeatedly directed to disclose the means/source by which the said property had been acquired by her but she failed to furnish the same.

Thus by doing the said act, Mrs. Sunita Mehra, PGT(Home Science) has committed a gross misconduct and acted in a manner which is unbecoming of a Government servant thereby contravening the provisions of Rules 18 of CCS (Conduct Rules), 1964.

ARTICLE-III

That Mrs. Sunita Mehra, PGT(Home Science) while working in SKV, RAJ Nagar-II, Palam Colony Delhi-110077 taken housing loan from Union Bank of India, Narayana Vihar, Delhi-110028ad also from Andhra Bank, Sector 17C, Chandigarh (Amounting Rs. 24,000,00 Lacs) in the year 2010 without any intimation to her office.

Thus by doing the said act, Mrs. Sunita Mehra, PGT (Home Science) has committed a gross misconduct and acted in a manner which is unbecoming of a Government servant thereby contravening the provisions of Rules 18 of CCS (Conduct Rules), 1964.

ARTICLE-IV

That Mrs. Sunita Mehra, PGT (Home Science) while working in SKV, RAJ Nagar-II, Palam Colony Delhi-110077 taken loan of Rs. 1,00,000



(One Lac) from her family friend Ms. Vandana Singh, R/o 302, Rall Vihar, Sector-57 Gurgaon without any intimation to her office.

Thus by doing the said act, Mrs. Sunita Mehra, PGT (Home Science) has committed a gross misconduct and acted in a manner which is unbecoming of a Government servant thereby contravening the provisions of Rules 16 of CCS (Conduct Rules), 1964.

ARTICLE-V

Smt. Sunita Mehra, PGT (Home Science) while working in SKV, Samalka, Delhi lodged a police complaint dated 15/07/2012 against the higher officers of Directorate of Education for giving "Average" grading in her ACR for the year 2009-2010.

Thus, by doing such said act, she brought the outside influence in order to intimidate her reporting authority in respect of service matters and acted in manner of unbecoming of a Govt. servant, in violation of provision of Rule 20 of CCS (Conduct Rules), 1964."

8. Even from a bare perusal of the articles of charges, it is evident that the charges if proved would constitute misconduct. The occasion for us to interfere with the charge memo would arise only in two rare and exceptional circumstances. They are (1) when the charge memo is issued by an authority not vested with the power and (2) no act of indiscipline can be perceived, even if, the contents of the charge memos are taken as true. Though the first ground is pleaded in this case on close scrutiny it emerges that the charge memo was issued by the competent authority.



9. The applicant raised the plea that the Chief Secretary alone is the authority to initiate disciplinary proceedings against the employees of the category of the applicant. In the counter affidavit, the respondents dealt with this objection in Para 5, which reads as under:-

“(A To C): That as per the Gazette Notification of Services-II Department Govt. of NCT of Delhi vide Notification No. F.13/11/70/5-11, dated 3/8/1976 in pursuance of the provisions of Parts II, III and IV of Schedule to the Central Civil Service (Classification Control & Appeal) Rules, 1965, has specified in column III the appointing authority and has further specified in column IV the authority competent to impose penalties, specified in column V of the Schedule in reference to the penalties mentioned in Rule 11 of CCS (CCA) Rules. Copy of the said Notification No. F.13/11/70/5-11, dated 3/8/1976 is annexed as Annexure R-1. As per the said Notification, the Directorate of Education has been specified as the appointing authority for all the class III posts including teaching posts i.e. (Primary Teachers, Trained Graduate & Post Graduate Teacher) and is also specified as the Disciplinary Authority empowered to impose any of the penalties specified in Rule 11 of CCS (CCA) Rules, 1965. The said position with reference to imposition of penalties was also clarified as per OM No. F.3(6)(37)/83-Vig/399-448 dated 23.1.1993. Copy annexed as Annexure R-2.

The applicant herein has been appointed with the approval of Director of Education and the Memorandum of charge dated 4-5-2018 has been issued also by Director of Education. The copy of the Appointment letter dated 21-4-1993 and promotion order dated 31.07.2000



are annexed as Annexure R-3 & R-4 respectively.

As per Sixth Pay Commission and Govt. of India DoPT's Order no.F.No.110112/7/2008-Estt.(A), dated 17.04.2009, the posts of teachers i.e. (Primary Teachers, Trained Graduate Teachers and Post Graduate Teachers) are classified in the category of Class B posts as per Grade Pays of their respective posts.

Based on the said classification of Sixth Pay Commission, the recruitment rules (RRs) of all teaching staff having initial grade pay of Rs. 4200 and above is under consideration for change of their classification from Group "C" to Group "B" in accordance with initial grade pay classification associated for these posts. The RRs with reference to PGT (Home Science) has not yet been modified and they are under consideration and till such time the posts of PGTs still falls in Group 'C'.

Chief Secretary (Delhi) vide his note dated 7-12-2016 has observed that it would be appropriate if Director (Education) continues to function as Appointing Authority/Disciplinary Authority (all non gazette officers) as per existing RRs in order to avoid delay and expedite the decision of Disciplinary Proceedings. The same has also been approved by Hon'ble LG on 15-12-2016. Copy of the note is annexed as Annexure R-5."

10. They have also enclosed the copy of the gazette notification as Annexure R/1. A bare perusal of the same discloses that the Director of Education, being Head of the



Department, is very much competent to initiate disciplinary proceedings against the applicant.

11. It appears that the pay scale for the post of PGT was enhanced to the higher one on the recommendations of the 6th Central Pay Commission, and there existed a possibility for the Chief Secretary to become the Disciplinary Authority, having regard to the pay scale. When a proposal in this behalf was mooted, the Chief Secretary took the view that the Director of Education can continue to be the Disciplinary Authority and that in turn was approved by the LG. The relevant noting reads as under:-

“92. In order to avoid delay and expediting the decision of Disciplinary Proceedings, it would be appropriate if, Director (Education) continues to function as Appointing Authority/Disciplinary Authority in respect of Nursery Teachers/Assistant Teachers/TGTs/PGTs (all non Gazetted Officers) as per existing RRs and the advice of Service Department. Considering the above position it is felt that Education Department should put up the proposal for delegation of the said powers to the Director (Education) at the earliest but definitely within 30 days for approval of this note by Hon’ble L.G.

93. All similar files (8 cases as per list at Flag-‘B’ will be returned to the Director (Education) for taking further necessary action once the above proposal is approved by L.G.”



12. The result is that the old conduct rules remain in force and the government did not feel it necessary to amend the rules. The Director of Education continued to be the DA.

13. The ground on which the charge memos dated 21.03.2013 were set aside are a bit interesting. In one writ petition filed by a different employee, the Hon'ble High Court has set aside the order of punishment and made observation that an officer by name Jang Bahadur Singh in the Education Department has his own way of functioning and it shall be ensured that he shall not be entrusted with the disciplinary matters. It was rather incidental that the charge memos to the applicant were issued by that very officer. In OA Nos.1827/2013 and 1832/2013, this Tribunal has set aside the charge memos on the sole ground that they were issued by Mr. Jang Bahadur Singh. When the second set of charge memos were issued, some technical flaw was noticed and they too were withdrawn. Now the respondents have taken all the precautions and issued the charge memo.

14. It is also interesting to note that the OA was filed way back in the year 2018 and there was no interim order. However, it is informed that there is no progress in the proceedings and the applicant has flatly refused to cooperate



so much, so four Inquiry Officers had to be changed. A time has come when the department had to act firmly to ensure that acts of indiscipline, if they exist, cannot be left at that. In case the applicant is not permitting any Inquiry Officer to progress, the feasibility of the Director himself to act as IO shall be considered and the proceedings shall be concluded within a period of three months from the date of receipt of a copy of this order.

15. We do not find any factual or legal error in the impugned charge memo and the OA is accordingly dismissed with the above observation. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/ns/ankit/akshaya/