CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

OA No. 496of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Shri Niranjan Nayak, aged about 54 years, S/o- Sankar Nayak, presently working as Sub Staff, K.V No.2, At- Nuapada, Madhupatna, Cuttack, 753010.

.....Applicant.

VERSUS

1. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi, 110016.
2. Joint Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi, 110016.
3. Assistant Commissioner (Now re-designated as Deputy Commissioner), Kendriya Vidyalaya Sangathan, Regional Office at Pragati Vihar, Mancheswar, Bhubaneswar, Dist-Khurda, 751017.
4. Education Officer, Kendriya Vidyalaya Sangathan, Regional Office at Pragati Vihar, Mancheswar, Bhubaneswar, Dist-Khurda, 751017.
5. Principal Kendriya Vidyalaya, No. 2, CRPF Campus, Bhubaneswar.
6. Principal, Kendriya Vidyalaya, No.2, At- Nuapada, Madhupatna, Cuttack, 753010.

.....Respondents.

For the applicant : Mr. D. P.Dhalsamant, Advocate

For the respondents: Mr. H.K. Tripathy, Advocate

Heard & reserved on :19.08.2020 Order on : 28.10.2020

O R D E R

Per Mr.Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

> (i) *That the charge sheet dated 14.10.2004 (A/2), order dated 17.03.2005 (A/6), order dated 07.05.2005 (A/7) of the Disciplinary Authority & order dated 02.11.2005 (A/8) of the Appellate Authority be quashed.*
> (ii) *That direction be issued to the respondents to grant all consequential benefits to the applicant.*
> (iii) *That any other order/orders as it would deem fit and proper to give complete relief to the applicant.*

2. The brief of the case as averred in the OA is that the applicant was initially appointed at peon on 02.01.1988 under the respondents at KV No. 3, Mancheswar. While the applicant was working as GR-D K.V. No.2 CRPF Bhubaneswar was placed under suspension by the Respondent No. 5 vide memo dated 17.09.2004 (Annexure A/1). The applicant was charge sheeted under Rule 14 of CCS (CCA) Rules 1965 by Respondent No. 5/Disciplinary Authority vide memo dated 14.10.2004 (Annexure A/2) on the allegation of three charges. The DA vide memo dated 29/30.11.2004 (Annexure A/3) appointed Ch. Rama Rao, Assistant Superintendent KV Sambalpur as Inquiry Officer and vide memo dated 29/30.11.2004 (Annexure A/4) appointed Sri S.K. Padhi UDC, KV Bhawanipatna as Presenting Officer. After the inquiry on 27.01.2005 (Annexure A/5) the Presenting Officer submitted inquiry report and the Inquiry Officer on 28.02.2005 submitted the report to Principal KV Sambalpur which was sent by him to respondent No. 5. Respondent No. 5 vide memorandum dated 04.03.2005 supplied the inquiry report to applicant to submit his written submission within 10 days of receipt of the memorandum, the applicant submitted his written statement on 15.03.2005 to the disciplinary authority and the disciplinary authority vide office order dated 17.03.2005 (Annexure A/6) gave

an opportunity to the applicant for personal hearing on 28.03.2005in his chamber. The applicant appeared before the disciplinary authority/respondent no. 5 (Sri N. Balan) who stated that the findings of the inquiry officer is true beyond doubt by enclosing brief report on basis of the inquiry report and written submission by the applicant. The disciplinary authority vide its order dated 07.05.2005 (Annexure A/7) imposed penalty of compulsory retirement from service on applicant w.e.f 07.05.2005. The applicant preferred an appeal to respondent no. 4/appellate authority against the order of compulsory retirement. The appellate authority vide memo dated 02.05.2005 (Annexure A/8) modified the order of compulsory retirement by imposing penalty of reduction to 8 lower stages for a period of eight years from the date of joining on reinstatement with cumulative effect with further direction that the applicant will not earn increment of pay during that period of such reduction of pay and on expiry of such period the reduction will not have the effect of postponing his future increments of pay and the absence from duties with effect from 17.09.2004 (the date of suspension) to the date of joining will be treated as DIES NON. After the order of appellate authority the disciplinary authority/respondent no. 3 vide office order dated 17.02.2006 (Annexure A/9) posted the applicant at KV Surda (Chhatisgarh), the applicant joined there on 22.05.2006. The applicant was then transferred to KV 2 Cuttack where he joined on 25.05.2011 and continuing. The applicant, being aggrieved by the order of the disciplinary as well as appellate authority, had handed over all his papers to an advocate for filing of cases in this Tribunal in the year 2006 and was given the impression that his case is pending for adjudication. The applicant in the year 2014 sent a series of representation in the year 2014 (Annexure A/10 series) to respondent No. 3 through respondent no. 6 which was forwarded. Since there was no action on those representation he again ventilated his grievance to

respondent no. 2 through respondent no. 6 through series of representations (Annexure A/11 series in the year 2015. As there was no action on those representations, he filed this OA.

It is further averred by the applicant in the OA that the chargesheet is liable to be quashed since the applicant was not precisely told the charges. The respondent no. 5/disciplinary authority (Sri N. Balan, Principal KV 2 CRPF Bhubaneswar) who made allegation against the applicant, initiated the disciplinary proceeding against the applicant, appointed inquiry officer, presenting officer who submitted the inquiry report to him and then he imposed punishment of compulsory retirement on the applicant. Instead an ad-hoc disciplinary authority should have been appointed. The applicant further averred that Sri N.Balan, Principal KV 2 CRPF who raised the allegation against the applicant as far as article 3 is concerned was not examined for which the applicant was denied an opportunity to cross examine. Hence the charge memo, inquiry report and punishment order are liable to be set aside.

3. The respondents in their counter inter alia averred that the applicant was given reasonable opportunity for making his submission and defence against the inquiry report, the applicant appeared before the Principal KV No. 2, CRPF, Bhubaneswar & Disciplinary authority for personal hearing and challenged the course of action without making any valid submission hence the action of the competent authority is legal, valid and sustainable in the eyes of law. He further averred that the act of the applicant was disturbing the peace of his work place i.e. KV No. 2, CRPF, Bhubaneswar hence the appellate authority punishment order too is legal, valid and sustainable in the eyes of law. The respondents submitted that as per rules it was the responsibility of the applicant to submit appeal within 45 days to revision authority for reviewing the penalty imposed by the disciplinary authority

and appellate authority and no revision can be made after 6 months of date of order and it will not be entertained after 1 year from the date of issue of penalty, hence remaining silent for 12 years and sending representations does not have merit. It is further submitted that as per statutory provision Principal of the Vidyalaya is the Disciplinary Authority in respect of sub-staff to impose Major and Minor Penalty under CCS (Conduct) Rules, 1964 and change of disciplinary authority or appointment of adhoc disciplinary authority arises only if the post of Principal remains vacant. Hence the allegation is baseless and misleading. The respondents cited few judgments of Hon'ble High Court to submit that the court of tribunal cannot interfere with the findings of the inquiry officer or competent authority when the same are not arbitrary or utterly perverse and hence the charge sheet, punishment order of disciplinary authority and competent authority are legal, valid and sustainable in the eyes of law and therefore the OA is devoid of merit and liable to be dismissed.

4. In the rejoinder to the counter the applicant averred that Sri N. Balan, the Principal, KV No. 2 CRPF, Bhubaneswar, was the person who made allegation against the applicant for shouting at the principal in loud voice and he issued the charge sheet for the above and then he acted as disciplinary authority to impose order of punishment of compulsory retirement thus acting as judge of his own cause. And since the Principal Sri. N. Balan is a witness who made allegation against eh applicant cannot act as disciplinary authority and someone other than the Principal Sri N. Balan should have been appointed as Adhoc Disciplinary Authority.

5. The imputation of misconduct or misbehaviour in respect of which the inquiry was held as per annexure II of charges reads as follows:

"Article 1: That the said Mr. Nirnajan Naik, Group D employee while functioning in the Kendriya Vidyalaya No. 2, CRPF, Bhubaneswar from 11.08.2000 was found absenting from duties without prior sanction of leave from the competent authority. His absence from duties without prior sanction leave has been affecting the smooth functioning of the Vidyalaya which ultimately affecting the children. Due to his absenting from duties without prior intimations/sanction of leave alternate arrangement in time could not be made for the children. His absent from duties is in violation of CCS (CCA) Rules 1965. It is therefore imputated that Mr. Niranjan Naik, Group D employee has committed a misconduct which is in violationof Rule 3 (1)(i)(ii)(iii) of CCS (Conduct) Rules 1964 as applicable to the employees of Sangathan.

Article II: That the said Mr. Niranjan Naik, Group D employee while functioning in the Kendriya Vidyalaya No. 2, CRPF, Bhubaneswar from 11.08.2000 was found not discharging his allotted duties promptly and efficiently. In spite of advisory notes and daily observations he was found not discharging the assigned work satisfactorily and promptly. It is therefore imputed that Mr. Niranjan Naik, Group D employee has committed a misconduct which is in violation of Rule 3 (1)(i)(ii)(iii) of CCS (Conduct) Rules 1964 as applicable to the employees of the sangathan.

Article III: That the said Mr. Niranjan Naik, Group D employee while functioning in the Kendriya Vidyalaya No. 2, CRPF, Bhubaneswar from 11.08.2020 was found showing disregard to his superior officer and found shouting at the Principal in front of other staff members on 21.09.2004. He was asked not to shout by the Principal but he failed to do so till Vice Principal and PET asked him to stop. It is therefore imputed that Mr. Niranjan Naik, Group D employee has committed a misconduct which is in violation of Rule 3 (1)(iii)of CCS (Conduct) Rules 1964 as applicable to the employees of the Sangathan."

6. The Inquiry officer in his submission of enquiry report after analysing and assessment of evidence found Article of Charge I to be confirmed. The findings in respect of Article of Charges – II & III is given below:

"Article of Charge-II: It was confirmed from the evidence recorded from the witness (SW-3/1) Mr. L. N. Panda, Principal, Kendriya Vidyalaya,

Chandrapura after examination that, Mr. Naik was doing his duties sincerely and whatever negligence was observed, the same was brought to the notice of Mr. Naik for compliance through daily supervision sheet. In two occasion i.e. dated 6.04.04 and 12.4.04 the matter relating to wearing of uniform in the Vidyalaya were brought to the notice of Mr. Naik. As per the statement as recorded by the Principal vide Article III, Mr. Naik was deputed to Biology Lab to perform the duty of Lab. Attendant and no official work was allotted to him. There was no record found whether the InchargeBio.Lab had lodged any complaint against Mr. Naik regarding his performance as Lab Attendant. But as per the statement recorded in daily supervision sheets, the observance about the maintenance of lab by the lab attendant was found 'maintained and assisted for conducting practicals'. Does not confirm fully to the charges as framed.

Article of Charge – III: The presence of Shri Niranjan Naik, Group'D' (under suspension) on 20.08.2004 in the Vidyalaya was confirmed from the witness (SW-7/1) Mr. R. N. Mohanty, UDC. According to the statement of Mr. Mohanty, UDC, he had deputed Mr. Niranjan Naik, Group D on 20.8.04 to Primary Wing along with fee receipt book of Class-III©, VI(B), II(C) & V(B) for realization of fees on account of admission. The above documents are verified from the record of the Vidyalaya. As per the statement of Mr. Naik he came back to the Vidyalaya office after realization of fees along with the PET and went to Bio.Lab to perform the duty of Lab.Attendant. It was confirmed from the evidences recorded from the witnesses after examination that Mr. Nayak pleaded his grievance in a loud voice on 21.9.2004 in the chamber of the Principal at 1350 hours the witnesses could confirm whether Mr. Naik banged the table on 21.9.2004 in Principal Chamber. Even no witnesses except Mr. G. Mishra, PET could confirm regarding threatening given by Mr. Naik to Principal for dire consequence and to see him outside KV as recorded. After the cross examination by the CO with Shri G. Mishra, PET, it was confirmed that Mr. Naik had not threatened the principal for any dire consequence or to see him outside KV rather the presentation of Mr. Nayak before the principal was not desirable. The attitude of Mr. Naik could not be ensured adamant and careless. The preliminary report dated 27.08.2004 confirm that Mr. Niranjan Naik had not used any abusive language or threatened the Chair for any dire consequence but it confirms that Mr. Nayak pleaded his grievance to the authority at a high pitch. Does not confirm fully to the charges framed."

7. The Disciplinary Authority/Shri N. Balan, Principal, KV No. 2, CRPF, Bhubaneswar vide office order dated 17.03.2005 while giving opportunity of personal hearing to the applicant in his brief report of the Disciplinary Report on the basis of the Inquiry Report and written submission by charged officers has mentioned the following:

"1. Article I: Proved.

2: Article II; Proved.

3: Article III: Partly proved. As per inquiry officer after examining all the eye witnesses the charged officer has talked in a loud voice to the Principal and shook the table of the principal. All the eye witnesses to the incident admitted that Mr. Niranjan Naik entered in the Principal's chamber in an agitated manner and shouted at the principal in loud voice and banged and shook the table of the Principal. Only one witness stated that Mr. Niranjan Naik used language such as "Asare, Kana Bhabilake". From the eye witness account of the incident on 21.08.2004 at 1.50 pm Mr. Niranjan Naik, Group D employee entered in the principal's chamber and shouted at the principal in a loud voice and banged the table without any provocation from the principal. The behaviour of the charged officer is unbecoming and as per the Supreme Court order the use of language in a loud voice and behaving in an arrogant way to his superiors is termed as act which is unbecoming of an employee without any provocation from the employer. As such there is no doubt that the charges framed against Mr. Niranjan Naik, Group D employee as per Article III of the charge sheet is proved. It is also to mention here that the charges framed should either be proved or not proved and not partly proved. Thus the word partly proved used by the Inquiry Officer is wrong and on the basis of the eye witness account the charges are proved beyond doubt.

After careful examination of the written submission of the charged officer dated 15.03.2005 it has been admitted by the charged officer that he remained absent without prior sanction of leave and submitted leave application and medical certificate later. In the same tone the charged officer is also not in agreement with the findings of the Inquiry Officer stating that the Inquiry Officer was perverse, based on no evidence or exhibits and non application of mind. This statement negates the very

purpose of Inquiry and sufficient opportunities were given to the charged officer to defend his case and allowed to produce evidences or exhibits to prove that he is not guilty. The charged officer failed to do so and as such all the charges framed vide Articles I, II and III stands proved."

8. Shri N. Balan, Principal & Disciplinary Authority in the order dated 07.05.2005 has mentioned:

"Now therefore, the undersigned after considering the facts, relevant records and circumstances of the case, has come to the conclusion that the said Shri Niranjan Naik, Group D employee (under suspension) has committed a misconduct and hence the undersigned decides to impose a penalty of compulsory retirement from service w.e.f. 07.05.2005 to meet the justice."

9. The appellate authority vide its order dated 02.11.2005 on appeal by the applicant has passed the following order:

"Whereas the said appeal dt. 06.06.2005 submitted by Shri N. Naik, appellant, has been considered by the undersigned.

And whereas based on the consideration of the facts and circumstances of the case records, enquiry report and representation of the appellant, the undersigned has come to the conclusion that the punishment of compulsory retirement is severe and disproportionate to the quantum of offence.

Now therefore, the undersigned has reduces the penalty of compulsory retirement to the penalty of reduction to 8 (eight) lower stage in the time scale of pay Rs. 2610-60-2910-65-3300-70-4000/- from Rs. 3365/- to Rs. 2845/- for a period of eight years from the date of joining his duties on reinstatement with cumulative effect with further direction that said Shri Naik will not earn increments of pay during the period of such reduction of pay and on expiry of such period the reduction will not have the effect of postponing his future increments of pay to meet the end of justice. His absence from duties with effect from 17.09.2004 to the date of joining on reinstatement will be treated as "DIES NON"."

10 The following citations have been relied by Learned counsel for the applicant:

1. 2011 (1) SCCC (L&S) 180 (Mohd. Yunus Khan vrs State of UP & Others).
2. 2000 SCC (L&S) 85 (Hrdwari Lal vrs State of UP and others)
3. AIR 1999 SC3558 – para 12 (C.K. Jha vrs Mahavir Prasad and others)
4. 1998 SSS (L&) 1783 (Panjab Notational Bank vrs KB Mishra)
5. AIR 2001 SC 2398 (SBI vrsArabinda Kumar Sukla)
6. 2009 (1) SCC (L&S) 398 (R S Negi vs Punjab National Bank & others)

11 The following citations have been relied by the learned counsel for the respondents:

1. Hon'ble Apex Court in Civil Appeal No. 8948/2013 (arising out of the SLP (Civil) No. 18271/2006) Deputy Commissioner KVS &Orsvrs J. Hussain.
2. Hon'ble Apex Court in (2010) 5 SCC775, Administrator, Union Territory of Dadra and Nagar Haveli vrsGulabhai M Lad.
3. Hon'ble Supreme Court in (2010) 11 SCC 314 in ChiranjitLambavrs Commanding Officer, army Southern Command & others.
4. Hon'ble Apex Court in 2004 (I) Supreme 727, Principal Secretary, Govt of A.P. & another vrs M. Adinarayan.
5. Hon'ble Supreme Court in (1999) 1 SCC 259 in Sangeroid Remedies vrs Union of India & others.
6. Hon'ble Apex Court in 1989W SCC P/177 in Sri Parma Nanda vrs State of Haryana & others.
7. Hon'ble Apex Court in 2011 AIRSCW 6577 in State Bank of India vrs Ram Lal
8. Hon'ble Apex Court in 2010 5 SCC 349: AIR 2010 SC 2735 Union of India vrs Alok Kumar
9. Honble Apex Court in 2013 AIR SCW 3338 in S. R. Tewari vrs. R.K. Singh.

10. Hon'ble Apex Court in AIR 1968 SC 850 in Union of India vrs P. K. Ray and others.
11. Hon'ble Apex court in AIR 2008 (SC) 2513 in Dev dutlvrs Union of India
12. (1985) 55 L.J. AB 39 ord Esher M.R. in VionetvrsBarett.
13. Hon'ble Apex Court in 1974 SCC (L&S) 165 in E.P. Royappavrs State of Tamil Nadu & another.
14. Hon'ble Delhi High Court in W.P. © No. 4400/2003-KVS & others vrs Gauri Shankar.
15. Hon'ble Apex Court in 2011 (2) Supreme-185-Sudhir Kumar Consul vrs Allahabad Bank.

12. We have heard the learned counsels for both the sides and perused the written submissions and citations. It is appropriate to quote some of the Hon'ble Supreme Court in a few cases on the issue of scope of judicial review in the matter of disciplinary proceedings.

13. In *Union of India vs. Flight Cadet Ashish Rai (2006) 2 SCC 364*, the Hon'ble Supreme Court has held as under:

> ***"Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice and (e) reach a decision which no reasonable tribunal would have reached; or (f) abused its powers. Administration action is subject to control by judicial review in the following manner;***
>
> ***I. Illegality: this means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.***
>
> ***II. Irrationality, namely, Wednesbury unreasonableness.***

III. Procedural impropriety.

14. In *Hombe Gowda Educational Trust vs. State of Karnataka (2006) 1 SCC,* the Hon'ble Supreme Court has laid down that the scope of judicial review is limited to the deficiency in decision-making process and not the decision.

15. Similarly, in *B.C. Chaturvedi vs. Union of India (1995) 6 SCC 749,* the Hon'ble Apex Court has congealed the extent of judicial review in a disciplinary proceedings as under:

> ***"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act or of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or whether the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case"***

16. In *Ashok Kumar Yadav vs. State of Haryana, 1985 SCR Supl (1) 657,* Hon'ble Supreme Court held:

"We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias it is 'in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting'. The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to not that this rule is not confined to cases where judicial power strictosensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for its vital to the maintenance of the rule of law in a welfare state where the jurisdiction of administrative bodies in increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner."

17. It was submitted by learned counsel for the respondents that the applicant having already undergone punishment in question cannot challenge the same in this OA after lapse of so many years and the same is not permissible under the law. It is seen that applicant had earlier filed OA No. 496/2017, the same was dismissed by this Tribunal by order dated 12.01.2018 on the ground of delay and lachesse. Thereafter the applicant had approached Hon'ble High Court in WP (C) No. 3506/2018 which was disposed of by the Hon'ble High Court as per order dated 18.05.2018. As per the said order the applicant had approached this Tribunal by filing MA No. 194/2018 praying for condonation of delay in filing the OA No. 496/2017. This Tribunal as per order dated 04.02.2019 has allowed the same MA and condoned the

delay in filing the OA. The respondents have not challenged the said order before Hon'ble High Court and has also not prayed before this Tribunal for modification or review of the said order. Therefore, there is no delay on the part of the applicant in filing the OA in question. It was submitted by the learned counsel for the respondents that there is no illegality or irregularity in conducting the inquiry or in imposition of punishment in question. In support of the said submission he had further drawn the attention of this Tribunal to the fact that the applicant was given opportunity to file his defence statement and in fact the applicant had filed defence statement on 29.10.2004 and disciplinary authority had given the opportunity of personal hearing to the applicant on 28.02.2005. He has further submitted that in this circumstances there is no scope for judicial review of the order of punishment in question by this Tribunal. Learned counsel for the respondents further submitted that after receiving the order of punishment the applicant had joined his duty on 25.02.2006 and he having undergone part of the punishment in question cannot now challenge the punishment order in this OA.

18. It is seen that the order of compulsory retirement passed by the disciplinary authority vide annexure A/7 on 07.05. was modified by the appellate authority. The appellate authority as per order vide A/8 dated 02.11.2005 had modified the said order of compulsory retirement and imposed a punishment of penalty of reduction to 8 (eight) lower stage in the time scale of pay Rs. 2610-60-2910-65-3300-70-4000/- from Rs. 3365/- to Rs. 2845/- for a period of eight years from the date of joining his duties on reinstatement with cumulative effect with further direction that said Shri Naik will not earn increments of pay during the period of such reduction of pay and on expiry of such period the reduction will not have the effect of postponing his future increments of pay to meet the end of justice. His absence from duties with effect

from 17.09.2004 to the date of joining on reinstatement will be treated as "DIES NON".

19. It was submitted by learned counsel for the applicant that Shri N. Balan, the then Principal, KV – 2 CRPF, being a vital witness relating to Article -3 has not been examined in this case from the side of the department. He has further submitted that once there was allegation made in the article of charges that the applicant had threatened and misbehaved with the said principal, it was not permissible under law for the said principal, Shri N. Balan to act as disciplinary authority and impose the punishment in question. This ground has been specifically taken in the OA and also in rejoinder filed by the applicant. But for the reasons best known the respondents have not specifically denied the said factual aspect either in their counter or by filing any reply to the rejoinder in question. Therefore, the claim made by the applicant to that effect stand uncontroverted. It was submitted by the learned counsel for the applicant that the appellate authority having not accepted the view of the inquiring officer, a copy of dissenting memo should have been communicated to the applicant, in order to enable him to submit his explanation in this regard and that having not been done the punishment imposed on the applicant cannot be sustained.

20. In the case of Uma Nath Pandey &Ors vs State of U.P&Anr, reported in AIR 2009 SC 2357, Hon'ble Apex Court held as under:-

> ***"17. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-***

judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is 'nemo judex in causa sua' or 'nemo debetesse judex in propria causa sua' as stated in (1605) 12 Co.Rep.114 that is, 'no man shall be a judge in his own cause'. Coke used the form 'aliquis non debetesse judex in propria cause quia non potestesse judex at pars' (Co.Litt. 1418), that is, 'no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party'. The form 'nemo potestesse simul actor et judex', that is 'no one can be at once suitor and judge' is also at time used. The second rule is 'audi alteram partem', that is, 'hear the other side'. At times particularly in continental countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely 'qui aliquidstatueritparteinaudita alteram actquam licet dixerit, haud acquumfacerit' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See Bosewell's case (1605) 6 Co.Rep. 48-b, 52-a) or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated."

21. Applying the above principles to the present case, the violation of the principle of natural justice is quite apparent in this case as the respondent No. 5 to whom the applicant has alleged to have misbehaved, had decided to function as the disciplinary authority against the applicant instead of referring the matter to the next higher authority for taking an appropriate decision in this matter. Here the disciplinary authority himself had complained of being misbehaved by the applicant, which was included as one of the charges.

22. It is correct as per the submission made by the learned counsel for the respondents that the Principal is the disciplinary authority and he is empowered to impose the punishment in

question but in the circumstances the question of bias by the principal has to be examined.

23. Now coming to principle as to whether the above mentioned principal, Shri N. Balan could have acted as the disciplinary authority in this case, the principle that a person cannot be a judge of his own cause has to be referred to. The said principle which is also in the maxim ***'nemo judex in causa sua'*** is a basic principle of natural justice. That basic principle having not been taken care of by the respondents and Shri N. Balan having acted as disciplinary authority in this case, the question of bias and specifically departmental bias against the applicant by Shri N. Balan cannot be ruled out. It need not be proved by the applicant that in fact there has been a bias but it is sufficient if it is shown that there was likelihood of bias in this case. The applicant has successfully made out the case of bias in this case. After going through citations, as relied upon by the learned counsel for the respondents, it is seen that the said citations are not applicable to the facts and circumstances of the present cases. In the circumstances the entire disciplinary proceeding and the subsequent punishment imposed against him by the disciplinary authority stands vitiated and are found by this Tribunal to be illegal. As a necessary corollary order passed by the Appellate Authority vide Annexure A/8 and the subsequent action and justification made by the respondents in support of the punishment in question falls flat to the ground.

24. After going through materials on record, this tribunal is unable to accept the submission of the learned counsel for the applicant that the charged memo issued against the applicant is vague in nature

25. Hence this Tribunal finds that the punishment imposed against the applicant by the disciplinary authority vide Annexure

A/7 and the subsequent punishment imposed on him by the appellate authority vide Annexure A/8 are illegal and same are hereby quashed by the Tribunal. In the circumstances the point regarding non-communication of the dissenting memo by the appellate authority to the applicant, need not be further gone into by this Tribunal.

26. The fact remains that the alleged incidence took place on 21.09.2004 and that the applicant challenged the action of the respondents before this Tribunal in the OA filed in the year 2017. Therefore, it cannot be said that there was delay and laches on the part of the respondents in proceeding with the inquiry in question. In the circumstances and taking into consideration the nature and seriousness of allegation as made against the applicant this Tribunal finds that it is necessary in the interest of justice to remand back the matter with a direction to disciplinary authority to take necessary steps to cause inquiry against the applicant in accordance to law in respect to the article of charges which have already been served on him. Accordingly the matter is remanded back to Disciplinary Authority to take necessary steps to cause inquiry against the applicant and it is directed that the inquiry shall be completed preferably within a period of 6 months from the date of receipt of copy of this order.

27. With the above observation the OA is disposed of but in the circumstances without any cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

(csk)