

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/244/2018

Order Reserved on 21.07.2020

DATE OF ORDER: 29.07.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Dr. A.K. Bhatt S/o Late Shri D.N. Bhatt aged around 62 years, R/o 48/63, Rajat Path, Mansarovar, Jaipur. Earlier retired as Principal, K.V. Nepanagar (M.P.) – 302020.

....Applicant

Shri Amit Mathur, counsel for applicant - (through Video Conference).

VERSUS

1. Union of India through the Secretary of Education (K.V.S.), M.H.R.D. Shastri Bhawan, New Delhi – 110001.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi – 110016.
3. The Joint Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi – 110016.

....Respondents

Shri Hawa Singh, counsel for respondents - (through Video Conference).

ORDER

Per: Hina P. Shah, Judicial Member

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:

"It is, therefore, prayed that the present original application made by the applicant may kindly be allowed and the impugned memorandum Annex-A/1 dated 03.05.2018 may kindly be quashed and set aside. The respondents may be directed to give full consequential benefits to the applicant. They may further be directed to pay the cost of the application to the applicant.

Any other relief or direction which this honourable tribunal deems fit in the facts and circumstances of the case may also be passed in favour of the applicant."

2. Brief facts of the case as stated by the applicant are that the applicant was served with a charge sheet dated 07.05.2010 under Rule 14 of CCS (CCA) Rules 1965 for three charges, while he was posted as Principal, Kendriya Vidyalaya No. 4, Jaipur. Inquiry was conducted by the Inquiry Officer, who submitted his report dated 03.06.2015 and the charged officer was found guilty of all the three charges. In the meanwhile, the applicant

attained the age of superannuation on 31st December 2015. But he was not paid any pensionary benefits due to pendency of disciplinary proceedings. There were several lacunas in the procedure of conducting enquiry, which was not done as per rules. No documents were supplied during the course of inquiry. No witnesses were allowed to be examined by the applicant. UPSC was not consulted and also CVC report was not submitted to the applicant before imposing penalty. There is an inordinate delay in issuing penalty order as the charge sheet was issued in 2010 and penalty order issued in 2018. Order of penalty was a non-speaking and cryptic order. Also, the penalty was imposed under Rule 9 of the CCS (Pension) Rules 1972 by an incompetent authority. The Chairman or Commissioner cannot exercise the power unless the Rules of 1972 allow delegation of power. The applicant submitted a detailed representation over the Inquiry Officer's report. None of the issues raised by the applicant were discussed in the order dated 03.05.2018 wherein the authority had already decided to impose the penalty of 25% cut in pension for a period of five years. Also, the penalty imposed on the applicant is shockingly disproportionate to the charges levelled against him and, therefore, the same is liable to be quashed and set aside.

The applicant was also deprived from getting his actual "dues" since 2002 and has suffered huge financial loss and his entire professional career has been affected and he has got lot of mental stress due to several illegal orders being passed by the Kendriya Vidyalaya Sangathan and he was forced to approach the Hon'ble Central Administrative Tribunal and Hon'ble High Court on earlier occasions also. Therefore, as the penalty imposed on the applicant is shockingly disproportionate to the charges levelled against him, the same is liable to be quashed and set aside and he may be given full consequential benefits with costs.

3. On the other hand, the respondents after issue of notice have filed their reply dated 26.07.2018 denying the contentions raised by the applicant and stated that a detailed inquiry was conducted as per procedure. The charges levelled against the applicant were fully established. The Inquiry Officer submitted his report dated 03.06.2015 and the charged officer was found guilty of all the three charges. As per Memorandum dated 13.09.2017, Inquiry Report was supplied to the applicant and reply to the same was given by the applicant on 03.10.2017. CVC tendered its advice vide OM dated

01.08.2017, wherein it was opined to KVS that first stage advice was not taken inadvertently by KVS in the present case. Commission, in agreement with the Disciplinary Authority, would advise imposition of penalty of suitable pension cut on the applicant. Then vide Memorandum dated 18.08.2017, a tentative decision was taken to cut pension and reply was given by charged officer on 20.12.2017. Therefore, correct procedure was followed and there was no lacuna at any stage of enquiry. Accordingly, the order dated 03.05.2018 issued by the Commissioner, KVS conveying the orders of the Hon'ble HRM & Chairman, KVS is just, proper and legal.

4. Heard learned counsels for the parties through Video Conference and perused the material available on record and also written submissions of both the parties and annexures attached to it along with judgements.

5. Besides, reiterating the facts, several grounds are raised by the applicant pertaining to violation of rules and procedures during enquiry proceedings and in the final penalty order. Therefore, the applicant states that the impugned order in challenge is liable to be quashed and

set aside as the same is in violation of Article 14, 16 and 21 of the Constitution of India.

6. The applicant, in support of his contentions, has relied upon the several judgements and a few are as under:

- a) Mathura Prasad V/s. Union of India & Ors., (2007) 1 SCC 437 (Para 19, 20).
- b) Union of India & Ors. V/s. B.V. Gopinath, (2014) 1 SCC 351 (Para 45 to 51).
- c) Shri. M.P. Bansal V/s. Kendriya Vidyalaya Sangathan, (2004) 1 SLJ 311 CAT (Para 5 & 9).
- d) P.V. Mahadevan V/s. MD, T.N. Housing Board, (2005) 6 SCC 636 (Para 10 & 11).
- e) State of A.P. V/s. N. Radhakishan, (1998) 4 SCC 154 (Para 19).
- f) M.V. Bijlani V/s. Union of India & Ors., (2006) 5 SCC 88 (Para 16 & 28).
- g) Roop Singh Negi V/s. Punjab National Bank and Ors., (2009) 2 SCC 570 (Para 14 & 23).
- h) Messrs. Mahabir Prasad Santosh Kumar V/s. State of U.P. and Ors., (1970) 1 SCC 764. - (Order must be speaking and reasoned).

7. The respondents in reply have reiterated their stand taken earlier and stated that as per Rule 9 of the CCS (Pension) Rules 1972, the President of India was the authority but as per order dated 14.01.1961 issued by Rashtrapati Bhawan regarding allocation of business, his Highness President delegated powers to the Minister of

the Department concerned to discharge the allocation of business on behalf of his Highness President of India and in accordance with Rule 9 of CCS (Pension) Rules 1972, the Hon'ble HRM-cum-Chairperson, KVS in exercise of the powers of the President conferred upon him in terms of Allocation of Business Rules 1961 has the said necessary powers. As far as UPSC is concerned, KVS has its own recruitment procedure and rules and, therefore, CVC was consulted for first stage advice in view of CVC Circular dated 07.04.2015. It was further stated that respondents' Institute is a Society registered and for that CVC Act is published on 12.09.2013, Section 8 (1)(g) and Section 8 (2)(b) be referred (compilation of referred documents). It is further clarified that charged officer is not a Government employee but he is a KVS employee, which has its own rules and procedures. Also Pay fixation is correctly carried out after Appellate Authority's Order dated 20.12.2007 of three stages of reduction of pay. As far as earlier Order dated 04.10.2006 is concerned, it was passed by Disciplinary Authority, wherein penalty was reduction of pay by six stages, which comes to minimum of pay scale, therefore, no order of fixation was necessary. The Respondents further added that the Applicant in his representation dated 20.12.2017 did not

bring out any new facts / points / evidences to prove his innocence. The charges framed against the charged officer were fully proved during the enquiry. Also, the CVC vide its letter dated 01.08.2017 tendered its concurrence with the tentative view of the Disciplinary Authority to impose the penalty of 25% cut in pension. Therefore, considering the facts of the case, documents on record, gravity of misconduct relating to financial impropriety and misappropriation of funds, findings of inquiry and the representation of the applicant, the penalty imposed by the Hon'ble HRM & Chairman KVS being the Competent Disciplinary Authority is just and proper and cannot be interfered with.

8. The respondents relied on the following judgements in their support:

- a) S.K. Jain V/s. Union of India & Ors., Decided by Central Administrative Tribunal, Principal Bench, in OA No. 2086/2012 on 16.01.2014. (Para 3, 4 &5)
- b) Jagdish Lohra V/s. Union of India & Ors., Decided by Hon'ble High Court of Delhi in W.P.(C) No. 631/2014 on 03.11.2017. (Para 21,22 & 23)
- c) D. Varghese V/s. Union of India & Ors., Decided by Central Administrative Tribunal, Ernakulam Bench in OA No. 454/2014 on 30.06.2016. (Para 32)

9. The crux of the present matter is that the applicant has been served with a penalty order dated 03.05.2018 whereby the Commissioner, Kendriya Vidyalaya Sangathan (HQ), New Delhi, has conveyed the orders of the Hon'ble HRM & Chairman, KVS for imposing penalty of 25% cut in pension for a period of five years upon the applicant in accordance with Rule 9 of the CCS (Pension) Rules 1972 after giving him a charge sheet dated 07.05.2010 under Rule 14 of the CCS (CCA) Rules 1965. The applicant has retired from service on superannuation on 31.12.2015. A detailed inquiry was conducted and three charges levelled against the applicant were held proved though the charged officer denied the charges.

10. The main ground raised by the applicant is that the penalty cannot be imposed upon him in accordance with Rule 9 of the CCS (Pension) Rules 1972 as the said powers are only vested with the President of India. It is undoubtedly clear that under Rule 9, the President is the Competent Authority to withhold pension or gratuity and the same becomes operative only after the government servant is found guilty of grave misconduct or negligence during the period of service. But as per order dated 14.01.1961 issued by the Rashtrapati Bhawan regarding

allocation of business, the President has delegated power to the Minister of the Department concerned to discharge the allocation of business on behalf of his Highness President of India. Therefore, it is clear that the Hon'ble HRM & Chairman, KVS is competent to pass orders under Rule 9 of the CCS (Pension) Rules, 1972. Pertaining to ground raised by applicant that consultation with UPSC was mandatory as after retirement there cannot be appeal /revision of penalty order. It is clear that Kendriya Vidyalaya Sangathan is an autonomous body under the Society Registration Act XXI of 1860 and recruitments are made directly by KVS and not through UPSC. Therefore, there was no question of consultation with the UPSC as the appointments are not made through UPSC.

11. Apart from these grounds, it is seen that in the present matter, the enquiry was not conducted in accordance with law. Dr. R.K. Soni, Inquiry Officer, concluded the enquiry without following Rule 14 of the CCS (CCA) Rules 1965 in a hurried and haphazard manner. The Key witness mentioned in the list of witnesses was not examined. Necessary and relevant documents mentioned in the charge-sheet were not

provided. During the course of enquiry, it was brought to the knowledge of the Inquiry Officer that the very basis of the charge sheet was the penalty order dated 04.10.2006, which has been set aside by the Tribunal vide its order dated 25.02.2013 with the penalty of 'censure', but this aspect was totally ignored by the Inquiry Officer. It is seen that there were several lacunas in the procedure and violation of several rules in the enquiry. There was also non-supply of CVC Report before imposing the penalty. The order of penalty is a non-speaking and unreasoned order. There is violation of principles of natural justice.

12. One of the vital grounds raised by the applicant pertains to the delay. It is seen that there was inordinate delay in concluding the disciplinary proceedings. It is seen that the charge sheet was served upon the applicant in 2010 and the same was concluded only on 03.05.2018 by which the penalty order was issued. It took 08 (eight) long years in concluding the proceedings. It is also noted that though the Inquiry Officer submitted its report to the Disciplinary Authority on 03.06.2015, but the inquiry report was finally served on the applicant on 13th September, 2017 under Rule 15 of CCS Rules. Due to

such delay the applicant lost his chance of getting promotion and has suffered heavy financial loss. Also, though the applicant retired on superannuation on 31.12.2015, but he has been deprived of his retiral and pensionary benefits due to the delay in disciplinary proceedings thereby causing financial strain to a retired person. It is also seen that Rule 9 of CCS (Pension) Rules, 1972 can only be invoked if there is a case of grave misconduct. From all the three charges levelled against the applicant, no charge shows grave misconduct on the part of the applicant. Therefore, it is seen that the penalty imposed upon the applicant is disproportionate to the charges levelled upon him as the same does not commensurate to the charges levelled against the applicant. The judgements cited by the respondents in Jagdish Lohra vs. Union of India & Ors. (supra) as well as D. Varghese vs. Union of India & Ors. (supra) cannot be made applicable to the present case as facts of the said cases and case in hand are different.

13. We have gone through the judgements referred by the parties and are aware of the fact that when the charge is proved, it is the Disciplinary Authority with whom lies the discretion to decide as to what kind of

punishment is to be imposed. No doubt, the discretion has to be exercised objectively keeping in mind the nature and gravity of the charge. The judicial review in such cases is permissible only if there is illegality, irrationality or procedural impropriety. The Court can interfere with the punishment imposed only when it is found to be totally irrational or is outrageous in defiance of logic. That means the interference is permissible only when punishment is shockingly disproportionate. In the present case, it is clear that there were several violation of rules and procedure during inquiry and also eight years required to complete inquiry when there was no fault on the part of charged officer. For the mistakes committed by the department in the procedure for initiating the departmental proceedings, the applicant should not be made to suffer. As a matter of fact, due to delayed pending disciplinary proceedings, the applicant has already suffered promotional avenues available to him and also not received his retiral and pensionary benefits even after retirement. Therefore, the present penalty imposed on the applicant is highly unjust and improper.

14. In view of the discussions made above, we, therefore, have no regret to quash and set aside the penalty order dated 03.05.2018 (Annexure A/1) and the respondents are directed to give all consequential benefits to the applicant. Accordingly, Original Application is allowed with no order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat