

(10)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH**

OA No.936/2004

New Delhi, this the 18th day of January, 2005

Hon'ble Smt. Meera Chhibber, Member(J)
Hon'ble Shri S.K. Naik, Member(A)

Atar Singh
34/118, Sector 3
Rohini, Delhi-110 085

Applicant

(Shri M.K.Bhardwaj, Advocate)

Versus

Union of India, through

1. Secretary
Ministry of Human Resources Development
Shastri Bhavan, New Delhi
2. Chairman
Kendriya Vidyalaya Sangathan, New Delhi
3. Vice-Chairman
Kendriya Vidyalaya Sangathan, New Delhi
4. Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area, Shaheed Jeet Singh Marg
New Delhi

Respondents

(Shri S.Rajappa, Advocate)

ORDER (ORAL)

Shri S.K. Naik

The applicant was working as the Principal of Kendriya Vidyalaya, ITBP, Sarahan, State of Himachal Pradesh from December 1996 until he was transferred to Kailashsahar, North Tripura during August 2000. While at Kailashsahar, he received a charge memo dated 19.2.2000 under Rule 14 of CCS (CCA) Rules, 1965. It contained the following four articles of charge:-

"Article-I

That the said Shri Attar Singh, Principal while working as such at Kendriya Vidyalaya ITBP Sarahan during the year 2000-2001, has made irregular appointments on the posts of PGT (Commerce) and PGT (Economics). The sanction from the Vidyalaya Executive Committee was not obtained by him.

The aforesaid act of the said Shri Attar Singh constitutes a misconduct under Rule 3(1) (i), (ii) (iii) of Central Civil Services (Conduct) Rules, 1964 as extended to the employees of Kendriya Vidyalaya Sangathan.

Shri S.K. Naik



Article-II

That the said Shri Attar Singh, Principal while working at Kendriya Vidyalaya ITBP Sarahan during the year 2000-2001, retrenched Mrs. Rajni Gupta and Shri Rajesh Patil on 31-03-2000. In spite of their appointment on contractual basis having been made till 21-12-2000 without the information/approval of the Chairman, Executive Committee.

Article-III

That the said Shri Attar Singh, Principal while working at Kendriya Vidyalaya ITBP Sarahan during the year 2000-2001, has violated the instructions contained in KVS Letter No.F.1/1/94-Kvs{RP-II} dated 19.3.95 in re-engaging Smt. Rajni Gupta as Contract Teacher in the Vidyalaya.

The aforesaid act of the said Shri Attar Singh constitutes a misconduct under Rule 3 (i), (ii) & (iii) of Central Civil Services (Conduct) Rules, 1964 as extended to the employees of Kendriya Vidyalaya Sangathan.

Article-IV

That the said Shri Attar Singh, Principal while working at Kendriya Vidyalaya ITBP Sarahan during the year 2000-2001, has failed to draw the agreement bond executed in case of 8 contractual appointments made for the posts of PRT/TGT/PGT in order, as it contained various anomalies/shortcomings, trying to put the blame on the off. Principal, for the lapse.

The aforesaid act of the said Shri Attar Singh constitutes a misconduct under Rule 3 (i), (ii) & (iii) of Central Civil Services (Conduct) Rules, 1964 as extended to the employees of Kendriya Vidyalaya Sangathan."

2. The applicant, vide his letter dated 12.4.2002, denied all the charges. The respondents thereafter appointed an inquiry officer. The inquiry was held and the inquiry officer returned the findings that the article of charge No.1 was not proved. Similarly, article of charge No.2 too had not been proved. The article of charge No.3 was held to be proved and article of charge No.4 was held as partially proved. The applicant had submitted his detailed reply in defence against the findings of the inquiry officer vide his letter dated 7.7.2003. The disciplinary authority, however, after considering the reply of the applicant passed the impugned penalty order dated 3.12.2003 and imposed the penalty of removal from service, which shall not be a disqualification for future employment under the Government. The applicant thereafter submitted an appeal against the order of punishment dated 3.12.2003 before the appellate authority. The appellate authority vide order dated 12.3.2004, however, rejected the same after giving a personal hearing to the applicant. Aggrieved upon the order of removal from service inflicted upon him by the respondents, the applicant is before us.

3. Learned counsel for applicant has contended that out of four charges leveled against him, the inquiry officer has held that the main articles of charge referred to in articles 1 & 2 thereof have not been proved. Of the other two minor charges, the only article No.3 has been held to have been proved while article No.4 has been held to

Learn

have been partly proved. In this background of the matter, learned counsel has first attacked the order of punishment passed by the disciplinary authority, which, he contends, is cryptic, non-speaking and not reasoned; in that the disciplinary authority has not stated as to whether he entirely agreed with the report of the inquiry officer or he disagreed with the exoneration by the inquiry officer on the main articles of charge Nos. 1 & 2 and whether his decision to impose the penalty of removal was based primarily on the only article of charge, i.e., charge No.3 having been proved. The order of punishment, the learned counsel contends, is an insipid order, which does not indicate if the disciplinary authority had at all applied its mind. On this ground alone, the learned counsel has contended that the said order should be set aside and in that respect he has relied upon the judgment of the Hon'ble Supreme Court in **S.N. Mukherjee v. Union of India**, AIR 1990 SC 1984, in which it has been held as follows:

“Decision by Administrative authority – Reasons must be recorded, except in cases where requirement is dispensed with expressly or by necessary implication.

Natural Justice – Administrative action – Must be supported by reasons.

Administrative Law – Administrative action – Must be supported by reasons.”

4. Referring further to a recent judgment of the Apex Court in **State of Bihar & others v. Lakshmi Shankar Prasad**, (2002) 10 SCC 351, learned counsel has contended that interference with the punishment order by the Courts will be justified when the punishment order does not record the necessary findings and the reasons therein.

5. Contending further, the learned counsel has submitted that the only reason the disciplinary authority has stated in the order of punishment relates to “violation of the instructions and procedure of KVS by re-appointing Smt. Rajani Gupta, PGT (Eco) as a contractual teacher in contravention of the rules and instructions issued on the subject”. The other contention therein is that the applicant had “not executed the agreement papers properly for contractual appointment in respect of Ms. Neena Kumari and Sh. Narendra Singh in the year 2000-2001 by not putting his signature while working as Principal K.V. ITBP Sarhan”.

6. Contending that these lapses are only procedural and, therefore, they can^{not be} termed as grave, he has submitted that it does not warrant the extreme penalty of removal, especially in the background that the applicant had rendered more than 20 years of meritorious service and had never committed any misconduct.

7. In a similar vein, the learned counsel has argued that the appeal has been summarily rejected without any application of mind.



8. With reference to the specific charge in article No.3, which has been held to have been proved by the inquiry officer and the applicant has been held responsible for its violation, learned counsel has contended that the said letter of the KVS states that no candidate may be re-appointed without following the procedure prescribed for the purpose. The vacancies, which arise subsequently, are also to be filled as per procedure. By the said charge, the respondents wanted to prove that the applicant had given fresh appointment to Smt. Rajni Gupta whereas the fact is that the said Smt. Rajni Gupta was not given any appointment by the applicant but she already stood appointed by the officiating Principal on 14.3.2000 with a contract, which was valid upto 21.12.2000. Thus, the learned counsel contends that article No.3 has been held to have been proved without any evidence and without appreciating the facts.

9. Contending that the action of the respondents from the very beginning has been vindictive, the learned counsel has pointed out that the same is evident from the contradictory stand they have taken while framing the charges. While in charge No.2, it has been alleged that the applicant has committed misconduct in retrenching Smt. Rajni Gupta and Shri Rajesh Patil in spite of their appointment made till 21.12.2000, in charge No.3, it has been alleged that the applicant has committed misconduct in re-engaging Smt. Rajni Gupta in the month of April 2000. Stating that the applicant was on CBSE duty away from the school in the month of March 2000 and that Smt. Rajni Gupta had not been retrenched at all, the learned counsel argues that in view of this contradictory stand, the article of charge No.3 has been deliberately concocted.

10. Finally, contending that the Hon'ble Apex Court in a catena of judgments has held that the penalty should be in commensurate ^{with} ~~of~~ the gravity of misconduct, the learned counsel has argued that the punishment of removal from service is an extreme penalty in a flimsy case and needs to be quashed and set aside.

11. Learned counsel for respondents, on the other hand, justifies the impugned orders on the ground that these have been passed after following the due procedure laid down and the principle of natural justice having been followed, the Tribunal cannot sit in judgment nor can it re-appreciate the evidence. Contending further that the order of punishment passed by the disciplinary authority has been upheld by the appellate authority and thus being the concurrent judgments contends that no interference is called for.

12. On the point of proportionality of the punishment, the learned counsel contends that it is best left to the judgment of the disciplinary as well as the appellate authorities, and the Tribunal should not interfere in the same.

main

19

13. We have heard the learned counsel for the parties as also have perused the records of the case carefully. We are in full agreement with the arguments advanced by the learned counsel for applicant that the order passed by the disciplinary authority inflicting the punishment of removal from service is non-speaking and non-reasoned. We have no hesitation also to say that the disciplinary authority has neither discussed the findings of the inquiry officer in the inquiry report nor has he given any opinion as to whether the only one charge (article No.3), which was held to have been proved, was in his opinion so grave as to warrant the extreme penalty of removal from service. In fact, we are not in a position to comprehend as to how could the authority bestowed with the power to remove/dismiss an employee from service could think of imposing the penalty of removal on such a flimsy finding. A reading of all the four charges, in our opinion, does not make it so grave as to warrant such a harsh punishment specially when the inquiry officer has found the main charges (article Nos. 1 & 2) to have not been proved.

14. We also find that the respondents indeed have taken contradictory stand. While in one article of charge, it has been alleged that the applicant committed irregularities in retrenching the services of Smt. Rajni Gupta and Shri Rajesh Patil, whereas in another charge, it has been alleged that the applicant allowed Smt. Rajni Gupta to continue in service. The respondents themselves appear to be not quite sure about the nature of misconduct alleged against the applicant. The only article of charge, which has been partly proved, i.e., article No.4, relates to the failure on part of the applicant to draw a proper agreement bond in case of some contractual appointments. This at best is an ^{procedural} irregularity and cannot be said to be so grave as to warrant the punishment of removal from service. Respondents have also not taken into consideration the fact that the applicant has already put in more than 20 years of service.

15. In view of the discussions made above, we hold that the orders passed by authorities, viz. Annexure A-I and A-II cannot be sustained in law. The same are accordingly quashed and set aside. The matter is remitted back to the authorities for passing fresh orders by giving reasons and in view of the observations as made above. This shall be done within a period of two months from the date of receipt of a copy of this order under intimation to the applicant. The respondents shall also pass a reasoned order for deciding intervening period in accordance with rules. The OA is accordingly ^{partly} allowed. No costs.

S.K. Naik
(S.K. Naik)
Member (A)

Smt. Meera Chhibber
(Smt. Meera Chhibber)
Member (J)

/sunil/