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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.173 of 2004

Cuttack this the 29th day of July, 2005

P.Chandrasekhar ..... Applicant(s)

-VERSUS-

Union of India & Ors. ..... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes

(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.173 OF 2004
Cuttack this the 24th day of June, 2005

C O R A M :

THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

...

P.Chandrasekhar,
aged about 37 years,
Son of late P.L.N.Sistry,
At/PO/Dist; Bargarh - at present
serving as P.G.Teacher (Physics),
K.V.No.2, Bolangir ..... Applicant

By the Advocates M/s.P.C.Acharya
S.R.Pati
P.Sinha

-VERSUS-

1. Secretary to Government, Ministry of Human Resources, Government of India, Sastri Bhawan, New Delhi
2. Commissioner of Kendriya Vidyalaya Sangathan, 18, Institutional Area, Sahid Jeet Singh Marg, New Delhi
3. Joint Commissioner (Administration), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Sahid Jeeg Singh Marg, New Delhi
4. Assistant Commissioner of Kendriya Vidyalaya, B.D.A.Locality, Laxmisagar, Bhubaneswar, Dist-Khurda, PIN 751006
5. Principal, Kendriya Vidyalaya No.2, At/PO/DIST: Bolangir, PIN 767002

Respondents

By the Advocates M/s.Ashok Mohanty
S.P.Nayak
M.K.Rout

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ORDER

MR.B.N.SOM, VICE-CHAIRMAN :

This Original Application has been filed by Shri P. Chandrasekhar, at present working as Post Graduate Teacher (in short P.G.T.) (Physics), Kendriya Vidyalaya No. II, Bolangir, being aggrieved by the order dated 25.2.2005 passed by Respondent No.5 imposing on him the penalty of reduction by three stages in the time scale of Rs.6500-200-10,500/- for a period of three years with effect from 1.2.2002 and that during that period he would not earn increment. He is also aggrieved by the order dated 17.12.2002 passed by Res.4 rejecting his appeal. He has assailed Memorandum No.17979 dated 21/24.6.2003, proposing to take action against him under Rule 16 of CCS(CCA) Rules, 1965.

2. The facts of the case in a nut shell are that the applicant was served with a copy of Memorandum dated 13.2.2002 along with the articles of charges issued by the Principal, K.V.No.2, Bolangir, alleging that handling of Classes IX, X and XII for teaching Physics has not been carried out with due sincerity, in spite of written orders of his superiors. He was served with an advice note No.F.2/24/01/KV/ No.II/BLGR/629 dated 17.11.2000. He was informed that the results of the students in Physics both

in the Unit Test as well as in the Board Examination had been unsatisfactory. Certain instances of mistakes in the question paper set by him were quoted and his inability to complete the syllabus in time was also alleged. On the aforesaid acts of dereliction of duty, it was held that he had violated the provisions of Rule 3(i)(ii)(iii) of CCS(Conduct) Rules,1964 as extended to the employees of the Sangathan. The applicant on receipt of the charge memo filed his detailed explanation controverting the allegations and prayed for dropping of the charges brought against him. He also requested for personal hearing in the matter (Annexure-2). However, the Disciplinary Authority, without giving him an opportunity to be heard in person passed the order as stated above. Being aggrieved, he filed an appeal dated nil (Annexure-A/4). In that appeal, among other things, he pointed out that the charges against him were drawn up under Rule 16 of CCS(Conduct) Rules, 1965, but the D.A. imposed on him a major punishment of reduction of pay to a lower stage in the time scale of pay for a period of three years, which having the effect of postponing his increments tentamounted to imposing on him the penalty under Rule 14 of the said Rules. Further that the order of punishment although passed on 25.2.2002 was given retrospective effect from 1.2.2002, which was against the Rules laid down in this regard He had also drawn the attention of the appellate authority on the effect of the order

on his entitlement of pay and how his future salary and pension would be affected as a result thereof, although the punishment of reduction of pay, if imposed under Rule-16, should not have any effect on the pension of the Sangathan servant. However, the appellate authority rejected his appeal without application of mind and with an unreasoned order.

3. The Respondent-Sangathan has opposed the application by filing a detailed counter. It has taken the stand that the Application is liable to be dismissed in limine as it seeks multiple remedies inasmuch as the applicant has prayed for quashing the order of punishment and simultaneously tried to challenge the memo of charges under Annexure-6. On the merit of the case, it has been argued that the disciplinary proceeding was initiated against the applicant for having committed misconduct which is punishable under the Conduct Rules, following the procedure laid down in the CCS(CCA) Rules. They have submitted that the applicant was proceeded against as he had failed to maintain devotion in discharge of his duty which resulted in poor academic performance of the students in pre Board examination. They have submitted that the plea of the applicant that he was punished without an inquiry being held in the matter has no legal basis, because there is no mandatory provision for holding inquiry for the charges brought under Rule 16.

4. The Respondents have further submitted that the applicant had filed a review petition, which was pending. It was, therefore, premature on his part to have approached the Tribunal in this O.A. They have also taken the position that action against the applicant was necessary as his poor performance was affecting the studies of the students of the school. His failure in performance was quite serious, yet instead of giving him a major penalty charge sheet, a minor penalty proceeding was initiated.. They have also submitted that the punishment imposed is not shocking or disproportionate to his guilt.

5. I have heard the learned counsel of both the sides and have perused the records placed before me.

6. The applicant has assailed the disciplinary action against him on four grounds. Firstly, that the charges brought against him in the charge memo dated 13.2.2002 had the following allegations; (a) he failed to discharge his duties; (b) failed to produce good result in Unit Test; (c) failed to produce good result in half yearly examination; (d) failed to produce satisfactory result in pre Board Examination; (e) failed to complete the syllabus for half yearly examination; (f) while functioning as P.G.T.(Physics), he failed to handover the progress reports of the children on the stipulated date and (g) he had taken extra special classes during holidays/

Sundays as he failed to complete syllabus in time. While denying all these allegations, by filing his written statement dated 22.2.2002, he had requested the disciplinary authority to conduct an inquiry and to give him an opportunity to prove his innocence. His request was not considered. Instead of that the disciplinary authority imposed on him the punishment, which goes to show that the disciplinary authority had a pre determined mind. Secondly, that the punishment order passed by the D.A. was in fact a major penalty although charge sheet was issued under Rule 16, i.e., for minor penalty. Thirdly, that he was not heard before the order could be passed by the D.A. Lastly, that the appellate authority did not apply his mind and had disposed of the appeal in a mechanical manner.

7. With regard to his first allegation the Respondent has taken the position that holding inquiry in a minor penalty case is not to be adopted, merely because the charged official had asked for it or that holding of inquiry is not mandatory under Rule 16.I have perused the procedure for imposing minor penalty under Rule 16. It is true that holding detailed inquiry has not been prescribed as a normal course of action under the Rule 16. However, under the provisions of Rule 16(b) and 16(c) it is stated as under :

> (b)"Holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in

which the disciplinary authority is of the opinion that such inquiry is necessary;
© taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause(b) into consideration; "

8. In other words, the holding of inquiry is not anathema to the provisions of Rule 16. It is true, inquiry is not to be held in each and every case. But the rules provide that a charged official can ask for an inquiry under Rule 16(c) and if such a request is made, the disciplinary authority shall have to consider the matter in the light of the reasons put forth by the charged official seeking an inquiry and shall have to come to a considered view if such an inquiry is necessary. The manner in which the disciplinary authority shall consider such representation has been further clarified in the Govt. of India, **DOPT O.M. No.11012/18/85-ESTS(A) dated 28.10.1985**. We quote the said letter as under :

" It is made clear that the disciplinary authority has to take a conscious decision as to whether an inquiry is necessary or not and it is only after due consideration, the disciplinary authority would come to the conclusion that an inquiry is not necessary and if he comes to such a conclusion, he should do so in writing indicating the reasons, instead of rejecting the request for holding inquiry summarily, that it has applied its mind to the request, failing which, such an action could be construed as denial of natural justice".

9.. In the instant case, no averment has been made either in the counter or during the oral argument by the Respondents that the disciplinary authority had considered the representation of the applicant regarding holding of inquiry under Rule 16 and no where any averment has been made by the disciplinary authority to say that the request of the applicant was duly considered but rejected. That being the fact of the case, there is no doubt that it is a clear case of denial of natural justice to the applicant, in consonance of the Govt. of India letter dated 28.10.1985, as referred to above.

10. Regarding his 2nd contention that although the charge memo was issued under Rule 16, the penalty imposed on him is a penalty available under Rule 14, the Respondents have not specifically answered this allegation in their counter. During the oral argument also, this allegation was not rebutted effectively, although the learned Senior Counsel submitted that even under Rule 16 penalty of reduction of pay was available and to that extent there was no legal infirmity in the order passed by the disciplinary authority. He gave me to understand that there might have been some unintentional typographical mistake in the order dated 25.2.2002 for which the order by itself does not become illegal. To resolve the controversy, I have perused the penalties prescribed under Rule 11 of CCS (CCA) Rules.

Rule 11 of the said rules prescribes penalties under two headings, i.e., Minor Penalty and Major Penalties. Rule 11(i) to (iv) prescribes Minor Penalties and Rule (v) to (ix) relates to Major Penalties. Under Rule 11(iii)(a), the following penalty has been prescribed :

> "reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension".

11. The allegation of the applicant is that the punishment imposed on him was to the following effect:

> "It is therefore ordered that the pay of Shri P.Chandrasekhar be reduced by three stages from Rs.7900/- to Rs.7300/- in the time scale of Rs.6500-200-10,500/- for a period of three years with effect from 1.2.2002. It is further directed that Shri P.Chandrasekhar will not earn increment of pay during the period of reduction and that on the expiry of this period the reduction will not have the effect of postponing the future increments of pay".

From the above, it is apparent that the order of reduction to a lower stage in the time scale of pay had gone beyond the scope of the penalty prescribed under Rule 11(iii)(a). The penalty imposed on him contained several directions, such as that the applicant will not earn increments of pay during the period of such reduction and that on the expiry of such period, the reduction will not have the effect of postponing the future

increments of pay. The case of the applicant is that under minor penalty, the reduction of pay to a lower stage is a simple order of reduction of pay to a lower stage for a period not exceeding three years and that the effect of reduction cannot have cumulative effect or will have no adverse affect on pension of the charged official. On the other hand, the order passed by the disciplinary authority in his case stipulated that he will not earn increment of pay during the period of reduction and by virtue of the impugned order his pension is going to be adversely affected inasmuch as the reduction will have the effect of reducing his pay by Rs.600/- for all times to come.

12. The grievance of the applicant has lot of force in it. But more than that we find that the disciplinary authority had passed his order dated 25.2.2002 by filling up blanks in a pre-printed order sheet, where he appears to have asked his office to fill up, indicating the name of the charged official, memorandum No. and the scale of pay and the stages of pay reduced etc. in a mechanical manner. Any order passed by a disciplinary authority being a quasi judicial order shall not only be passed after due application of mind, but also must be a speaking and reasoned one. I am constrained to point out that the order passed by the disciplinary authority was neither a speaking nor a reasoned one. It was nothing but a sheet of

paper filling up the blanks, which deserves to be quashed being in total violation of the laid down procedure in this regard under CCS(CCA) Rules.

13. Equally forceful is the contention of the applicant that denial of opportunity of being heard in person by the Disciplinary Authority before passing the order had prejudiced his interest in defending his case. Another coordinate Bench of this Tribunal (Ahmedabad Bench) in the case of **Mahendra Doshi vs. Union of India & Ors. (O.A.NO.219/01 disposed of on 23.4.2004)- 2005 (1) (CAT) AISLJ 155** while discussing the rights of the delinquent official to be heard, taking support of the decision of the Hon'ble Apex Court in **Yoginath D. Bagade vs. State of Maharastra and another (1999) 7 SCC 739** where in the Apex Court, recalling the decisions of three judge Bench of the Apex Court rendered in the case of **Punjab National Bank v. Kunj Bihari Mishra** have held that the right to be heard would be available to the delinquent up to the final stage held that this right being a constitutional right of an employee, the same cannot be taken away by any legislative enactment or service rules including rules made under Article 309 of the Constitution, quashed and set aside the show cause notice as well as the order of punishment imposed on the applicant therein. I am in respectful agreement with the said view expressed by the Ahmedabad Bench of this Tribunal.

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14. Lastly, the learned counsel for the applicant submitted that the appellate order (Annexure-5) also suffers from serious legal infirmities as it violated the procedure laid down under Rule 27(2) of CCS (CCA) Rules and hence the same is not sustainable in the eye of law. I have perused the appellate order at Annexure 5 and I have no hesitation to hold that the order of the appellate authority is bereft of any reason and has been passed without following the procedure laid down under Rule 27(2) referred to earlier. It is now the settled position of law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden ***(RAMACHANDRA KESHAV ADKE V. GOBIND JOTI CHAVARE AND ORS. AIR 1975 SC 915).*** Appellate order also not being a reasoned one, the same is bad in law. In this respect, I may profitably quote what Lord Denning M.R. in ***BREEN v. AMALGAMATED ENGINEERING UNION 1971(I) All E.R. 1148*** observed, as under :

> "The giving of reasons is one of the fundamentals of good administration".
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> In ***ALEXANDER MACHNERY (DUDLEY) Ltd. V. CRABTREE 1974 LCR 12***0 it was observed *"failure to give reasons amounts to denial of justice"." Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. Right to reason is an indispensable part of a sound judicial system".*

The same view was, however, implied by the Constitution Bench of the Apex Court in the case of ***S.N.MUKHERJEE –Vrs.- UNION OF INDIA – AIR 1990 SC 1984,*** the relevant portion of which is quoted hereunder:-

> "16. The law in Canada appears to be the same as in England. In Pure Spring Co. Ltd. V. Minister of National Revenue, (1947) 1 DLR 501 at p. 539, it was held that when a Minister makes a determination in his discretion he is not required by law to give any reasons for such a determination. In some recent decisions, however, the Courts have recognized that in certain situations there would be an implied duty to state the reasons or grounds for a decision (See: Re R.D.R. Construction Ltd. And Rent Review Commission , (1983) 139 DLR (3d) 168) and Re Yarmouth Housing Ltd. And Rent Review Commission, (1983) 139 DLR (3d) 544). In the Province of Ontario the Statutory Powers Procedure Act, 1971 was enacted which provided that "a tribunal shall give its final decision, if any in any proceedings in writing and shall give reasons in writing therefore if requested by a party." (Section 17). The said Act has now been replaced by the Statutory Powers and Procedure Act, 1980 which contains a similar provision."

15. For the reasons discussed above, I am also of the view that the appellate order also suffers from serious legal infirmities as it violated the procedure laid down under Rule 27(ii) of the CCS(CCA) Rules and therefore, the appellate order dated 17,12,2002 is bad in law and liable to be quashed.

16. Before parting with this case, I cannot but help observing that the charge of misconduct level against the applicant is unsustainable in law. As the applicant has pointed out that the charges brought against him on seven grounds relate to his performance as a PG Teacher (Physics). The question is whether failure in performance is a misconduct for which it would attract the provisions of CCS(CCA) Rules. I am surprised to note that when law is well settled as to what constitutes misconduct, the Respondents have failed to grasp its full meaning in its proper perspective. The Apex Court in the case of ***Agname (M.W.) v. Badri Das (1963) 1 LLJ 684 (SCV) : (1963) LR 400*** distinguished what is misconduct and has laid down that whereas disobedience, insubordination and acts of subversive of disciplines are the recognized misconduct because these acts are contrary to the obligations imposed on an employee, but it would be imprudent and unreasonable on the part of the employer to attempt to improve the moral and ethical tone of the employees conduct. The matter was more pointedly settled in the case of ***Union of India vs. J. Ahmed (AIR 1979 SC 1022),*** wherein it was held as under:

> "Lack of, integrity, if proved, would undoubtedly entail penalty. Failure to come up to the highest expectations of an officer holding a responsible post or lack of aptitude or qualities of leadership would not

constitute as failure to maintain devotion to duty. The expression "devotion to duty" has been used as something opposed to indifference to duty or easy-going or high-hearted approach to duty. But one cannot say that only that act or omission would constitute misconduct for the purpose of Discipline & Appeal Rules, which is contrary to the various provisions in the Conduct Rules. An act of omission which runs counter to the expected Code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct. A disregard of an essential condition of the contract of service may constitute misconduct. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct. However, lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence".

17. In a nut shell, law is that lack of performance is not to be confused with misconduct. As discussed earlier, disobedience, insubordination, lack of discipline would constitute misconduct, but failure

to maintain the highest standard of teaching ability while holding the high post of P.G. Teacher would not constitute misconduct .Administrative actions are available to remedy the matter like issue of letter of warning or making necessary remarks in the annual confidential report and those adverse remarks may be communicated to inform him about his performance which will affect promotion/career progression of the individual. In the case of misconduct for infringing discipline of the organization, one is liable to action under Conduct Rules and all actions under that Rule invariably affects career progression, but not vice versa, i.e., for inefficiency in performance one necessarily is not to be charge sheeted. Lack of qualities alleged may be relevant consideration on the question of retaining the Teacher in the post or for promotion to a higher post , but lack of personal quality cannot constitute misconduct for the purpose of disciplinary proceeding. It was further held in the case of J. Ahmed(supra) competence for the post, capability to hold the same, efficiency requisite for a post, failure to discharge the function attached to the post are things different from some act or omission of the holder of the post which may be styled as misconduct so as to incur the penalty under the rules.

18. In view of the clear cut differentiation between what constitutes misconduct and what constitutes lack of efficiency or non performance and

that the cases of non performance are not cases for taking disciplinary proceedings, I have no hesitation to hold that the charge sheet dated 13.2.2002 issued by the Respondents against the applicant is unsustainable and therefore, the same is liable to be quashed. Accordingly the same is quashed. The impugned orders passed by the Disciplinary Authority under Annexure-3 and the Appellate Authority under Annexure-5, as held above, being bad in law are also quashed. In the circumstances, I also direct Respondent No.2 to make a review of the policy of the Respondent-Sangathan to proceed against the teachers for their non performance in the light of the decisions of the Apex Court, as referred to above.

18. In the result, the O.A. succeeds. No costs.

(B.N.SOM)
VICE-CHAIRMAN