

X

# CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

Original Application No.1212 OF 2004  
Cuttack, this the 28<sup>th</sup> day of December, 2005.

S.K. MISHRA

APPLICANT

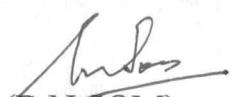
Versus

UNION OF INDIA & Ors.

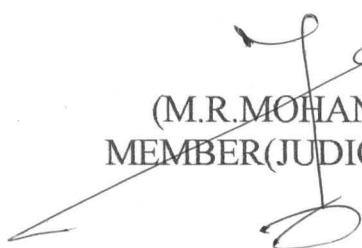
RESPONDENTS

## FOR INSTRUCTIONS

- n. Whether it be referred to the reporters or not? Yes
- 2. Whether it be circulated to all the Benches of CAT or not? Yes

  
(B.N.SOM)

VICE-CHAIRMAN

  
(M.R.MOHANTY)

MEMBER(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

**Original Application No.1212 OF 2004**  
Cuttack, this the 28<sup>th</sup> day of December,2005.

**CORAM:**

**THE HON'BLE MR.B.N.SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)**

SHRI S.K.MISHRA, Aged about 48 years,  
S/o Godabarsih Mishra, a permanent resident of  
Village: Achyutarajpur, PO: Banpur,  
Dist.Khurda at present working as  
TGT in English, Kendriya Vidyalaya,INS  
Chilika, Khurda.

**..... APPLICANT.**

For the Applicant : M/s. D.P.Dhalsamanta,P.K.Behera, Advocates.

**VERSUS**

1. Union of India, represented through its  
Secretary to Government of India,  
Ministry of Human Resource Development  
(Education Department), Shastri Bhawan, New Delhi.
2. Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area, Saheed Jeet Singh Marg, New Delhi.
3. Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Pragativihar, Mancheswar, Bhubaneswar, Khurda.
4. The Principal , K.V.S.,INS Chilika, Po: Chilika, Khurdas.

**..... RESPONDENTS.**

For the Respondents: Mr.Ashok Mohanty, Sr. Advocate.

Mr.S.P.Nayak, Advocate for Res.No.4



O R D E R

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

In a disciplinary proceeding\$, that was initiated against Applicant (engaged as a Trained Graduate Teacher in English) in the Kendriya Vidyalay at INS Chilika) under Rule 16 of CCS(CCA) Rules, 1965, the disciplinary authority, (i.e., Principal, K.V., INS, Chilika) imposed the following punishment under Annexure A-8 dated 22.4.2004:-

“.. the pay of Shri S.K.Mishra, TGT (English) be reduced by 3(three) stages from Rs.7900/- to Rs.7300/- in the time scale of Pay Rs.6500-200-10,500/- for a period of three years with effect from 23<sup>rd</sup> April, 2004 without cumulative effect. It is further directed that Shri S.K.Mishra 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 postponement of future pay and will not adversely effect to his pension”.

On appeal, filed by the Applicant, the Appellate Authority (under Annexure-A/10 dated 29-11-2004/01-12-2004) passed the following orders:-

“ now THEREFORE, at the penalty imposed upon Shri S.M.Mishra, TGT (Eng) from 3(three) stages from 7900/- to 7300/- in the time scale of pay Rs. 6500-200-10500/- for a period of three years with effect from 23<sup>rd</sup> April, 2004 without cumulative effect with further direction that Shri Mishra, TGT (Eng) will not earn increment of pay during the period of reduction and that on the expiry of the period the reduction

10

will not have the effect of postponement of future pay and will not adversely effect to his pension to 3 (three) stages from Rs. 7900/- to Rs. 7300/- in the time scale of pay Rs. 6500-200-10,500/- for a period of three years with effect from 23<sup>rd</sup> April, 2004 without cumulative effect with further direction that Shri Mishra, TGT (Eng) will earn increments of pay after expiry of this period and not adversely effecting to his pension".

In this backdrop, the Applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 with prayers to quash the order of punishment that was passed under Annexure-A/8 dated 22-04-2004 and the order of rejection of his appeal that was passed under Annexure-A/10 dated 29-11-2004/01-08-2004 and for issuance of a direction (to the Respondents) to pay the Applicant all his financial benefits with interest at the rate of 18% per annum.

2. Respondents-KVS have filed counter stating inter alia that the Applicant being a problematic teacher used to create problem and obstacles in the smooth functioning of the Vidyalaya; that he involves himself in Anti-Vidyalaya and Anti-Authority activities; that he was not at all punctual in his class room and that he had a bad reputation among the students and teachers; that, on several occasions, allegations have been made against him for which he has been warned severally to be careful and not to indulge himself in such nefarious activities. As there was no improvement in his attitude, on

11

receipt of further complaints that (a) he gave a physical assault to one student (named master Abdul Azim) of Class X-B on 18.11.2003; (b) tampered the attendance register and (c) for late attendance etc, the Applicant was issued with memorandum of charges under Rule 16 of CCA( CCS) 1965 (under Annexure-A/6 dated 17-03-2004) to explain his conduct. The explanation submitted by the Applicant (under Annexure-A/7 dated 30-03-2003) having not been found satisfactory, he was issued with the order of punishment under Annexure-A/8 dated 22-04-2004 which was also confirmed by the Appellate Authority. It has further been pointed out by the Respondents that there being no violation of the principles of natural justice and the order of punishment being commensurate with the gravity of the charges, the same is not to be interfered with.

3. Heard Mr. D.P.Dhalsamant, Learned Counsel appearing for the Applicant and Mr. Ashok Mohanty, Learned Senior Counsel appearing for the KVS/Respondents and perused the materials placed on record. Learned counsel appearing for the Applicant has submitted that the order of punishment is nothing but an out come of prejudicial view of the Principal towards the Applicant inasmuch as the averments made in the counter that the Applicant is a problematic teacher is not supported by any evidence. Rather, the applicant is sincere and loyal to his profession. As the Applicant did not tolerate

19

the illegal action of the Principal KV, he became an eye shore of the Principal; for which he has been subjected to victimization. Mr. Dhalsamant, learned counsel appearing for the Applicant has also submitted that the punishment imposed on the applicant is de hors the Rules as no such punishment is available to imposed in the proceedings initiated under Rule 16 of CCS(CCA) Rules and, therefore, the impugned order of punishment as well as the appellate order are liable to be quashed.

4. On the other hand, the learned senior counsel Mr. Mohanty, appearing for the KVS/Respondents, submitted that the scope of interference by the Courts/Tribunal in the matter of disciplinary proceedings being very limited, and in the present case there being no violation/infraction of the principles of natural justice/Rules, the interference in the matter is unwarranted. It has further been submitted by him that K.V. being an educational institution adherence to discipline by the teachers and the taught is of paramount consideration. Since it was found that the Applicant is not amenable to discipline and did not improve the degree of discipline, despite several warnings, it was thought prudent to initiate disciplinary proceedings against him. Shri Mohanty added that in the matter of conducting the disciplinary proceedings there was strict adherence to

20

rules of law by the authorities in the department and therefore, it is hardly a matter to be interfered with.

5. Having regard to the various submissions made by the parties, we do not like to comment upon the allegation of bias or prejudicial view as averred by the applicant against the Principal, because, against whom bias or mala fide is pleaded he has to be arraigned as party by name. This being the position of law, whatsoever allegation has been made against the Principal is nothing but an empty bluster.

6. Now the question needs to be examined is as to whether the penalty, as has been imposed on the applicant as a consequence of disciplinary proceedings initiated against the Applicant (under Rule 16 of CCS (CCA) Rules,1965) is available under the said Rules to be imposed ?. It is in this background, we would like to quote hereunder the punishments (as indicated under Rule-II as against the proceedings under Rule 16 of CCS(CCA) Rules,1965:-

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor Penalties –

- i) censure;
- ii) withholding of his promotion;
- iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

14

- iii) (a) 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
- iv) withholding of increments of pay."

Thus the punishments to be imposed in a proceedings under Rule 16 of CCS (CCA) Rules, 1965 having been codified, as indicated above, it was the disciplinary authority or for that matter the appellate authority ought to have resorted to those Rules having regard to the facts and circumstances of the case/proceedings. It is seen from the order of punishment that the Appellate Authority, although intended to bring the matter of awarding punishment within the framework of the Rules, he failed to resort to one of those Rules as would be evident from the import of the language couched in the order itself. Therefore, it is a fit case where the matter should be remitted back to the Appellate Authority for giving a fresh look into the matter of imposition of punishment under the heading "Minor Penalty", as extracted above. We order accordingly.

7. In course of hearing, Mr. D.P.Dhalsmanat, learned counsel appearing for the Applicant placed into service the amended provision of Clause (iii) (a) of Rule in the matter of imposition of punishment. The said amendment came into force w. e. f. 23-08-2004 The Disciplinary Proceedings having been initiated long before August, 2004 and the Disciplinary Authority having imposed

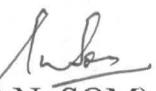
15

15

punishment before that date, the Applicant's case is not to be covered by the said amended provisions of Rule-11 of CCS Rules and, as a consequence, the Appellate Authority is required to proceed in the matter in order to pass a fresh orders within the frame work of Sub-Rule (iii) (a) (iv) of Rule 11 of CCS (CCA) Rules, 1965, which were in vogue prior to 23.08.2004.

8. Other points raised by learned counsel appearing for the Applicant are not available to be examined in the present case, especially because the Applicant had not prayed for an enquiry; which was also available in the proceedings under Rule 16 of the Rules, 1965.

9. With the above observations and direction, this Original Application stands disposed of. No costs.

  
(B.N. SOM)  
VICE-CHAIRMAN

  
28/12/05  
(M.R. MOHANTY)  
MEMBER(JUDICIAL)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.**