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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 27-3-2002

O.A. No. 278/2001

Hansraj son of Shri Tara Chand by caste Bishnoi resident of 2/189, Housing Board, Suratgarh, District Sri Ganganagar, employed as a Chowkidar, Kendriya Vidyalaya, Suratgarh Cantt.

... Applicant.

v e r s u s

1. Union of India through the Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shahid Jeet Singh Marg, New Delhi - 110 016.
2. The Assistant Commissioner, Education Office, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
3. The Principal, Kendriya Vidyalaya, Suratgarh Cantt., Distt. Sri Ganganagar.

... Respondents.

Mr. H.S. Sidhu, Counsel for the applicant.

Mr. K.K. Shah, Counsel for the respondents.



CORAM:

Hon'ble Mr. Justice O.P. Garg, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice O.P. Garg)

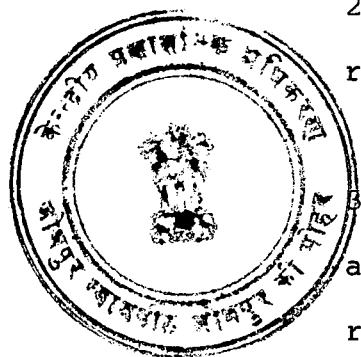
The applicant Hansraj was a Group 'D' employee in Kendriya Vidyalaya, Suratgarh Cantt. A departmental enquiry was initiated against him under the provisions of CCS (CCA) Rules, 1965. The disciplinary authority, namely, the Principal, Kendriya Vid

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Suratgarh Cantt. by his order dated 17.04.2001 imposed the penalty of "censure" under Rule 11 of the Rules aforesaid. The applicant preferred a departmental appeal. The appellate authority vide order dated 29.06.2001 (Annex. A/2) after giving an opportunity of personal hearing to the applicant inflicted the penalty of dismissal from service holding that the penalty of "censure" imposed on him was not sufficient. The applicant by means of the present application under Section 19 of the Administrative Tribunals Act, 1985, has challenged the departmental proceedings initiated against him as well as the order of "censure" passed by the disciplinary authority and that of the appellate authority which are respectively dated 17.04.2001 (Annexure A/1) and 29.06.2001 (Annexure A/2). He has further prayed for all consequential benefits.

2. A detailed reply has been filed on behalf of the respondents.



3. Heard Shri Hamir Singh Sidhu, learned counsel for the applicant as well as Shri K.K. Shah, appearing on behalf of the respondents.

4. The applicant was suspended in contemplation of departmental enquiry by order dated 12.04.90 (Annex. A/3) passed by the Principal, Kendriya Vidyalaya, Suratgarh Cantt. A memorandum of charge dated 15.06.90 (Annex. A/4) was served upon the applicant. Shri D.C. Mehta, Lecturer of the Vidyalaya, was appointed as Inquiry Officer. The applicant has refuted the allegations levelled against him by submitting a detailed reply dated 25.09.90 (Annex. A/7). The enquiry officer submitted a report on 04.10.99 (Annex. A/10), which reads as follows:-

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R E P O R T

" On going through the documents submitted by the Principal, K.V. No. 1, AF, Suratgarh, and asking various questions on the matter by the undersigned during the inquiry period, it has been found that Shri Hansraj was careless in performing his duties. He is hereby warned to respect the chair and behave properly, failing which disciplinary action may be taken against him. Since the then Principal, Shri G.H. Yadav has already sanctioned him all the increments, arrears etc. and his suspension has already been given to him.

He may be warned to behave properly in future and perform duties sincerely and faithfully. If in future, the Principal under which he will be working gives a report against him disciplinary action may be taken and no chance will be given for improvement."

The enquiry report was served on the applicant, but he did not make any representation. The disciplinary authority passed the following order on 17.04.2001 (Annexure A/1) :-

" As the inquiry report was served to Shri Hansraj, Gr.D and he did not accept it and nor submitted any of his representation. In this regard, as taking into account all the relevant documents and the findings of the inquiry reports, the undersigned finds that Sh. Hansraj, Gr.D was often non-co-operative, negligent to his duties and disobedient to the authority. Hence, he is hereby censured and an adverse entry of this effect is made in his service records.

However, agreeing with the Inquiry Officer the undersigned gives him one more chance to improve his working and behaviour and regularise all the benefits of suspension period as already given to him."



Against this order of "censure and adverse entry", the applicant, as said above, filed a departmental appeal. Admittedly, there was no appeal or move on behalf of the respondent-department for the enhancement of the penalty. While disposing of the appeal filed by the applicant against the penalty of "censure and adverse entry", the appellate authority passed a funny order dated 29.06.2001 (Annexure A/2) dismissing the applicant from service, which runs as follows:-

" WHEREAS the penalty of "Censure" under Rule 11 of CCS

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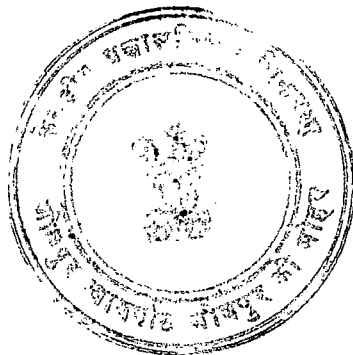
(CCA) Rules, 1965, was imposed on Shri Hans Raj, Group 'D', Kendriya Vidyalaya, Suratgarh Cantt. by the Principal, Kendriya Vidyalaya, Suratgarh Cantt. being the disciplinary authority vide order No. F.PF/KV/SOG/Cantt/2001-2002/30 dated 17.04.2001.

WHEREAS, the said Shri Hans Raj filed an appeal against the order dated 17.04.2001 of the Disciplinary Authority to dispose of the appeal by giving an opportunity of hearing.

AND WHEREAS, based on facts and circumstances of the case and an opportunity of personal hearing was given to him on 07.06.2001 at Kendriya Vidyalaya, Suratgarh Cantt. by the Appellate Authority where his attitude was found anti-organisation and anti-authorities including the adduced by the appellant, the undersigned being the Appellate Authority, has come to the conclusion that penalty of 'Censure' imposed to him is not sufficient and sees to enhance the penalty of "Dismissal from service, which shall ordinarily be a disqualification for future employment under Government".

NOW THEREFORE, after careful consideration of the facts of the case and opportunity of personal hearing was given to him, the undersigned therefore, is of the view that ends of justice would be met if the penalty of dismissal from service which shall ordinarily be a disqualification for future employment under Government is imposed on him.

Accordingly, the said penalty imposed on Shri Hansraj, Group 'D', Kendriya Vidyalaya, Suratgarh Cantt."



5. Learned counsel for the applicant criticised the order passed by the appellate authority on the ground that since there was no prayer on behalf of the respondent-department for enhancement of the penalty, the appellate authority was not empowered suo moto to pass an order of dismissal; that the order passed by the appellate authority is vitiated as being in flagrant violation of the provisions of law. It was also urged that as a matter of fact there was no enquiry into the matter and the report of enquiry dated 04.10.99 which came into being after about nine years of the initiation of the enquiry was nothing, but an eye wash. Serious objection has been taken on behalf of the applicant with regard to the manner in which the enquiry was proceeded.

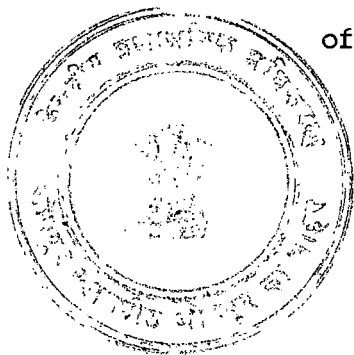
6. Shri Shah appearing on behalf of the respondents defended the report of enquiry as well as the order passed by the appellate

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authority. He urged that since a reasonable opportunity of hearing was afforded to the applicant, the appellate authority was well within its competence to enhance the punishment.

7. We have given thoughtful consideration to the rival contentions of the parties and are constrained to observe at the outset, that the order of enhancement of punishment passed by the appellate authority cannot be sustained as it is clearly in contravention of law. It is common case of the parties that the matters with regard to the disciplinary proceedings and punishment are governed by the provisions of CCS (CCA) Rules, 1965 (the Rules, for short). Part VII- Rules 22 to 28 deal with the appeal against the orders of the disciplinary authority. Rule 27 of the Rules makes a provision for consideration of appeal. Sub-rule (1) of this Rule deals with the appeal against the order of suspension. It is not relevant for our purpose. Sub-rule (2) of Rule 27, which is relevant and germane for the purpose of decision of this O.A., runs as follows:-



"27. (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider -

- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders -

- (i) confirming, enhancing, reducing or setting aside the penalty; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances

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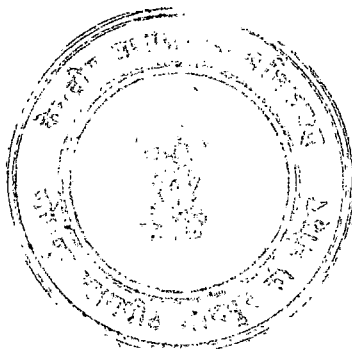
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of these cases:

provided that -

- (i)
- (ii)
- (iii)
- (iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty."

On the strength of the above provision, Shri K.K. Shah urged that the appellate authority has jurisdiction and power to enhance the penalty imposed by the disciplinary authority and it was not necessary that the department should have moved or taken any steps for enhancement of the penalty. It is true that the appellate authority has the power to confirm, enhance, reduce or set aside the penalty or to remit the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case. In the instant case, admittedly the appellate authority has not chosen to remit the case to the disciplinary authority. It has straight away passed the order dismissing the applicant from service by substituting the penalty of 'censure and adverse entry' passed by the disciplinary authority. There is no doubt that the appellate authority has the power to enhance the punishment, if it is of the view that looking to the nature of the charges, gravity and seriousness of the established misconduct, the punishment awarded was insufficient. Therefore, in those cases where the appellate authority makes up his mind to enhance the punishment, it is bound to adopt the mandatory procedure prescribed under the Rules. Proviso (iv) to Sub-rule (2) of Rule 27 quoted above enjoins upon the appellate authority to pass an order of enhancement of penalty after giving a reasonable opportunity to the charged employee, as far as may be in accordance with the provisions of Rule 16, of



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making a representation against such enhanced penalty. Rule 16, in turn, provides that no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of Rule 11 shall be made except, after informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal. Shri Shah frankly conceded that no information in writing was served on the applicant by the appellate authority with regard to the proposal to enhance the punishment or to make a representation against the proposal to dismiss him from service. It appears that without complying with the provisions of the proviso (iv) to sub-rule (2) of Rule 27 to be read with provisions of Rule 16 (1) (a), the appellate authority has straight-away passed an order of dismissal from service. The recital of the fact by the appellate authority in her order dated 29.06.2001 that an opportunity of personal hearing was given to the applicant, was not sufficient compliance of the provisions as aforesaid. As a matter of fact, in the circumstances of the case, it was doubtful, in the absence of any move on the part of the respondent-department, that the appellate authority could enhance the punishment. In any case, even if the appellate authority is held legally competent to do so suo moto, she had not complied with the mandatory provisions of the Rules mentioned above. In case the appellate authority thought and considered it proper to impose the extreme penalty of dismissal from service, it was obligatory on her to have issued a notice in writing to the applicant to make a representation against the proposed punishment of dismissal from service. As said above, nothing of the kind was done. The order imposing the penalty of dismissal from service passed by the appellate



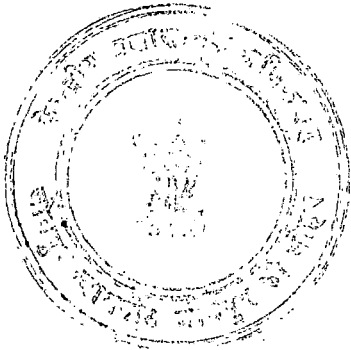
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authority suffers from serious legal infirmity. The said order cannot be supported or defended as it is clearly in contravention of the Rules mentioned above.

8. It would not be out of place to mention that the imputations of charges against the applicant were not such as would have justified his dismissal from service. The punishment of dismissal from service in the context of the alleged misconduct, is not only shocking, unconscionable and unjustified, but is clearly disproportionate to the alleged misconduct of the applicant. The enquiry officer has simply found the applicant careless in performing his duties.

9. It is sad and bad that the authorities concerned have not given a fair treatment to a lowly paid employee belonging to Group 'D' category. Even if the applicant exhibited himself to be a turbulent, disobedient, undesirable and incorrigible person, who behaved in a nasty manner, he could be weeded out for the alleged misconduct or misdemeanour in accordance with the procedure prescribed by law. The applicant was not only nagged, but harassed for a considerable long time. After placing him under suspension, a departmental enquiry was initiated in the year 1990. The applicant submitted his reply soon after the service of the charge sheet upon him. The enquiry officer was also appointed in the year 1990. For about long nine years, the enquiry officer or for that matter the disciplinary authority exhibited a sense of total inaction. The circumstances during which the enquiry was allowed to linger on for a long period of nine years are not perceivable. It was clearly a case of victimisation of an employee occupying the lowest post in the hierarchy of administration. The applicant had to remain under suspension for a period of about 33 months.



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10. The submission of the learned counsel for the applicant that as a matter of fact, no enquiry had at all taken place, is well founded. The report of enquiry dated 04.10.90 (Annexure A/10) quoted above in Para 4, clearly fortifies the submission of the learned counsel for the applicant. The report of enquiry is not only vague, but is of sweeping nature. It is virtually in the form of an order whereby a warning was administered to the applicant by exhorting him to respect the chair and to behave properly failing which disciplinary action may be taken against him. This report also indicates that the disciplinary authority had already sanctioned and released all the increments and arrears of pay etc. The enquiry officer simply suggested that the applicant may be warned to behave properly in future and perform his duties sincerely and faithfully. A reading of the so called report of the enquiry leaves no room for a doubt that there has been no enquiry at all and after about nine years, the enquiry officer adopted a short-cut method of submitting a report with certain casual remarks having no bearing on the factual matrix of the charges against the applicant. It appears that the enquiry officer as well as the disciplinary authority were out to shelve the enquiry, which was initiated in the year 1990 against the applicant and it was for this reason that without any enquiry, the applicant was censured and an adverse entry was ordered to be made in his service records. Aggrieved, the applicant went in appeal. Without noticing the fact that no enquiry has taken place and with a view to put an end to an old pending matter, the disciplinary authority has dropped the enquiry by censuring the conduct of the applicant, the appellate authority, without application of mind, and in total disregard of the rules passed an order imposing the extreme penalty of dismissal from service. No material of further

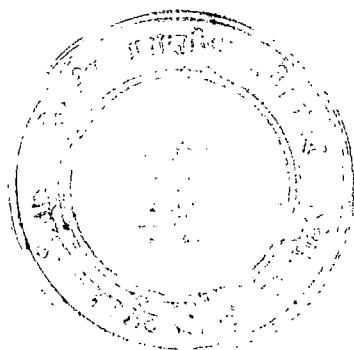


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information was brought or produced before the appellate authority. It is not understandable under what circumstances, she jumped to the conclusion that the applicant is required to be dismissed from service. The order passed by the appellate authority does not stand the test of the scrutiny and is patently bad in law. She has adopted a despotic and reckless attitude in punishing the applicant.

11. To sum up, it is evident from the above discussion that there has been no enquiry into the charges against the applicant. The so called report of enquiry is nothing but an empty formality. On its basis even a minor penalty could not be inflicted upon the applicant. The order dismissing the applicant from service passed by the appellate authority is not only absurd, but in flagrant disregard of the well established procedure and law. The order passed by the appellate authority cannot be sustained. Since there has been no enquiry into the alleged misconduct of the applicant, the order passed by the disciplinary authority can also not be upheld.



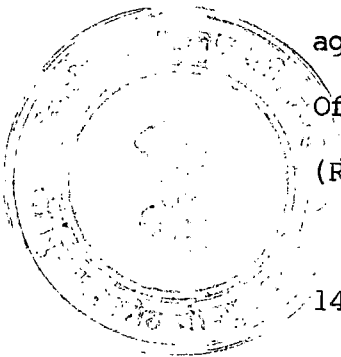
12. In the result, the O.A. succeeds and is allowed. The order dated 17.04.2001 (Annexure A/1) passed by the Principal, Kendriya Vidyalaya, Suratgarh Cantt., as well as the order dated 29.06.2001 (Annexure A/2) passed by the appellate authority are hereby quashed. The applicant be reinstated in service with immediate effect and shall be entitled to get all consequential benefits as if no order of dismissal from service was passed against him.

13. The Registrar of this Tribunal shall send a copy of this order to the Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shahid Jeet Singh Marg, New Delhi, for

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information and initiating such action as may be deemed necessary against the appellate authority, Smt. V. Bisarya, Education Officer/ appellate authority, Kendriya Vidyalaya Sangathan (Regional Office), 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.



14. No order as to costs.

Gopal Singh

(GOPAL SINGH)
Adm. Member

Garg
27-3-2002
(JUSTICE O.P. GARG)
Vice Chairman

CVR.