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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.

Original Application No. 130/2005

Date of order: 06.12.2005

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

Shri D.V. Asopa s/o Shri Dev Krishan Asopa, Age 56 years., r/o Kankariyaon-ke-Asopa, Mahamandir, Jodhpur.
(at present working on the post of WET at KV No. 2(Army), Jodhpur.)

....Applicant.

(Mr. Vinay Jain, counsel for the applicant.)

VERSUS

1. Kendriya Vidyalaya Sangathan, Through Assistant Commissioner, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
2. The Principal, Kendriya Vidyalaya No.1 (AFS), Jodhpur.
3. The Principal, Kendriya Vidyalaya No.2 (Army), Jodhpur.

.....Respondents.

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

ORDER (Oral)

Mr. J.K. Kaushik, Judicial Member.

Shri D.V. Asopa has invoked the jurisdiction of this Bench of the Tribunal wherein he has assailed the order dated 21.04.2005 at Annex. A/1 directing recovery of Rs. 84808/- from his salary per month in 20 installments; the last installment be rounded off, and has sought for quashing of the same amongst other reliefs.

2. With the consent of both the learned counsel for the parties, the case was taken up for final disposal at the stage of admission, keeping in view the urgency in the matter. I have accordingly heard the arguments advanced at the Bar and have carefully considered the pleadings and records of this case.

3. The indubitable facts as borne out from the pleadings of both the parties depict that the applicant while working on the post of WET at Kendriya Vidalaya No. 1(AFS) Jodhpur during the year 2002 was directed to hand over the charge of the furnitures held by him for over 10 years to one Shri H.H. Lal PGT (History). The charge was not handed over and the applicant had moved out and was relieved on 23.04.2005 from Jodhpur for joining at Viramgoan. Subsequently, the applicant was called to hand over the charge of furniture on 15.7.2002 and the charge was handed over with the condition that the discrepancy if any shall be finalized later on. Preliminary enquiry was held in the beginning. Subsequently, a Board of enquiry also conducted inquiry in the matter and submitted their report. As per the enquiry report, it was pointed out that it was not the only applicant who was involved in the matter but certain other persons were also involved and exhaustive details were required to be gathered and action taken thereof. On the basis of findings given in the above enquiry report dt. 1.03.2005 the action was initiated against him which culminated into the impugned order.

4. As regards the variances in the facts, the defense of the respondents as said out in the reply indicates that it was the applicant who had not handed over the charge and the other incumbent strived hard and even prepared the discrepancy lists as early as 30.03.2002 but the applicant avoided to settle up the matter. It has also been averred that the applicant had moved out on an assurance that he would cooperate with any enquiry and come back if required for finalization of the discrepancies and the applicant did come number of times subsequently as and when he was called.

5. The learned counsel for the applicant has submitted that the CCS (CCA) Rules 1965 (for brevity the rules), applies to the employees employed in the KVS and in the instance case, the applicant

has neither been issued with any charge sheet nor confronted with any enquiry held in the matter. He has also submitted that even the applicant has not been given any show cause notice and the impugned order of the recovery is forthcoming just like a bolt from the blue. He has contended that there has been a clear fraction of Article 14 of the Constitution of India inasmuch as the applicant has been penalised without following the due procedure established by law for imposition of penalty. He has also contended that the whole action of the respondents is without jurisdiction and may be declared null and void. He has lastly contended that even as per the so called enquiry report there were number of other persons involved in this case and findings clearly indicate that action ought to have been taken against those persons also but no such exercise has been found expedient and the applicant was made a scapegoat for the whole episode and punished him for none of his fault.

6. The learned counsel for the respondents has opposed the contentions raised on behalf of the applicant. He has submitted that the applicant has been given ample opportunities in the matter and inasmuch he was associated with all the inquiries and all the inquiries were done in his presence and all the inquiries reports and other documents contained his signature. He has also submitted that there is no doubt that the Rules do apply to the case of the applicant, but in the instance case, since the applicant has been given ample opportunities, there has been substantial compliance of the rules in force and the impugned order has been passed under Rule 11 of the Rules. He has also contended that even as per Rule 16 of the Rules, the procedure for imposing the minor penalty has been prescribed, is made subject to sub Rule 3 of Rule 15 of the rules which provides that the disciplinary Authority could impose the penalty under rule 11 even without issuance of charge sheet or following the procedure which has established in the Rule 16 of the Rules itself. In this way, no fault can

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be fastened with the action of the respondents. It has also been contended that the respondents have been quite liberal as well as lenient in the case of the applicant in as much as the actual loss was to the tune of about Rs.2,25000 and with the extra ordinary use of the financial powers, certain condemnations were done and it has been reduced to only Rs.84,808. The action of the respondents cannot be said to be arbitrary in any manner and the question of violation of Article 14 of the Constitution of India does not arise.

7. I have considered the rival submissions put forth on behalf of both the parties. The primary question that boils down for consideration and adjudication by this Bench of the Tribunal is as to whether the impugned order whereby recovery has been ordered could be construed to be a penalty order under Rule 11 of the Rules and whether the due procedure for imposition of penalty has been adhered to especially when no charge sheet has been issued to the applicant in this case. As far as imposition of penalty is concerned, it is admitted case of both the parties that the impugned order has been issued as a measure of penalty. Now the question remains as to whether the penalty under Rule 11 can be imposed without issuance of the charge sheet and following the procedure as laid down in Rule 14 and 16 of the Rules. As far as the question of recovery is concerned, the recovery is one of the minor penalty as prescribed under Rule 11 of Rules and the procedures of imposition of penalty has been laid down in Rule 16 wherein it has been laid down that in most of the cases holding of the enquiry is not necessary. I am not impressed with the submission of the learned counsel for the respondents that Rule 15(3) has any application to the present case and the requirement of Rule 16 of Rules could be dispensed in any manner. Rule 15(3) cannot be read in isolation and it is in fact a step while taking up action on the enquiry report but the enquiry report as envisaged under Rule 14 or 16 of the Rules wherein the charge sheet is to be issued, the statement of

defence is called for and the investigation is done by giving due opportunity the delinquent employee wherein substantial right of cross examination is also envisaged. Thus the rule 15 of the rules as it is, has no application to the facts of instant case. Therefore, dispensing with Rule 16 in the instance case could not be said to be in order in any manner.

8. The inquiry conducting by the board of inquiry could be aptly termed as fact finding inquiry on the basis of which the disciplinary proceeding under the rules could be initiated. I also find that no explanation is forthcoming to the effect that the Board of inquiry pointed out in its findings that number of persons were involved in the matter but action has been taken only against the applicant. The matter could have been conveniently resolved by taking recourse to a joint and detailed inquiry against all the defaulting officials, in accordance with the procedure laid down under the rules. In any case the impugned order cannot be sustained on any account and shall have to be held as inoperative and illegal.

8. In the premises, the Original Application merits acceptance and the same stands allowed accordingly. The impugned order dated 21.4.2005 at Annex. A/1 is hereby quashed and the applicant shall be entitled to all the consequential benefits including refund of any amount, if recovered in pursuance of impugned order. The rule issued earlier is made absolute. The respondents are not foreclosed from initiating disciplinary proceedings against any of the defaulting officer in accordance with rules if felt so advised but a joint and detailed inquiry may be preferred keeping in view the observation made in penultimate para.. No costs.

(J.K.Kaushik)
Judicial Member

LG/-

Part II and III destroyed in my presence on 2/1/14 under the supervision of section officer (J), as per order dated 18/12/13

Section officer (Record)
2/1/14

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