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CENTRAL ADMINISTRATIVE TRIBUNAL

**ORIGINAL APPLICATION NO. 137/2005
M.A.NO.132/2008 [OA 137/2005]
JODHPUR THIS IS THE 16th January, 2009.**

CORAM :

**HON'BLE MR. N.D.RAGHAVAN, VICE CHAIRMAN
HON'BLE MR. SHANKAR PRASAD, MEMBER [A]**

Heera Lal S/o Late Shri Manmohan Lal Ji, by caste Harijan (Scheduled Caste) aged about 27 years, resident of Quarter No. 7/2 K.V. Colony, Sri Ganganagar, presently working as Group 'D' employee in Kendriya Vidyalaya, Sri Ganganagar.

.....**Applicant**

For Applicant : Mr.K. S. Yadav, Advocate.
Vs.

1-Union of India through the Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

2-The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Tonk Phatak, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.

3-The Principal, Kendriya Vidyalaya, Sri Ganganagar.

4- Smt. Santosh Gupta acting as Principal, Kendriya Vidyalaya, Dehradoon (Uttranchal).

.....**Respondents.**

For Respondents : Mr. Pushpendra Singh, Advocate for Respondent Nos. 1 to 3.
None for the Respondent No.4.

.....
ORDER
[PER SHANKAR PRASAD, MEMBER(A)]

Aggrieved by the order dated 21.7.2004 of disciplinary authority imposing the punishment of reduction by two stages with cumulative effect and treating the period of suspension as no-duty and that of appellate authority modifying the punishment to stoppage of one increment with retrospective effect i.e. date of imposition of penalty, the applicant has preferred the present O.A.



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2- The applicant, while challenging this order of punishment, had also challenged the punishment imposed by order dated 20.09.2003. The O.A. was accompanied by a M.A. for condonation of delay as the period of limitation had expired in respect of the later order. The applicant had given up the challenge to the later order, as only one order could have been challenged as per the Rules. It suffices to note that by this order dated 20.09.2003 penalty of stoppage of one ^{4 till further orders by} increment has been imposed on a minor penalty chargesheet. M.A. 132/2008 for condonation of delay is dismissed as withdrawn.

3- There is only one enclosure to Memorandum dated 08.01.2004.

It reads :

Allegations against Shri Heera Lal, Safai Karmchari -

Violation of CCS (Conduct) Rules during Education Year 2003-04 by Shri Heera Lal, Safai Karmchari.

- 1. There was no improvement in work inspite of oral and written warnings and imposition of punishment.**
- 2. He has not taken the warning in proper spirit and has leveled false, baseless and un-civilized allegations against Committee, Office, Staff and undersigned, which are totally false and baseless. They are against the prestige and status of the School.**
- 3. He has corresponded directly without proper channel.**
- 4. He spreads wrong information in, information and particulars, in activities vitiating the academic atmosphere and discipline.**

[English Translation]



It is not accompanied by a detailed charge. The list of witnesses /relied upon documents, is also not found enclosed. *A*

4- An enquiry officer appears to have been appointed. He has examined three witnesses and submitted his report. This report, however, was not made available to the applicant and the disciplinary authority imposed the punishment. The applicant has submitted a very detailed appeal stating that none of the earlier Principals had found anything wrong with his working and that he had to bring the harassing attitude of Principal to higher officials. Specific grievances regarding the conduct of enquiry were also raised (Para 15 & 16). It was stated that the enquiry officer commented on defence assistants and that the enquiry was abruptly concluded without giving an opportunity to present his case. The report of enquiry officer shows that enquiry officer and his defence assistant left on 26.04.2004 and did not participate in the enquiry on 27.04.2004. The report was submitted on 30.08.2004.

5- The appellate authority has passed the following order:-

"WHEREAS Sh. Hiralal, Group 'D' of Kendriya Vidyalaya, Sriganganagar was issued Memo of charge for minor penalties on 8.1.2004 by the appointing authority.

WHEREAS the penalty of reduction of two increment lower stage in the time scale of his pay was imposed on him vide memorandum No.KV/SGNR/PF/ (Hiralal) /04-05 / 289 dated 21.7.2004.

WHEREAS Sh. Hiralal, Group 'D' has submitted an appeal dated 26.8.2004 to the undersigned being the appellate authority.

WHEREAS the said appeal was considered by the undersigned and the penalty of stoppage of two increments imposed by the appointing authority is hereby reduced to the penalty of stoppage of one increment with the retrospective effect i.e. the date of implementation of penalty without changing the other condition of the penalty.



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6- We have heard the learned counsels. The said Principal was joined as private respondent. She has been served. O.A. has proceeded ex parte against her.

7- The learned counsel for the applicant has placed reliance on the decision in **S.N. Chakravarthy Vs. Union of India**, AIR 1971 SC 752 and the decision in **Siemen's Manufacturing Vs. Union of India**, AIR 1976 SC 1785, on the role of appellate authority.

8- The decision on the role of appellate authority in respect of CCS (CCA) Rules and the Railway Servants (Discipline & Appeal) Rules, have been given in the case of **R.P. Bhatt Vs. Union of India**, 1986 LAB IC 790 and **Ram Chander Vs. Union of India & Ors.**, AIR 1986 SC 1173.

9- A Three Judge Bench of Apex Court in **Surath Chandra Chakravarty Vs. The State of West Bengal**, AIR 1971 SC 752, has held :

"4..... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This Rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."



10- The Apex Court in **R.P. Bhatt Vs. Union of India and Ors.**

1986 LAB IC 790 has held :-

"The word 'consider' in R. 27(2) implies 'due application of mind'. Rule casts a duty on the appellate authority to consider the relevant factors set forth in Cls. (a), (b) and (c) thereof.

There was no indication in the impugned order dismissing an appeal against the order of removal from service, preferred by the employee of Border Road Organisation, that the Director-General, the appellate authority, was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice.

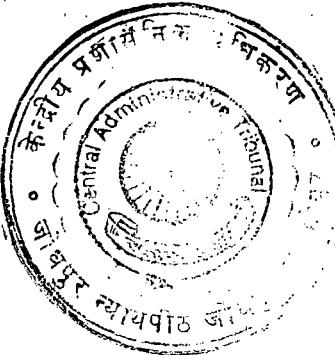
Further, there was also no finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record and the Director-General only applied his mind to the requirement of Cl.(c) of R. 27(2), viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the case. Held that, there being non-compliance with the requirements of R. 27(2), the impugned order was liable to be set aside. AIR 1966

SC 1827, AIR 1969 SC 414 and AIR 1977 SC 567, Ref. to judgement of Delhi High Court, Reversed."

11- The Apex Court in **Ram Chander Vs. Union of India and Ors.,**

AIR 1986 SC 1173 was considering the provisions of Rule 22 (2) of Railway Servants (Discipline & Appeal) Rules. It took note of the situation arising out of 42nd amendment and the decision in **Tulsiram Patel**. It took note of the decision in **R.P. Bhatt** (supra) in respect of pari material provisions of CCS (CCA) Rules. It held :

"In the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmation. But, R. 22 (2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. R 22 (2) provides that in the case of an appeal against an order imposing any of the penalties specified in R. 6 or enhancing any penalty imposed under the said rule, the appellate authority shall "consider as to the matters indicated therein. The word



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"consider" has different shades of meaning and must in R. 22 (2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

It is of utmost importance after the Forty-Second Amendment as interpreted by the majority in *Tulsiram Patel's case (1985) 3 SCC 398* that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given."

12- It is clear from a bare perusal of the allegations that one of the incidents related to the then Principal herself. 'No man shall be a judge in his own case', is a cardinal principle of natural justice. The orders of M.H.A. & DG (P&T) quoted below Rule 12 of the CCS (CCA) Rules, envisage appointment of ad hoc disciplinary authority. This has not been done.

13- The enquiry officer in his report, makes it clear that applicant and his defence assistant left abruptly on 26.04. The Prosecution witnesses were examined on 27.04.2004, in absence of the applicant or defence assistant and report submitted on 30.04. This report is not given to applicant. The applicant has specifically commented on this aspect in his appeal petition but, the appellate authority has not considered it at all. The role of appellate authority is laid down in the decisions of **R.P.Bhat and C. Ramachandra.**



14- We quash and set aside the ⁷ orders of appellate authority and disciplinary authority. In case, the earlier disciplinary authority has been transferred out, the ^{new} disciplinary authority shall appoint an enquiry officer who shall conduct the enquiry from the stage of cross-examination of prosecution witnesses. The new enquiry officer will submit his report un-influenced by the views of earlier enquiry officer or orders of disciplinary / appellate authority. In case, the same disciplinary authority continues, an ad hoc disciplinary authority shall be appointed. The enquiry be completed within four months of the receipt of the order.

15. The applicant will be entitled to the amount with-held on account of imposition of penalty. The same shall be refunded within three months of the receipt of order. Otherwise, interest at 9^{1/2}% shall be payable beyond that period to the date of actual payment. A fresh decision regarding period of suspension shall be taken after conclusion of enquiry. Costs payable by official respondents quantified at 1,500/- only.

Shankar Prasad
(Shankar Prasad)
AM

R.D. Raghavan
(R.D. Raghavan)
VC



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