

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

**Original Application No 162 of 2008
Order Reserved on 01.09.2014**

Order Pronounced on 17/09/2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Romesh Kumar sharma aged about 66 years S/o Late Jankak Raj Sharma R/o 76 Samar Vihar Colony, Alambagh.

Applicant

By Advocate Sri A. Moin.

Versus

1. Kendriya Vidyalaya Sangthan through its Commissioner 18 Institutional Area, Shahidjeet Singh Marg, New Delhi.
2. Chairman, Kendriya Vidyalaya Sangthan, 18 Institutional Area, Shahidjeet Singh Marg, New Delhi.
3. Vice Chairman, Kendriya Vidyalaya Sangthan, 18 Institutional Area, Shahidjeet Singh Marg, New Delhi.
4. Assistant Commissioner, Kendriya Vidyalaya Sangthan Aliganj, Lucknow.

Respondents

By Advocate Sri Surendran P

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-



(a) To quash the impugned order dated 9.7.2007 passed by Respondent No. 2, as contained in Annexure A-1 to the O.A. with all consequential benefits.

(b) To direct the respondents to treat the period from 25.1.1999 to 31.5.2002 as duty for all purpose including arrears of pay taking into consideration that the punishment orders dated 25.1.1999 and 27.8.1999 had been quashed by this Hon'ble Court.

(c) To direct the respondents to refund the amount of pension deducted from the applicant with interest @ 18% p.a.

(d) Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The brief facts of the case are that the applicant was initially appointed as trained Graduate Teacher in English in October, 1967 in Kendriya Vidyalaya Sangthan and he was subsequently appointed in 1968 on the post of Post Graduate Teacher in English and thereafter, he was promoted on the post of Vice Principal in the year 1986. While the applicant was posted at Kendriya Vidyalaya, Bharat Heavy Electricals Limited, Jagdishpur, the applicant acted as Principal and designated as Incharge Principal on account of no regular Principal from February 1991 to October 1993.

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In November, 1995, the applicant was served with a charge sheet wherein, 8 charges were levelled against the applicant. Along with the charge sheet, the statement of imputations of misconduct and list of witnesses and documents are also mentioned. After the service of the charge sheet, the applicant replied to the same and also wrote a letter to the enquiry officer. A copy of which was given to the Commissioner and requested for supply of 10 documents which were important for defence and out of aforesaid documents so demanded by the applicant, only 5 documents were made available. It is also indicated by the learned counsel for the applicant that refusal of the authorities to supply the relevant important documents, the applicant was handicapped in his defence and thus he could not get reasonable opportunity of defence. The inquiry officer proceeded with the inquiry and finally, the inquiry officer submitted his inquiry report on 15.12.2006 indicating there in that out of 8 charges, only a part of Article (v) is proved and rest of the charges are not proved. The copy of the inquiry report was placed before the disciplinary authority and the disciplinary authority issued a disagreement memo on 3.4.2007 and the applicant was asked to submit the reply within a period of 15 days. Vide representation dated 9.4.2007, the applicant submitted the reply to the

disagreement memo and prayed for condoning the proposed penalty to be imposed upon him. The disciplinary authority through order dated 9.7.2007, imposed a penalty of 20% cut in pension for a period of 5 years with immediate effect and the period of unemployment w.e.f. 25.1.1999 to 31.5.2002 from the date of dismissal to the date of superannuation in normal course to be treated as non duty for all purposes. It is admitted that the applicant has not preferred an appeal against the said order. The applicant feeling aggrieved by the said order, preferred the present O.A.

3. The applicant has relied upon Rule 9 of the CCS (Pension) Rules, 1972. Apart from this, the learned counsel for the applicant has also relied upon Rule 8 (5) (b) of the CCS (Pension) Rules and indicated that the expression grave misconduct is required to be interpreted. Not only this, the learned counsel for the applicant has also relied upon the decision of the Hon'ble Apex Court in the case of D. V. Kapoor Vs. Union of India and Others reported in (1990) 4 SCC 314 and indicated that the Hon'ble Apex Court has categorically indicated that the appellant must be found to have committed grave misconduct or negligence within the meaning of Rule 8(5) (2) of the CCS (Pension) Rules and has also indicated that neither in the charge sheet nor in the

orders passed by the authority the grave misconduct is being mentioned as such, the entire action taken by the respondents is illegal, arbitrary and is liable to be quashed.

4. Not only this, the applicant earlier preferred an O.A. vide O.A. No. 379/1999 which was finally decided by this Tribunal on 22.9.2003. In the said O.A., the applicant has challenged the order dated 25.1.1999 and 27.8.1999. The Tribunal while deciding the O.A., quashed both the orders and liberty was given to the respondents to start the proceedings from the stage of giving documents which were allowed by the enquiry officer and by summoning witnesses asked for by the applicant to examine and then proceed with the enquiry from that stage in accordance with law. As such, a fresh inquiry was conducted in terms of order dated 28.2.2006 and finally the respondents pass the impugned orders dated 9.7.2007.

5. The respondents filed their counter reply and through counter reply, it is indicated by the respondents that the applicant was charged sheeted while he was functioning as In charge Principal, K.V. Jagdishpur and the respondents passed the order dismissing the applicant from service vide order dated 25.1.1999 and the appeal so preferred by the applicant was also rejected by the authorities. The applicant

preferred the O.A. indicating there in that the required documents were not supplied to the applicant as such, the Tribunal remanded back the proceedings to the respondents and accordingly, respondents again started the inquiry w.e.f. 28.2.2006 and finally the disciplinary authority after due opportunity of hearing to the applicant imposed a punishment of 20% cut in pension for a period of 5 years upon the applicant and has also indicated that the period of unemployment w.e.f. 25.1.1999 to 31.5.2002 i.e. from the date of dismissal to the date of retirement in normal course treated as non duty for all purposes. Undisputedly, the applicant has not preferred any appeal against the said order. The learned counsel for the respondents has also argued that the word misconduct has categorically mentioned in the entire documents and on account of misconduct on the part of the applicant, the impugned punishment has been imposed upon the applicant. Not only this, it is also indicated by the respondents that the scope of judicial review in the matters of disciplinary proceedings is very limited and if there is no procedural lapses, the same is not required to be interfered with. Not only this, it is also argued by the respondents that the applicant has also not submitted any proper reply and there is no requirement of mentioning any word as grave misconduct in the charge sheet and in the event of

no procedural lapses, no interference is required by this Tribunal.

6. On behalf of the applicant, rejoinder is filed and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied. However, it is indicated by the learned counsel for the applicant that in the event of no grave misconduct, a punishment cannot be awarded to the applicant and not only this, it is also argued by the applicant that in terms of Rule 9 of the CCS (Pension) Rules, empowers of the President is only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss to in whole or in part subject to minimum and the employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularities.

7. Heard the learned counsel for the parties and perused the record.

8. The applicant was appointed in the respondents organization and while working as acting Princiipal of KVS, Jagdishpur, a charge sheet was served upon the applicant. The charged sheet so served upon the applicant contains 8 charges which reads as under:-

ARTICLE-I

That Shri R. K. Sharma, while functioning as Incharge Principal in Kendriya Vidyalaya, BHEL Jagdishpur during the period 1991-92 to 1993-94 made irregular admissions in various classes without the approval of the competent authority and also issued TCs immediately after granting admission most of the cases. The said act constitutes a misconduct which is violative of Rule 3 (I) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of the KVs.

ARTICLE-II

That the said Shri R. K. Sharma while functioning as Incharge Principal in the aforesaid vidyalaya during the aforesaid period issued TC twice on 14.8.1993 and 19.10.1993 to the same student Master Sumit Diwan vide TC No. 67 dated 14.8.1993 and TC No. 100 dated 19.9.1993. The said act of Shri Sharma constitutes a misconduct which is violation of Rule 3 (I) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan.

ARTICLE-III

That the said Shri R.K. Sharma while functioning as Incharge Principal in the aforesaid vidyalaya during the aforesaid period purchased furniture items amounting to Rs. 54,480/- without following the purchase procedure as laid down in chapter 17 of Accounts Code for KVs. The said act of Shri Sharma

constitutes a misconduct which is violative of Rule 3 (I), (i) (ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan.

ARTICLE-IV

That the said Shri R. K. Sharma while functioning as Incharge Principal in the aforesaid vidyalaya during the aforesaid period purchased crockery and other misc. items amounting to Rs. 55,990/- without following the purchase procedure as laid down in Chapter 17 of Accounts Code for KVs. The said act of Shri Sharma constitutes a misconduct which is violative of Rule 3 (I) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan.

ARTICLE-V

That the said Shri R. K. Sharma while functioning as Incharge Principal in the aforesaid vidyalaya during the aforesaid period drew the LTC/TA advance to the tune of Rs. 19,000/- and failed to submit/ settle the claims and kept the same with him unauthorisedly. He thus misappropriated an amount of Rs. 19,000/-. The said act of Shri sharma constitutes a misconduct which is violative of Rule 3 (I) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan.

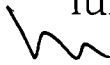
ARTICLE-VI

That the said Shri RK Sharma while functioning as Incharge Principal the aforesaid vidyalaya during the aforesaid period drew an advance Rs. 9,405/toward LTC and claimed/adjusted the amount without complying with the objections of AIO, Lucknow Region and without getting it pre-audited. He thus misused his official position as Drawing and Disbursing officer. The said act of Shri Sharma constitutes a misconduct which is violative of Rule (I), (i), (ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan.

ARTICLE-VII

That the said Shri R. K. Sharma while functioning as Incharge Principal in the aforesaid vidyalaya during the aforesaid period claimed Daily Allowance w.e.f. 12.2.1991 to 8.8.1991 to the tune of Rs. 9, 012.50/- which include the amount of the days that were either holidays or when he was on CL/EL. In addition to this, he also claimed double DA for 22.4.1991 to 23.4.1991 in the main bill and in a separate bill. The said act of Shri Sharma constitutes a misconduct which is violative of Rule 3 (I) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan.

ARTICLE-VIII

That the said Shri R. K. Sharma while
 functioning as Incharge Principal in th aforesaid

vidyalaya during the aforesaid period failed in discharging his duties a drawing and disbursing officer in as much as he did not maintain the vidyalaya Accounts properly, failed to constitute PR. Committee to govern the PF. The said act of Shri Sharma constitutes a misconduct which is violative of Rule 3 (I) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employees of the Sangathan.

8. After the said service of charge sheet, the copy of the same was duly communicated to the applicant. It is to be indicated that along with the charge sheet, the list of documents were mentioned whereas, in regard to the list of witnesses, it is mentioned as Nil. Soon thereafter, the applicant, has submitted an application for supply of additional documents and the inquiry officer written a letter in the year 1997. The authority supplied all the additional documents. Finally, the respondents passed an order of dismissal from service through order dated 25.1.1999. The applicant preferred the appeal which was also dismissed by the respondents vide order dated 22.8.1999. The applicant feeling aggrieved by the said orders preferred the O.A. before this Tribunal and this Tribunal passed an order on 22nd September, 2003 wherein, it is categorically mentioned by the Tribunal that the order passed by the authorities are non-speaking orders and punishment so awarded to the

applicant also not proportionate to the gravity of misconduct alleged against him and in view of this both the orders of the disciplinary authority as well as the appellate authority were quashed. However, the Tribunal granted liberty to the respondents to start the proceedings from the stage of giving documents which were allowed by the inquiry officer and by summoning the witnesses wanted by the applicant to examine and then proceed with the enquiry from that stage in accordance with law. After completing the enquiry respondent shall give opportunity to the applicant to represent against the report of enquiry officer as well as any recommendation which they wish to take from the Vigilance Department by giving time to the applicant to make his detailed representation thereon within stipulated time. Not only this, the Tribunal has also observed that the disciplinary authority shall then pass detailed and reasoned order by dealing with all the points raised by the applicant including quantum of punishment. Not only this, the Tribunal also categorically mentioned that since there was a procedural irregularities therefore, the matter was left open to the respondents to pass appropriate orders for the intervening period in accordance with law and instruction on the subject. The matter as filed before the Hon'ble High Court, the Writ Petition was

withdrawn. After the said orders of the Hon'ble High Court, the respondents issued an order on 28.2.2006 and the competent authority directed to start an inquiry from the stage of giving documents which were allowed by the inquiry officer and by summoning witness wanted by the applicant to examine and then proceed with the inquiry from that stage in accordance with law. It is also indicated in the said order that the orders in regard to appointing of the presenting officer will be issued separately. After the said orders, the inquiry officer was appointed and the inquiry officer submitted his report indicating there in that out of 8 charges, only part of one charge stands proved whereas, other charges does not stands proved. While observing this, the inquiry officer has taken cognizance of list of witnesses and also number of documents and also discussed all the charges. The disciplinary authority not being satisfied with the said report of the inquiry officer, issued disagreement memo on 3.4.2007 indicating there in that the charges as mentioned in Article, (i), (ii), (iii), (iv), (v) are very serious in nature. As such, the respondents propose to issue major penalty of cut in pension to the tune of 20% for a period of five years with the stipulation to treat the period of unemployment i.e. from 25.1.1999 the date of dismissal to 31.5.2002 the date of superannuation in normal

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course as non-duty for all purposes. The applicant was provided the copy of the disagreement memo and was also asked to submit the detailed reply within a period of 15 days from the date of receipt of the memo. Along with the disagreement memo, list of exhibited documents were also mentioned and it is also indicated that no state witness were required to be examined as there was no one listed in the charge sheet and no defence witnesses were produced by the charge officer though he initially submitted a list of two witnesses vide his letter dated 3.5.2006, but subsequently on 16.10.2006 after completion of the regular hearings of the case by the disciplinary authority, the charged officer was asked to produce his witnesses for his defence, he expressed his unwillingness to do so, vide his written application date 16.10.2006. As such, the applicant refuse to submit any defence statement in support of his contentions. The applicant submitted the reply to the memo. The reply of the applicant was considered by the disciplinary authority and the disciplinary authority through order dated 9.7.2007 imposed the punishment of 20% cut in pension for a period of five years and the period of unemployment i.e. from 25.1.1999 to 31.5.2002 as non-duty for all purposes. It is undisputed fact that the applicant superannuated on 31.5.2002 and the entire

proceedings started after the order of the Tribunal from 28.2.2006.

9. As regards, the arguments advanced by the learned counsel for the applicant in regard to Rule 8(5)(b) of the CCS (Pension) Rules, the word grave misconduct can be seen from the charges leveled against the charged officer. As such, not mentioning the word grave misconduct in the charge sheet, or in the impugned order, does not support the contentions of the applicant. As regard, Rule 9 of the CCS (Pension) Rules which requires the exercise of the power by the President in regard to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the state or in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularities. For ready reference, Rule 9 (i) is reproduced below:-

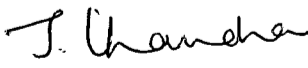
“9(i) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and for ordering recovery from a pension or gratuity of the whole

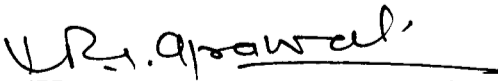
or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement.”

10. The applicant superannuated on 31.5.2002, and the disagreement memo was given on 3.4.2007, as such, matter would have been referred under Rule (9) of the CCS (Pension) Rules for taking a appropriate decision which is not done by the competent authority. As such, it requires interference by this Tribunal.

11. Accordingly, the impugned order dated 9.7.2007 is quashed. The matter is remanded back to the disciplinary authority to initiate the proceedings a fresh in accordance with Rule (9) of CCS (Pension) Rules, 1972 keeping in mind that the applicant superannuated on 31.5.2002 and pass the necessary orders within a period of six months from the date the certified copy of the order is produced.

12. Accordingly, the O.A. is disposed of. No order as to costs.


(Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)