Central Administrative Tribunal Lucknow Bench Lucknow

Lucknow this the 31st day of ~~February~~, 2014

Original Application No. 403 OF 2011

HON'BLE MS. JAYATI CHANDRA,MEMBER(A)
HON'BLE SHRI M. NAGRAJAN MEMBER (J)

Dr. Hazari Lal, A/a 56 years, S/o Lt. Sri Munna Lal, R/o 59, Kailash Nagar, Jajmau, Kanpur.

Applicant

By Advocate:Sri V. K. Srivastava.

VERSUS

1. Kendriya Vidyalaya Sangahan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16, through its Chairman.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Sector-J, Aliganj, Lucknow.
3. Principal, Kendriya Vidyalaya, Kanpur Cantt (II Shift), Kanpur.
4. Sri R. P. Dwivedi, Principal, Kendriya Vidyalaya, Kanpur Cantt (II Shift), Kanpur.

Respondents

By Advocate Sri Surendran P.

(Reserved On 3.2.2014)

ORDER

By Hon'ble Shri M. Nagrajan, Member (J)

The applicant has filed the present O.A. challenging the action of the respondent No. 3 imposing penalty by his order dated 15.4.2011 (Annexure-1) against which his appeal has also been disposed of by the Respondent No. 2 by the order dated 3.9.2011 (Annexure No. 2). He also sought a direction to grant all consequential benefits upon quashing the said orders impugned in the O.A.

2. The impugned order dated 15.4.2011, is passed by the Respondent No. 3 i.e. the Principal, Kendriya Vidyalaya, Kanpur Cantt (II Shift), Kanpur. The said Principal under the impugned order dated 15.4.2011 ordered that the pay of the applicant be reduced by one stage from Rs. 19970+ Grade Pay

Rs. 4800/- to Rs. 19240+ Grade Pay Rs. 4800 in the time scale of PB-2 of Rs. 9,300-34,800/- for a period of three years w.e.f 15.4.2011 without cumulative effect and not adversely affecting his pension. It was further ordered therein that the applicant will not earn increments of pay during the period of reduction and that on the expiry of the said period, the reduction will have no effect of postponing his future increments of pay.

3. The other order impugned i.e the order dated 3.9.2011 vide Annexure No. 2 i.e passed by the second respondent in the appeal preferred by the applicant as against order dated 15.4.2011 passed by the Disciplinary Authority i.e. Respondent No. 3.

4. The case of the applicant is that he was appointed in the year 1983 as PGT (BIO). Subsequently, the apphcant was promoted as PGT (BIO) on 26.8.2008 and when he was working as PGT (BIO) at KVS Kanpur, he was in receipt of Memorandum dated 30.3.2011 under which, it is proposed to take action against him under Rule 16 of CCS (CCA) Rules, 1965 and he was asked to submit his representation within 10 days of the receipt of the said memorandum. In response to the said memorandum dated 30.3.2011, the applicant has submitted his reply on 4.4.2011 vide Annexure A-14. After receiving the reply of the applicant dated 4.4.2011, the 3rd respondent has passed the impugned order dated 15.4.2011 (Annexure No. 1) imposing a penalty. According to the applicant, the order of punishment imposed upon him under

the impugned order dated 15.4.2011 falls within the definition of major penalty under Rule -11 of CCS (CCA) Rules, 1965. In support of this contention, the applicant referred to the Rule 11 (v) of CCS (CCA) Rules 1965 which reads as under:

> "**Major Penalties**
>
> **(v) save as provided for in Clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay."**

5. By referring to the above Rule, the applicant contends that no major penalties can be imposed, without following the procedure provided under Rule-14 of CCS (CCA) Rules 1965. In sum and substance, the main contention of the applicant in support of his prayer for quashing the order dated 15.4.2011(Annexure-1) passed by the 3rd respondent is that the same is inviolation of Rule 14 of CCS (CCA) Rules, 1965. It is further contended, that in view of the fact that the Respondent No. 3 has passed the impugned order dated 15.4.2011(Annexure No. 1) without following the procedure prescribed under Rule 14 of CCS (CCA) Rules, 1965 and since the same came to be confirmed by Appellate Authority by its order dated 8.9.2011 vide Annexure No. 2 both the orders are liable to be set aside. The applicant further assailed the impugned orders attributing malafides upon the Respondent No. 4. Hence he presented this O.A. with a prayer to set aside

the said two orders dated 15.4.2011 and 8.9.2011 respectively passed by the Respondent Nos. 2 and 3.

6. The respondent No. 2 filed his counter reply meeting the ground and contentions raised by the applicant. In the reply, it is contended that the Respondent No. 3 is the competent authority to impose minor penalty and the penalty imposed by the respondent No. 3 by his order dated 15.4.2011 falls within the definition of the minor penalty. The further contention of the respondent is that it was not necessary for the Disciplinary Authority to follow the procedure prescribed under Rule 14 of the said CCS (CCA) Rules, 1965. The respondent No. 3 in his counter reply has specifically contended that under the Memorandum dated 30.3.2011 (Annexure-13) it was proposed to take action against the applicant under Rule 16 of CCS(CCA) Rules, 1965 and as such, the question of following the procedure prescribed under Rule 14 of CCS (CCA) Rules, 1965 does not arise. The allegation made against the Respondent No. 4 was specifically denied in the reply.

7. Perused the pleadings and referred to the documents annexed to the pleadings of both the parties

8. Heard the learned counsel for the applicant Shri V. K. Srivastava, and the learned counsel for the respondents Shri Surendran P. Upon hearing the learned counsel for the applicant and the respondent, the points that arises fr our considerations are:

(i) Whether punishment imposed by the third respondents (Principal) by the order dated 15.4.2011 (Annexure No. 1) is a major penalty or minor penalty within the definition of Rule 11 of CCS(CCA) Rules, 1965.

(ii) If the answer to the above the question is that the order dated 15.4.2011 falls within the definition of major penalty, then, whether on that ground, the impugned orders are liable to be set aside.

(iii) Whether the impugned order is liable to set aside on the ground of bias /malafides on the part of the respondent No. 4 as alleged by the applicant.

9. To consider the point No. 1, i.e. whether the penalty imposed by the respondent No. 3 under the impugned order dated 15.4.2011 is minor penalty or a major penalty, it is necessary to refer to Rule -11 if the CCS(CCA) Rules 1965 which categorizes penalties and relevant portion reads as under:-

> **"11. Penalties:-**
> **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 art of any pecuniary loss caused by him to the Government by negligence or breach of orders;**
>
> **(iii) (a) reductions 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:**
>
> **Major Penalties-**

(v) save as provided for in Clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay."

(vi) reduction to lower time scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service.

10. Clause (iii) (a) of the above shows that the penalty imposed is 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 then such penalty is a minor penalty. On the other hand, as per Clause (v) of above, the penalty imposed is reduction to a lower stage, in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay, then, such a penalty is a major penalty. Keeping this in view, the operative portion of the order dated 15.4.2011 (Annexure No. 1) were to read, the penalty imposed upon is required to be concluded as a major penalty. As such , we answer the point

No. 1 holding that the penalty imposed by the Principal by the order dated 15.4.2011, Annexure-1 is a major penalty.

11. Now in view of the finding that penalty order dated 15.4.2011, is a major penalty, the next question that required to be considered is whether that on account of the finding that the penalty imposed is a major penalty, the impugned order dated 15.4.2011 and 3.9.2011 are required to be set aside. To deal with this, what is required to be noted is that it is an admitted fact that as against the order dated 15.4.2011 passed by the respondent No. 3 (Principal), the applicant has preferred an appeal before the Appellate Authority namely the Assistant Commissioner, KVS, Regional office, Sector-J (Respondent No. 2). The Appellate Authority while disposing of the said appeal, only confirmed the order of minor penalty and omitted the direction contained in the said order dated 15.4.2011 that the applicant will not earn increments of pay during the period of reduction and that on the expiry of the period of three years, the reduction will have no effect of postponing this future increments of pay. At this juncture, it is relevant to refer to the operative portion of the order passed by the Disciplinary Authority dated 15.4.2011 and the order dated 3.9.2011 passed by the Appellate Authority. The order dated 15.4.2011(Annexure No. 1) passed by the Disciplinary Authority reads as under:-

> **"It is therefore ordered that the pay of DR. Hazari La, PGT(Bio) be reduced by one stage from Rs. reduced by one stage from Rs. 19970+ Grade Pay Rs. 4800/- to Rs. 19240+ Grade Pay Rs. 4800 in the time scale of PB-2 of Rs. 9,300-34,800/- for a period of three years w.e.f 15.4.2011 without cumulative effect and not adversely affecting his pension. It was further ordered therein that the applicant will not earn increments of pay**

> **during the period of reduction and that on the expiry of this period, the reduction will have no effect of postponing his future increments of pay."**

The order dated 8.9.2011 (Annexure No. 2)passed by the Appellate Authority reads as under:-

> **"Now therefore, the undersigned being the Appellate Authority, confirms the order of minor penalty of reduction by one stage in the time scale of the pay for the period of three years without cumulative effect vide order dated 15.4.2011 on Dr. Hazari Lal, PGT(Bio) Kendriya Vidyalaya, Kanpur Cantt (IInd Shift) and disposes his appeal dated 25.5.2011 accordingly."**

A reading of the operative portion of the order dated 8.9.2011 (Annexure No. 2) passed by the Appellate Authority reveals that the penalty imposed upon the applicant is only is a minor penalty and the same fall within the definition of Rule 11 (iii) (a). While disposing of the appeal what is confirmed by the Appellate authority is only the minor penalty and not the later of portion the order dated 15.4.2011 (Annexure No. 2) which attracts the definition of "Major Penalty" to the extent that he will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have no effect of postponing his future increments of pay. Thus the resultant position of the order of the appellate authority is one of imposition minor penalty which falls within Clause (iii) of Rule 11 of CCS (CCA) Rules 1965. Hence, we are of the opinion that impugned orders are not liable to be set aside on the basis of the answer to the point No.

12. The order of penalty dated 15.4.2011 passed by the disciplinary authority merged with the order of the Appellate Authority dated 3.9.2011. A finding has been already

recorded that the penalty imposed upon the applicant is only a minor penalty and not a major penalty, in view of the order of the Appellate Authority dated 3.9.2011. Hence we are of the opinion that though the order dated 15.4.2011 passed by the Disciplinary Authority falls within the definition of the major penalty as prescribed under Rule -11 (v) that cannot be a ground to interfere with the impugned orders and hence we answer the point No. 2 in negative.

13. What is further required to be noted is that once a decision has been taken for formal disciplinary proceedings should be instituted against the Government Servant under the rules, the Disciplinary Authority will need to decide whether the proceeding should be taken either under Rule 14 or under Rule 16 i.e. for imposing a major penalty or a minor penalty. At this juncture, it is relevant to refer to the memorandum dated 30.3.2011 (Annexure A-13) . In the said memorandum, it is proposed to take action against the applicant under Rule 16 of CCS(CCA)Rules,1965. The reading of Annexure-13 reveals that the action proposed against the applicant is under Rule-16. Accordingly, by following the procedures prescribed under Rule -16, the disciplinary authority passed the order dated 15.4.2011. Further, the decision taken by the disciplinary authority in its order dated 15.4.2011 is only to impose a minor penalty. The same is evident from the portion of the order dated 15.4.2011 which reads as under:-

> "Now therefore, the undersigned being the competent disciplinary authority under Rule 16 of CCS (CCA) Rules

> 1965, after considering the aforesaid representation of Dr. Hazari Lal, PGT(Bio) & facts and circumstances of the case, have come to the conclusion that the said Dr. Hazari Lal, PGT(Bio) had failed to maintain devotion to duty & created gross indiscipline and thus violated of Rule 3 (1) (ii) and (iii) of CCS (Conduct) Rules 1964 as extended to the employees of KVS and hence have decided to impose a minor penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years, without cumulative effect and not adversely affecting his pension."

14. The underlined portion of the impugned order dated 15.4.2011 makes it crystal clear that a decision taken is only to impose

a minor penalty and not a major penalty. But however, in the last paragraph of the order dated 15.4.2011, the disciplinary authority issued a direction relating to the fact whether the applicant will earn increments of pay during the period of reduction and whether such reduction will have effect of postponing his future increments of pay after the expiry of three years. Thus, in view of the direction contained therein, the order falls within the definition of major penalty. It is already observed that the decision taken by the disciplinary authority is only to impose a minor penalty. In view of this position and in view of the fact that that the Appellate Authority while confirming the order of minor penalty, did not confirm the direction issued by the disciplinary authority, we are not inclined to accept the argument of the learned counsel for the applicant that the impugned order of the penalty is liable to set aside for not following the procedure under Rule 14 of CCS(CCA) Rules 1965.

15. So far the prayer of the applicant to quash the impugned order dated 3.9.2011 (Annexure A-2) passed by the Appellate Authority, we find that no valid ground is urged by the applicant. The law is well settled that the Tribunal in exercising the power of judicial review cannot sit as an Appellate Authority. The power of the Tribunal to interfere with an order passed by the disciplinary proceedings is very limited. The Tribunal in its exercise of power of judicial review of an order passed in a disciplinary proceedings can interfere in such order only in the circumstances where it is pleaded and established:-

(i) That the impugned order is in violation of statutory provisions or the rules prescribed or the procedure is disregarded.

(ii) The order has been passed by not ad hearing to the Principle of natural justice.

(iii) The punishment has been imposed in the absence of evidence.

(iv) The conclusion is wholly arbitrary, unless any one of the aforesaid ingredients are pleaded and established normally, the Tribunal in exercise of power of judicial review, cannot interfere with an order passed in the disciplinary proceedings. It is a well settled law that the Tribunal cannot interfere with an order on finding found fault with the decision, but can interfere only a situation where it is found that process is not in accordance with the prescribed procedure and the procedure has been improperly exercised. If these principles

of law were to be applied to the facts and circumstances of the case, it requires to be concluded that the impugned order is not liable to be interfered with since the applicant has not urged any one of the aforesaid necessary ingredients which warrants an interference in the impugned order. Hence our answer to point No. 2 is that though the order of the disciplinary authority dated 15.4.2011 falls with the definition of the major penalty, cannot be a ground to set aside the order of the appellate authority dated 3.9.2011(Annexure No. 2.).

16. While dealing with the point No. 3, it is required to be noted that the applicant has attributed bias and enimical approach of the Respondent No. 4 against him. As such, the alleged bias and enimical approach of the Respondent No. 4 against him can be pressed into service as a ground of attack only to the extent of the order passed by the disciplinary authority dated 15.4.2011. But, admittedly, as against the order dated 15.04.2011, the applicant preferred as appeal and the same was disposed of by the appellate authority by the order dated 3.9.2011 (Annexure No..2). The appeal is not rejected, but, was disposed of modifying the major penalty to that of a minor penalty. The applicant has not pointed out any illegality relating to the manner in which the appellate authority disposed of the appeal. The alleged ground of bias/enimical approach can be gone in to, provided the order of the disciplinary authority is confirmed. But, what is confirmed by the appellate authority is imposition of minor penalty. It is

already said the major penalty imposed by the disciplinary authority is modified by the appellate authority to that of a minor penalty. In other words the order of the disciplinary authority is no more in existence and hence the order of penalty passed by appellate authority can't be interfered on the alleged ground of bias and enimical approach of the respondent no. 4.

The Hon'ble Supreme Court, in the case of E. P. Royappa Vs. State Of Tamil Nadu and another reported in 1974 SCC (L&S) 165 as observed that the allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. In the light of the principle laid down by the Hon'ble Supreme Court in the said case of E. P. Royappa we perused the allegation averment made by the applicant against the respondent No. 4 as to the allged enimical approach , towards him and on perusal of the same, we find that the applicant has not discharged the onus of proof with high order of credibility in respect of the said allegation. Hence, we answer the point No. 3 in negative.

17. Finally with regard to the prayer of the applicant to set aside the impugned orders we may observe that quashing the order dated. 15.04.2011 (Annexure No. 1), order does not arise at all, since the same is not in existence in view of the fact that the appellate authority modified the order of disciplinary authority from that of major penalty to that of a minor penalty. As regards the prayer of the applicant for quashing of the order of the appellate authority dated 3.9.2011, we have already held,

that no valid grounds has been urged by the applicant calling interference of the same.

18. With regard to the reliance placed by the applicant upon the judgment of the Hon'ble Allahabd High Court (Lucknow Bench) in the case of Mahaveer Prasad Verma vs. Central Administrative Tribunal , Lucknow and Others (2013(31) LCD 351), and in the case of Dr. Anil Chandra Vs. Birla Sahni Institute of Paleobotany and other (2003 (27) LCD Para 396, we may observe that the counsel for the applicant placed reliance upon the said two judgments with a view to substantiate his contention that if the rules, prescribed a particular mode for performing an duty or for taking any action or for doing any work, then the same has to be done in that manner prescribed and not otherwise. But, this contention does not lie in the mouth of the applicant for the reason that following the procedure prescribed under Rule 14 of CCS(CCA)Rule,1965 does not arise since the penalty imposed and which is in existence is only on minor penalty. Therefore the decision relied by the counsel for the applicant is of no relevance.

19. In view of the foregoing reasons, we are of the view that the application is devoid of merits and as such, the O.A. required to be dismissed. Accordingly, the O.A. is dismissed. No order as to costs.

(M. Nagrajan)
Member(J)

(Ms. Jayati Chandra)
Member(A)

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