

5/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Sahita
15/11/17

(SEE RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : 8/03
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant(s) : Somit Srivastava

- Vs. -

Respondent(s) : U.O.T. (K.V.S.)

Advocate for the Applicant(s) : B.K. Sharma, S. Sarma,

Advocate for the Respondent(s) : CGSC Mrs V. Das

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time. Contempt Petition is filed / not filed C.F. for Rs. 50/- deposited vide IPO/B/ No <u>76605/43</u> Dated <u>19.12.03</u></p> <p><u>[Signature]</u> Dy. Registrar</p> <p>mb</p>	<p>11.2.2003</p>	<p>Heard Mr. S.Sarma, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records.</p> <p>List on 11.3.2003 for orders</p> <p><u>[Signature]</u> Vice-Chairman</p>
<p>Steps taken with in envelopes.</p> <p><u>[Signature]</u></p> <p>Notice prepared and sent to D/s for filing the Respondent No 1 to Sd/- Regd ALD.</p> <p><u>[Signature]</u> 18/2</p> <p>D/No <u>259 to 263</u> dtd <u>19/2/03</u></p>	<p>11.3.2003</p>	<p>Mr.M.K.Mazumdar, learned counsel appearing on behalf of the respondent has prayed for time to file written statement.</p> <p>List on 2.4.2003 for filing of written statement.</p> <p><u>[Signature]</u> Vice-Chairman</p>

Respondent No 1. Unreceived. due to "incomplete address"

[Signature]
27/2/03

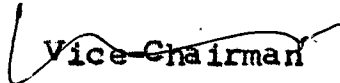
2
O.A. 8/2003

2.4.2003

Heard Mr. S. Sarma, learned counsel for the applicant. Mr. M.K. Mazumdar, learned counsel for the respondents stated that he is filing written statement shortly. Pu up again on 10.4.2003 for further orders

No written statement has been filed.

21
9.4.03


Vice-Chairman


mb

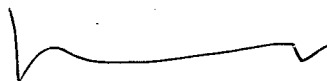
10.4.2003

Mr. M.K. Mazumdar, learned standing counsel for the KVS stated that he is filing written statement within short time. In that view of the matter, the case may now be listed for hearing on 26.5.2003. The applicant may file rejoinder within two weeks thereafter.

21. 4.03

W/S submitted by the respondent No 4.


No rejoinder has been filed.


Vice-Chairman

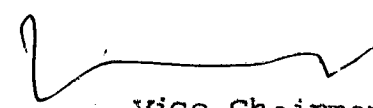
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23.5.03

26.5.03

Heard Mr S.Sarma, learned counsel for the applicant and Mr M.K.Mazumdar, learned counsel for the respondents at length. Hearing concluded. Judgment reserved.


Member


Vice-Chairman

6.6.2003

30.5.2003

Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S.K. Hajra, Member (A).

Judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.

copy of the judgment has been sent to the Office for issuing the sum to the applicant as well as to the L/Adv. for the Respt


Member


Vice-Chairman

mb

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / R.A. No.⁸ of 2003.

DATE OF DECISION 30.5.03.....
.....

..... Sri Somit Srivastav APPLICANT(S).

..... Sri S. Sarma ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

..... Union of India & Ors. RESPONDENT(S).

..... Sri M.K.Mazumdar ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN

THE HON'BLE MR S.K.HAJRA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Ho'ble Vice-Chairman

Yes
h

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 8 of 2003.

Date of Order : This the 30th day of May, 2003.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr S.K.Hajra, Administrative Member.

Sri Somit Srivastava,
Son of late G.P.Srivastava,
P.G.T.(Physics),
Kendriya Vidyalaya,
Project Pushpak, Aizawl.

...Applicant

By Advocate Sri S.Sarma.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Human Resources Development,
New Delhi.
2. The Commissioner (Admn.),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi.
3. The Joint Commissioner (Admn.),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi.
4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Hospital Road,
Silchar-1.
5. The Principal,
Kendriya Vidyalaya, Project Pushpak,
Zemabawk, Aizawl (Mizoram)

...Respondents

By Sri M.K.Mazumdar, Standing counsel for KVS.

O R D E R

CHOWDHURY J.(V.C)

The applicant at the relevant time was working as a Post Graduate Teacher (Physics) in the Kendriya Vidyalaya, Project Pushpak at Aizawl. While working as such he was served with a memorandum dated 15.2.2000 informing him of the proposal to take action under Rule 16 of the CCS (CCA) Rules 1965 (hereinafter referred to as Rules) alongwith the

article of charge as well as the imputation. The full text of the Article of charge alongwith the statement of imputation of misconduct are reproduced below :

"Sri Somit Srivastav, PGT(Physics) while functioning at Kendriya Vidyalaya, Aizawl has been indulging in private tution in violation of item 19 of the code of conduct of teachers as prescribed in Article 55 of the Education Code.

He has therefore, rendered himself liable to disciplinary action under CCS(CCA) Rule 1965 as extended to employees of the Kendriya Vidyalaya Sangathan.

Annexure-II.

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLE OF CHARGE FRAMED AGAINST SRI SOMIT SRIVASTAV, PGT (PHYSICS), KENDRIYA VIDYALAYA AIZAWL

During the period of visit of the Assistant Commissioner KVS, Regional Office, Silchar on 03.2.99 at KV, Aizawl three students of class-XII of KV, Aizawl admitted before Shri N.D.Joshi, Principal, KV, ONGC-Srikona and Sri P.R.Purbey, Principal, KV, Aizawl that they pay Rs.500/- (Five hundred) each per month to Sri Somit Srivastav towards payment of private tution fees. Three students were interacted by the principals within the campus of the K.G.School run by station authority through which they were going for private tution to the residence of Sri Somit Srivastav.

Sri Somit Srivastav has therefore violated item 19 of the code of conduct of teacher as prescribed in Article 55. of the Education code and has rendered himself liable to Disciplinary action under CCS(CCA) Rules, 1965 as extended to employees of Kendriya Vidyalaya Sangathan."

The applicant submitted his reply refuting the allegations. By impugned order dated 22.11.2000 the disciplinary authority imposed penalty of withholding two increments in the pay scale of Rs.6500-10500/- for a period of two years without cumulative effect. The applicant preferred an appeal which was also dismissed by the impugned order dated 18.10.2001. Hence this application assailing the legitimacy of the orders imposing penalty.

2. Mr S.Sarma, learned counsel appearing for the applicant while assailing the impugned order of penalty

contended that the respondents authority failed to adhere to the procedure prescribed by the rules and consequently caused grave failure of justice. The learned counsel referring to the impugned order contended that the respondents committed grave illegality in imposing the penalty without any just cause. Mr Sarma in support of his argument referred to the following decisions :

- i) AIR 1972 (Gau) 3 = 1972 632 (Gau) -
T.S.Srivastava vs. State of Assam & Ors.
- ii) AIR 1961 SC 107 (1074) J.P.Saxena vs.
State of M.P.
- iii) 1973 (i) SLR (Pb & Hr 1076, M.L.Gera vs. Chief
Engineer, Irrigation.
- iv) 1973 (1) SLR (Pb & Hr) 311 Amrit Rai vs. State
Punjab.
- v) 1980 (3) SLR 520 (J & K) Mansa Ram vs. General
Manager, Telecom.
- vi) 1983 (3) SLR 529 (A.P) G.Pantraiah vs. Union
of India.

In addition he also cited the following cases :

- I) 1987 (3) ATC 1927
- II) 1988 (8) ATC 17,
- III) 1989 (9) ATC 455.

3. In reply Mr M.K.Mazumdar, the learned standing counsel appearing on behalf of the KVS brought our attention to the statutory provisions including para 61(a) cited in Chapter VI of Code of Conduct in the Education Code for Kendriya Vidyalayas. Mr Mazumdar, the learned counsel referring to rule 16 of the 1965 Rules contended that the authority rightly imposed the penalty on the basis of the materials on record. The learned counsel submitted that in the instant case a penalty of withholding of two increments simpliciter was imposed upon the applicant. The allegations were made known to the applicant and his explanation was

called for and that was taken into consideration. In the matter of imposition of minor penalty nothing more was to be needed. In support of his contention the learned counsel referred to the following decisions :

i) Food Corporation of India, Hyderabad & Ors. vs. A.Prahalada Rao & Ors., 2001 SCC (L&S) 186.

ii) I.D.L. Chemical Ltd., vs. T.Gattaiah & Ors., 1995 SLP 93 SCC 573 and

iii) Union of India vs. K.Rajappa Menon, 1970 Lab. I.C. 578.

iv) Surjit Singh vs. Northern Railway, AIR 1967 Allahabad 112.

4. Before going into the issues raised before us it would be appropriate to go into some of the relevant statutory provisions in respect of Code of Conduct mentioned in Chapter VI of Education Code of Kendriya Vidyalaya. For smooth administration of the Vidyalayas the Kendriya Vidyalaya Sangathan introduced some rules, regulations and instructions. Code of Conduct is delineated in Chapter VI of the Education Code of the Kendriya Vidyalaya. The relevant provisions are reproduced below :

"61 A. (19) No teacher shall undertake private tuition or private employment or otherwise engage himself in any business. Any teacher violating these instructions will be liable to disciplinary action under the C.C.S (CCA) Rules 1965, as extended to the employees of the Kendriya Vidyalaya Sangathan."

In the instant case the impugned penalty was imposed on the applicant in aid of 1965 Rules. Procedure for imposing minor penalty is prescribed in Rule 16, which reads as follows :

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government Servant any of the penalties specified in clauses (i) to (iv) of Rule 11 shall be made except after-

(a) 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;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

- (c) taking the representation, if any, submitted by the Government Servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
- (d) recording a finding on each imputation of misconduct or misbehaviour; and
- (e) consulting the Commission where such consultation is necessary."

Admittedly the respondents authority imposed minor penalty on the applicant and for that purpose one was to act in accordance with the provisions prescribed in the statutory rules. Mr S.Sarma, learned counsel for the applicant contended that where the Government servant disputed his involvement it was incumbent upon the authority to conduct a full fledged enquiry. On the face of the scheme mentioned in the 1965 Rules it is incumbent upon the authority to conduct a full fledged enquiry. The disciplinary authority is charged with a statutory power to conduct the enquiry as per the rules. As per the rules holding of regular departmental enquiry is a discretionary power depending upon facts and circumstances of the case. We have also considered the decision rendered by Supreme Court in O.K.Bhardwaj vs. Union of India & Ors., 2002 SCC (L&S) 188. The said decision does not support the contention of Mr Sarma that a full fledged enquiry is always required in imposition of minor penalty. In that case Supreme Court also reiterated that even in case of minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges made against him. If charges are factual and if they are denied by the delinquent employee, an enquiry should be called for. In the aforesaid case a statement was made on behalf of the Union of India that as a matter of fact an opportunity was given to the appellant and that there was adequate compliance of principle of natural justice. Since the High Court did not consider the matter from the above point of view the matter was remitted to the High Court to consider whether an opportunity was given to the appellant to put forward his case and whether in the light of the facts and circumstances

of the case an enquiry was called for and if called for, was it held according to law and the principles of natural justice. That was a decision on facts. The decision referred by the Mr Mazumdar in I.D.L.Chemicals Ltd. vs. T.Gattaiah & Ors. reported in 1995 Supp (3) SCC 573 as well as the decision of the Supreme Court in Food Corporation of India, Hyderabad & Ors. vs. A.Prahalada Rao & another, reported in 2001 SCC (L&S) 186 (supra) goes counter to the contention of Mr Sarma as to necessity of conducting a full fledged enquiry. But that by itself will not absolve from fulfilling their statutory obligation. We have already recounted the statutory provisions contained in Rule 16 which particularly enjoins upon the disciplinary authority to take into consideration the representation submitted by the Government servant and recording a finding on its imputation of misconduct or misbehaviour. The impugned order dated 22.11.2000 and for that matter the appellate authority also did not indicate that the representation submitted by the applicant was taken into consideration. Procedural adherence aims at providing the individual with a fair opportunity to influence the outcome of the decision. In the instant case the applicant denied that he was undertaking any private tuition or otherwise engaged himself with any business. The applicant in his representation asserted that he used to help students as and when they approached for some guidance. This was done for the interest of the students which was known to the students and guardians. He referred to his statement in writing given by the parents and guardians. In any of the impugned order there is no indication as to the stand of the applicant indicated in the written statement. The impugned order dated 22.11.2000 the enquiry authority did not record his findings of misconduct or misbehaviour. He only made the following observations ;

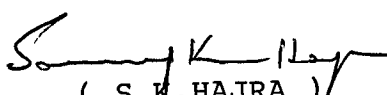
"He used to coach these children together, he was actually taking money or not could not be proved." But his coaching to these three students stands confirmed by defence as well as by prosecution side. The statements of parents and students only says that they were not paying him. They are silent on the point that whether these children were asked anything by the Assistant Commissioner in front of the two Principals. It becomes more important in the light of the fact that their statements were produced by the appellant and not by the prosecution and even then, this point was not contradicted by them.


The incident of recording the statement of children by the Assistant Commissioner get proved circumstantially."

Recording of the finding is one of the essential requirement of law. The appellate authority was discharging the statutory duty as laid down in rule 27. The duty was cast on the appellate authority to satisfy itself as to whether the procedure laid down in the statutory rules has been complied with and if not whether non compliance will amount to violation of the provision of Constitution or failure of justice, whether finding of the disciplinary authority were recorded and whether penalty imposed was adequate or sufficient. The Hon'ble High Court by its judgment and order dated 22.8.2001 directed the authority to dispose of the appeal taking into account of all relevant facts and circumstances including the documents submitted by the applicant and pass a reasoned order. The appellate authority came to the conclusion that applicant used to coach the children together but whether the applicant received consideration or not could not be proved" he observed. But his coaching to the three student was confirmed by defence as well as the prosecution side. The appellate authority brushed aside the version of the applicant on the score that the said version was not produced by the prosecution. The charge was that of undertaking private tuition. On the own finding of the

appellate authority the said charge was not proved. The Hon'ble High Court by its order insisted for giving a reasoned order. The reasoned order is also essential under the scheme of the statute. The decision making process need to be meaningful and not mere ritualistic. The whole object of consideration of representation is made to render justice and to make the quality of official decision a fair one. The ^{object} of giving reasons for decision is intended for rationalising the decision making process. The aim is to ensure that the argument presented to the maker was to be taken into account and also will be seen to be taken into account. As indicated earlier the disciplinary authority failed to take into account the representation of the applicant. The appellate authority in reaching the conclusion overlooked the relevant consideration and took into consideration extraneous consideration. The appellate authority in reaching its conclusion overlooked the gravamen of the charge and took into consideration irrelevant consideration which caused grave failure of justice. The findings arrived at by the appellate authority is patently perverse. While upholding the penalty imposed by the disciplinary authority the appellate authority overlooked the illegality committed by the disciplinary authority in imposing the penalty without recording a finding of the charges.

5. In the facts and circumstances we therefore hold that the impugned order dated 22.11.2000 mentioned in Annexure-H as well as the order passed by the appellate authority dated 18.10.2001 mentioned in Annexure-M are liable to be set aside and quashed and accordingly the same are quashed. The application is allowed with all consequential benefits. No order as to costs.


(S.K. HAJRA)
ADMINISTRATIVE MEMBER


(D.N. CHOWDHURY)
VICE CHAIRMAN

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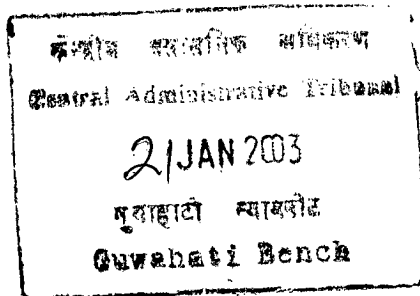
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 8 of 2003

SYNOPSIS/LIST OF DATES

1. 18.12.93 The applicant got his initial posting as PGT(phy) in KVS.
2. 18.12.95 His service as PGT(phy) under KVS Confirmed.
3. 28.6.99 Since 28.6.99 he serving in KV Project Puspak, Aizawl.
4. 6.12.99 Respondent No.5 issued an order to report Regional Office, Silchar on 9.12.99.
5. 7.12.99 Relieving order of the applicant.
6. 9.12.99 Applicant was asked to visit the office of the Respondent No.4 at 4.30 pm. He was asked to submit a written statement regards the allegation of Private tution. However, he denied the charge and refused to do so.
7. 10.12.99 As per the direction of the Respondent No.4 he visited the office and Respondent No.4 asked him to report Aizawl immediately. No certificate was issued to him.
8. 13.12.99 Applicant returned on 10.12.99 and reported his duty on 13.12.99.
9. 16.12.99 He submitted the bill for T.A./D.A. But no payment was made by respondent No.5. and his salary from 8.12.99 to 10.12.99 was deducted.
10. 16.12.99 Representations of the applied for
7.01.2000, 10.1.2000 release of his salary.
11. 15.02.2000 Chargesheet issued to the applicant (Annexure-F)
12. 14.03.2000 The applicant submitted his representation (Annexure-G.)
13. 22.11.2000 Impugned order of the Disciplinary Authority (Annexure-H).
14. 16.01.2001 Appeal submitted and forwarding letter.
16.01.2001 (Annexure-I & J.)

15. 22.08.2001 Judgment and order passed in WP(c) No.71/01 (Annexure-K).
16. 05.10.2001 Appellate Authority gave personal hearing to the applicant on 10.10.2001.
17. 18.10.2001 Appellate Authorities order rejecting the appeal. (Annexure-M).
18. 23.04.1999 OM indicating power and function of the executive Committee. (Annexure-N.)
19. 05.07.2002 Hon'ble High Court's order on WP(c) No.105/01.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case :

O.A. No. 8 of 2002

BETWEEN

Shri Somit Srivastava. Applicant.

AND

Union of India & ors. Respondents.

I N D E X

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15.	Annexure-M	
16.	Annexure-N	

Filed by : *Asha Das*

Regn.No.:

File : C:\WS7\SOMIT

Date :

Filed by
the applicant through
Alshar Das
Advocate
6/1/03

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

(An application under section 19 of the Central Administrative
Tribunal Act.1985)

D.A. No. 8 of 2002

Between

Sri Somit Srivastava,
Son of late G.P.Srivastava,
P.G.T.(Physics)
Kendriya Vidyalaya
Project Pushpak, Aizawl,

....Applicant.

- AND -

1. Union of India, represented by the Secretary to the
Government of India, Ministry of Human Resources
Development, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi.
3. The Joint Commissioner (Admn.),
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi.
4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Hospital Road,
Silchar-1.
5. The Principal, Kendriya Vidyalaya
Project Pushpak, Zemabawk,
Aizawl, (Mizoram).

.... Respondents

DETAILS OF THE APPLICATION.

1. PARTICULARS OF ORDER AGAINST WHICH THIS
APPLICATION IS MADE.

This application is directed against the impugned order
of punishment dated.12.11.2000, passed by the Asstt.

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Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Silchar-1 and the impugned appellate order dated 18.10.2001 passed by the Joint Commissioner (Admn.), Kendriya Vidyalaya Sangathan, New Delhi. This application is further directed against illegal withholding of salary and T.A./D.A. of the applicant for the period of 8.12.1999.

2. JURISDICTION OF THE TRIBUNAL

That the Applicant declares that the subject matter of the present application is well within the Jurisdiction of this Hon'ble Tribunal.

3. LIMITATION

The Applicants declares that the present application have been filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act 1985.

4. FACTS OF THE CASE

4.1. That the applicant is a citizen of India and as such he is entitled to all the rights and privileges as guaranteed under the Constitution of India and laws framed thereunder.

4.2. That the applicant got his initial appointment as Post Graduate Teacher (Physics) (PGT) in Kendriya Vidyalaya Sangathan (KVS) on 18.12.93 and his aforesaid service was confirmed on 18.12.95. Presently the applicant is working in the said capacity in the Kendriya Vidyalaya Project Pushpak Aizawl since 28.6.99.

4.3. That when the petitioner was working as PGT (Physics) under the Respondent No.5, on 6.12.99 the said Principal issued an office order directing him to report the office of the Respondent No.4 at Silchar on 9.12.99 forenoon positively. Along with the

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said order the petitioner was also served with a relieving order dated 7.12.99 whereby he was relieved w.e.f. 8.12.99 for proceeding to Silchar for the above purpose. In the said order of release there was a mention regarding his entitlement of T.A./D.A. as per the Rules of Kendriya Vidyalaya Sangathan. (KVS). Accordingly, the applicant reached the office of the Respondent no.4 at Silchar on 9.12.99 at around 8.30 A.M. but the Respondent No.4 asked him to report at 4.30 P.M. on the same day. The applicant accordingly met the Respondent no.4 at 4.30 P.M. on 9.12.99. The Respondent No.4 asked the applicant to give a written statement to the effect that he was indulging private tuition for the students of Kendriya Vidyalaya, Aizawl. However, the applicant denied the allegation and refused to put anything in writing regarding the said allegation. The Respondent No.4 thereafter asked him to visit his office on the next day (10.12.99) at 10.A.M. and accordingly the applicant met the Respondent No.4 directed the applicant to report to his school at Aizawl immediately. The applicant as per the Rules asked the Respondent No.4 for a certificate showing his attendance at Silchar Regional Office, but the Respondent No.4 refused to issued any such certificate to the applicant. Situated thus, the applicant contacted the Principal (Respondent.No.5) seeking his advice as well as advance. The Respondent No.5 advised the applicant to resume his duty at Aizawl school even without any attendance certificate. The applicant accordingly returned to Aizawl on 10.12.99 evening and resumed his duty in the Vidyalaya on 13.12.99, 11th and 12th December being holidays on account of 2nd Saturday and Sunday. The applicant thereafter on 16.12.99 submitted his bill for T.A./D.A. The applicant made requests to the Respondent No.5 for settlement of his bill, but no payment was made. Adding insult to his injury the Respondent No.5

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deducted his salary w.e.f. 8.12.99 to 10.12.99 without making any prior intimation.

Copies of the orders dated 6.12.99 and 7.12.99 are annexed herewith and marked as Annexure A and B.

4.4. That the applicant submitted numbers of representations both the Respondent No.4 and 5 for release of his salary for the said period in question. The Respondent No.4 and 5 inspite of receipt of those representations have not yet redress his grievances nor any reply has been furnished to him.

Copies of the said Representations dated 16.12.99, 7.1.2000 and 10.1.2000 are annexed herewith and marked as Annexure C,D and E respectively.

4.5 That the Respondent No.5 on 8.2.2000 called the applicant in his office and served a memorandum of charges dated 15.2.2000 issued by the Respondent No.4 making an allegation that the applicant had taken private tutition of three students of Class XII of Kendriya Vidyalaya, Aizawl taking a fee of Rs.500/- per student P.M. The memorandum of charges dated 15.12.2000 while narrating the allegation indicated that he has violated item 19 of the code of conduct of teachers as prescribed in Article 55 of Education Code. Alongwith the said memorandum a copy of document purported to be a joint statement signed by Sri D.N.Joshi, Principal, Kendriya Vidyalaya, ONGC, Srikona and Sri P.R. Purbey, Principal, Kendriya Vidyalaya, Aizawl was also enclosed as Annexures 3 an 4 which is supposed to be a list of prosecution witnesses with the indication that there is no witnesses. The applicant by this memorandum was given 10 days time to submit his representation.

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A copy of the said memorandum of charges is annexed herewith and marked as Annexure F.

4.6. That the Applicant in response to the aforesaid memorandum of charges submitted a detailed representation to the Respondent No.4 through Respondent No.5 on 14.3.2000 denying the charges leveled against him. The applicant in his said representation also clarified the factual aspect of the matter with a prayer to drop the proceeding leveled against him in the memorandum of charges dated 15.2.2000.

A Copy of the said representation dated 14.3.2000 alongwith it's enclosures are annexed herewith and marked as Annexure G series.

4.7. That the Respondent No.4 on receipt of such representation issued the impugned order dated 22.11.2000 whereby the penalty of withholding his increments for a period of 2 years without cumulative effect. However, the Respondent No.4 issued the said penalty without holding any enquiry as contemplated under 16 of CCS(CCA) Rules, 1965 and the applicant was never given any opportunity to defend himself effectively in the said proceeding.

The aforesaid impugned order was issued by the Respondent no.4 violating the OM dated 23.4.99 issued by the Respondent No.2 regarding procedure for imposition of minor penalties. According to the provision of the said OM the Executive committee and the Principal of each Vidyalaya in the concerned authority to impose any minor penalty as contemplated under Rule 11 of CCS(CCA) Rules 1965.

A copy of the aforesaid impugned order dated 22.11.2000 is annexed herewith and marked as Annexure H.

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4.8. That the applicant being aggrieved and dissatisfied with the imposition of the said penalty preferred a statutory appeal on 16.1.2001 to the appellate authority, the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi, (the Respondent No.2) with a prayer for setting aside the impugned order of punishment dated 22.11.2000. The Respondent No.5 vide his letter dated 16.1.2001 forwarded the statutory appeal of the applicant.

Copies of the appeal dated 16.1.2001 alongwith the forwarding letter dated 16.1.2001 is annexed herewith and marked as Annexure I and J respectively.

4.9. That the applicant states that since the appellate authority did not take any action he preferred Writ Petition before the Hon'ble High Court which was registered as W.P(C) No.71/01. The Hon'ble High Court at the motion stage itself was pleased disposed of the said Writ Petition directing the Respondents to dispose of the appeal preferred by the applicant within a period of 45 days from the date of the receipt of the order.

A copy of the said judgment dated 22.8.2001 is annexed herewith and marked as Annexure K.

4.10. That the applicant states that pursuant to the aforesaid judgment dated 22.8.2001, the appellate authority on 18.10.2001 provided an opportunity of personal hearing and to that effect he issued a memorandum dated 5.10.2001. In response to the aforesaid memorandum dated 5.10.2001 the applicant appeared before the appellate authority on 18.10.2001 and explained his grievances by placing supporting documents.

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A copy of the aforesaid memorandum dated 5.10.2001 is annexed herewith and marked as Annexure L.

4.11. That the applicant states that the appellate authority however, without taking into consideration the material placed by the applicant passed the impugned appellate order on 18.10.2001 whereby the appeal preferred by him was rejected and the penalty imposed pursuant to the chargesheet dated 18.2.2000 was confirmed.

A copy of the said appellate order dated 18.10.2001 is annexed herewith and marked as Annexure M.

4.12. That the applicant states that the impugned appellate order dated 22.8.2001 is not a speaking order as directed by the Hon'ble High Court vide it's judgment and order dated 22.8.2001. From the aforesaid impugned order dated 18.10.2001 it is clear that the appellate authority has not applied it's mind while passing the said order in as much as the said appellate order does not contained any independent finding of the said authority as contemplated under the Rules. It is further stated that the appellate authority has exercised his jurisdiction in excess and thereby has gone beyond the charges and finally came to the conclusion abruptly. The appellate authority took the following the facts as undisputed which case reproduced below.

"AND WHEREAS having heard the appellate in person and based on consideration of facts and circumstances of the case and contents in the appeal the undersigned came to the conclusion that the following facts are undisputed.

1. He used the coach three children together; he was actually taking money or not could not be proved. But his coaching to these three students confirmed by the defence as well as by the prosecution side.

2. The statements of parents and students only says that they were not paying him; they are silent on the point that whether these children were asked anything by the Asstt. Commissioner in front of the two Principals. It becomes more important in the light of the fact that their statements were produced by the appellant and not by the prosecution and even them, this point was not contradicted by them.

3. The incident of recording statement of children by the Asstt. Commissioner gets proved circumstantially.

From the above it is clear that before issuance of the chargesheet there was a preliminary enquiry and in fact in the said enquiry the applicant was never provided with any opportunity of placing his defence. Apparent from that the records of that fact finding proceeding were never produced/furnished to the applicant whereas the entire proceeding to the stage of passing of appellate order was based only on the finding of that preliminary enquiry. As per the Rules in a given proceeding if any material of preliminary enquiry is taken into consideration during the course of regular proceeding, the charged official is required to provide with all the records of that preliminary enquiry and he should be allowed to confront with those material, so that no prejudice is caused. However, in the instant case although the proceeding was initiated basing on the preliminary enquiry conducted firstly by Sri N.D.Joshi, Principal, Kendriya Vidyalaya, ONGC, Srikona and Sri P.R.Purbey, Principal, Kendriya Vidyalaya, Aizawl and secondly by the Asstt. Commissioner as indicted in the appellate order, but no such materials were placed/furnished to the present applicant to place his defence. The appellate authority as it appears in the impugned order dated 8.11.2001, however, came to the conclusion that the facts are not disputed. On this score along the

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proceeding can be termed as illegal and violating of Article 14 and 16 of the constitution of India, and thus same is required to be set aside and quashed.

4.13. That the applicant states that the impugned appellate order dated 18.10.2001 is a non speaking one and same has been issued without any application of mind. The language used in the observation part is not clear and it does not carry any meaning. However, from the said observation it appears that the appellate authority himself was in confusion as to the factual aspect of the matter. The appellate authority without understanding the head and tail of the case passed the impugned order and thereby has gone beyond the charges. And therefore, the said impugned order dated 18.10.2001 is liable to be set aside and quashed.

4.14. That the applicant states that the Sub Para I,II, III of the appellate order dated 18.10.2001 indicates the fact that so far as taking money from these children could not be proved, and none of the witness of the preliminary enquiry could prove the fact of providing guidance by taking money. The crux of the charges is that the applicant indulged private tuition by taking money but during the course of so called preliminary enquiry this fact was never proved. However, basing on such farcical enquiry the disciplinary authority as well as the appellate authority came to the conclusion that the charge is proved and the penalty imposed on him is justified. The appellate miserably failed to take into consideration these factual aspect of the matter and came to a wrong conclusion and hence same is liable to be set aside and quashed.

4.15. That the applicant states that the impugned order dated 22.11.2000 passed by the disciplinary authority is violating of Article 14,16 and 311(2) of the constitution of India and hence same is liable to be set aside and quashed. Although from the

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impugned order as well as in the chargesheet there are indications of some sort of enquiry but the applicant was never intimated regarding those enquiry and thereby they have violated provisions contained in the Rules guiding the field. Entire proceeding was initiated basing on joint statement made by the two Principal on 3.12.99 but without affording any reasonable opportunity took into consideration those statements and finalised the proceeding without making any further enquiry into the matter.

4.16. That the applicant states that the joint report of the Principals and the fact disclosed in the charged memorandum are contradictory in nature. In the alleged report the relevant date is shown as 3.12.99, whereas in the imputation of charge contained in the Annexure 2, the relevant date is mentioned as 3.2.99. Again while the statement of imputation states that there students of class XII of Kendriya Vidyalaya, Aizawl admitted before Sri N.D.Joshi and Sri P.R.Purbey, Principals, the alleged joint report of the two principal date 3.12.99 states that an enquiry by the Asstt. Commissioner it was revealed that they were going for tuition etc. etc. This joint statement is therefore can be termed as a second hand proof as the statement of the Asstt. Commissioner was never brought to the notice of the applicant, nor it was a part of records produced in the proceeding. As all these alleged events took place behind the back of the applicant, and those materials finally formed a part of the proceeding, the Respondents ought to have produced the actual statement of the Asstt. Commissioner instead of placing a second hand statement through his subordinates. If the Respondent No.4 is not well disposed towards the applicant for not giving a statement implicating himself he could very well asked the said two principals for submission of a direct report, instead of making

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it via media. These shows the vindictive and malafide attitude of the Respondent No.4 in passing the impugned order dated 22.11.2000 followed by the order dated 18.10.2001 passed by the appellate authority (Respondent No.3).

4.17. That the applicant states that the proceeding initiated against him pursuant to the chargesheet dated 15.2.2002 contains the fact that three students of class XII of Kendriya Vidyalaya, Aizawl is involved in the so called incident and the joint report of the Principals contained their names but surprisingly enough those students were never made a party to the proceeding. Apart from that in the memorandum of charges dated 15.2.2002 indicates the fact that there are no witness but as it appears from the impugned orders more particularly the appellate order that some sort of enquiry was conducted during the proceeding and the students and their parents had been used as witnesses on behalf of prosecution side. However, the applicant was never intimated regarding the said enquiry and nor he was allowed to place and defence to that effect. Undoubtly the aforementioned denial of placing his defence has caused serious prejudiced to the applicant and same has violated the entire proceeding and as such same is liable to be set aside and quashed.

4.18. That the applicant states that after submission of his representation against the memorendum of charges denying all the charges the disciplinary authority ought to have conducted full fledged enquiry instead of taking a short cut method. It was not a case of the Respondents that the attendance of the witnesses were not possible during the course of enquiry, nor it was a case of only documentary evidence. In fact, there were enquiries prior to framing of the charges and even during the course of the proceeding and witnesses were also examined in these enquiries but everything has been done behind the back of the applicant.

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The disciplinary authority as well as the appellate authority only took into consideration the second hand joint statement of two Principals which has got no legal sanctity, came to the conclusion that the applicant is jointly of the charges. Entire proceeding was based on the said joint report as well as the statements of the students and their parents. However, in all these enquiries the applicant was never put any question and everything has been done behind his back. On this score along the entire proceeding is liable to be set aside and quashed.

4.19. That since no enquiry was conducted by the disciplinary authority the alleged charge and the impugned order was passed basing on some joint statement and the statement recorded by the Asstt. Commissioner, it was obligatory on the part of the disciplinary authority to hear the applicant with regard to the findings arrived at by him before passing the impugned order of punishment. Accordingly the impugned orders are not sustainable and liable to be set aside and quashed.

4.20. That the applicant states that from the proceeding as well as the impugned orders, it is clear that there were some sort of enquiries and it was obligatory on the part of the authority to communicate the enquiry report as contemplated in the Rules, although the impugned chargesheet dated 15.2.2000 has been issued under Rule 16 under CCS(CCA) Rules, 1965 but going by the so called allegation, and the so show cause reply filed the applicant dated 14.3.2000, the disciplinary authority ought to have conducted regular enquiry. Apart from that since the application opposed the procedure regarding holding of enquiry behind his back before issuance of the chargesheet and questioned the transparency of the procedure adopted by the authority, it was a fit case for holding regular enquiry but the concerned authority violating the said provision concluded the proceeding

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without affording any reasonable opportunity of hearing.

4.21. That the applicant states that the competent authority for imposing minor penalty as per the OM dated 23.4.99 issued by the Respondent No.2 is the executive committee of the Vidyalaya concerned. In the said OM dated 23.4.99 the power and the function of the executive committee has been described. Accordingly to the provisions, the Principal of the Vidyalaya is having full power and is the competent authority to impose all minor penalties on all Group B,C,D employees of the Vidyalaya as laid down in Rule 11 of CCS(CCA) Rules, 1965 and as adopted by Kendriya Vidyalaya Sangathan. In these circumstances the action of the Respondent no.4 in holding farcical enquiry behind the back of the applicant and passing of the impugned order only goes to show that same has been done with a nullified intention to harass the applicant. Such being the case the impugned order of penalty dated 22.11.2000 passed by the Respondent No.4 is not sustainable and liable to be set aside and quashed.

A copy of the said OM dated 23.4.99 is annexed herewith and marked as Annexure **RL**

4.22. That the applicant states that the action of the Respondent No.4 in not paying the applicant his salary and T.A./D.A. for three days from 8.12.99 to 10.12.99 is highly illegal and arbitrary as no prior notice for deduction/non payment has been issued to the applicant and as such same is liable to be set aside and quashed.

4.23. That the applicant being aggrieved by the impugned orders dated 22.11.2000 and 18.10.2001 preferred Writ Petition, WP(c) No.105/01 before the Hon'ble High Court, Aizawl Bench at Aizawl. The Hon'ble High Court on 5.7.2002 after hearing the parties to the proceeding was pleased to dispose of the said Writ

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Petition taking into consideration the fact that the Jurisdiction of the instant case lies before the Hon'ble Tribunal.

A copy of the said order dated 5.7.2002 is annexed herewith and marked as Annexure ⑩.

4.24. That the applicant states that after such disposal of the Writ Petition, there is no other alternative than to approach this Tribunal and accordingly the applicant files this Original Application before this Hon'ble Tribunal at the earliest opportunity. Immediately on receipt of the order dated 5.7.2002 the applicant came down to Guwahati for consultation with his counsel and this process took some time.

5. GROUNDS WITH LEGAL PROVISIONS

5.1. For that the entire action on the part of the respondents in proceeding against the applicant departmentally is illegal and same has been done without following the procedure prescribed in the Rules holding the field, and as such same is liable to be set aside and quashed.

5.2. For that impugned orders passed pursuant to the proceeding initiate against the applicant by issuing the chargesheet dated 15.2.2000 is illegal and same is violative of Article 14 and 16 of the Constitution of India and laws framed thereunder. Therefore, the proceeding as well as the impugned orders dated 22.11.2000 and 18.10.2001 is liable to be set aside and quashed.

5.3. For that the charges leveled against the applicant vide memorandum of charges dated 15.2.2000 is vague, indefinite and same does not disclosed the exact factual aspect of the matter and as such same is liable to be set aside and quashed.

5.4. For that the Respondents have acted illegally in not holding

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a regular enquiry to enquire into the factual aspect of the matter inspite of repeated request by the applicant and thereby the proceeding can be termed as illegal one and same is liable to be set and quashed.

5.5. For that the disciplinary authority's order dated 22.1.2000 and the appellate authority's order dated 18.10.2001 are both bad in law as same have been passed without following the due process of law.

5.6. For that in any view of the matter the action on the part of the Respondents is not sustainable in the eye of law and liable to be set aside and quashed.

The applicant craves leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of this case.

6. DETAILS OF THE REMEDIES EXHAUSTED.

That the applicant declares that he has exhausted all the possible departmental remedies towards the redressal of the grievances in regard to which the present application has been made and presently he has got no other alternative than to approached this Hon'ble Tribunal.

7. MATTER PENDING WITH ANY OTHER COURTS

That the applicant declares that the matter regarding this application is not pending in any other Court of Law or any other authority or any other branch of the Hon'ble Tribunal.

8. RELIEF SOUGHT:

Under the facts and circumstances stand above the applicant prays that the instant application be admitted, records be call

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for and upon hearing the parties on the cause or causes that may be shown and on perusal of records be pleased to grant the following reliefs.

B.1 To set aside and quash the impugned orders dated 22.11.2000 and 18.10.2001. *ANX MP 42*

B.2. To direct the respondents to pay salary and T.A./D.A. to the applicant for the period from 8.12.99 to 10.12.99 with 18% interest on such delayed payment.

B.3. Cost of the application.

B.4. Any other relief/reliefs to which the present Applicant is entitled to under the facts and circumstances of the case and as may be deemed fit and proper by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR:

Under the facts and circumstances of the case the applicant does not pray for any interim order at this stage.

10. THE APPLICATION IS FILED THROUGH ADVOCATE:

11. PARTICULARS OF THE POSTAL ORDER :

(I) I.P.O. No.: *7G 605143*

(ii) Date: *19/12/02*

(iii) payable at Guwahati

12. LIST OF ENCLOSURES : As stated in the Index.

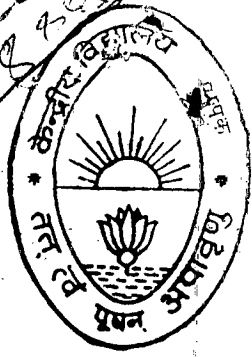
23

VERIFICATION

I, Shri Somit Srivastava , S/o Sri G.P.Srivastava, aged about 31 years, presently working as Post Graduate Teacher in Kendriya Vidyalaya, Aizawl, Mizoram, do here by solemnly affirm and state that the statement made in this petition from paragraph_____ are true to my knowledge and those made in paragraphs_____ are matters records of records informations derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on ___th day of December 2002.

Somit Srivastava



Annex - 'A' - 18 -

0389-341128 (3)
Phone : 0389-340291
Ext. 337

केन्द्रीय विद्यालय
पुष्पक, C/o 99 ए० पी० ओ०
Kendriya Vidyalaya
PROJECT-PUSHPAK, C/o 99 A. P. O.

(14)

Ref. No. F. 55/99/KVS-AIZ/720-721

Dated 6-12-99.....

(18)

OFFICE ORDER

In compliance with the telephonic instruction received from the Assistant Commissioner, KVS(SR) Silchar on 6-12-99 at 1.30 p.m., Shri Somit Srivastava, PGT (Phy) is hereby directed to report to The Assistant Commissioner, KVS(RO) Silchar on 8-12-99(F.N) positively.

To

Shri Somit Srivastava,
PGT(Phy)
K.V. Pushpak,
Aizawl.

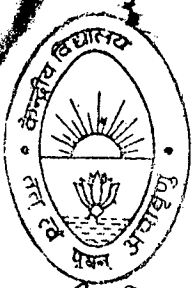
9. R. P. 2/1
6/12/99
(B.R. PURBEY)
प्र. वि. पुष्पक/क. व. पुष्पक
पुष्पक, आइजल-796017
Zemabawk AIZAWL-796017

Copy to :

The Assistant Commissioner, KVS, (SR) Silchar
for his kind information please.

PRINCIPAL.

Attested
W. S.
Advocate.



(19) Annex-B 35

केन्द्रीय विद्यालय KENDRIYA VIDYALAYA

AIZAWL

Ref. No. 7/TA/DA. /KV-A12/99-2000/728-729
RELIEVING - ORDER

Dt. 07.12.99

1. Name of employee relieved

Shri Sonit Srivastava.....

2. Designation

.P.G.T.(Phy.).....

3. Name of the Vidyalaya

..K.V...A12AWL.....

4. Authority (Letter No.)

F. 55/99/KVS-A12/720-721

5. Date & Time of relieving from

08.....
07.12.99 (A/N)
07/12/99 (Forenoon / Afternoon)

6. Name of the Venue to report

The A.C., KVS SR

7. Duty assigned/Purpose of relieving

..Silchar.....
to meet the A.C.,
as per his instruction

8. Any other instruction

9. He/She will be entitled for T.A./D.A. as per
KVS rules, in respect of this

As per KVS rules

To,

Shri/Smt./Kum. Sonit Srivastava

.....P.G.T.(Phy.).....
K.V. A12AWL

V. R. Ph
07.12.99
PRINCIPAL

Copy to for information to :

1. The A.C., KVS, SR, Silchar
for information please.

2.....

3.....

4.....

5.....

Witnessed
W.Don
Advocate.

PRINCIPAL

From:

Somit Shrivastav
PGT Physics
K.V. Pushpak Aizawl

To

The Principal
Kendriya Vidyalaya
Aizawl Hqoram

16.12.99

SUB: TA/ DA REGARDING

Sir,

With due respect and regards I would like to state following few points for your kind considerations and necessary action please :

1. That, I reported to Assistant Commissioner Silchar on the morning of 9.12.99 at 8.30 hrs as per your office order No. F.55/99/KVS-AIZ/720-721 dated 6.12.99 and relieving order No. 7/TA/DA/KV-AIZ/99-2000/728-729 dated 7.12.99 at his residence. On seeing me he asked me to meet at 16.30 hrs. I complied with his instructions and reported to him at 16.30 hrs at his office. There, he inquired about my indulging in private tuitions. I replied the same which I had said to him during his visit to our Vidyalaya on 3.12.99 that I do not indulge in private tuitions. Later he asked me to come on 10.12.99 (Next day) at 10.00 hrs. When I reported to him at 10.00 hrs on 10.12.99, he asked me to go back with the instructions to you to report to him on the next day.
2. Immediately after coming out of his office I contacted to you over telephone and briefed you about my meeting with the Assistant Commissioner and also about the non issuance of attendance/ relieving certificate. On my verbal request you confirmed the fact that I had met the Hon'ble Assistant Commissioner on 9th and 10th Dec 99.
3. That, I actually started from Silchar on 10.12.99 (Friday) at 20.30 hrs and reached Aizawl on 11.12.99 at 7.00 hrs in the morning. 11th Dec being the second saturday and 12th Dec being Sunday, I joined my duties on 13.12.99 (F/N) with the due permission from offg principal as you were not present on the station.
4. My TA/DA bills are enclosed herewith for early reimbursement.
5. The whole issue has disturbed me a lot. I do not understand why was childrens' study jeopardised for four days and why was a subordinate of yours put to unnecessary tension and harassment for four days.

Yours faithfully,

(Signature)
(Somit Shrivastav)

Encl: 2. Bill with all documents in original (Tickets and Hotel bill)

(Signature)
Attested
Advocate.

Annex. 'D'

6

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From:

Somit Shrivastav
PGT(Physics)
Kendriya Vidyalaya Pushpak, Aizawl

To

The Principal(I/O)
Kendriya Vidyalaya
Project Pushpak, Aizawl

07 Jan 2000

SUB: NON PAYMENT ON SALARY OF DECEMBER MONTH W.E.F. 8.12.99
TO 10.12.99 (THREE DAYS) REGARDING.

Sir,

I would like to bring it to your kind notice the following few lines for your necessary actions:

1. That, I had gone to Silchar to meet the Assistant Commissioner vide office order F.55/99/KVS-AIZ/720-721 dated 6.12.99 and subsequent relieving order No. 7/TA/DA/KV-AIZ/99-2000 dated 7.12.99 by the principal Sri P.R. Purbay, and even I have been marked as on duty in the staff attendance register against my name on 8th, 9th and 10th of December 1999.
2. But to utter surprise the three days salary in December month w.e.f. 8.12.99 to 10.12.99 has been deducted without any intimation to me. The entire matter has been informed to the principal Sri P.R. Purbay in writing .
3. That, therefore I request you very humbly to make a supplementary payment for the three days as I had gone on proper office order.

Yours faithfully,

[Signature]
7.1.2000
(Somit Shrivastav)
P.G.T. Physics
K.V. Pushpak

8.
Attended
W.D.

Annex-'E'

7

From:

Somit Shrivastav
PGT (Physics)
K.V. Aizawl

To:

The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office Silchar-1

10 Jan 2000

SUB: NONPAYMENT OF THREE DAYS SALARY OF DECEMBER MONTH W.E.F. 8.12.99 TO 10.12.99 REGARDING

(through principal)

Sir,

With due respect I would like to state following few lines for your kind consideration and necessary action please:

1. That, I visited your office on 9.12.99 and 10.12.99 in compliance of the office order and relieving order vide P.55/99/KV8-AIZ/720-721 dated 6.12.99 and No. 7/PA/DA/KV-AIZ/99-2000 dated 7.12.99 from the principal directing me to do so. Even in the staff attendance register I have been marked 'On Duty' for 8th, 9th and 10th of December '99.
2. That, I was surprised and shocked to see that my three days salary w.e.f. 8.12.99 to 10.12.99 has been deducted without any intimation to me, presumably at the behest of principal, who asked our UDC to do so before proceeding on leave.
3. That, different people are interpreting it in different manner. Some are of the view that it will deemed as a service break and this is causing me intense mental tension and perturbation and therefore may I seek your intervention in this regard.
4. That, my T./DA bill too has not been passed till now.

Yours faithfully,

[Signature]
(Somit Shrivastav)
P.J.T. Physics
K.V. Aizawl

Copy to:

1. The Principal
K.V. Aizawl

* One copy is sent directly to avoid delay.

Attested
[Signature]
Advocate.

Annex 'F'

8

KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE::SILCHAR-1::

23

No. 3-1/KVS(SR)/99-2000/ 17177-78

Date: 15.02.2000

Registered/Confidential.

M E M O R A N D U M

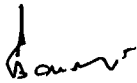
Shri Somit Srivastav, Post Graduate Teacher(Physics) Kendriya Vidyalaya, Aizawl is hereby informed that it is proposed to take action against him under Rule 16 of CCS(CCA) Rules 1965. A statement of the imputation of misconduct or misbehaviour on which action is proposed to be taken as mentioned above is enclosed.

2. Shri Somit Srivastav, Post Graduate Teacher(Physics) is hereby given an opportunity to make such representation as he may wish to make against the proposal.

3. If Shri Somit Srivastav fails to submit his representation within 10 days of the receipt of this memorandum it will be presumed that he has no representation to make and orders will be liable to be passed against Shri Somit Srivastav, Post Graduate Teacher(Physics) ex parte.

The receipt of this Memorandum should be acknowledged.

✓
To
Shri Somit Srivastav,
Post Graduate Teacher(Physics)
Kendriya Vidyalaya
Aizawl.


(S. P. BAURI.)
ASSISTANT COMMISSIONER.

Assessed
UDa
Advocate.

24 9 40

Annexure - I

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST
SRI SOMIT SRIVASTAVA, POST GRADUATE TEACHER (PHY.)

ARTICLE - I

Sri Somit Srivastav, PGT (Physics) while functioning at Kendriya Vidyalaya, Aizawl has been indulging in private tuition in violation of item 19 of the code of conduct of teachers as prescribed in Article 55 of the Education Code.

He has therefore rendered himself liable to Disciplinary action under CCS (CCA) Rules 1965 as extended to employees of the Kendriya Vidyalaya Sangathan.

Annexure - II.

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT
OF ARTICLE OF CHARGE FRAMED AGAINST SRI SOMIT
SRIVASTAV, PGT (PHYSICS), KENDRIYA VIDYALAYA AIZAWL.

During the period of visit of the Assistant Commissioner KVS, Regional Office, Silchar on 03.2.99 at KV, Aizawl three students of class-XII of KV, Aizawl admitted before Shri N.D. Joshi, Principal, KV, ONGC-Srikona and Sri P.R. Purbey, Principal KV, Aizawl that they pay Rs. 500/- (Five hundred) each per month to Sri Somit Srivastav towards payment of private tuition fees. These students were interacted by the principals within the campus of the K.G. School run by station authority through which they were going for private tuition to the residence of Sri Somit Srivastav.

Sri Somit Srivastav has therefore violated item 19 of the code of conduct of teacher as prescribed in Article 55 of the Education Code and has rendered himself liable to Disciplinary action under CCS (CCA) Rules, 1965 as extended to employees of Kendriya Vidyalaya Sangathan.

Annexure - III.

LIST OF DOCUMENTS.

1. The Written joint statement of Sri N.D. Joshi and Sri P.R. Purbey, Principal KV, ONGC-Srikona & KV, Aizawl respectively.

LIST OF WITNESS

- NIL -

312 99 - visit

Indulging private tuition

near

IN D 3064

P.R. Purbey

Item no 19

Note

(25)

K.G. School, Pushpak, Aizawl

At 03/12/99

While visiting the probable site of KV, Aizawl at 6.10 a.m (0610 hrs) on 03/12/99, we the following two principals were waiting along with the Asst. Commissioner on the ground of KV, Pushpak, Aizawl for the Under Secretary, Dept. of Revenue, Govt of Mizoram to come and discuss the matter on the spot, saw three students of Cl. XII sc. of KV, Aizawl going towards Vidyalaya along with their school bags in uniform. They were: Miss Preeti Panda, Yogesh Mehta and Amaya Athing.

On query by the Asst. Commr. it was revealed that they were going for tuition in Physics to Sh. Sanjit Sivarora PAT (Phy). On further query, it was intimated by the students that they pay Rs 500/- (Rs. five hundred) per month towards tuition fee to Sh. Sivarora.

W. K. Principal, K. G. School, Pushpak, Aizawl.

P. R. Taky, K. V. Aizawl

P. R. Taky
03/12/99

Ames

Advocate.

Annex. G

FROM : Shri Amit Srivastav,
Post Graduate Teacher (Physics),
Kendriya Vidyalaya,
Aizawl, Mizoram.

TO : The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Silchar-1.

THRO : The Principal, Kendriya
Vidyalaya, Aizawl.

SUB : REPLY TO SHOW CAUSE NOTICE.

Sir,

With reference to your letter No. 3-1/KVS(SR)/99-
2000/17177-78 dated 15.2.2000, received by me on 8-3-2000,
I have the honour to submit my reply as under :-

1. That first of all I deny the charge levelled against me on the basis of the alleged joint statement of Shri N.D. Joshi and Shri P.R. Purbey. It is not a fact that I have been taking any type of private tuition to the three students of Class XII mentioned in your letter quoted above. In fact, I have never indulged in taking any type of private tuition in respect of any students of Kendriya Vidyalaya, Aizawl, as alleged in your above show cause notice. I also deny that I have ever accepted any remuneration from any students for taking private tuition. The allegation brought out in your above quoted show cause notice is totally baseless. As such it is emphasized that I have ^{not} violated any provisions of the Code of Conduct ~~for~~ in respect of the Teachers of Kendriya Vidyalaya. As such I am not liable to any kind of disciplinary proceedings under the CCS (CCA) Rules as extended to the employees of KVS, as stated in the show cause notice referred to above.

2. That I submit that there seems to be some misunderstanding with regard to the whole issue relating to the private tuition. As such I would like to clarify the position for your kind information. As the three students mentioned in the aforesaid charge memorandum are rather ^{more curious} in the subject of Physics, their parents/guardians met me some time back and requested me to help their children in getting their doubts, if any, clarified as and when required. Accordingly I assured their parents/guardians that as and when they had any ~~them~~ doubt about the subject I am teaching, they could approach me for clearing their doubts. On the basis of such assurance, these children used to visit my residence from time to time, some times in the

..... 2'

Attested
[Signature]
Advocate.

morning and some times in the evening, depending upon their convenience and I used to help them in their studies. I have never charged any fees for this help and the children never paid any thing to me as remuneration for the help rendered by me. As their teacher, I considered it my duty to help them whenever they approached me and I do not think ^{that} I have done any thing wrong in doing so or violated any rules of the School. Whatever I have done was done on the request of the students and their parents/guardians and for the best interest of the children and the school itself. The statement regarding acceptance of remuneration/fees at the rate of Rs.500/- per month is totally false and is only a figment of imagination. ^{All} the children and their parents/guardians are ready and willing to testify to this effect, if they are required to do so at any time. In fact, I am enclosing herewith the statements of the children concerned as well as their parents/guardians themselves who have given in writing that I have never accepted or asked for any fees from them and that the purpose of their visit to my residence was only to clear their doubts about the subject I was teaching. These statements, coming from the children themselves as well as their parents are sufficient testimony in itself regarding my innocence with regard to the whole allegation. I once again reiterate that the allegation regarding taking of private tuition as well as acceptance of remuneration/fees @ Rs.500/- per month was motivated and absolutely baseless. If there was an iota of truth in these allegations, the best thing to do was to call me on and there and confront me with the students concerned when they allegedly reported the matter to the two Principals in your presence. This would have given me also a fair chance to explain my conduct and to clarify the position in the presence of every one. However, in the present case such an opportunity was not afforded to me and, instead, some sort of an enquiry was allegedly conducted behind my back without even giving me an opportunity to be present at the time of the said alleged inquiry and to know as to what exactly transpired in between the two Principals and the three students concerned. This is highly unjust and unfair in a democratic country like ours where rule of law and transparency in the process of decision making should prevail.

.....3/-

Am
Wan
L

3. Under the ~~extr~~ facts and circumstances highlighted in the foregoing paragraphs, I repeat that I have not taken any private tuition nor accepted any fees or remuneration from the three students of Class XII as mentioned in the aforesaid show cause notice at any time during my tenure in K.V. Aizawl. Consequently, the allegation/charge that I have violated the standing rules/code of conduct of the KVS and thereby rendered myself liable to disciplinary action under the CCS(CCA) *Rules* is unsustainable in law.

4. In the premises aforesaid, may I earnestly request your honour to kindly accept my explanation given above and close the matter once and for all so that justice is done to me. In the same context, I also pray that ~~that~~ the Principal, KV, Aizawl may be directed to clear my arrear pay and allowances as well as the T.A. bill in connection with my journey to Silchar ^{bills} and back for which I have already submitted necessary representation to him.

5. And for this act of kindness, your humble servant, as in duty bound shall ever pray.

Dated : 14-3-2000

Encl : As stated above.

Yours faithfully,

Handwritten signature
14/03/2000
(SOMIT SRIVASTAV)
PGT (PHYSICS)
K.V. AIZAWL, MIZORAM

-/-

*Received one copy
along with his share of
documents of three children
and their parents
P. R. P. Singh
14.03.2000
at 1.30 P.M.*

Attested
Handwritten signature
Advocate.

45
Annex - G-1

29

~~29~~

Sir,

I beg to say that our physics sir (Mr. Somit-Srivastava) used to clarify our doubt's occasionally on the request of my parents. which is free of cost.

Yours faithfully

Yogesh Mishra

(XII)

Arrested
Advocate

30

Annex - G-2.

15

~~30~~

Respected sir,

I Amising want to say that I
used to clarify my doubts from
Mr. Sant Shrinasth (our Physics teacher).

As my father has requested to him, for
which I do not pay.

Yours obediently
Amising Raleng
class - XII.

Attested
Advocate.

(87)

Annex-G-3

(16)

47

(31)

Sir,

With due respect I want to state that I sometimes go to our Physics teacher's either at school or at home for clearing my doubts.

But neither I have paid any fees for the same nor our physics teacher has demanded any fees from me so far.

Yours faithfully
Prati Panda

Attested
W. S. S.
Advocate.



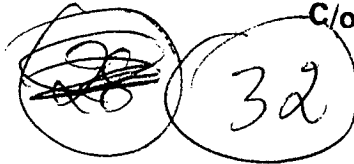
Shri Y P Mishra
EE (E&M)
Officer Commanding

1885/YPM/158/Pers

Annex-G-4

(17)

1061 Fd Wksp (GREF)
C/o 99 A P O



11 Mar' 2000

To,

Sh. Somit Shrivastav
PGT (Physics)
KV Pashpak (Aizwal)

1. Please refer your letter dt 10 Mar' 2000.
2. To clarify doubts of my son Yogesh Mishra in physics I had requested you to guide him as and when possible during or after the school hours as a help to the student with out any remuneration or fees.
3. I am very much thankful to you for your kind help and guidance rendered by you to my son in the month of Dec' 99.

Thanking you,
With regards & best wishes

Yours sincerely,

Y P
(Y P Mishra)
EE (E & M)

Dated : 11 Mar' 2000.

Attested
Under
A



PUSHPAK

1508/UCP/

Form - G-5

18

~~24~~ 33

Headquarters
24 Border Roads Task Force
C/o 99 APO

13 Mar 2000

Sh. Somit Shrivastav
PGT (Physics)
KV Pushpak (Aizawl)

Dear Sir,

1. Please refer our letter dt 10 Mar 2000.
2. To clarify doubts of my daughter Priti Panda in Physics I had requested you to guide her as and when possible during or after the school hours as a help to the student, without any remuneration or fees.
3. I am very much thankful to you for your kind help and guidance rendered by you to my daughter in the month of Dec 99.

Thanking you,

Yours Sincerely

Panda

(UC Panda)

MO I

SMO 24 BRTF

Dated : ____ Mar 2000

Approved
under
Admission

CERTIFICATE

34

Annex-G-6.

10
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10

With reference to allegation against Physics teacher K.V. Aizawl for imparting tuition with my son AMEISING RALENG and charging money as informed, it is to certify that ^{to} the best of my knowledge no money has been paid by my son to the teacher as tuition fees.


ATHING RALENG, CO I
F/O AMEISING RALENG
K.V. AIZAWL

Dated : 10 Mar 2000

UDAN
Advocate.

24
7

Annex. 'H'

दूरभाष — { 34009 (AC) with Fax
Phone — { 34339 (AC) Resl.
34154 (AO)
21250 (EO)



केन्द्रीय विद्यालय संगठन
KENDRIYA VIDYALAYA SANGATHAN

35

क्षेत्रीय कार्यालय
अस्पताल रोड
सिलचर-788001

Regional Office
Hospital Road
Silchar-788001

पत्रांक

F. No. : 3-1/99-KVS(SR) / 12228-31

दिनांक

Dated : 22/11/2000

Regd/Conf-

O R D E R

Whereas disciplinary proceedings under Rule 16 of the Central Civil Service(Classification, Control and appeal) Rules 1965 were instituted against Shri Somit Srivastav, Post Graduate Teacher, Physics Kendriya Vidyalaya, Project Pushpak, Aizwal in regard to charge framed against him vide Memotandum No. 3-1/KVS(SR)/99-2000/17177-78 dated- 15.2.2000.

2. Whereas after taking into consideration the record and having regard to all the facts and circumstances of the case, the undersigned is satisfied that good and sufficient reasons exist for imposing the penalty of withholding two increments for a period of two years without cumulative effect.

3. Now therefore, the undersigned orders that penalty of withholding two increments/in the pay scale of Rs.6500/- to Rs.10,500/- only for a period of two years without cumulative effect and not adversely effecting his pension is imposed on Sri Somit Srivastav, Post Graduate teacher, Physics Kendriya Vidyalaya, Project pushpak Aizwal.

To

Shri Somit Srivastav
Post Graduate teacher, Physics
Kendriya Vidyalaya, Project Pushpak
Aizwal.

ASSISTANT COMMISSIONER

Copy to:

The Education Officer(Vig) KVS(HQ), New Delhi.

2. The Principal, KV, Aizawl- for necessary action.

3. The Chairman, VMC, KV, ONGC, Agartala.

Re: Copying of order on
earn impression - 2 milchur / 26 misha

Attested
W.D.

Advocate

ASSISTANT COMMISSIONER.

A 1962 SC 1764

From

Somit Shrivastav, M.Sc., M.Ed., PGT (Physics)
Kendriya Vidyalaya
Project Pushpak, C/O 99 APO

To

The Commissioner
Kendriya Vidyalaya Sangathan
18 institutional Area
Shaheedjett Singh Marg
New Delhi

16.01.2001

**Subject: Appeal against the punishment imposed by the Hon'ble Assistant
Commissioner of the Region vide his order no. 3-1/99-KVS (SR)/12228-31 dated
22.11.2000.**

Hon'ble Sir

With a profound sense of regards I would like to state following few lines for your kind consideration and necessary action please: -

1. On 3.12.99 the Hon'ble Assistant Commissioner of the region who had arrived here a day earlier along with one principal (Shri N.D. Joshi, Principal K.V. Srikona, Silchar Region) in connection with some work, called me in principal's office and asked me to give in writing that I was indulging in private tuition. I told him that this was not a fact and I did never indulge in private tuition, thereupon on the same day they left for Silchar.
2. That, on 6.12.99, when I was taking class in X, the Hon'ble principal served me an office order (Annexure 1 and 2) directing me to meet Assistant Commissioner at Silchar and subsequently I was relieved of my duties on 8.12.99. I reached Silchar and reported to the Hon'ble Assistant Commissioner on the morning of 9.12.99, at about 8.30. On seeing me Hon'ble Assistant Commissioner asked me to meet at about 4.30 in the evening. In the evening again he asked me to give in writing that I was indulging in private tuition but I told him that this was not a fact. I had never accepted any money from anybody for imparting education, a little while later he asked me to report on the next day at 10 in the morning. Next day he asked me to go back to school with the instructions for the principal to report to him. Hon'ble Assistant Commissioner did not give me any attendance certificate.
3. Very perplexed and very much humiliated I contacted my principal over telephone from Silchar and told him about my meeting with the Hon'ble Assistant Commissioner and also the fact that I had not been given any attendance certificate. On getting his verbal assurance with regard to allowing me to join my duties even without attendance certificate I started from Silchar on 10.12.99 in the evening and joined my duties on 13.12.99, 11th and 12th December being second Saturday and Sunday. I submitted TA/DA bills on 16.12.99 to the principal (Annexure 3)
4. That, to my utter surprise and shock my three days salary in the month of December (For those days when I was in Silchar) was not paid without any intimation to me though I was present on all working days in the month of December. I submitted representations to the principal and to the Hon'ble Assistant Commissioner to this effect (Annexure 4 and 5), but only to remain unattended even upto now. To the best of my knowledge Hon'ble principal also sent a letter to the Hon'ble Assistant Commissioner for sending attendance certificate but that too was not acted upon by the office of the Hon'ble Assistant Commissioner.

Annexure
4/5/01
A.S.

PRINCIPAL

5. On 8.3.2000 the Hon'ble principal handed over to me a memorandum (Annexure 6) from Hon'ble Assistant Commissioner along with a charge sheet stating that It is proposed to take action against me for indulging in private tuition. As an evidence for the charge a written joint statement of my principal and principal whom Hon'ble Assistant Commissioner had accompanied during his visit to Aizawl on 2nd and 3rd of December 99. On 14.03.2000 I submitted my representation to Hon'ble Assistant Commissioner through principal against the proposal giving crystal clear evidences and proofs in the form of statements from students as well as parents that I had never accepted any money for imparting education to them. (Annexure 7). I even requested Hon'ble principal to establish the genuineness of statements by any means and attest them but my request was not acceded. Let me also mention that these statements from the parents and students were obtained after receiving memorandum and charge sheet when their CBSE practical exams were over and I virtually had no control over them. I was not even their class teacher.
6. On 11.12.2000 after eight long months principal handed over to me an order from Hon'ble Assistant Commissioner in the form of a sealed envelope imposing a penalty of withholding two increments for two years without cumulative effects. I believe my representation was not even read and I have been punished for no crime on my part.
7. Under such circumstances, I entreat your honour to be kind enough to go through records enclosed herewith and take appropriate decision and save me from this blame and stigma of punishment. It has considerably damaged my prestige and reputation in the Vidyalaya. Once again I reiterate very solemnly that I was innocent and I had never given any type of private tuition to any student. Does it not sound strange to you that in my seven years of service as a PGT Physics in Kendriya Vidyalaya the first memorandum is being issued not by any of my principals who were immediate superiors but by the Assistant Commissioner of the region. In my seven years of service never a complaint was received against me from any parent or student and never I have been served any kind of warning, admonition or any other punishment from the principal or the VMC. The Annual Confidential Reports of the last seven years do not reflect any adverse entry. Sir! You would agree that when a higher officer develops a kind of hatred for an employee, all other officers down the line in order to show solidarity with the higher officer also start neglecting and insulting the employee. I am a victim of such isolation and I have been feeling a pinch of it for the last one year, therefore I request your honour to restore my prestige in the Vidyalaya and save me from any further victimization. I am a teacher of such a branch of science which requires a great deal of mental peace and I do not want to remain tensed in this year therefore once again, with a great sense of humility I request your goodness to come to my rescue from this blame and stigma.

Yours truly,

Somit Shrivastav
16.01.01

(Somit Shrivastav)
PGT (physics)
Kendriya Vidyalaya Aizawl Mizoram

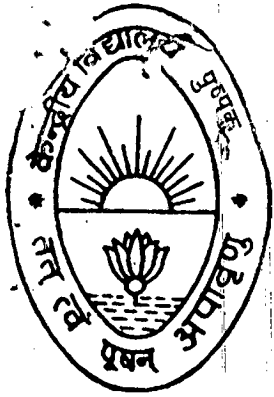
Enclosures: -

1. Annexures 1 to 8

Total No. of sheets = 20

7.2.2001
16.01.2001

Attested
U. D. An
Advocate.



JS

Annex 'J'

Phone : 0389-21128

केन्द्रीय विद्यालय

पुष्पक, C/o 99 ए० पी० ओ०

(38)

54

KENDRIYA VIDYALAYA

PROJECT-PUSHPAK, C/o 99 A. P. O.

ZEMABAWK, AIZAWL - 796017.

Ref. No. F.65/P.F./KV-AIZ/2000-2001/2243/-

Dated 15.01.2001

To

The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Silchar Region,
Hospital Road,
Silchar - 1.

JS

Subject :- Appeal against the punishment imposed ^{by} the
Hon'ble Assistant Commissioner of the Region vide
his ~~order~~ order no. 3-1/99-KVS(SR)/12228-31
dated 22.11.2000 - Regarding.

Sir,

I have the honour to send herewith an appeal from
Shri Sanit Srivastava, P.G.T. (Physics) of this Vidyalaya on the
subject cited above for information, necessary action and onward
transmission please.

Yours faithfully,

Encl As above

(P.R. PURBEY)
PRINCIPAL.

Copy to Shri S. Srivastava,
P.G.T. (Physics)
for information.

P. R. Purbey 16.01.2001
(P.R. PURBEY)
PRINCIPAL.

के०वि० पुष्पक/K V. Pushpak
जिमाबाँक, अइजल-796017
Zemabawk, AIZAWL-796017

Attested
W.D. as
Advocate.

Hannu - 15 (39)

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR:
TRIPURA: MIZORAM & ARUNACHAL PRADESH)

AIZAWL BENCH :: AIZAWL

WRIT PETITION (C) NO. 71 OF 2001

Sh. Somit Shrivastav : Petitioner

- Vs -

Union of India & Ors. : Respondents

P R E S E N T

THE HON'BLE MR JUSTICE RANJAN GOGOI

For the petitioner : Mr. George Raju

For the respondents :

D A T E

22.8.2001

O R D E R

Heard Mr. George Raju, learned counsel
for the petitioner.

The petitioner who is working as a
Post Graduate Teacher (Physics) in the Kendriya Vidyala-
laya, Project Pushpak at Aizawl was served with a Memo-
randum of charges dated 15.2.2000 alleging violation of
item 19 of the Code of Conduct of Teachers as prescribed
in Article 55 of the Education Code applicable to Teach-
ers of Kendriya Vidyalaya. The reply of the petitioner
not having been found to be satisfactory, the Assistant
Commissioner, Kendriya Vidyalaya Silchar vide order
dated 22.11.2000 imposed the penalty of with-holding of
two increments for the period of two years without cumu-
lative effect. The petitioner contends that the aforesaid
order of punishment has been passed without any conside-
ration of his reply to the charges and the documents
enclosed thereto as well as without holding any enquiry.
Against the aforesaid order of the Assistant Commissioner
dated 22.11.2000, an appeal was filed before the appellate
authority on 16.1.2001. The said appeal is stated to be
presently pending awaiting orders of the appellate autho-
rity.

Contd...2/-

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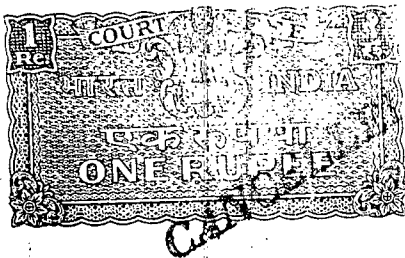
- 2 -

Upon hearing the learned counsel for the petitioner and having regard to the facts of the cases as stated above, this Court is of the considered view that since an appeal against the impugned order of punishment is presently pending, [the said appeal be disposed of at the first instance. In view of the aforesaid conclusion reached, this Court considers it appropriate to close the present Writ Application with a direction to the respondent No.2 to dispose of the appeal of the petitioner(Annexure-I) by taking into account all relevant facts and circumstances including the documents submitted by the petitioner and pass a reasoned order. The aforesaid exercise shall be completed by the respondent No.2 within a period of 45 days from the date of receipt of a copy of this order. If the petitioner continues to feel aggrieved by such order that the appellate authority may pass, it will be open for him to avail of all his remedies in law.

Writ petition stands closed.

Sd/-
RANJAN GOGOI
JUDGE

Attested
[Signature]
Advocate.



Annex - 'L'

(41)

KENDRIYA VIDYALAYA SANGATHAN
[VIGILANCE]
18 INSTITUTIONAL AREA
SHAHEED JEET INGH MARG
NEW DELHI-110016

F. No.9-22/2001-KVS (Vig.)


BY SPEED POST
Dated: 5.10.2001

MEMORANDUM

As per his appeal dated 16.1.200, Shri Somit Shrivastav, PGT[Phy] Kendriya Vidyalaya Aizwal was allowed a personal hearing by Joint Commissioner[Admn] on 5.10.2001 vide Memorandum dated 26 -09-2001.

The said Shri Somit Shrivastav has telephonically informed PA to Joint Commissioner[Admn], his inability to attend to the same on 5.10.2001.

Shri Somit Shrivastav is hereby given another date of personal hearing on 18.10.2001 at 10 AM in consideration of his appeal on the condition that if he fails to present himself for the same as per the schedule, his appeal will be considered on merits.


(MOHD AMIN)
SECTION OFFICER(VIGILANCE)
FOR EDUCATION OFFICER[VIG]

✓ Shri Somit Shrivastav, PGT[Phy],
Kendriya Vidyalaya,
Project Pushpak, C/O 99 APO
Aizwal,
Mezoram

Copy for information to

1. The Assistant Commissioner, Regional Office, SILCHAR with the request to suitably apprise the Hon'ble High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh w.r.t. WP [C] No. 71/2001 by Somit Shrivastava.
2. The Registrar, High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh, Aizawl Bench, Aizawl w.r.t. WP [C] No. 71/2001 filed by Somit Shrivastava.
3. PA to Joint Commissioner[Admn]

hearing+cert.

4

Attested

Advocate.

(Hd)

Annex - 'M'

58

SPEED POST

Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi 110 016.

F.No.9-22/2001-KVS (Vig.)

Dated 18 October 2001

ORDER

WHEREAS the penalty of withholding of two increments w.e.f. the date of accrual in the pay scale of Rs 6500/- to 10,5000 for a period of two years without cumulative effect and not effecting his pension was imposed upon Shri Somit Srivastava by the Assistant Commissioner, KVS Regional Office, SILCHAR, being the Disciplinary Authority, vide order dated 22.11.2000

WHEREAS the said Shri Somit Srivastava filed an appeal against the aforesaid order of the Disciplinary Authority to the Commissioner, K.V.S., on 16.1.2001 which has been considered by the under signed being the Appellate Authority. The appellant has also filed an WP [C] No. 71 of 2001 in the Hon High court of Assam; Nagaland; Meghalaya; Manipur; Tripura; Mizoram and Arunachal Pradesh; Aizawl Bench, against which the said Hon'ble Court's has passed an order dated 22.8.2001 with the stipulation that the Respondent No.2 to dispose of the appeal of the petitioner by taking into account all relevant facts and circumstances including the documents submitted by the petitioner and pass a reasoned order within a period of 45 days from the date of receipt of a copy of the order. The said order of the said Hon'ble High Court have been received in this office on 4.9.2001. Accordingly he was called for a personal hearing on 5.10.2001, but he expressed his inability to attend the personal hearing and requested for another date. He has again been given an opportunity on 18.10.2001 which he availed of.

AND WHEREAS having heard the appellant in person and based on consideration of facts and circumstances of the case and contents in the appeal the undersigned came to the conclusion that the following facts are undisputed:

1. He used to coach these children together; he was actually taking money or not could not be proved. But his coaching to these three students stands confirmed by Defence as well as by prosecution side.

Attested
u/s
Advocate.

- ii. The statements of parents and students only says that they were not paying him ; They are silent on the point that whether these children were asked anything by the Assistant Commissioner in front of the two Principals. It becomes more important in the light of the fact that their statements were produced by the appellant and not by the prosecution and even then, this point was not contradicted by them.
- iii. The incident of recording the statement of children by the Assistant Commissioner gets proved circumstantially.

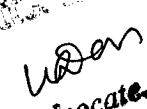
Hence the charge framed against the appellant stands sustained and the penalty imposed by the Disciplinary Authority upon the appellant is, therefore, upheld.

NOW, THEREFORE, the undersigned, being the Appellate Authority, confirms the penalty imposed by the disciplinary authority and disposes of the appeal of Shri Somit Srivastava, PGT[Physics] accordingly.


(DINESH SINGH BIST)
Joint Commissioner[Admn]

Copy to :-

- ✓ 1. Shri Somit Srivastava, Kendriya Vidyalaya Aizwal
2. The Assistant Commissioner, KVS Regional Office, SILCHAR
3. The Principal, Kendriya Vidyalaya Aizwal
4. EDUCATION OFFICER[D] with reference to her letter no /f19-190[13]/2001-KVS[L&C] dated 11.9.2001.
5. Guard File.


Advocate.

Annex - 'A'

~~Secret Post~~

43

KENDRIYA VIDYALAYA SANGATHAN
18, INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI 110 016

F.No.2-16/87-KVS(Admn-I)

23-04-99

OFFICE MEMORANDUM

In order to improve the local supervision of Kendriya Vidyalayas, it has been decided to set up an Executive Committee of the VMC at the Vidyalaya level in all Kendriya Vidyalayas with immediate effect. The Constitution of the Executive Committee, its functions and powers are detailed here under.

2. **CONSTITUTION OF THE EXECUTIVE COMMITTEE.** Each Kendriya Vidyalaya will have an Executive Committee of the VMC comprising the following:

(a)	Chairman, VMC	Chairman
(b)	One Educationist-Member of VMC	Member
(c)	One Parent Representative - Member of VMC	Member
(d)	One Teacher Representative-Member of VMC	Member
(e)	Principal of the Vidyalaya	Member Secretary

The Executive Committee so constituted will be notified by the Chairman, VMC. In case there is a vacancy in the VMC because of which a representative as above cannot be nominated, the Chairman, VMC will notify the Executive Committee without such representative, who may be included later.

3rd Admn

20/5

DDO
For information
20/5

Advocate.

HH

3. PROCEEDINGS OF THE EXECUTIVE COMMITTEE. The Executive Committee will meet as often as necessary but in any case once in three months. The decisions taken by the Executive Committee would be recorded and communicated by the Principal of the Vidyalaya concerned. Three members would constitute a quorum for the meeting.

4. FUNCTIONS AND POWERS OF THE EXECUTIVE COMMITTEE. The Executive Committee shall have the following powers:

a) Academic and Administrative supervision of the Vidyalaya. The Executive Committee will have powers to carry out administrative and academic supervision of the Kendriya Vidyalaya. It will also ensure follow up action on the inspections carried out by the Regional Offices and the Hqs. Office and initiate appropriate steps for removing the deficiencies noticed at the time of such inspections. The Executive Committee shall also have the power to associate educationists and academicians for exercising appropriate degree of administrative and academic supervision over the Kendriya Vidyalaya. Without prejudice to the generality of the aforesaid power, the powers of Executive Committee shall cover the following areas:

- i) Analysis of strength and weaknesses of the KV.
- ii) Progress with regard to the annual calendar of the KV.
- iii) Audit objections and their settlement.
- iv) Discipline.
- v) Analysis of results of KV including initiation of steps for improvement of results.
- vi) Utilisation of funds including Pupils' Funds and Maintenance and Development Fund.
- vii) Adherence to the instructions issued from time to time by the KVS Hqs and ROs.

Attested
W.D.M.
Advocate.

- 62
- 3
- (145)
- b) Admissions. All the admissions will be carried out with the approval of the Executive Committee only. It will be the responsibility of the Principal to ensure adherence to the Admission Guidelines laid down by the KVS(Hqrs). The Executive Committee will not be empowered to dilute or violate these guidelines.

The Executive Committee shall have the power to raise the sanctioned strength of a section from 35 to 40 to accommodate children of the priority category. This can be done only up to 31st August of the Academic Session. Admissions, will however, be made strictly as per the Admission Guidelines.

- c) Purchase and procurement for KVs. All the purchases/procurements of goods and services exceeding Rs. 5000/- in value will be made with the approval of the Executive Committee. This will be applicable to all the funds viz. School Fund, Pupils' Fund and Maintenance and Development Fund available at the disposal of the Vidyalaya. The relevant rules in this regard are being modified to replace the Committees formed therein by the Executive Committee.
- d) Maintenance of the Vidyalaya building and its campus. The Executive Committee will be responsible for the proper upkeep and maintenance of the Vidyalaya building and its campus. The funds provided by the Hqrs for the annual repairs and maintenance as also funds generated for this purpose at the Vidyalaya level would be utilised as per the directions of the Executive Committee.
- e) Condemnation of Stores. The Executive Committee will have powers upto Rs. 50,000/- in a year to condemn stores of all kinds in accordance with the provisions of the Delegation of Financial Powers Rules and the instructions issued by KVS on the subject. However, cases involving fraud, embezzlement, misappropriation or theft will be condemned only with the approval of the Commissioner.

Amended
UDan
Advocate.

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f) Utilisation of funds. In order to ensure proper utilisation of resources, the Executive Committee will monitor the annual budget estimates showing receipt and ensure proper utilisation of funds on approved activities in accordance with the established procedure.

g) Discipline and control. The Executive Committee is being separately declared as the Competent Authority under Rule 13 of the CCS(CCA) Rules, 1965. It will accordingly have powers to institute proceedings or to direct the Principal to institute proceedings against an employee of the Vidyalaya on whom he is competent to impose penalties under CCS (CCA) Rules, 1965. It is clarified that the Principal has the following disciplinary powers:

- | | |
|---|--|
| i) In respect of Gr. 'D' Staff : | Full disciplinary powers |
| ii) Post Graduate Teachers
(Group 'B') | |
| iii) Trained Graduate Teachers
(Group 'C') | Powers to impose minor penalties as laid down in Rule 11 of CCS(CCA) Rules as adopted by KVS |
| iv) Primary Teachers
(Group 'C') | |
| v) Other Teachers
(Group 'C') | |
| vi) Non-teaching staff
(Group 'C') | |

h) Timings of the Vidyalaya. The Executive Committee will be competent to decide the timings of the school and for this purpose may decide as to when the KV shall start and end everyday, subject to the condition that the total working hours for Primary classes are 5 hours and 35 minutes and for other classes 6 hours and 10 minutes.

5. The Admission Guidelines, instructions with regard to the purchase and procurement as well as those relating to the condemnation of stores and discipline/control issued from time to time stand modified accordingly.

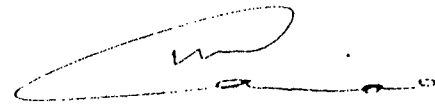
W. S. S. S.
W. S. S. S.
Advocate

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6. The following committees at the Vidyalaya level stand dissolved with immediate effect:

1. Purchase Committee
2. Pupils' Fund Committee
3. Maintenance and Development Fund Committee
4. Any other Committee exercising any of the above powers.



(H. M. CAIRAE)
COMMISSIONER

23/09/89

Distribution :

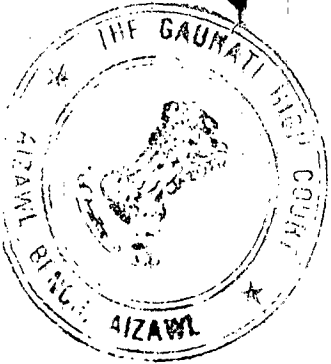
1. All Officers in the KVS(Hqrs.)
2. All Assistant Commissioners.
3. All Chairmen of VMCs
4. All Principals
5. Guard Files/Office Order File

Attested
W. S. An
Advocate

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA :MANIPUR
TRIPURA: MIZORAM & ARUNACHAL PRADESH)

AIZAWL BENCH :: AIZAWL.

W.P.(C) No. 105 of 2001



Sh. Somit Shrivastav : Petitioner

- Vs -

The Union of India & Ors. : Respondent

P R E S E N T

THE HON'BLE MR JUSTICE S.K. KAR

For the petitioner : Mr. George Raju

For the respondent : Mr. T. Vaiphei
Sr. Advocate
Mr. N.Sailo.

DATE
05.07.02

O R D E R

At this stage of the proceeding under Article 226 of the Constitution of India, an objection has been raised from the respondents that the case of the petitioner being covered by the Central Administrative Tribunal Act, there is no jurisdiction of this Court to proceed with the petition under Article 226 of the Constitution as it will be against the principle of law.

The learned counsel for the petitioner conceded with the principle of law, but submits that this Court entertained the petitions on similar situated facts and passed final orders. This submission being confronted by Mr. T.Vaiphei, learned Addl. Advocate General, Government of Mizoram, stating that illegality once detected will have to be respected and it should not cited as a precedence.

Learned counsel appearing for the petitioner submits that he has no specific authority to supplement his submission at this stage.

Since this Court has no jurisdiction to entertain this petition, the petition is closed. However, the petitioner shall be entitled to withdraw any important documents attached.

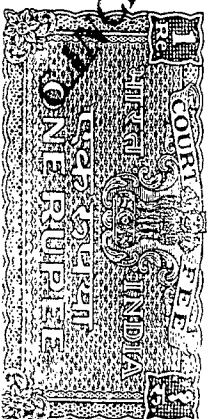
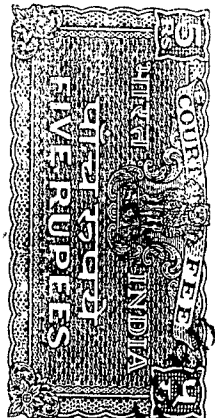
This disposes of the petition.

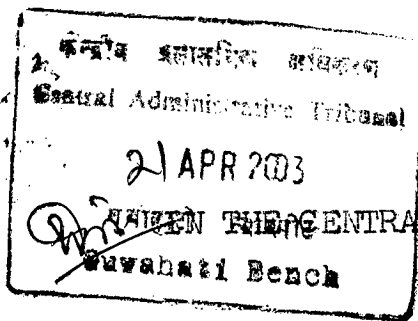
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Atthang
SUPERINTENDENT (Judl)
Gauhati High Court.
Aizawl Bench

Attested
W.D.
Advocate.

Sd/-
S.K. KAR
JUDGE





O.A. NO. 8/2003

Sri Somit Srivastava

- Vs -

The Union of India & Ors.

IN THE MATTER OF :

Written statement filed
by the Respondent No. 4
for himself and other
Respondents.

- AND -

IN THE MATTER OF :

The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Silchar.
Assam.

.... Deponent.

- Versus -

Sri Somit Srivastava

.... Petitioner.

The humble written statement
on behalf of the Respondent
is as follows :-

- 1) That the Respondent states that in
the Original Application he has been made party

contd.... p/2.

Filed by 11 Respondents
Through. M.K. Majumdar
Advocate
21-04-03 SC

and a copy of the same has been served upon him. The Respondent has gone through the contents of the petition and understood the same and he is competent to file the written statement on behalf of him and for others. They being the official Respondents.

2) That the Respondent states that the statement and averments made in the Original Application are totally denied. The statements which are not born out of records are denied. The Respondents which are not specifically admitted may deemed to be denied.

3) That the Respondent state that before controverting the statements and averments made in the above application the Respondent craves leave of this Hon'ble Tribunal to admit the following facts of the case in brief for appreciation.

FACTS OF THE CASE

Three Students viz. Miss Preeti Panda, Master Yogesh and Master Ameising Raleng admitted before the Principals of KV, Srikona and KV, Aizawl in the presence of the then Asstt. Commissioner during his visit to KV Aizawl that they were going for tution for Physics to Shri Somit Srivastava, PGT (Physics) on payment of Rs. 500/- each per month.

Shri Srivastava was charge sheeted under Rule 16 of CCS (CCA) Rules, 1965 vide Memorandum

contd....p/3.

dated 15-02-2000 on the aforesaid account.

Having considered the defence statement submitted by the said Shri Srivastava finding the same not convincing as the students admitted in the presence of the Disciplinary Authority i.e. Asstt. Commissioner, KVS, RO, Silchar, penalty of withholding two increments for a period of two years without cumulative effect has imposed by the Disciplinary Authority upon him vide order dt. 22-11-2K.

Shri Srivastava, preferred an appeal dt. 16-01-2001 to the Appellate Authority against the order of Disciplinary Authority which was forwarded to the Appellate Authority on 13-03-2001.

Shri Srivastava had filed an W.P. (C) No. 71/2001 against which the Hon'ble Court passed order dated 22-08-2001 with the stipulation that the respondent No. 2 i.e. the Appellate Authority should dispose of the appeal by taking into consideration all relevant facts and circumstances including documents submitted by the Appellant and pass a reasoned order. The aforesaid exercise should be completed by the Appellate Authority within 45 days from the date of receipt of copy of the order.

Shri Srivastava was asked to appear for personal hearing on 05-10-2001 before the Appellate

contd....p/4.

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Authority on a telephonic message from him regarding his inability to attend the same the hearing was postponed to 18-10-2001.

After hearing him personally on 18-12-2001 and also considering the facts and curcumsatances of the case the Appeal of Shri Srivastava was disposed of by the Appellate Authority vide order dated 18-10-2001.

The Applicant has filed the instant OA No. 8/2003 challenging the orders dated 22-11-2000 and 18-10-2001 passed by the Disciplinary Authority and the Appellate Authority respectively.

4) That with regards to statement made in para 4.1 and 4.2 the Respondents submits that these are matter of records which does not warrant any comment.

5) That with regards to the statement made in para 4.3 the Respondents states that the relieving order of the Applicant by the Principal is not the proof of his attendance for considering his TA claim by the Respondent. Attendance Certificate is pre-requirement for settlement of the TA claims preferred by the Applicant. In the absence of the requisite proof absence from duty can not be treated as duty. The said period has however, been regularized on production of Attendance Certificate dtd. 23.4.2002 and the salary so withheld has been released.

contd....p/5.

6) That with regards to the statement made in para 4.4 the Respondents states that this is matter of records which does not warrent any comment.

7) That with regards to the statement made in para 4.5 the Respondents submitts that - three students admitted before the then Principls namely Sri N.D. Joshi and Sri P.R. Purbey, K.V. ONGC, Srikona and K.V., Aizwal in the presence of the Disciplinary Authority that they were going for tuition for Physics to Sh. Somit Srivastava, PGT (Phy.) on payment of Rs. 500/- each per month. The petition was charge sheeted under Rule 16 of CCS(CCA) Rules, 1965 with Memorandum dated 15.02.2000, only after the Disciplinary Authority was satisfied that the prima-facie case existed against the petitioner.

8) That with regards to the statements made in para 4.6 & 4.7 the Respondent states that - the petition was given an opportunity to submit representation against the said Memorandum dated 15.02.2002. The Disciplinary Authority after examining the representation carefully the grounds adduced by the petition and also the faces & ~~ex~~ circumstances of the case could not disprove the charges and passed order imposing penalty vide order dated 22.11.2000. Since the penalty will not effect the pension benefit and with-holding of increment is not exceeding three years the enquiry is not mandatory as per Rule 16 of the

CCS(CCA) Rules 1965.

The averment made by the petitioner is denied. The delegation of statutory powers to the lower authority does not refrain the higher Authority from exercising his own statutory powers.

9) That with regards to the statement made in para 4.8 the Respondents states that the petitioner is free to avail the department remedies as per law.

10) That with regards to the statement made in para 4.9 the Respondents denied the same however the statement made in para 4.10 the Respondent states that - the time taken in proceeding the appeal preferred by the petitioner was due to the administrative reasons and not because, anything held against him. However, the time-limit set by the Hon'ble Court has been honoured as the appeal has been disposed off within the stipulated time period ~~vide order~~ vide order dated 18.10.2001.

11) That with regards to the statement made in para 4.11 the Respondents states that the ~~xxx~~ averment made by the petitioner is incorrect. The material and grounds placed by the petitioner before the Appellate Authority has been duly considered in the light fact and circumstances of the case

contd....p/7.

12) That with regards to the statement ~~to~~ made in para 4.12 & 4.13 the Respondent states that the averment made by the petitioner is incorrect. As per the appellate order issued, the appellant was not witnessed to have received money for taking class. However by circumstantial evidence it gets proved that he was imparting tuition privately to some students at his residence without the knowledge or approval of the competent authority. In departmental enquiry it is necessary that the charges have to be proved beyond doubt, but it can be held proved on preponderance of probability. Thus in the present case the charge was ~~not~~ sustained against the appellant

In passing the said order, the Appellate Authority has adequately applied his mind to the facts and circumstances of case and come to the conclusion as stated in his order dated 18.10.2001. The Appellate order dated 18.10.2001 is based on just consideration and based on the material facts of the case.

The order passed by the ~~Appellate~~ Appellate Authority is as per law.

13) The Respondent reiterate the statement made against the para 4.13.

14) That with regards to the statement made in para 4.15 the Respondent states that the averment made by the petitioner is incorrect.

contd....p/8.

The action of the Disciplinary Authority is as per rules. The order issued by the Disciplinary Authority is just, proper and reasonable as per law.

The Principals being the responsible Officers recorded the statement of the students without being provoked or biased. The petitioner has been given reasonable opportunity as per rules to prove his innocence before passing the final orders by the Disciplinary Authority as is evident from the memorandum dated 15.02.2000. The order passed by the A.A. is reasonable and valid as per rules. Holding of regular enquiry is not mandatory under Rule 16 of CCS(CCA) Rules, 1965.

15) That with regards to the statement made in para 4.16 the Respondent denied the same. The date of incident in Annexure-II of Memorandum mentioned as 03.2.1999 is due to typographical mistake. The date of incident is 03.12.1999 stands substantiated by the Annexure-III of the same memorandum. The petitioner has never objected this in his defense statement as well as in the Appeal made against the said Memorandum. Thereby admitted the facts and circumstances of the case. Hence the orders passed by the Disciplinary Authority and the Appellate Authority are just and valid.

contd....p/9.

16) That with regard to the statement made in para 4.17 the Respondent denied the averment made by the petitioner. The students admitted before the two Principals in the presence of the Disciplinary Authority that they were going for tuition in Physics to the petitioner. The statement of the students recorded by the two Principals who are responsible Officers has been made the list of document to substantiate the charge framed against the petitioner and a reasonable opportunity has been given to him as per rules to prove his innocence. It has not been considered fit by the Disciplinary Authority to enlist the three students as witness in the case as they have admitted in his presence. The petitioner has not been deined any opportunity to put his defence before the Disciplinary Authority. The action taken by the Disciplinary Authority is strictly in accordance with rules and stands valid as per law.

17) That with regards to the statement made in para 4.18 the Respondent states that the petitioner failed to dis-prove the charge frame against him.

18) That with regards to the statement made in para 4.19 the Respondent states that the Disciplinary Authority passed the final orders after considering the grounds adduced by the petitioner in his representation and also the facts and circumstances of the case as per rules.

contd....p/9.A.

- 9.A. -

As per rule 16 of the CCS(CCA) Rules 1965, holding of regular inquiry is not mandatory.

19) That with regards to the statement made in para 4.20 the Respondent states that the averment made by the petitioner is incorrect. The Disciplinary Authority as well as Appellate Authority have taken their decision after careful consideration of the facts and circumstances of the case as per rules. Hence the orders passed by the Disciplinary Authority and the Appellate Authority are ~~xxx~~ reasonable and valid.

20) That with regard to the statement made in para 4.21 the Respondent reiterate the state-^{para}ment made against the/4.6 & 4.7 in reply to statement.

21) That with regard to the statement made in para 4.22 the Respondent reiterate the statement made against the para 4.3 in reply to statement.

22) That the Respondent states that para 4.23 is matter of records. The said W P(C) No. 105/01 has been dismissed by the Hon'ble Court on the ground of Jurisdiction.

23) That with regards to statement made in para 4.24 the Respondent states that this is matter of records which does not warrant any-comments.

That with regards grounds set forth and para 5.1 to 5.5 the answering respondent submit that these are not good grounds under

contd....p/10.

the facts controverted by the respondent, and as such, no further relief as claimed in para can be granted and after consideration the facts and circumstances stated by the Respondent the petition is liable to be dismissed.

24) That with regards to the statement made in para 5.1 the Respondent states that - Disciplinary Authority has followed the prescribed procedure scrupulously and action taken by him is as per rules. The order passed by the Disciplinary Authority is reasonable & valid.

25) That with regards to the statement made in para 5.2 the Respondent states that - the proceedings were as per Rule - 16 of CCS and CCA(Rules) 1965. Hence action taken by the Department is valid as per law.

26) That with regards to the statement made in para 5.3 the Respondent states that the memorandum dated 15.2.2000 issued by the Disciplinary Authority is valid as per law.

27) That with regards to the statement made in para 5.4 the Respondent states that ~~the~~ Holding regular enquiry is not mandatory as per Rule 16 of CCS(CCA) Rules 1965 in this case. The Disciplinary Authority was ~~xx~~ satisfied with the facts and circumstances of the case and the proceedings were as per rules. The action of the Disciplinary Authority is as per law.

28) That with regards to the statement made in para 5.5 the Respondent states that the order passed by Disciplinary Authority as well as by the Appellate Authority are as per law and stand valid and sustainable.

Relief sought :

That the Respondent respectfully submitted that considering the facts and circumstances it is crystal clear that the relief claimed under para are not at all acceptable and Hon'ble Court may be pleased to dismiss the instant O.A. to meet the end of Justice.

..... Verification.

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V E R I F I C A T I O N

I, Sunder Singh Sehrawat, S/O Shri Harish Chander, Age about 52 years, presently working as the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region, Maligaon Chariali, Guwahati-12, do hereby verify that the statement made in Paragraphs 1, 2, 3(p), 4, 9-14, 16-21, 24-28 are true to my knowledge and those made in paragraphs 3(pwd), 5-8, 15, 22, 23 are based on records.

And I sign this verification on this the 21st day of ^{April} 2002 at Guwahati.

Place : Guwahati.

Sunder Singh Sehrawat

DEPONENT

Date : 21-04-03