

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR**

Original Application No. 268/2005

Date of decision. 17.12.09

Hon'ble Mr. Justice S.M.M.Alam,Judicial Member.

Hon'ble Mr. B.L. Khatri, Administrative Member.

Ajit Singh Meena s/o late Shri Amar Singh Meena, aged about 33 years, resident of A-253, Tara Nagar, Karnipath, Jhotwara, Jaipur.

: Applicant.

Rep. by Mr. R.D. Rastogi : Counsel for the applicant.

Versus

1. Union of India through the Secretary, Ministry of Human Resource and development, New Delhi.
2. Joint Commissioner (Administration) KVS (Hq), 18 Institutional Area, Shahed Jeet Singh Marg, New Delhi-110 016
3. Assistant Commissioner, KVS, I.I.T. Campus Pawai, Mumbai 400 076.

: Respondents.

Rep. by Mr. V.S. Gurjar, Counsel for the respondents.

ORDER

Per Mr. Justice S.M.M. Alam, Judicial Member.

Being aggrieved by the order dated 27.11.2003 (Ann. A-1), passed by the Assistant Commissioner, Kendriya Vidyalaya Sangathan (for short KVS), Mumbai Region and the order of Appellate Authority dated 22.11.2004 (Ann.A-2), passed by the Joint Commissioner (Admn.) (Vig. Sec.), KVS, New Delhi the applicant Ajit Singh Meena, a PGT(Geo) Teacher, Kendriya Vidyalaya, Artillery Centre, Nasik Road Camp, presently residing at No.A-253, Tara Nagar, Karnipath, Jhotwara, Jaipur, after his termination from service has preferred this Original Application.

2. The brief facts of the case are that a disciplinary inquiry was started against the applicant, in which the inquiry officer found him guilty and submitted his inquiry report for consideration of the Disciplinary Authority. The Disciplinary Authority i.e. Assistant Commissioner, KVS, Mumbai Region, vide his order dated 27.11.2003 (Ann.A-1) agreed with the findings of the inquiry officer and by way of punishment terminated the services of the applicant. Thereafter, the applicant preferred an appeal to the Appellate Authority i.e. Joint Commissioner (Admn.) (Vig. Sec.), KVS, New Delhi. The Appellate Authority by his order dated 22.11.2004 (AnnA-2) confirmed the order of the Disciplinary Authority and rejected the appeal preferred by the applicant.

3. As per record two charges were leveled against the applicant. The charges as mentioned in the Articles of Charge are as follows:

Article I

Shri Ajit Singh Meena while working as PGT (Geogrpphy) at KV Nasik Road during the year 2002 took the students of Class XII- HUM including girl students on 03.02.2002 for survey to a place of Wani without lady escort and without due permission from the Principal and returned back at about 9.30 PM at night.

By this act he has committed misconduct under article (55) (34) (ii & iii) of the education code as applicable to the teachers of Kendriya Vidyalaya Sangathan which also amounts to misconduct under rule 3 1 (ii) and (iii) of CCS (Conduct) Rules 1964 as applicable to KVS employees

Article II

That the said Shri Ajit Singh Meena while working as PGT (Geo) at K.V. Nasik Road has taken 22 Admit Cards of Class XII- Hum students from the class teacher Mr. Syed Hasibuddin PGT (Hist) in the resent of two teachers in the staff room on 11.02.2002 and misplaced. On demand by the class teacher on next day he denied having any Admit Cards with him. The card were sent by Post next day.

By this act he has committed misconduct under article (55) (34) (ii & iii) of the education code as applicable to the teachers of Kendriya Vidyalaya Sangathan which also amounts to misconduct under rule 3 1 (ii) and (iii) of CCS (Conduct) Rules 1964 as applicable to KVS employees.

On the above mentioned two charges inquiry proceedings against the applicant was conducted by one Cherian C. George (Principal) KV ONGC, Panvel and he submitted his report on 05.09.2003 holding the applicant guilty of the charges.

4. The contention of the applicant is that inquiry was conducted in sheer violation of principles of natural justice as in spite of demand of the applicant to provide him defence assistant, the inquiry officer did not provide him the defence assistant and therefore the entire proceeding is illegal and not in accordance with law. The next contention of the applicant is that the inquiry report as well as both the impugned orders were passed by the concerned officers without applying their mind. The third contention was that finding of the inquiry officer is perverse and the same is based either on no evidence or misinterpretation of the evidence available on record. The fourth contention is that the punishment of removal from service is not in consonance with the charges leveled against him. On the basis of the above contentions the following reliefs have been prayed by the applicant.

"i) by issue of appropriated order or direction the order of removal of service dated 27.11.2003 may kindly be quashed and set aside and the appellate order dated 22.11.2004 may kindly be declared to be invalid and be quashed and set aside and the respondents may be further directed to reinstate the applicant in service with all other consequential benefits.

ii) By issue of appropriate order the respondents may be directed to pay the applicant the balance of subsistence allowance.

iii) Any other relief which this Hon'ble Tribunal may deem fit just and proper in the circumstances of the case, the same may kindly be granted in favour of the applicant.

5. On filing of this O.A, notices were issued to the respondents. In response to the notice, the respondents have appeared through counsel and filed reply of the O.A. In their reply the respondents have

refuted the averments of the applicant made in the O.A. and claimed that the inquiry was conducted in accordance with law and the impugned orders i.e. annex. A/1 and A/2 which are passed on the basis of inquiry report and on perusal of the relevant documents are correct and legal and so no interference can be made in the impugned orders.

6. During the hearing lawyers of both sides were heard at length. On the one hand the learned counsel of the applicant argued that the inquiry report as well as both the impugned orders are perverse and based on no evidence. On the other hand, the learned counsel of the respondents argued that the same are in accordance with law and based on materials available on record and as such they cannot be said to be perverse.

7. It is settled principles of law that ordinarily Courts/Tribunals should not interfere with the punishment awarded to a delinquent employee by the competent authority, if the inquiry is conducted in accordance with law and proper opportunity has been given to the delinquent to defend his case in the proceedings. It is also settled law that if the findings of the inquiry officer is perverse and against the materials available on record then the Courts/Tribunals have got ample power to interfere with the punishment awarded to a delinquent officer.

8. Therefore, first of all we would like to consider whether the findings of the inquiry officer on the two charges leveled against the

applicant is against the materials available on record and the same can be termed as perverse.

9. We have already incorporated the charges leveled against the applicant at para 3 above. The report of the inquiry officer has been annexed with the O.A at pages 121 to 132 of the paper book. From perusal of the inquiry report it appears that the inquiry officer has dealt with Article of charge No. I at pages 129-130 and Article of charge no. II at p-131. We would like to incorporate the findings of the inquiry officer for better appreciation:

" Article-I

a) Whether Shri Ajit Singh Meena had taken Class XII (hum) including girls for a field survey on 03.02.2002 to a place –vani:

The statements of Shri Meena in his submissions he accepts that he had taken students for the field survey on 03.02.2002. The statements of children submitted individually in their own hand writing clearly proves that Mr. Meena had taken children for the filed survey on 3rd February 2002. The individual statements written by children appear to be quite genuine (pages 121 to 147 of Annex. II).

The statements of children, the evidences collected from the witness clearly proves that the survey was from 8.30 a.m. to 9.30 pm and no lady teacher escorted them (pages 121 to 147 Annex. II)

b) Whether Shri Ajit Singh Meena got permission to take children for the survey on 03.02.2002, from competent authority.

The only evidence to prove that Mr. Meena has got permission to take children for the field survey, submitted by CO is his letter dated 19/01/02 submitted to the competent authority, Principal. It reveals that the letter given by said Meena is seeking permission to take remedial class for slow learners and gifted children (page 14 Annex. I). The sentence formation in the letter is such that he had seeked permission to conduct extra classes and principal have initialed it. After obtaining the permission for the same , the accused officer might have added the other sentence in it.

The size and nature of the letters clearly indicates the difference. The letter written by Mr. Meena starts with " I want to take ----- and ends with, so kindly allow me to do so. The sentence " please intimate the Chairman (VMC) regarding the conduct of practical survey and depute lady escort" **is added later**, since the body of the letter does not have any mentioned about the survey. If it was originally planned before 19.01.2002, the detailed programme, just like the extra class would have been included in the said letter. This discrepancy can be seen even in the subject of the letter which might have ended with the word 20/01/02, later the wordings " and permission/Intimation for Till XII arts might have included. These letters were submitted along with written statement for charge sheet dated 12/04/02 addressed to the Assistant Commissioner (page 13,14 Annex. I) During the examination of W.I Shri P.K. Chadha, then I/C Principal categorically denied that he had

given permission to Shri Meena to conduct the said Survey. (page 367 Annex. XXV). The Principal stated that he had relieved Shri Meena on 3/02/02 FN to conduct practical examination at Central Railway Sr. Secondary School, Busaval to be held on 4/2/02.

" Hence the with the evidences made available to IO, examination of witness it revels that Shri AS Meena had committed misconduct in taking students including girls without due permission from the principal and returned at 9.30 pm"

10. With regard to the finding of the inquiry officer on Charge No. I, it appears that the inquiry officer was of the view that the applicant had taken the girls students for field survey on 03.02.2002 without the permission of the principal and in this regard the applicant had made certain interpolation, whereby he had sought permission of the principal for taking girls students with him for field survey. It has been contended by the learned counsel of the applicant that these observations of the inquiry officer is against the material available on record. His contention was that the school principal was the only competent person to accept or deny this fact, whether he had granted permission to the applicant for taking the girls students with him for field survey. He has further argued that there are unimpeachable documents on record which can establish beyond doubt that this finding of the inquiry officer is against the materials available on record. In this regard he has referred to Annex. A-5, A-6 and A-7.

11. We have perused the above documents i.e. Annex. A-5, A-6 and A-7. Annex. A-5 is the application of the applicant Shri Ajit Singh Meena, addressed to the Principal Kendriya Vidyalaya, Nasik Road Camp Nasik seeking permission for conducting remedial class for slow learner and gifted students of XII standard in geography subject on 20.01.2002 and permission/Intimation for conducting practical survey on 27/01/02 (Triumbakeshwar) and 3/02/2002 (vani) for XII Arts.

Ann-A.6 is another letter of the applicant addressed to the said principal KV requesting him to confirm that he had given oral permission for survey in connection geography practical classes. Ann.A-7 is the confirmation letter of the Principal of the said institution. This document is very important and relevant for deciding the issue in question. i.e. for Charge No. I. We are incorporating this document verbatim:

"KENDRIYA VIDYALAY, ARTILLERY CENTRE, NASIK ROAD CAM NASIK – MAHARASHTRA

Ref No. Per ASM/KV Nasik/2001-02

dated 15/02/2002

I state that I allowed Mr. A.S. Meena PGT (Geo) in written on 19/01/02 & verbally on 02/02/02 to conduct survey at Wani/vani on dated 03/02/02 without lady escort with student of XII Hum including girls.

He acted as per my verbal order dated 7/1/02

Sd/..
(P.K.Chadha)
i/c Principal.

To

Mr. Ajit Singh Meena PGT (Geo)
KV, NRC Nashik.

Copy to 1. Mr. R.L. Gupt (EO)

KVS MR

2. Chairman, VMC, KV NRC, Nashik .

There is no averment on the part of the respondents that this letter (Ann.A-7) is either forged or does not bear the signature of the Principal. This letter establishes beyond doubt that the Ist charge that the applicant while working as PGT (Geo) at KV Nashik Road during the year 2002 took the student of Class XII Hum including girl students on 03.02.2002 for field survey to a place Wani without lady teacher as escort and without the permission of the principal stands falsified and fully establishes the contention of the learned counsel of the applicant that the applicant had taken due permission from the Principal for taking the students including the girls students of XII

(Hum) for field survey. Therefore we are of the view that the finding of the inquiry officer with regard to charge I is perverse and against the material available on record.

12. As regards the second charge we would like to incorporate the findings of the inquiry officer at page 131 of the paper book for better appreciation:

Article 2

That the said Shri Ajit Singh Meena, while working as PGT (Geo) at K.V.Nasik Road has taken 22 Admit cards of Class XII (Hum) students from the class teacher Mr. Syed Hasibuddin, PGT (His) in the presence of two teachers in the staff room on 11/2/2002 and misplaced. On demand by the class teacher on next day, he denied having any Admit Card with him. The cards were sent by Post next day."

The points to be inquired are:-

- Whether Shri AS Meena had collected 22 Admit Cards from Sri Syed Hasibuddin or not.

The eye witnesses Smt. Keerti Sharma and Ms. Shakeela Hussain, in their statements during the examination of them revealed that they had witnessed the act of collecting admit cards by Mr. Meena from Shri Syed Hasibuddin, who was the class teacher of Class XII in the pretext of verification of geographical practical purpose. He did not return it, even though Mr. Syed Hasibuddin requested him on 13th Feb.

Even though Mr. Meena was present during the examination of witnesses he never tried to cross examine them.

- Whether it is Shri Meena posted the admit cards back to the principal.

There is no clear cut evidence for the same, but it is a truth that the admit cards were received by post on 16th which was booked in the Nasik post office itself. The cover was opened in the presence of Shri PRL Gupta EO Principal and Hussain. The weight recorded on the packet was 120 grams. In the submission of defence by Shri AS Meena (page 227- Ann. XXVII) 12th line onwards, states that "Moreover --- vague in nature", appears as the arguments on the literature of the article but indicates some hidden facts. The weight 120 grams is almost equal to the weight of cover and Hall tickets. Further argument of CO that, the admit cards has got signature dated 14th by principal is not seen, the dated signature of student (pg. 279-Ann. XXVII) is seen. It does not reveal that Principal attested it on 14th or 15th. The statements made by Mr. Meena in staff room to witness No. 4 (pg. 391 Annex. XXVI) line no. 10 and other circumstantial evidences proves that the sender may be Shri A.S. Meena since there is proof for the collection of admit cards by Shri Meena from Mr. Hasibuddin and there is no evidences for returning the same thereafter to him.

Even though Shri Meena was present during the examination of witnesses, he did not deny the facts or cross examine the witness.

Hence the article II is proved.

The contention of the learned counsel of the applicant is that Smt. Keerti Sharma and Ms. Shakeela Hussain both teachers of the said school in collusion with Mr. Syed Hasibuddin have cooked up a false story of taking away 22 admit cards. The learned counsel submitted that the above mentioned teachers have grudge against the applicant since the applicant had complained to the authorities with regard to the misdeeds of the above teachers. He placed reliance on certain documents. But we are of the view that this Tribunal is not competent to re-appreciate the evidences and to find out as to whether the witnesses who gave evidences against the delinquent employee are inimical to him or not. We are further of the view that this Tribunal can only interfere with the findings of the inquiry officer only when the same is perverse and against the materials available on record.

The learned counsel appearing for the applicant has submitted that as per the allegation this applicant has taken 22 admit cards from Mr. Hasibuddin in the presence of Smt. Keerti Sharma and Ms. Shakeela Hussain on the pretext of verification and promise to return them; but in spite of the request made by Mr. Hasibuddin the applicant did not return the same, rather he sent the admit cards to the school authorities by post mentioning the name Ms. Shakeela Hussain and the same was received in the school on 16.02.2002. The learned counsel submitted that this allegation stands falsified from the fact that on 14th and 15th, the Principal had affixed his signature on the admit cards which disproves the allegation that on 12.02.2002, the applicant had taken away 22 admit cards and only on 16.02.2002, the same were received back in school through speed post.



We have minutely perused the findings of the inquiry officer on Charge No. II. It started with the sentence "There is no clear cut evidence for the same" which goes to establish that to prove this charge sufficient evidence on the basis which any definite opinion could have been formed, was not available. The finding of the inquiry officer is that the admit cards do not bear the signature of the Principal rather the same bears the signatures of students mentioning the dates as 14th and 15th. This observation of the inquiry officer establishes beyond doubt that the allegation that the applicant had taken away 22 admit cards with him on 11.02.2002 and returned the same on 16.02.2002 through speed post is not correct rather the same were lying in the school premises even on 14th and 15th Feb. and the students put their signatures on the admit cards. Thus the finding of the inquiry officer itself disproves the charge that the applicant had taken away 22 admit cards from Mr. Syed Hasibuddin on the pretext of verification and did not return the same and later on sent the same through speed post which were received in the school on 16.02.2002.

Thus we are of the view that the finding of the inquiry officer on charge No. II is also against the materials available on record and so we hold that this finding is also perverse.

13. We have already pointed out that this Tribunal is empowered to interfere with the finding of the inquiry officer in disciplinary proceeding if the same is perverse. In this regard we place reliance upon the decision of the Apex Court rendered in the case of Bhagwati Prasad Dubey vs. the Food Corporation of India [AIR 1988 SC 434]. At para 3 of the judgement, the Apex Court has observed that

normally this Court does not interfere with findings of fact arrived at in disciplinary proceedings. But leave to appeal having been granted we have looked into the matter and find that in the present case the Enquiry Officer has reached his conclusion on no evidence and without proper appreciation of the background and circumstances in which the appellant had to function at the relevant time. It further transpire from the above judgement that the Apex Court after discussing the background of the case came to conclusion that the finding of the inquiry officer is based on no evidence and quashed the order of removal of the appellant therein.

14. As we have already held that the findings of the inquiry officer on both the articles of charge is perverse and based on no evidence, as such we have no alternative except to come to the conclusion that the order of termination of the services of the applicant passed by the Disciplinary Authority dated 27.11.2003 (Annex. A-1) and subsequent order of confirmation passed by the Appellate Authority dated 22.11.2004 (Annex. A-2) must be quashed.

15. The learned counsel of the applicant has also taken a legal ground that the inquiry officer was duty bound to provide defence assistant to the applicant during the inquiry, but in spite of request made by the applicant, the inquiry officer did not provide him defence assistant, which has vitiated the entire proceedings. In this regard he has placed reliance on several decisions of the Apex Court. A perusal of the record shows that the applicant had sought permission from the inquiry officer to engage a defence assistant but the same has been

refused by the inquiry officer and this fact has been incorporated in the letter of the inquiry officer dated 30.10.2002, addressed to the applicant - Annex. A/20- page 74 of the paper book. It has been stated therein that since the head quarter of Shri H.S. Upadhyaya, PGT (His), is Barmer in Rajasthan is much away, his name cannot be accepted as defence assistant. It further transpires from the record that on earlier occasion also the request of the applicant for having a defence assistant, who was out side KVS, was also rejected. Thus the documents establishes beyond doubt that the applicant was not provided defence assistant during the inquiry.

16. Law as laid down by the Apex Court as well as by various High Courts and followed by this Tribunal is very clear that as per rules a delinquent employee is entitled to engage a defence assistant including a legal practitioner to defend him in departmental inquiry and refusal to permit him to engage a defence assistant/legal practitioner vitiates the entire inquiry proceedings. In this regard we place reliance on the decision of the Apex Court in the case of **C.L.Subramaniam vs. The Collector of Customs, Cochin** [AIR 1978 SC 2178] and the decision of the High Court of Rajasthan at Jaipur in **Deoki Nandan Kulshreshtha vs. State of Rajasthan & anr.** [1985 WLN (UC) 103. Thus we are of the view that failure to provide defence assistant to the applicant during inquiry has vitiates the entire inquiry proceedings against the applicant. To support our view, we would like to quote para 22 and 23 of the judgement of the Apex Court rendered in the case of **C.L.Subramaniam** [supra]

" 22. It is needless to say that R.15 is a mandatory rule. That rule regulates the guarantee given to Government servants under Article 311.

Government servants by and large have no legal training. At any rate, it is nobody's case that the appellant had legal training. Moreover when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. The accusation against the appellant threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him, as it has proved to be. In such a situation he cannot be expected to act calmly and with deliberation. That is why Rule 15 (5) has provided for representation of Government servant charged with dereliction of duty or with contravention of the rule by another government servant or in appropriate cases by a legal practitioner.

23. For the reasons mentioned above, we think that there had been a contravention of Rule 15 (5). We are also of the opinion that the appellant had not been afforded a reasonable opportunity to defend himself. Hence the impugned order is liable to be struck down and it is hereby struck down. The facts of this case are not such as to justify any fresh enquiry against the appellant. Hence we4 direct that no fresh enquiry shall be held against the appellant and he be restored to the position to which he would have been entitled to but for the impugned order....."

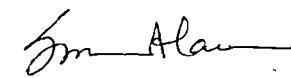
17. On the basis of the above discussions and law laid down by the Apex Court we hold that the report of the inquiry officer, which is the basis for the order dated 27.11.2003 (Annex. A-1) passed by the Assistant Commissioner, KVS, Mumbai Region in capacity of disciplinary authority and the order dated 22.11.2004 (Annex. A-2) passed by the Joint Commissioner (Admn) (Vig. Sec.), KVS, New Delhi, is based on no evidence and on misinterpretation of the evidences available on record and therefore the inquiry report as well as the impugned orders (Ann.A-1 and A-2) are perverse in the eye of law. We are further of the view that the departmental inquiry against the applicant is vitiated in law due to the failure of inquiry officer to provide defence assistant to the applicant during the inquiry. We, therefore, hold that the impugned order dated 27.11.2003(Annex. A/1) and the order dated 22.11.2004 (Annex. A/2) should be quashed and set aside.

18. In the result, the O.A is allowed and the impugned order dated 27.11.2003 (Annex. A-1) passed by the Assistant Commissioner, KVS,

Mumbai Region as disciplinary authority and the order dated 22.11.2004 (Annex. A-2) passed by the Joint Commissioner (Admn) (Vig. Sec.), KVS, New Delhi, as Appellate Authority are hereby quashed and set aside. The respondents are directed to reinstate the applicant within a period of two months from the date of receipt of a copy of this order with all the consequential benefits..

19. In the facts and circumstances of this case there will be no order as to costs.


[B.L. Khatri]
Administrative Member.


[Justice S.M.M. Alam]
Judicial Member

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