

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
- JAIPUR BENCH

Jaipur, this the 29th day of March, 2011

Original Application No.36/2007

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Dinesh Kumar Sharma
s/o late Shri Panna Lal Sharma,
r/o A-135, Karamchari Colony,
Alwar.

.. Applicant

(By Advocate: Shri Anand Sharma)

Versus

1. The Union of India
through Secretary,
Ministry of Human Resources & Development,
Department of Education,
New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. The Joint Commissioner (Administration),
and Appellate Authority,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
Bajaj Nagar,
Jaipur.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

ORDER (ORAL)

The short controversy involved in this OA is that a memorandum dated 15.6.2004 (Ann.A/1) was issued to the applicant and he was called upon to submit explanation to the aforesaid memorandum. In the statement of articles of charge framed against the applicant it was alleged that the applicant while working as UDC in Kendriya Vidyalaya, Alwar has done embezzlement of Rs. 3,75,455/- as per Appendix-A to D attached from Accounts of VVN and School Fund of Kendriya Vidyalaya, Itarna during the period 10.1.1998 to 3.1.2004. As per Article-II the charge leveled against the applicant was that while working as UDC in Kendriya Vidyalaya, Itarna, Alwar, he has done temporary misappropriation of funds amounting to Rs. 72,782/- as shown in Appendix 'E' attached and as per Article-III, the allegation was that the applicant has deposited a sum of Rs. 25709/- in the VVN and School Fund Account on different dates as per Appendix 'F' attached whereas no such amount was received by him on any account during the said period as per record/cash book violating Article 95 of Accounts Code of KVS. Thus, he has violated Rule 3(i)(ii) of CCS (Conduct) Rules, 1964.

2. The case of the applicant is that before issuing memorandum to the applicant, the applicant was not given opportunity of hearing as contemplated under CCS (CCA) Rules, 1965 and while

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issuing the penalty order dated 24.1.2006, the Disciplinary Authority has not even examined the nature of charges and the defence put forward by the applicant and further the Disciplinary Authority as well as the Appellate Authority both have conveniently ignored the most important issue in the instant matter that the applicant was charged with embezzlement and not properly maintaining the record and the cash as well as the accounts disputed in the inquiry proceedings were already subjected to internal audit as well as audit conducted by the office of Auditor General and during the entire relevant period i.e. from 1998 to 2004, at no point of time any objection with regard to handling and disposing of cash and maintenance of account and rather satisfactory report was given by the auditors. It has also been contended that each and every entry in the cash book, accounts book and DCR was duly attested and verified by the Principals/Controlling Authorities and for the said act of embezzlement, the applicant cannot be held responsible.

3. It is also submitted that the respondents forced and compelled the applicant to deposit Rs. 1,95,000/- in the Bank but they have ignored the issue that the deposit slip of the Bank was never signed by the applicant and this fact was never examined that who had signed the aforesaid deposit slip of the bank for depositing Rs. 1,95,000/-. Thus, the applicant does not seem to be sole culprit of mishandling cash and accounts and the other main culprits have been left scot free.

4. Per contra, the learned counsel appearing for the department strongly controverted the submissions made on behalf



of the applicant and submitted that dismissal order was passed after conducting inquiry in accordance with the rules and the respondents have also afforded opportunity of being heard to the applicant. In support of his submissions he has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of State Bank of India and Others vs. Ramesh Dinkar Punde, reported at (2006) 7 SCC 212 in which the Hon'ble Supreme Court observed that the respondent as a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. It was further observed that the respondent was a Manager of the Bank and in the banking business absolute devotion, diligence, integrity and honesty need to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. Therefore, when a bank officer commits misconduct for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and not leniently.

5. The learned counsel appearing on behalf of the respondents further submitted that the chargesheet which was enquired into related to a serious misconduct. The applicant was unable to demonstrate before this Tribunal as to how prejudice was caused to him due to non-appearance of the auditors and not calling for the audit reports in the present case. In support of his submissions he has further placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of Regional Manager, UP SRTC

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vs. Hoti Lal, reported at [(2003) 2 SCC 605] wherein the Hon'ble Supreme Court in para 10 has observed as under:-

"....If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable...."

With regard to the submission that other culprits have been left scot free, the respondents submitted that the departmental action has also been initiated against the then Principal, Kendriya Vidyalaya, Itarna, Alwar for his lapses and further reiterated the contention made by the applicant in the OA that the applicant in his memo of appeal has pleaded that after his suspension, he was made to deposit cash to the tune of Rs. 195000/- with the understanding that rest of the amount will be made good by the Principal. This act itself proves the fact that the applicant was involved in the serious misconduct of misappropriation.

6. Having heard the rival submissions of the respective parties and upon perusal of material available on record, it is not disputed that Rs. 1,95,000/- has been deposited by the applicant.

7. We have also thoroughly examined the inquiry report (Ann.A/9) and upon bare perusal of inquiry report it is clear that there is evidence in abundance available on record to sustain the charge of misappropriation/embezzlement of the Vidyalaya money by the applicant and looking to the gravity of the charges, in our considered view, the quantum of punishment cannot be said to be



excessive as held by the Hon'ble Supreme Court in the case of Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulabhai M.Lad reported as (2010) 5 SCC 775, wherein the Hon'ble Supreme Court in para 14 has observed as under:-

"14. The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or a tribunal would not substitute its opinion on reappraisal of facts."

8. After careful perusal of the judgment of the Hon'ble Supreme Court and looking to the gravity of the charges leveled against the applicant, we find no illegality in the punishment order dated 24.1.2996 (Ann.A/11) by which major penalty of dismissal from service has been imposed upon the applicant.

9. Therefore, the OA being devoid of merit is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

R/

K.S.Rathore
(JUSTICE K.S.RATHORE)
Judl. Member