

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 15.02.2013

OA No. 334/2010

Mr. R.C. Joshi, counsel for applicant.
Mr. Hawa Singh, counsel for respondents.

Arguments heard.

The learned counsels for the respective parties are given liberty to file and exchange their written synopsis by the next date.

Put up the matter on 25.02.2013 for dictation of orders.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

25-2-2013

Mr. R.C. Joshi - Counsel for applicant -
Mr. Hawa Singh - Counsel for respondents

Heard the learned counsel for
the parties.

For the reasons dictated separately
the OA stands disposed of.

Anil Kumar
(Anil Kumar)
member (A)

K.S. Rathore
(Justice K.S. Rathore)
member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 25th day of February, 2013

ORIGINAL APPLICATION No. 334/2010

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Dr. A.K. Bhatt son of Late Shri D.N. Bhatt aged 54 years
working as Principal, Kendriya Vidyalaya No. 4, Army Area
Khatipura Road, Jaipur.

... Applicant

(By Advocate : Mr. R.C. Joshi)

Versus

1. The Union of India through the Secretary, Ministry of Human Resources, Shastri Bhawan, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sanghthan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi.
3. The Dy. Commissioner (Personnel), Kendriya Vidyalaya Sanghthan (Personnel), 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi.
4. The Assistant Commissioner, Kendriya Vidyalaya Sanghthan, Regional Office, 92 Gandhi Nagar, Bajaj Nagar, Jaipur.

... Respondents

(By Advocate : Mr. Hawa Singh)

ORDER (ORAL)

The applicant has filed this OA praying for the following
reliefs:-

- “(i) Annexure A/1, A/2 and A/3 may kindly be quashed and set aside with all consequential benefits as if no such order ever passed against the applicant with all financial benefits.
- (ii) Any other relief to which the applicant may find entitle may kindly be granted.
- (iii) Cost of the OA may kindly be awarded.”

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2. Learned counsel for the applicant submitted that the applicant was working as Principal in the Kendriya Vidhyalaya Sangathan (KVS) and was suspended on 05.04.2002 without any charge made known to him. This suspension was revoked vide order dated 20.01.2003 (Annexure A/6).

3. The applicant was issued Memorandum on 26.09.2002 (Annexure A/7) in which the so called irregularities were leveled against the applicant. Subsequently the Memo containing eight Articles of charges dated 11.12.2003 (Annexure A/13) was served upon the applicant. He further pointed out that out of eight Articles of charges; six Articles of charges are based upon the Audit Report of the Internal Audit of KVS, Jodhpur, which was conducted in January, 2001. The photo copy of the Audit objections has been annexed as Annexure A/14 of the OA.

4. The Articles of charges with the corresponding audit paras have been mentioned in the tabular form in Para 4.14 of the OA:-

Articles of Charges	Internal Audit Para No.
Article II	Part III, Para 2(c)
Article III	Para 5
Article -V	Para-II, Para 2(a)
Article -VI	Para-II, Para 2(b)
Article VII	Para I (c)
Article VIII	Para 5(b)

5. Learned counsel for the applicant submitted that the applicant filed reply to all the Audit Paras during his tenure at

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Jodhpur and ultimately, they were dropped by KVS (Annexure A/15).

6. That 6 Articles of charges were based on objections raised by the Internal Audit, which did not exist at the time of imposing penalty order dated 04.10.2006 (Annexure A/3). Hence the penalty order was unjustified and illegal.

7. That the applicant demanded copies of relevant documents vide his letter dated 10.10.2002, 24.12.2003, 07.05.2004 and 11.09.2004 (Annexures A/17 to A/20 respectively) in order to reply for Memos. These documents were relevant and essential for submitting the written statement against the allegation made against him. Few documents were given to the applicant but all the relevant documents mentioned in the charge sheet and agreed by the Inquiry officer were not provided to him. Under the circumstances, it was not possible for the applicant to submit the complete defense duly supported by the documents. That the applicant submitted his reply to the Inquiry officer vide his letter dated 14.02.2005 (Annexure A/31). Thereafter through a letter dated 02.08.2005, the copy of the Inquiry report was sent to the applicant (Annexure A/32). The applicant submitted a representation against the finding of the Inquiry Officer vide letter dated 09.09.2005 (Annexure A/33).

8. Thereafter vide order dated 04.10.2006, the punishment order against the applicant was passed by the Disciplinary Authority (Annexure A/3).

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9. Aggrieved by the order of penalty passed by the Disciplinary Authority, the applicant preferred an appeal to the Appellate Authority. He also submitted a supplementary appeal.

10. That the Appellate Authority after considering the appeal of the applicant vide letter dated 20.12.2007 (Annexure A/2) reduced the punishment. Vide this order, the applicant's pay was reduced by three stages and he was directed to avail leave due against the period of suspension.

11. That the applicant preferred Revision Petition dated 17.02.2008 before the Hon'ble Minister, H.R.D. cum Chairman, KVS (Annexure A/36). This Revision Petition was dismissed vide order dated 25.05.2009 (Annexure A/1).

12. The learned counsel for the applicant argued that the charge sheet was framed against the applicant without any reason. The applicant submitted reply to the Audit Paras and after considering his explanation, the Audit Paras were dropped meaning thereby that no irregularity was committed by the applicant. The Inquiry officer had not considered this point of dropping of Audit Paras on which six charges were leveled against the applicant.

13. That entire inquiry was done without any defense witness, which ultimately proves that the Inquiry Officer had moved in a

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whimsical and an arbitrary manner and against the principles of natural justice.

14. He further argued that the Disciplinary Authority has treated the period of suspension that is from 05.04.2002 to 09.02.2003 as 'Dies Non'. This punishment is not prescribed in the Rules i.e. CCS (CCA) Rules, 1965. The applicant was not given 75% of the Subsistence Allowance after completion of three months.

15. The Appellate Authority directed that the applicant may avail leave for the period of suspension. This is also against the rules.

16. The learned counsel for the applicant further argued that the applicant was not personally responsible for allegation No. 1 as it was a collective responsibility of the committee and the applicant was one of the members of the committee. No charge sheet was given to any other member though the action taken was unanimous by the Moderation Committee. Thus there is discrimination against the applicant as no action has been taken against the other members of the Moderation Committee.

17. The learned counsel for the applicant further mentioned that there is no material evidence recorded by the Inquiry officer, no witness appeared to prove the documents and Inquiry officer has suo-moto recorded the findings in contravention of the prescribed procedure, hence the Inquiry report deserves to

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be quashed and set aside. The Disciplinary Authority and the Appellate Authority have not considered the points raised by the applicant. Therefore, the order of penalty dated 04.10.2006 (Annexure A/3) and the order of the Appellate Authority dated 20.12.2007 (Annexure A/2) be quashed and set aside.

18. The learned counsel for the applicant submitted that the applicant has been imposed with a minor penalty by the Appellate Authority. The learned counsel for the applicant referred to Para No. 3 of Administrative Instructions contained in FR 54-B, which is quoted below:-

"3. Period of suspension to be treated as duty if minor penalty only is imposed -

Accordingly, where departmental proceedings against a suspended employee for imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

2. These orders will become effective from the date of issue. Past cases already decided need not be reopened.

[G.I. Dept. of Per. & Trg. OM No. 11012/15/85-Estt.(A) dated the 3rd December, 1985]."

Therefore, he argued that since the applicant has been imposed minor penalty by the Appellate Authority, the applicant suspension period should be treated as duty and he should be paid full pay & allowances for the suspension period and his pay should be revoked.

19. The learned counsel for the applicant further argued that from the perusal of order passed by the Revisionary Authority, it

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appears that he has not applied his judicial mind. Therefore, the order passed by the Revisionary Authority dated 25.05.2009 be quashed and set aside. He further argued that the shocking punishment has been imposed on the applicant though he has not committed any wrong. Therefore, the OA be allowed.

20. The learned counsel for the applicant referred to the following case laws in support of his averments:-

- (1) G. Gabriel vs. State of Madras
1959 2MLJ 15 (Madras HC)
- (2) Sulhendra vs. Union Territory
AIR 1962
- (3) Ram Chander vs. Union of India & Others
1986 (2) SLJ 249
- (4) S.N. Mukherjee vs. Union of India & Others
1990 (5) SLR 8 (SC)
- (5) Narendra Mohan Arya vs. United India Insurance
Company and others 2006 (4) SCC 743

21. On the contrary, learned counsel for the respondents submitted that number of serious irregularities were committed by the applicant while functioning at KVS No. 1, Air Force Station, Jodhpur. Therefore, the competent authority placed the applicant under suspension vide order dated 05.04.2002 and his suspension was revoked vide order dated 20.01.2003. The applicant while submitting his reply to the Memorandum issued to him demanded large number of copies of irrelevant documents. However, the applicant was provided copies of the relevant documents vide Memorandum dated 26.12.2002. The competent authority appointed the Inquiry Officer/Presenting

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Officer vide order dated 16.02.2004. The Inquiry Officer submitted the Inquiry report with the following findings:-

Article -I	Proved
Article -II	Not Proved
Article -III	Largely Proved
Article -IV	Partly Proved
Article-V	Partly Proved
Article-VI	Substantially Proved
Article-VII	Proved
Article-VIII	Proved

22. Taking into consideration the facts, circumstances and material available on record of the case, the Disciplinary Authority imposed the penalty of reduction of pay by six stages from Rs.11,950/- to Rs.10,000/- in the time scale of pay of Rs.10,000-325-15200/- for a period of five years upon the applicant vide order dated 04.10.2006.

23. The applicant feeling aggrieved with the said order of the Disciplinary Authority preferred an appeal before the Appellate Authority i.e. Vice Chairman, KVS. The Appellate Authority considering the gravity of the charges proved and overall facts and circumstances of the case as well as material available on record, modified the penalty order dated 04.10.2006 of the Disciplinary Authority to the extent of reduction of pay by three stages from Rs.11,950/- to Rs.10,975/- for a period of three years with the stipulation that the applicant would earn increment during this period and on expiry of this period as well vide order dated 20.12.2007. Being aggrieved by the order of the Appellate Authority, the applicant filed a Revision Petition, which was dismissed by the Revisionary Authority. Learned

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counsel for the respondents submitted that thus, it is apparent on the face of record that there is no element of any illegality in the action of the respondents and the claim of the applicant as well as the OA merits rejection.

24. Learned counsel for the respondents further argued that the principles of natural justice was followed while conducting the inquiry, imposition of the penalty, deciding the appeal and the revision of the applicant. The penalty imposed on the applicant is in accordance with the prescribed procedure and there is no element of illegality in the decision making process. He further argued that the applicant was given all the relevant documents, which were necessary for his defense and for the conduct of proper inquiry. He further argued that there is no element of illegality in treating the period of suspension as 'Dies Non'. Therefore, the OA is without any substance and hence be dismissed.

25. The learned counsel for the respondents further argued that the applicant ultimately has admitted the fact that for the allegation under Point No. 1, he alone cannot be held responsible since it was a collective responsibility. Thus it is apparent on the face of record that there is evidence and admission by the applicant of his responsibility though allegedly in collective capacity. Therefore, the action of the respondents in imposing the penalty cannot be faulted. The learned counsel for the respondents further submitted that the period of suspension of the applicant has been dealt with by the competent authority

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according to FR 54 (B) (1). That the Appellate Authority after taking into consideration the material available on record and gravity of the charges proved, considered the issue with the application of judicious mind and decided that suspension period be treated as leave due. This decision is legal and according to law.

26. Learned counsel for the respondents further submitted that in the department proceedings there is limited scope of judicial review, the Tribunal/High Court cannot act as an Appellate Authority. That the Tribunal/High Court cannot re-appreciate the issue as a Court of Appeal and to support his averment, he referred to the judgment of the Hon'ble Supreme Court in the case of **State Bank of India & Others vs. Narendra Kumar Pandey** [Civil Appeal No. 263 of 2013 Arising out of SLP (Civil No. 34118 of 2011 decided on 14.01.2013)].

27. Therefore, he submitted that the OA has no merit and it should be dismissed with costs.

28. Heard learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel for the parties. Both the learned counsel for the parties have also submitted their written submissions.

29. The learned counsel for the applicant has stated that out of the eight Articles of charges served upon the applicant, six were based on Audit Paras. A comparative statement in the tabular

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form of these Articles of charges and corresponding Audit Paras has been quoted in Para No. 4 of this order.

30. The learned counsel for the applicant further submitted that all these Audit Paras were ultimately dropped. This has been mentioned by applicant in Para Nos. 4.14 and 4.15 of the OA. The respondents while replying to these Paras in their reply have stated that :-

"the contents of sub-paragraph (4.14), (4.15), (4.16) and (4.17) of Paragraph 4 of the Original Application, are not admitted in the manner stated by the applicant. Be that as it may, the audit section of Kendriya Vidyalaya Sangathan (Headquarters) being mother section as dealing with the Internal Audit/Special Audit report viz-a-viz setting audit paras after due consideration about the veracity of the claim of the applicant as to whether the financial irregularities committed by the applicant, as brought out in the Memorandum dated 11.12.2003, was a part of the Internal Audit Report of which the said paras were dropped by the competent authority. Be that as it may, keeping in view the facts, circumstances and material available on record collected during the course of enquiry is more than sufficient ground to sustain the energy (word appears to be penalty) imposed on the applicant for the misconduct committed."

31. From the perusal of this reply of the respondents, it also appears that six charges, as mentioned by the applicant in his OA were based on Audit Paras, which were dropped by the competent authority. Therefore, since the very basis of the Audit Paras on which the charges were issued were dropped by the competent authority, therefore, the gravity of the charges and the misconduct on the part of the applicant is considerably reduced.

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32. The learned counsel for the applicant submitted that the applicant was one of the members of the Moderation Committee but he alone has been issued the charge sheet on this point and penalty imposed on him while other members have been left out. Therefore, this is a case of discrimination against the applicant. The respondents neither in their written statement nor during the course of arguments could impress upon as to why no action was taken against other members of the Moderation Committee. Therefore, on this point it appears that the applicant has been discriminated upon. Charge No. II has not been proved by the Inquiry Officer.

33. With regard to the statement of the learned counsel for the applicant that there is no provision under the SCCS (CCA) Rules, 1965 for imposing penalty of 'Dies Non', as awarded by the Disciplinary Authority, we are in agreement with the averment made by the learned counsel for the applicant. Further the period of suspension from 05.04.2002 to 09.02.2003, which was ordered to be treated as 'Dies Non' by the Disciplinary Authority has been changed into that the applicant may avail of leave due against the period of suspension to the extent possible. In this regard, learned counsel for the applicant referred to the Para No. 3 of Administrative Instructions contained in FR 54-B, which is quoted below:-

"3. Period of suspension to be treated as duty if minor penalty only is imposed -

Accordingly, where departmental proceedings against a suspended employee for imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be

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paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

2. These orders will become effective from the date of issue. Past cases already decided need not be reopened.

[G.I. Dept. of Per. & Trg. OM No. 11012/15/85-Estt.(A) dated the 3rd December, 1985]."

34. The Appellate Authority in Para No. 11 of the order dated 20.12.2007 (Annexure A/2) as referred that:-

"11. However, considering the gravity of the charges proved, I would like to modify the penalty order dated 04.10.2006 of the Disciplinary Authority to the following extent:

- (i) Reduction of pay by three stages from Rs.11,950/- to 10,975/- in the pay scale of Rs.10,000-325-15,200/- for a period of 03 years with the stipulation that he would earn increments during the period and on expiry of this period, the reduction will not have the effect of postponing future increments.
- (ii) He may avail of leave due against the period of suspension to the extent possible."

35. According to Rule 11 of the CCS (CCA) Rules, 1965, minor penalty has been defined as under:-

"Minor Penalties

- (i)
- (ii)
- (iii)
- (iii)(a) reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension.
- (iv)"

36. It was not disputed between the parties that the penalty imposed by the Appellate Authority comes under the definition of minor penalty. Therefore, in our considered opinion the provision

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of the DOPT Circular No. 11012/15/85-Estt.(A), dated 3rd December, 1985 will be applicable and this was also not disputed by the learned counsel for the respondents that this circular is applicable in the case of applicant as he has been awarded a minor penalty only.

37. Therefore, we are of the considered opinion that since the applicant has been awarded a minor penalty, which has been upheld by the Revisionary Authority, the applicant is entitled that the period of suspension be treated as duty and suspension can be said to be wholly unjustified in terms of FR 54-B and the applicant be paid full pay & allowances for the period of suspension by passing a suitable order under FR 54-B. Accordingly, the respondents are directed to issue orders in this regard expeditiously but in any case within a period of three months from the date of receipt of a copy of this order.

38. After considering all the facts and material on record, we are of the opinion that the proceeding conducted against the applicant were according to the rules and the procedure prescribed on the subject and there is no illegality/infirmity on that basis. However, looking to the fact that the Audit Paras were dropped on the basis of which six charges were framed against the applicant, the gravity of the charges and misconduct has been considerably reduced. Similarly with regard to charge no. 1, the applicant was one of the members of the Moderation Committee and only he has been issued the charge sheet and no action has been taken by the respondents against other

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members of the Committee. Therefore, also the gravity of the charge and misconduct of the applicant is also reduced.

39. Thus looking to these facts, the penalty imposed by the Appellate Authority appears to be shockingly disproportionate to the gravity of the charges and misconduct on the part of the applicant. Therefore, we modify the penalty imposed by the Appellate Authority to that of 'Censure'.

40. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

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