

Central Administrative Tribunal
Jaipur Bench, JAIPUR

ORDERS OF THE BENCH

6th December, 2010

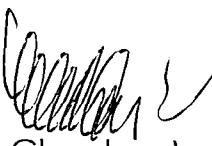
OA 518/2010

Present: Shri Amit Mathur, counsel for applicant

Heard Id. counsel for applicant.

For the reasons dictated separately, the OA is dismissed.

Anil Kumar
(Anil Kumar)
Member (Administrative)


(M.L. Chauhan)
Member (Judicial)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 6th day of December, 2010

Original Application No. 518/2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

A.K.Bhatt
s/o late Shri N.D.Bhatt,
r/o D-57, Ajay Enclave,
New Delhi, presently working as
Principal, Kendriya Vidyalaya No.4,
Jaipur

.. Applicant

(BY Advocate: Shri Amit Mathur)

Versus

1. Union of India
through Secretary,
Ministry of Human Resources Development,
Shastri Bhawan,
New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeetsingh Marg,
New Delhi.
3. Deputy Commissioner (Administration),
Kendriya Vidyalaya Sangathan,
Head Quarter,
New Delhi.
4. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
Jaipur.

... Respondents

(By Advocate:) *u/s*

ORDER (ORAL)

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

- a) the charge sheet dated 7.5.2010 and order dated 20.9.2010 passed by the respondents may kindly be quashed and set-aside.
- b) Any other order which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the case may also be passed in favour of the applicant.

2. By way of interim relief, the applicant has prayed that proceedings in pursuance to the memorandum dated 7.5.2010 may be stayed till the pendency of the original application.

3. At this stage, relevant facts may be noticed. The applicant was issued a chargesheet vide memorandum dated 7.5.2010 (Ann.A/1) containing statement of articles of charge accompanied by statement of imputation of misconduct or misbehaviour in support of articles of charge framed against him. The articles of charge framed against the applicant are as follows:-

"STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST
SHRI A.K.BHAT, PRINCIPAL, KV NO.4, JAIPUR

ARTICLE-I

Shri A.L.Bhatt while posted as Kendriya Vidyalaya Bokanjan was imposed a major penalty by the disciplinary authority Commissioner KVC, New Delhi for reduction of pay by six stages from Rs. 11950/- to Rs. 10000/- in the time scale of pay Rs. 10000-325-15200 for a period of 5 years vide order No. F.8-26/2002-KVS/(Vig) dated 4.10.2006.

That Shri A.K.Bhat while posted as Principal at K.V. No.Amritsar and KV No.4 Jaipur has drawn more pay in utter disregard to penalty order of Disciplinary Authority dated 4.10.2006.

The aforesaid act on his part constitutes a serious misconduct which is violative of Rule 3.1(i), (ii) & (iii) of CCS (Conduct) Rules 1964 as applicable to employees of KVS.

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ARTICLE-II

Shri A.K.Bhatt, while posted at Kendriya Vidyalaya, No.4, Jaipur drew pay and allowances in excess to his entitlement as is evident from the pay bills for the month of Nov., December, 2008 and January, 2009 in utter disregard to the pay fixation order No.F.6-36/1998-KVS/Estt-I/79 dated 5.8.2008 and No. Nil 21.11.2008 of the competent authority.

The aforesaid act on his part constitutes a serious misconduct which is violative of Rule, 3(1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964 as applicable to the employees of KVS.

ARTICLE-III

Shri A.K.Bhat, Principal has refunded Rs. 42,311/- to Principal KV No.1 Amritsar related to TTA Advance vide DD No.316520 dated 12.3.09 after a gap of almost three years which is a clear case of financial indiscipline on his part being Drawing and Disbursing Officer himself.

The aforesaid act on his part constitutes a serious misconduct which is violative of Rule 3.1(i), (ii) & (iii) of CCS (Conduct) Rules 1964 as applicable to employees of KVS."

At this stage, it may also be necessary to set out the statement of imputation in respect of Article No.1 which is very lengthy and detailed which was sought to be relied upon against the applicant at the proposed enquiry and we do not think it necessary to set out the statement of imputation in respect of articles II and II. It may be stated that articles of charge framed against the applicant read with imputation/particulars of the charges in respect of Article No.1 has been referred to in order to see whether on the basis of articles of charge read with imputation of misconduct, any misconduct or other irregularity can be said to have made out or whether the charges framed against the applicant are contrary to law. Statement of imputation of

misconduct or misbehaviour in respect of Article-I is in the following terms:-

"Shri A.K.Bhatt while posted at Kendriya Vidyalaya Bokajan (presently posted at Kendriya Vidyalaya No.4 Jaipur) was imposed major penalty of reduction of pay by six stages from Rs. 11950/- to 10000/- for a period of five years with effect from issue of the order. It was further directed that Shri A.K.Bhatt would not earn increments of pay during the period of reduction and that on the expiry of the said period of five years, the reduction would not have the effect of postponing his future increments of pay by the Competent Authority, KVS (HQ) New Delhi vide order no. F.8-26/2002-KVS (Vig.) dated 04-10-2006 in pursuance of issuance of Charge Sheet under Rule-14 of CCS (CCA) Rules, 1965.

That on verifying the records, it has been observed that Shri A.K.Bhatt while posted as Principal at KV No.1 Amritsar has drawn more pay than his entitlement, in utter disregard to penalty orders of Disciplinary Authority imposed vide order No. F.8-26/2002-KVS (Vig) dated 04.10.2006. Later the excess drawl Rs. 24018/- at KV No.1 Amritsar was refunded to concerned Vidyalaya vide DD No.372397 dated 29.11.2007. On being transferred to KV No.4 Jaipur from KV No.1 Amritsar, Shri A.K.Bhatt Principal drew Pay and Allowances in excess his entitlement in utter disregard to the penalty order dated 4.10.06. However, the excess amount of Rs. 27027/- drawn by Shri A.K.Bhatt, Principal KV-4, Jaipur on account of excess pay and allowances than his entitlement was refunded in the month of December 2007 as reflected in the Cash Book for the month of December 2007 of KV No-4 Jaipur.

Thus, Shri A.K.Bhatt misused his official position as Principal and Drawing & Disbursing Officer which is violative of Rule 3.1(i), (ii) & (iii) of CCS (Conduct) Rules 1964 as applicable to employees of KVS." (emphasis to the underline)

4. Before we proceed to decide this issue on the basis of the facts as stated above, it will be useful to notice the scope of judicial review in such matters as laid down by the Hon'ble Apex Court. At this stage, we wish to notice the judgment of the Apex Court in the case of Union of India and Ors. vs. Upendra Singh, 1994 SCC (L&S) 768 whereby the Apex Court held that jurisdiction of the Central

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Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. It is further held that if the Original Application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. At the outset, it may be stated that the applicant has not questioned legality and validity of the charges on the ground of patent lack of jurisdiction. As can be seen from the grounds raised in the OA and contention raised before us, the sum and substance of the case as set up by the applicant is that before issuing the chargesheet the respondents have not considered and decided the representation regarding TA and fixation of pay submitted by the applicant. Until and unless the representations submitted by the applicant are decided by the respondents, respondent No.2 cannot initiate departmental enquiry against the applicant. It is further pleaded that memorandum of charges can only be issued if the charges leveled therein constitute misconduct and the charges leveled vide the memorandum dated 7.5.2010 does not constitute misconduct. It is further pleaded that the chargesheet has been issued on incorrect and incomplete facts. The order of punishment has been modified by the Appellate Authority and it was duty of the respondents to mention the order passed by the appellate authority in the chargesheet.

5. We have given due consideration to the submissions made by the applicant. We are of the view that the applicant has not made out any case for our interference. As can be seen from Article No.1 read with imputation of misconduct in support of charges (Ann.-II), the charge against the applicant is that, Shri A.K.Bhat while posted as Kendriya Vidyalaya Bokanjan was imposed major penalty of reduction of pay by six stages from Rs. 11950/- to Rs. 10000/- for a period of five years with effect from issue of the order vide order dated 4.10.2006 which penalty was imposed after issuing chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 and holding enquiry. It is also evident from the statement of imputation that the applicant while posted as Kendriya Vidyalaya No.1 Amritsar has drawn more pay than his entitlement, in utter disregard to penalty orders of Disciplinary Authority dated 4.10.2006. Thus, on the face of these facts, it cannot be said that articles of charge framed against the applicant in the disciplinary enquiry does not constitute misconduct. Further, it cannot be said that the applicant has not committed any irregularity or the respondents have issued the chargesheet contrary to law on the basis of the aforesaid facts, which *prima-facie* constitute misconduct. For the same reasoning, it can not be said that charges leveled against the applicant as per Article-II and III does not constitute misconduct. In any case, based on these allegations, the departmental enquiry is being held in which the applicant will be given due opportunity to defend his case and it is not permissible for us to interfere with the truth or the correctness of the charges. At this stage, it will be useful

to quote para 6 of the judgment of the Apex Court in the case of Upendra Singh (supra), which thus reads:-

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court..."

In para-7, the Apex Court has made the following observations:-

"7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is understandable how can that be done by the tribunal at the stage of framing of charges ?...."

5. If the matter is viewed on the basis of law as laid down by the Apex Court, as reproduced above, we are of the view that the applicant has not made out any case for our interference. Accordingly, the OA is dismissed at admission stage.

Anil Kumar
(ANIL KUMAR)
Admv. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judl. Member

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