

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH**

O.A.NO.060/00333/2014

Orders pronounced on: 2.2.2017
(Orders reserved on: 19.12.2016)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A).**

Kulbhushan Singh, PGT Geography, Aged 49 years, S/o Sh. Attar Singh,
Jawahar Navodaya Vidyalaya, Maseetan, PO Tibba, District Kapurthala,
Punjab.

... APPLICANT

VERSUS

1. Union of India Through Secretary, Ministry of Human Resources Development, Shastri Bhawan, New Delhi.
2. Commissioner, Navodaya Vidyalaya Samiti, B-15, Institutional Area, Sector-62, G.B. Nagar, Noida (U.P) 201307.
3. Joint Commissioner (Admin), (Appellate Authority), Navodaya Vidyalaya Samiti, B-15, Institutional Area, Sector-62, G.B. Nagar, Noida (U.P) 201307.
4. Deputy Commissioner (Disciplinary Authority), Navodaya Vidyalaya Samiti, Regional Office, Bay No. 26-27, Sector 31-A, Chandigarh.
5. Sudeep Kumar Bajpai, (To be served through Respondent No.4) the then Principal, Jawahar Navodaya Vidyalaya Nud Samba, Distt. Jammu.

... RESPONDENTS

Present : Mr. Munish Kapila, Advocate, for the applicant.
Mr. Ram Lal Gupta, Advocate, for Respondent No.1.
Mr. D.R. Sharma, Advocate, for Respondents No.2to4.
Respondent No.5 ex-parte.

ORDER

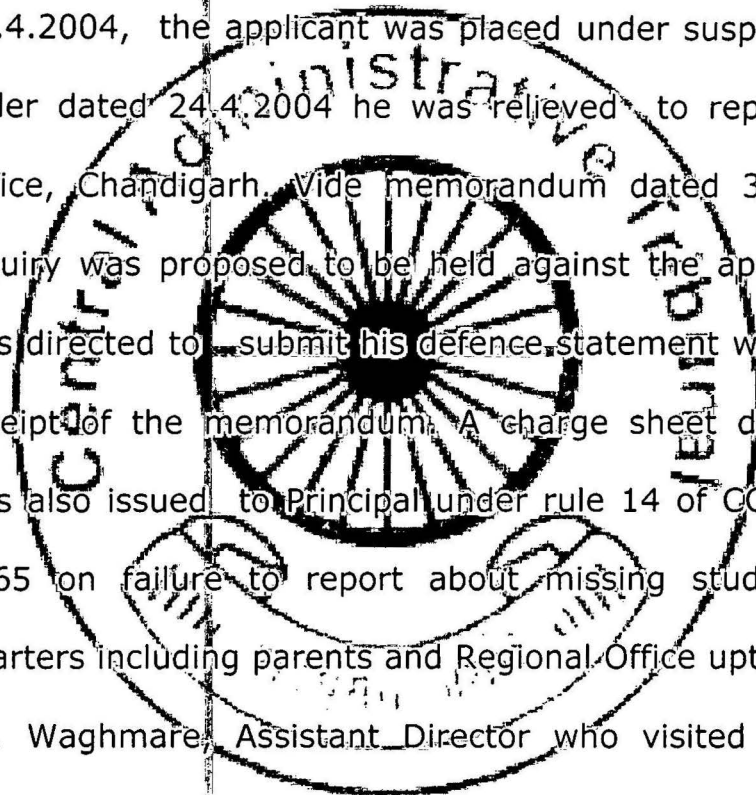
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, impugning the memorandum dated 30.4.2004, report dated 21.10.2005 and order dated 12.12.2005 vide which penalty of removal from service has been imposed upon the applicant and order dated 22.4.2013 vide which the appeal filed by the applicant has been rejected and for restoration of all the benefits.
2. The facts, which lead to filing of this Original Application, are that the applicant was appointed as PGT (Geography) in the pay scale of Rs.1640-2900 in Navodaya Vidyalaya Samiti and was posted at Jawahar Navodaya Vidyalaya Arnora Ghat District Doda, J&K. Vide communication dated 9.2.2004 addressed to respondent no.5, the applicant reported factum of missing of one child namely Master Karan Bajal to the Principal at about 9.30 P.M. and that child had not been seen in the Campus since 9.2.2004. On 15.2.2004, the applicant got charge as Acting Principal as Principal had gone on official tour to Jammu. Vide application dated 15.2.2004, the applicant again informed the Principal that a missing report at Police Station, had been submitted by the applicant on 15.2.2004, after the applicant had approached the family of the missing child. This report to Police made the Principal furious, who informed to Deputy Director about incident of missing child, and shifted liability on the shoulder of the applicant and the allegation of tampering with the record was also made. Vide order dated 27.2.2004, the Principal directed the applicant to accompany the mother of the missing child to Police Station, Samba for helping her in tracing the absconding child, where after a formal FIR was lodged at the said Police

↓

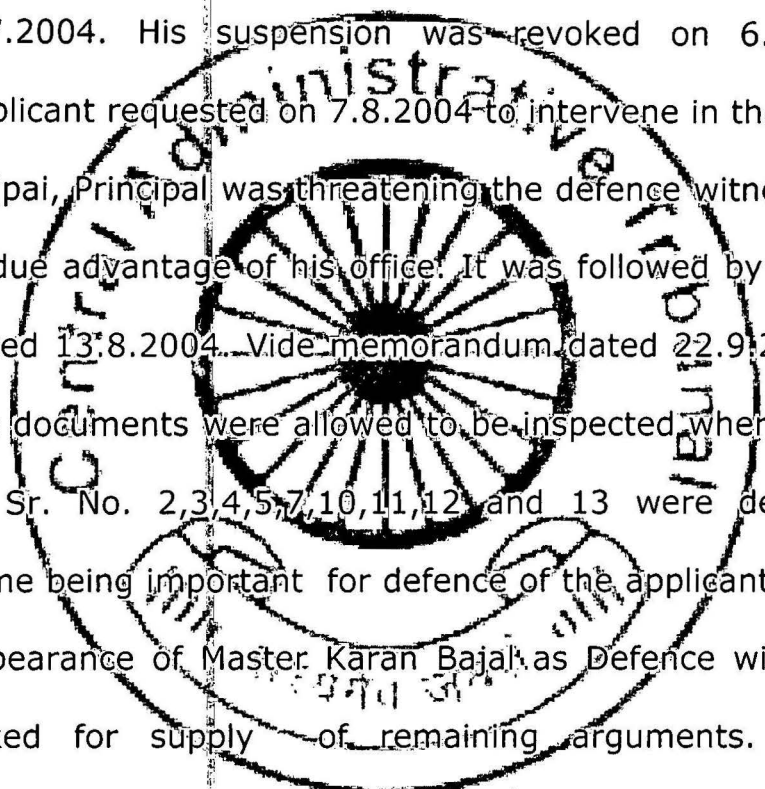
(O.A.NO.060/00333/2014 –
Kulbhushan Vs. UOI etc.)

Station, at the instance of the applicant. On 18.3.2004, the applicant was put on CBSE duty as Head Examiner to another place upto 22.4.2004 and during this period itself, the applicant was asked by Sh. P.K. Sharma, then Assistant Director, thereafter appointed as Inquiry Officer) to take charge as Incharge Principal at JNV, Kupwara vide order dated 19.3.2004. Sensing foul play, the applicant sent refusal vide a fax message and it annoyed the authorities as thereafter the Principal marked the applicant as absent from duty which was sorted out by intervention of the CBSE authorities. Vide order dated 23.4.2004, the applicant was placed under suspension and vide order dated 24.4.2004 he was relieved to report at Regional Office, Chandigarh. Vide memorandum dated 30.4.2004, the inquiry was proposed to be held against the applicant and he was directed to submit his defence statement within 10 days of receipt of the memorandum. A charge sheet dated 11.5.2004 was also issued to Principal under rule 14 of CCS (CCA) Rules, 1965 on failure to report about missing student to various quarters including parents and Regional Office upto 16.2.2004, to Sh. Waghmare, Assistant Director who visited the School on 24.2.2004, Chairman VMC upto 4.3.2004 and HQ which came to know about this fact on complaint dated 31.3.2004 by father of the missing child. He was charged with failure to ensure reporting system through roll calls, to ensure discharge of duty by MOD and House Master in responsible manner and failure to take appropriate steps on complaint of harassment by senior students made by Master Karan Bajal which might have been one of the reasons beyond his deserting the campus. Ultimately no charge was proved against him in the enquiry, rather, the applicant was pronounced guilty therein. The applicant



↓

submitted his reply on 17.5.2004 denying the charges. Vide communication dated 27.5.2004, Sh. P.K. Sharma, Assistant Director, was appointed as Inquiry Officer to enquire into the charges. Sh. Shiv Narain, Stenographer was appointed as Presenting Officer in the inquiry against the applicant. Vide communication dated 7.7.2004, the applicant submitted his list of witnesses which comprised of all students of Aravali House, JNV Nud, who had gone with the applicant while he reported the matter to the Principal on 9.2.2004 and the parents of missing child. The applicant also demanded certain documents on 7.7.2004. His suspension was revoked on 6.8.2004. The applicant requested on 7.8.2004 to intervene in the matter as Mr. Bajpai, Principal was threatening the defence witnesses by taking undue advantage of his office. It was followed by representation dated 13.8.2004. Vide memorandum dated 22.9.2004, some of the documents were allowed to be inspected whereas documents at Sr. No. 2,3,4,5,7,10,11,12 and 13 were declined despite same being important for defence of the applicant. He asked for appearance of Master Karan Bajal as Defence witness and also asked for supply of remaining arguments. However, on 30.12.2004 the representations were rejected. The applicant was called on 28.2.2005 to depose in the enquiry against the Principal but during recording Sh. M.L. Sharma stopped the same against which a representation dated 5.3.2005 was also filed by the applicant. The P.O. submitted his written brief on 6.7.2005 and applicant also submitted his brief on 25.8.2005. The applicant submitted a representation dated 8.11.2005 against illegality in conduct of inquiry such as his request of change of I.O. not being accepted but to no avail etc. Inquiry report was submitted by IO on 21.10.2005 asking the applicant to submit his



1

(O.A.NO.060/00333/2014 –
Kulbhushan Vs. UOI etc.)

representation which he did on 8.11.2005. However, vide order dated 12.12.2005, the penalty of removal from service was imposed upon the applicant with a direction that the period of suspension from 23.4.2004 to 6.8.2004 be treated as non duty for all purposes. The applicant was relieved from his duty with immediate effect. The applicant filed an appeal dated 23.1.2006 which was partly accepted and penalty of removal from service was reduced to reduction to lower stage in the time scale of pay attached to the post of PGT i.e. Rs.6500 in the pay scale of Rs.6500-10500. This order was implemented vide communication dated 11.9.2006. The applicant filed O.A.No. **116-JK-2007** challenging the orders of penalty which was disposed of on 17.11.2009, stating that modified penalty was not one of the prescribed penalties under rule 11 of CCS (CCA) Rules, 1965 as it did not indicate the duration of penalty and direction was given to pass a fresh order. Personal hearing was given to applicant vide letter / order dated 23.7.2010 fixing the time period of five years with further condition that applicant will not earn increments during this period. This order was challenged in O.A.No. **1069-PB-2010** and during pendency thereof, order dated 9.2.2012 was passed treating the period from removal from service to date of duty as non-duty for all purposes, instead of dies non. The O.A. was allowed on 20.9.2012 quashing the order dated 23.7.2010. The appellate authority passed fresh order reducing him in lowest stage of pay scale of Rs.6500-10500 for a period of three years and inter evening period is to be treated as duty for all purposes but applying principle of "no work no pay" he was held not entitled to any pay and allowances for such period and was given option to apply for leave of the kind due and admissible for that period etc. The case

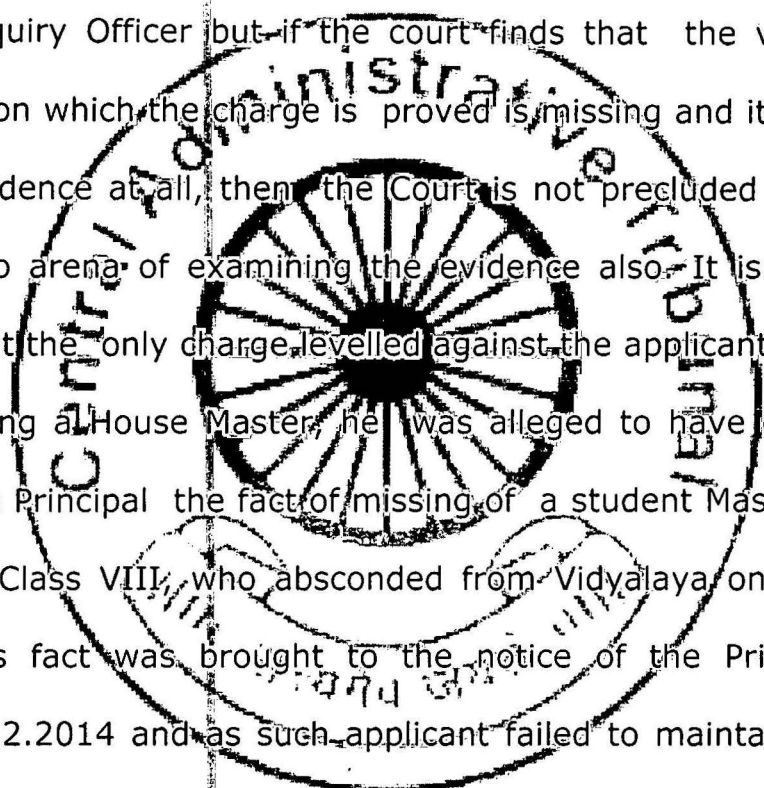
↓

in short set up by the applicant is that it is a case of no evidence and as such entire proceedings stand vitiated as there is enough evidence on record to indicate that the applicant had in fact informed about missing child from the school and documentary proof is available to that effect and as such very charges are not maintainable in the eyes of law. Hence the O.A.

3. The O.A. has been resisted by the respondents by filing written statement. They submit that applicant was entrusted duties of House Master of Aravali House. On 9.2.200, Master Karan Bajal, a student of Class VIII absconded from the School. However, applicant neither informed the Principal nor showed the child absent in the Night Roll-Call Register. He also did not inform the Master on Duty (MOD) who represents Principal for the day of the duty. On 10.2.2004, when applicant himself was MOD, he did not reflect in his report about missing child. The matter came to light on 14.2.2004, when MoD Mrs. Neelam Sambhayal in her report mentioned about missing of child. Thus, the disciplinary proceedings were initiated against the applicant and he was rightly punished by the respondents. They support the impugned orders. Disciplinary proceedings were also initiate against respondent no.5, but no charge was proved against him. Placing reliance on **State Bank of India V. Samrendra Kishore Endow**, 1994 2SCC 537 and **U.P. State Road Transport Corporation v. A.K. Parul**, AIR 1999 SC 1552, it is claimed that imposition of penalty is discretion of Disciplinary Authority and courts cannot interfere in the same. Placing reliance on Secretary to **Government, Home Department V. Srivaikundathan**, [1998] 9 SCC 553, it is claimed that unless it is a case of no evidence, the Courts cannot interfere in disciplinary proceedings. The Courts cannot act as Appellate

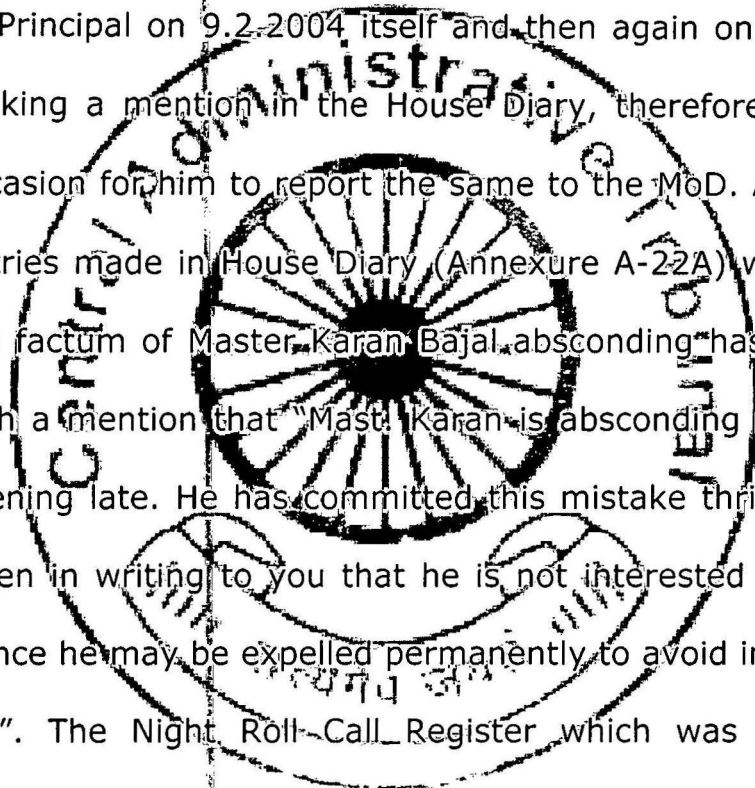
Authority or appreciate evidence. For this reliance is placed on Govt. of A.P. & Others Vs. Mohd. Nasrullah Khan, [2006] 2 SCC 373. They have prayed for dismissal of the O.A.

4. The applicant has also filed a rejoinder to rebut the submissions made in the written statement.
5. We have heard learned counsel for the parties at length and have examined the material on file minutely with the able assistance of learned counsel present for the parties.
6. Even though a Court of law is not expected to indulge in appreciation or reappraisal of evidence which is the job of the Inquiry Officer but if the court finds that the very foundation upon which the charge is proved is missing and it is a case of no evidence at all, then the Court is not precluded from entering into arena of examining the evidence also. It is not in dispute that the only charge levelled against the applicant was that while being a House Master, he was alleged to have concealed from the Principal the fact of missing of a student Master Karan Bajal of Class VIII, who absconded from Vidyalaya on 9.2.2004, but this fact was brought to the notice of the Principal only on 14.2.2014 and as such applicant failed to maintain devotion to duty thereby contravening rule 3 (1)(ii) of CCS (Conduct) Rules, 1964. However, it is specific case pleaded by the applicant that the moment he came to know about missing boy, search was conducted and he went to Principal at 9.30 PM for reporting the matter and the Roll Cass submitted by the Peon. Chowkidar without any signatures was lying on the table of Principal at his residence. The applicant signed the same and also incorporated the fact of missing of the boy in the absent column with his own green gel peon. Since the document / roll was prepared by someone else, applicant did not found it fit to disturb the figures



1

already written in the various columns. He has stated that the matter was also brought to the notice of the Principal on the next day morning i.e. on 10.2.2004 at 9 A.M. by way of a written note in the House Dairy, which was duly seen and signed by the Principal on the same date. He has stated that the Master of the day (MoD) dated 9.2.2004, who was supposed to supervise / notice all the routine activities from morning P.T. to Dinner including taking of attendance of the students was also supposed to notice the incidence and to reflect the same in the Mod proforma. Since he had already brought the matter to the notice of Principal on 9.2.2004 itself and then again on 10.2.2004, by making a mention in the House Dairy, therefore, there was no occasion for him to report the same to the MoD. A perusal of the entries made in House Diary (Annexure A-22A) would show that the factum of Master Karan Bajal absconding has been entered with a mention that "Mast. Karan is absconding since yesterday evening late. He has committed this mistake thrice. He has also given in writing to you that he is not interested to study here. Hence he may be expelled permanently to avoid inconvenience to me". The Night Roll-Call Register which was also seen by Principal on daily basis upto 14.2.2004 and Aravali House Attendance Register were also not considered by the Inquiry Officer copies of which are at Annexure A-22B to A-22C. These pleas have been taken by the applicant in para 4 (38) of the O.A. and in reply thereto, the respondents have stated that the applicant by producing the "tempered / fabricated documents is only trying to get the sympathy of the Hon'ble Court". It is claimed that the authority has passed the reasoned, speaking order etc. We have not been shown any document nor there is any explanation offered by the authorities as to in what manner

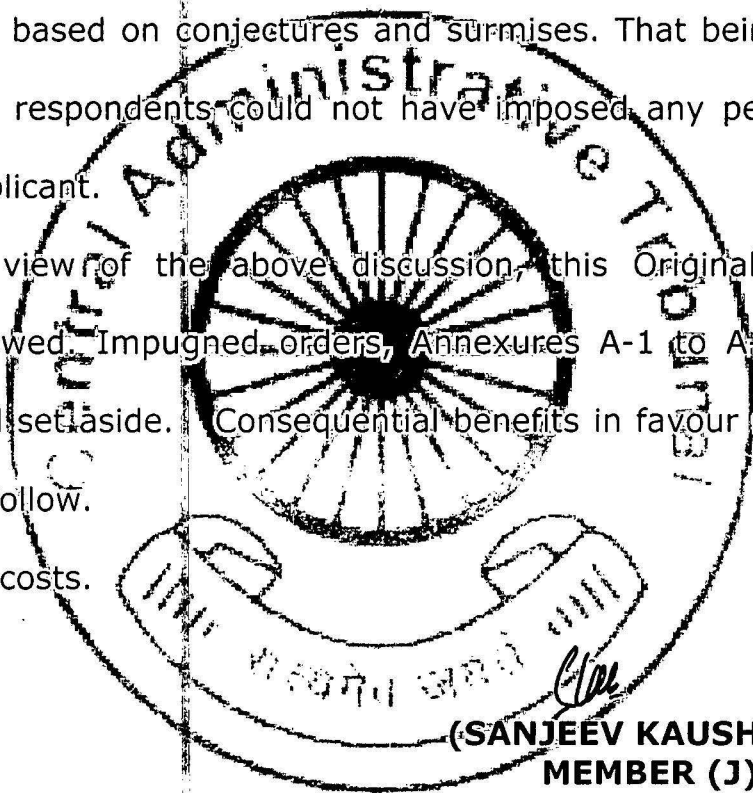


1

(O.A.NO.060/00333/2014 –
Kulbhushan Vs. UOI etc.)

the fabrication or tempering has taken place. The authorities cannot side track the evidence supporting the applicant by simply stating that the same is fabricated or tempered with. We have not been shown any material to indicate as to in what manner the tempering has taken place. The process of making the entries appears to be identical like other earlier made earlier to the relevant date or made thereafter. The pattern also is same. Thus, it has to be held that the findings recorded by the inquiry officer as upheld by the disciplinary authority and appellate authority are not based on any cogent evidence and are based on conjectures and surmises. That being the position, the respondents could not have imposed any penalty upon the applicant.

7. In view of the above discussion, this Original Application is allowed. Impugned orders, Annexures A-1 to A-4 are quashed and set aside. Consequential benefits in favour of the applicant to follow.
8. No costs.



(Signature)
(SANJEEV KAUSHIK)
MEMBER (J)

(Signature)
(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh
Dated: 2.2.2017

HC*