CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO.060/00581/2014 Date of order:- 17.07.2015

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Baldev Singh Manes son of Sardar Ajit Singh, resident of Village Mauliwala, Tehsil Patran, District Patiala, presently working as Principal, JNV, Kupwara, J & K and c/o House No.2556, Urban Estate-II, Patiala-147 002.

.....Applicant.

(By Advocate :- Mr. Jagdeep Jaswal)

Versus

1. The Union of India through the Secretary, Ministry of Human Resources & Development, Govt. of India, Shastri Bhawan, New Delhi.

2. Navodaya Vidyalaya Samiti, Minister of Human Resource Development cum Chairman, Navodaya Vidyalaya Samiti, Government of India, New Delhi.

3. Commissioner, Navodaya Vidyalaaya Samiti, B-15, Industrial Area, Sector 62, Noida-201 307.

4. Deputy Commissioner, Navodaya Vidyalaya Samiti, Ministrty of Human Resource Development, Department of School Education & Literacy, Government of India, Regional Office, Bay No.26-27, Sector 31-A, Chandigarh-160030.

5. Joint Commissioner (Administration), NVS, B-15, Industri9al Area, Sector 62, Noida-201 307.

...Respondents

(By Advocate : Mr. R.L.Gupta, for respondent no.1.
Mr. D.R.Sharma, for respondents no.2 to 4).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Baldev Singh Manes has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned punishment order dated 5.12.2012 (Annexure A-1), Appellate order dated 25.7.2013 (Annexure A-2) and order of the revisionary authority dated 3.2.2014 (Annexure A-3) being wholly illegal and arbitrary.

2. Facts of the case are that while working as Principal, the applicant was proceeded against under Rule 14 of the CCS(CCA) Rules, 1965 for awarding the corporal punishment to three students in July, 2010. A copy of the charge-sheet was furnished to the applicant on 27.12.2010. On the basis of the charge-sheet, an Inquiry Officer was appointed and Shri Mathew Thomas was appointed as Presenting Officer. The Inquiry Officer after conducting the enquiry that included examining the witnesses and after giving opportunity to the applicant to cross examine them as also producing his own witnesses, submitted his report dated 19.6.2012. The report concluded that the allegations against the applicant stood proved. A copy of the enquiry report was furnished to applicant on 19.6.2012

and he was asked to furnish his comments/reply. The applicant submitted his detailed reply on 9.10.2012.

3. The applicant has stated that the on the basis of the enquiry report, the Disciplinary Authority passed the impugned order dated 5.12.2012 imposing the major penalty of reduction by five stages in time scale of pay for a period of five years with immediate effect. The disciplinary authority has further ordered that the applicant will not earn any increment of pay during the period of penalty and penalty imposed will also operate for postponement of his future increments. Feeling dis-satisfied with the order dated 5.12.2012 passed by the Disciplinary Authority, the applicant filed a statutory appeal dated 22.2.2013 before the Appellate Authority. The Appellate Authority had rejected the appeal of the applicant vide order dated 25.7.2013. Thereafter the applicant filed a statutory revision under Rule 29 of the CCS(CCA) Rules, 1965 before the revisional authority. The revisional authority has also rejected the revision petition of the applicant vide order dated 3.2.2014 by upholding the punishment as ordered by the Disciplinary Authority.

4. The applicant has contended in the OA that impugned orders are non-speaking and unreasoned and, therefore, cannot be sustained in the eyes of law laid down by the Hon'ble Apex Court in the case of **Canara Bank** versus **V.K.Awasthy** (2005(4) J.T. Page

40). The applicant has alleged in the OA that no personal hearing was afforded to the applicant before passing the impugned orders which is mandatory in view of the law laid down by the Hon'ble Apex Court in the case of **Yoginath B.Bagde** vs. **State of Maharashtra** (1999(2) SCSLJ Page 324) and in the case of **Ministry of Finance** versus **S.B.Ramesh** (1998(1) SCSLJ Page 417).

5. Pursuant to notice, respondents no.2 to 4 have filed a written statement wherein they have stated that the present OA is liable to be dismissed for non-joinder of necessary parties. They have further stated that there is no procedural lapse or irregularity in the conduct of the enquiry against the applicant as he was given full opportunity to defend himself. They have pleaded that the imposition of punishment is within the discretion of the disciplinary authorities and the interference with the punishment cannot be sustained in view of the law laid down by the Apex Court in the case of **State Bank of India** versus **Samarendra Kishore Endow** (1994(2) S.C.C Page 537). They have also relied upon the following judgments :-

> "i) Secretary to Government, Home Department, versus Srrivaikundathan (1998(9) S.C.C. Page 533);
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> ii) Government of A.P. & Ors. versus Mohd. Nasrulah Khan (2006(2) S.C.C Page 373);
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> iii) U.P. State Road Transport Corporation versus A.K.Parul (A.I.R. 1999 S.C. Page 1552);

iv) Jasbir Kaur versus Union of India (O.A.No.831/PB/2007) decided on 6.10.2009."

6. The respondents have also stated that the applicant has given beatings to the students mercilessly under intoxication.

7. On merits, the respondents have stated that the charge levelled against the applicant stand proved by the Inquiry Officer and the applicant has not challenged the enquiry report nor impleaded the Inquiry Officer as party respondent. Even the applicant had not pointed out any irregularity or infirmity during the course of the enquiry proceedings. There is no provision under the CCS(CCA) Rules, 1965 for giving personal hearing by the revisional authority.

8. The applicant has filed a rejoinder by generally reiterating the averments made in the O.A.

9. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

10. There are two main grounds that the applicant has taken in this OA which was articulated by the learned counsel for the

applicant. The first ground is that there is no appreciation of witnesses and secondly this appreciation is not adequately reflected in the orders. The second ground that he has taken is that the applicant was not given the benefit of personal hearing. We have gone through the record and the orders. It may be argued that the analysis of the evidence placed before the Inquiry Officer has not been recorded in detail in the order. But that does not establish that no appreciation has been done. The respective witnesses of either of the parties have been examined and the fact stands recorded in the order. The orders also mention that the concerned authorities have carefully considered the evidence before them as also the defence put up by the applicant. The issue of personal hearing becomes relevant if there is a suggestion that the applicants wanted to say in person something that he has not been able to do while making his written submissions. Such a situation does not appear to obtain in this case. The fact remains that a personal hearing was afforded to him by the Inquiry Officer though not by the Appellate & Revisional Authority. Further, granting of personal hearing is not a mandatory requirement. However, it must be ensured that full opportunity of hearing and complete adherence to the principles of natural justice are followed during the course of enquiry. We, on the basis of record, are satisfied that the principles of natural justice while dealing with this case have not been compromised or diluted.

11. A number of Apex Court's judgments define the scope of interference of Tribunals in the matter of disciplinary proceedings like the one in this case. It has been held that that the intervention should come about in such cases where there has been gross violation of laid down procedure or where the principles of natural justice have been seriously compromised. The principle that needs to be observed while looking at the justification of punishment is whether the imposed punishment shocks the conscience and whether it is grossly disproportionate to the gravity of charges levelled against the government employee.

12. The Hon'ble Apex Court in the case of **S.R.Tewari** versus **Union of India** (2013(7) Scale Page 417) has reiterated that "The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is

disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice".

13. Recently, the Hon'ble Apex Court in the case of **Union of India** versus **P.Gunasekaran** (2015 (2) S.C.C. Page 610) in paras 12, 13 & 20 has held as follows :-

> "12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:
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> a. the enquiry is held by a competent authority;
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> b. the enquiry is held according to the procedure prescribed in that behalf;
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> c. there is violation of the principles of natural justice in conducting the proceedings;
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> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
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> f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
i. the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:
(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.
Xx xx xx
19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.
20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford

dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

The guidelines enunciated in the judgment above are as relevant and useful for adjudication of departmental proceedings in Tribunals also as they are for High Courts. If we consider the guidelines laid down by the Hon'ble Apex Court in the case of P.Gunasekaran (supra), we cannot fail but conclude that the instant case does not merit any interference by us as no aspect of this case qualifies for an intervention by the Tribunals. In the instant case, the enquiry has been conducted following due process of law, there are no procedural lapses or irregularity and the principles of natural justice are not violated in any manner.

14. As regards the quantum of punishment, the disciplinary authority has imposed the punishment of 'reduction of pay by five stages for a period of five years' which has been maintained by both appellate authority as also revisional authority. For any intervention on the issue of quantum of punishment, it may have to be considered whether the quantum of punishment is grossly disproportionate to the misconduct. While ordinarily it could be argued that inflicting a

corporal punishment does not deserve a major punishment, the peculiar facts and circumstances of this case must be kept in mind. Firstly, as amply pointed out by both the Appellate Authority and the revisional authority who is the Union Human Resource Development Minister, it was a residential school where the care, welfare and well being of the young students of tender age are the responsibility of the school principal. These boys stay away from their homes and families and are entirely in the hands of persons who may not necessarily come from the same cultural background. These boys belong to the scheduled tribe community. Corporal punishment is strictly prohibited and rightly so in such institutions. It is not the case of the applicant that the students indulged in a behaviour that was so offending, obnoxious or provocative that he could not but have taken recourse to corporal punishment, or that their behaviour so upset him that inflicting a violent punishment could be justified as being a natural response or reaction. In fact, if one analyses the provocation that led to the inflicting of corporal punishment, one realizes that there was nothing in the conduct of students that merited such a punishment.

15. It must also be kept in mind that it is well established understanding on the up-bringing of young boys and girls that any violence inflicted to them may cause serious trauma and mental agony in addition to the physical pain that they undergo and may linger in their psyche forever. It is for this reason

that corporal punishment is so strictly prohibited in residential schools and has been specifically laid down in the rules of Navodaya Vidyalaya Samiti. As such, we do not think that the punishment imposed on the applicant is indeed not disproportionate to the misconduct of the applicant which is of a special kind though super-facially it may appear somewhat severe.

16. In view of above discussion, we find no illegality in the impugned orders. Accordingly, the OA is found to be bereft of any merit and the same is dismissed. No costs.

Uday Kumar Varma

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- July 17 , 2015.

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