

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 259/2012

New Delhi this the 12th day of July, 2016.

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Jadish Ram
S/o Late Shri M. Ram
Working as Primary Teacher (PRT),
Kendriya Vidyalaya (AFS), Tugalkabad,
New Delhi-1100062.Applicant

(Argued by: Shri Yogesh Sharma, Advocate)

Versus

1. Kendriya Vidyalaya Sangathan (HQ)
Through its' Commissioner,
18 Institutional Area,
New Delhi-110016.
2. The Joint Commissioner (Admn.)
Kendriya Vidyalaya Sangathan (HQ),
18 Institutional Area,
New Delhi-110016.
3. The Deputy Commissioner (Admn.)
Kendriya Vidyalaya Sangathan (HQ),
18 Institutional Area,
New Delhi-110016.
4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan (HQ),
18 Institutional Area,
New Delhi-110016.Respondents

(By Advocate : Mr. S. Rajappa)

ORDER(ORAL)

Justice M. S. Sullar, Member (J)

The challenge in the instant Original Application (OA),
filed by the applicant, Jagdish Ram, Primary Teacher (PRT),
Kendriya Vidyalaya No.2, Delhi Canttt., is to the impugned

charge sheet dated 29.01.2007 (Annexure A-5), Enquiry Report dated 2/3.12.2009 (Annexure A-7) and impugned penalty order dated 26.03.2010 (Annexure A-1), whereby a penalty of reduction of pay by 4 (four) stages, from Rs.13210+4600 GP to Rs.11210+4600 GP, in the time scale of pay of Rs.9300-34800/-, for a period of 5 years, with immediate effect, was imposed on the applicant. He was also debarred from earning increments of pay during the period of reduction and the same will have the effect of postponing his future increments of pay by the Disciplinary Authority (DA). Applicant has also assailed the impugned orders dated 11.01.2011 (Annexure A-2), vide which his appeal was dismissed by the Appellate Authority (AA) and dated 07.07.2011 (Annexure A-3), by means of which his Revision Petition was also dismissed by the Revisional Authority (RA) as well.

2. The epitome of facts and material, which is essential for the limited purpose of deciding the core controversy involved in the instant OA, and emanating from the record is that, the applicant, while functioning as PRT, awarded corporal punishment to Master Ashutosh Kumar of Class IV-B & Master Himanshu of Class IV-A of Kendriya Vidyalaya No.2 Delhi Cantt. New Delhi on the relevant dates. A complaint dated 26.08.2006, was made by complainant, Shri Ramjee Prasad, father of Master Ashutosh Kumar against the applicant in this regard. Thus, he was stated to have committed grave misconduct during the course of his employment.

3. As a consequence thereof, applicant was served with the Memorandum of allegation/Statement of imputation of misconduct or misbehaviour dated 29.01.2008⁷ (Annexure A-5) and the following Article of Charge:-

“Article – 1

That the said Shri Jagdish Ram (under suspension) while functioning as Primary Teacher in Kendriya Vidyalaya No.2 Delhi Cantt. on 24.08.2006 awarded corporal punishment to Master Ashutosh Kumar of Class IV-B and due to this merciless beating and physical torture without caring about his tender age and ill health, the child suffered severe pain on both the thighs and was unable to walk and stand properly. The child was taken to SMC HQ WAC Hospital, Delhi Cantt. for medical aid by the parents. Shri Jagdish Ram also awarded corporal punishment to Master Himanshu, S/O Shri Shiv Dhari, a student of class IV A, Kendriya Vidyalaya No.2 Delhi Cantt. by throwing severe (sic) blows on his back due to which the child suffered chest pain and was provided medical aid by the parents.

Shri Jagdish Ram was in the habit of awarding corporal punishment to the students by different ways and a large number of students of Class IV-A and IV B of the Vidyalaya have suffered severe (sic) beating and corporal punishment from him due to which the children feels scared and developed tendency of withdrawal (sic) from the school.

Thus this brutal acts on the part of Shri Jagdish Ram exhibit his lack of devotion to duty and integrity and clearly indicates that he acted in a manner unbecoming of a KVS teacher and has committed gross misconduct in terms of Rule 3 (1) (i) (ii) and (iii) of the CCS (Conduct) Rules, 1964 as applicable to the Kendriya Vidyalaya Sangathan employees.”

4. Although the applicant has denied the allegations contained in the charge, however, the regular Departmental Enquiry (DE) was initiated against him as per the provisions of Central Civil Services (Control, Classification and Appeal) Rules, 1965 [hereinafter to be referred as “CCS(CCA) Rules”]. Consequently, Enquiry Officer (EO) was appointed, he completed the Departmental Enquiry (DE) and came to the conclusion that, the charge framed against the applicant, is duly proved vide his impugned enquiry report dated 02/03.12.2009 (Annexure A-7).

5. Agreeing with the findings of the enquiry report, the DA awarded the indicated penalty to the applicant vide impugned order dated 26.03.2010 (Annexure A-1). His appeal and revision filed by him were also dismissed vide impugned orders dated 11.01.2011 (Annexure A-2) and 07.07.2011 (Annexure A-3) by the Appellate/Revisional Authorities respectively.

6. Aggrieved thereby, the applicant has preferred the present OA challenging the enquiry proceedings and the impugned orders, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 (hereinafter to be referred as "Act").

7. The case set up by the applicant, in brief, in so far as relevant, is that, neither copies of the relied upon documents and the statement of witnesses recorded during preliminary enquiry were supplied to him at the time of the delivery of the charge sheet, nor at any subsequent stage, in spite of repeated requests. Thus, he was deprived of his valuable right to submit effective representation against the charge sheet and in this manner, his defence was prejudiced. As such, there is clear violation of Rules 14 and 23 of CCS (CCA) Rules, as there is no assessment of evidence by the EO in his report.

8. Sequelly, it was pleaded that EO was required to explain the circumstances to the applicant in relation to evidence which has come forward in the enquiry, so as to enable him to state his defence. He has closed the enquiry, without complying the statutory provisions, by denying the applicant his right to put

an effective defence in a particular manner and EO directed the Presenting Officer to submit his brief, which is illegal in the eyes of law. EO has not given him any time to engage Defence Assistant and completed the whole enquiry on a single day, causing prejudice to the case of the applicant, which is illegal. The relevant authorities have failed to consider the evidence on record to substantiate the charge framed against him.

9. According to the applicant, the impugned enquiry proceedings and orders are illegal, arbitrary, against the statutory rules and principles of natural justice. On the basis of the aforesaid grounds, the applicant sought to quash the impugned departmental proceedings and orders in the manner indicated herein above.

10. The contesting respondents refuted the claim of the applicant and filed the reply, inter alia, pleading certain preliminary objections of maintainability of the O.A., cause of action and *locus standi* of the applicant to challenge the impugned orders in this Tribunal. Further, the respondents have pleaded as under:-

“4. That a written complaint dated 28.6.2006 was made by one Shri Ramjee Prasad, father of Ashutosh Kumar Class-IV to the Principal, KV, No.2 Delhi Cantt. about alleged beating of his son by the applicant on 24.8.2006. Apart from the above, several parents of Class-IV-A & B (18 in number) have also reported to the Principal, about beating & torturing of students mercilessly by the applicant. Accordingly a fact finding inquiry was conducted by a committee comprising of Shri Dheer Singh, Principal, Smt. Usha Kiran, Vice Principal, Smt Vidya Indu, HM and Smt Usha Katial, PRT and the said committee fact findings inquiry on 30.10.2006 and reported that:-

“The students of Class-IV-A brought to the notice that he holds the child by the neck and lifts them and hits their head on the wall. Some reported that he makes the child bend down and punches him harshly on the back. He has funny ways of punishing the small children – pokes the tip of the pen on the nose, pulls their hair, hits them with shoes. Not only this he often uses abusive language and threatens the

children that he will set them right if they reported this to anybody in the Vidyalaya. The children are losing their interest in Maths & parents lose faith in the Vidyalaya”.

5. On receipt of the report from the Principal, KV No.2 Delhi Cantt., Assistant Commissioner, KVS, RO, Delhi vide order dated 31.10.2006 directed Smt. V.L. Chari Principal, KV No.4 Delhi Cantt. for conducting further inquiry into the matter. Vide letter dated 3.11.2006, Smt. Chari submitted her report confirming the allegation levelled against the applicant. Accordingly, the applicant was placed under suspension vide order dated 8.11.2006 and charge sheet under Rule 14 of CCS (CCA) Rules, 1965 was issued vide memorandum dated 29.1.2007 by the Assistant Commissioner, KVS, RO Delhi being the Disciplinary Authority.”

11. The case of the respondents further proceeds, that the applicant was duly served with the charge sheet of grave misconduct, the EO after recording the evidence and following the due procedure, came to the conclusion that the charge framed against the applicant stands duly proved vide his enquiry report. Taking into consideration the findings of the EO, the DA took the lenient view and only awarded the pointed penalty of reduction of pay. The Appellate and Revisional Authorities have duly considered all the points raised before them and rightly dismissed his appeal/revision. While admitting the factual matrix, reiterating the validity of the enquiry proceedings and impugned orders, the respondents have stoutly denied all other allegations and grounds contained in the main OA and prayed for its dismissal.

12. Controverting the pleadings in the reply filed by the respondents and reiterating the grounds contained in the O.A, the applicant filed the rejoinder. That is how we are seized of the matter.

13. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after

considering the entire matter, we are of the firm view that the present OA deserves to be accepted for the reasons mentioned hereinbelow.

14. As is evident from the record that departmental enquiry was initiated against the applicant under CCS(CCA) Rules. Admittedly, the pointed article of charge was served to the applicant and the prosecution has relied upon 9 documents mentioned in the list of documents (Annexure-III) and 8 witnesses depicted in the list of witnesses (Annexure-IV). In partial modification to (Annexure-III) of the charge sheet, the prosecution has also additionally relied upon the statement of students and teacher-members of the school mentioned at Sl.No. S1 to S15, as conveyed to the applicant vide Memorandum No.7-116/2008-KVS (DDR) dated 31.07.2008. In the main Memorandum of charge sheet dated 29.01.2007, applicant was directed to submit his written statement of his defence to the charge sheet within 10 days of the receipt of the Memorandum. He was also asked to state whether he wants to be heard in person.

15. What cannot possibly be disputed here is, not only that the applicant has denied all the charges levelled against him in Annexure-I and Annexure-II and also desired to be heard in person, but he has specifically made written requests dated 05.02.2007 (Annexure A-6) & 07.11.2007 (Annexure A-6 Colly) and demanded visible copy of the documents mentioned in the Annexure-III before initiating the departmental proceeding under

Rule 14 of CCS (CCA) Rules, so that he may be able to defend the enquiry proceeding properly.

16. The concerned authorities have never supplied the copies of relevant documents, statement of witnesses recorded during the course of preliminary enquiry and the statement of the students and teachers S1 to S15, as depicted in partial modification conveyed to the applicant vide Memorandum No.7-116/2008-KVS (DDR) dated 31.07.2008 despite another written request dated 12.11.2008 to supply the indicated documents but in vain. It is now well settled principle of law that, if any delinquent official ask for copies of statements of witnesses and relevant documents, then it was the mandatory duty of the relevant authority, to provide him such copies to enable the applicant to prepare his defence effectively. Admittedly, no copy of statements of witnesses and such documents were supplied to the applicant by the authority, despite pointed repeated requests, which has naturally caused a great prejudice to his case. Thus the respondents have violated the statutory rules and principles of natural justice. This matter is no more res integra and is now well settled.

17. An identical question came to be decided by Hon'ble Supreme Court in the case of ***State of U.P. Vs. Shatrughan Lal & Another JT 1998 (6) SC 55***, wherein it was ruled that one of the principles of natural justice is that a person against whom an action is proposed to be taken, has to be given an opportunity of hearing in an effective manner. It was observed

that preliminary inquiry, which is conducted invariably at the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet, then before a person is, called upon to submit his reply to the charge-sheet, he must, **on a request made by him** in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry (PE) particularly when, if those witnesses are proposed to be examined at the departmental enquiry (which has been done in the present case). The same view was taken by the Hon'ble Apex Court in the case of **Kashinath Dikshita Vs. U.O.I. and Others AIR 1986 SC 2118**. Again, it was held by Hon'ble Apex Court in the case of **State of U.P. Vs. Saroj Kumar Sinha (2010) 2 SCC 772** that non-supply of relevant foundational documents would result in miscarriage of justice and denial of reasonable opportunity to defend himself.

18. Therefore, the ratio of law laid down in the aforesaid judgments is *mutatis mutandis* applicable to the facts of the present case and is a complete answer to the problem in hand. Hence the enquiry proceedings initiated against the applicant are vitiated and illegal.

19. There is yet another aspect of the matter which can be viewed entirely from a different angle. A bare perusal of the record/enquiry report would reveal, that the preliminary hearing was held and following proceedings were recorded on 16.09.2009 by IO:-

(1) The preliminary hearing of the case against Shri Jagdish Ram, Ex-PRT, KV No.2, Delhi Cantt. and now working as PRT at KV, AFS, Tughlakabad was held at KC, Sector-3, Rohini, Delhi-110085 on 16.09.2009 at 09.30 AM.

(2) CO was asked by IO whether he pleads guilty to any of the articles of the charges included in the charge sheet & if not whether he has any defence to make.

(3) CO did not agree to the charges and, **therefore, preliminary enquiry was closed for further regular enquiry.**

(4) CO requested for inspection of listed documents to IO and also asked for photocopies of listed documents.

(5) Photocopies of listed documents (1 to 7) (not supplied copies of statements S1 to S15) were provided to CO under acknowledgement.

(6) CO was asked to provide the name and details of DA, if any, and also the list of witnesses with their full address within a time period of seven days so that summons may be issued to them for further regular hearing.

(7) PO was asked to provide the addresses of state witnesses so that they may be contacted or summons may be issued to them for being present on next hearing.

(8) The date of regular hearing is fixed as 08.10.2009.

Sig. of CO
16.09.2009

Sig. of PO
16.09.2009

Sig. of IO
16.09.2009".

20. It is clearly depicted in the enquiry report (Annexure A-7) that summons were issued on 22.09.2009 to all state witnesses and defence witnesses to attend the regular hearing on 08.10.2009. This date of (22.09.2009) was never fixed in the enquiry proceedings, as per proceeding recorded on 16.09.2009. As per proceedings of 08.10.2009, copy of listed documents of defence witnesses was submitted by CO to PO. Further, it is mentioned that CO did not engage any Defence Assistant and pleaded his case himself. Examination, cross-examination and re-examination of SW have been completed by PO and CO. Not only that, it has also been depicted in it that on 08.10.2009, CO & PO conducted examination, cross-examination and re-examination of the defence witnesses. PO was also asked to submit his brief report to CO with copy for his defence.

21. In other words, it remained an unfolded mystery that, as to who has ordered or issued the summons to all the prosecution and defence witnesses allegedly on 22.09.2009, the date which was never fixed in the departmental enquiry, as is clear from the pointed enquiry proceeding dated 16.09.2009, wherein enquiry proceedings were straightaway adjourned for 08.10.2009 from 16.09.2009.

22. That means the enquiring officer has recorded the examination-in-chief, cross-examination, re-examination of prosecution and defence witnesses, received all the documents and substantially completed the enquiry in a single day, i.e. on 08.10.2009. Even IO has purportedly summoned the PWs and DWs on 22.09.2009, without closing the evidence of the prosecution and without recording the defence statement of the applicant. Sub-rule (16) of Rule 14 of the CCS (CCA) Rules, postulates that, when the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed. According to sub-rule (17) the evidence on behalf of the Government servant **shall then be produced** (emphasis supplied). The Government servant may examine himself in his own behalf, if he so prefers. The witnesses

produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority. Likewise, sub-rule (18) further posits that the inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

23. A plain and meaningful reading of Rule 14 *ibid* would reveal that the EO was required to complete the evidence of the prosecution at the first instance, then to record the defence statement of Charged Official (CO) [sub-rule (16)], then the evidence of the Government servant shall be produced [sub-rule (17)] and thereafter, after close of the evidence of the Government servant, EO is required to put general questions on the circumstances appearing against him in the evidence for the purpose of enabling him (CO), to explain any circumstances appearing in the evidence against him.

24. Meaning thereby, although the EO was required to follow the indicated mandatory/statutory procedure of enquiry, as contemplated under Rule 14 of CCS (CCA) Rules, but he has not followed the mandatory and statutory provisions of holding an

enquiry in accordance with the principles of natural justice. At the same time, he has adopted a very novel method to complete joint preliminary and regular enquiry in a single day, which is not legally permissible.

25. It is not a matter of dispute that in the scheme of holding a departmental enquiry, the functions of every appropriate officer are quasi judicial in nature. They are assigned different duties to be performed at different stages in accordance with rules and law. They are further required to perform the duty and observe the principles of natural justice. It is not a mere formality to be by-passed by such authority, which has been exhibited by the EO in this case. Similarly, the Disciplinary and Appellate Authorities are also assigned powers to award a punishment to a delinquent person, after following the due procedure envisaged under statutory rules and as per the principles of natural justice and not otherwise, which are totally lacking in the present case.

26. As indicated hereinabove, not only that the EO has violated the statutory procedure of enquiry and the principles of natural justice while conducting the enquiry proceedings in a single day, but the indicated vital defects were just ignored by the DA and AA as well with impunity. They have not examined the matter in the right perspective to decide the real controversy between the parties. Therefore, any such punishment/appellate order passed on the basis of such enquiry, would automatically

fall on the ground on its own legs and cannot legally be sustained. The Hon'ble Apex Court in cases of **Roop Singh Negi Vs. Punjab National Bank and Others (2009) 2 SCC 570** and **State of Uttar Pradesh and Others Vs. Saroj Kumar Sinha (2010) 2 SCC 772** has ruled that function of Enquiry Officer is quasi-judicial in nature and Enquiry Officer acting in quasi-judicial authority, is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to follow the statutory procedure of enquiry and then to submit the report in accordance with law and not otherwise. Likewise, the Disciplinary and Appellate Authority also perform quasi judicial functions in the regular departmental enquiry.

27. Therefore, the crux of law laid down in the aforesaid judgments is *mutatis mutandis* applicable to the facts of the present case and is a complete answer to the problem in hand. Thus seen from any angle, the impugned enquiry report and orders cannot legally be sustained and deserve to be set aside.

28. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

29. In the light of the aforesaid reason and without commenting further anything on merit, lest it may prejudice the case of either side during the course of subsequent departmental proceeding, the OA is allowed. The impugned Enquiry Report dated 2/3/12/2009 (Annexure A-7), impugned punishment

orders dated 26.03.2010 (Annexure A-1) passed by the Disciplinary Authority, dated 11.01.2011 (Annexure A-2) passed by the Appellate Authority and dated 07.07.2011 (Annexure A-3) passed by the Revisional Authority, are hereby set aside. The matter is remitted back to the Enquiry Officer to initiate the enquiry proceedings after supplying the copies of the statements and demanded documents to the applicant, after following due procedure, in the light of aforesaid observation and in accordance with law. We hope and trust that the applicant would fully cooperate in the enquiry proceedings.

Needless to mention that nothing observed hereinabove, would reflect on the merits of the case in the enquiry proceedings in any manner, as the same has been so recorded for a limited purpose of deciding the present OA. At the same time, the competent authority is directed to complete the enquiry proceedings within a period of 3 months from the date of receipt of a copy of this order. However, parties shall bear their own costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh