

**Central Administrative Tribunal
Principal Bench**

OA No.565/2014

Order pronounced on 03.12.2016

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

Sh. Rishipal Singh Tomar,
S/o Sh. Ram Swaroop,
R/o C-100, Prem Nagar,
Najafgarh,
New Delhi-110043.

- Applicant

(By Advocate: Mr. M.K.Bhardwaj)

Versus

Govt. of NCT of Delhi & ors. through

1. The Secretary (Education),
Govt. of NCT of Delhi,
Old Secretariat, New Delhi.
2. Principal Secretary (Education),
Directorate of Education,
Old Secretariat, New Delhi.
3. The Director,
Directorate of Education,
Old Secretariat, New Delhi.
4. Sh. Jang Bahadur Singh,
Deputy Director of Education,
South West-B, Najafgarh,
Delhi.
5. Sh. Sudhir Vashisht,
HOS,
GBSSS No.1, Najafgarh,
New Delhi.

- Respondents

(By Advocate: Mr. K.M.Singh)

ORDER**Hon'ble Mr. V.N.Gaur, Member (A)**

The applicant, a retired PGT (Chemistry), was awarded the penalty of "reduction to two lower stages in time scale of pay till his retirement on superannuation with further direction that such reduction will adversely affect his pension" by the Disciplinary Authority (DA) vide order dated 28.06.2013. The applicant submitted an appeal against the order of the DA but that was also rejected vide order dated 22.01.2014. Consequently, the applicant has filed this OA with the following prayer:

- “(i) To quash and set aside the impugned punishment Order dated 28.06.2013 & 22.01.2014 and direct the respondents to restore back the withheld increments with further directions to release financial upgradation under ACP and other consequential benefits with arrears of pay.
- (ii) To declare the disciplinary proceedings initiated against the applicant vide charge memo dated 26.09.2012 as illegal and unjustified and issue appropriate directions for releasing all consequential benefits including arrears of pay with interest.
- (iii) To allow the OA with exemplary cost.
- (iv) To pass any further orders as this Hon'ble Tribunal may deemed fit and proper considering the peculiar facts and circumstances of the case.”

2. A charge memo was served to the applicant vide memorandum dated 26.09.2012 alleging repeated insubordination and disregard towards the orders of his seniors. The Statement of Articles of Charge and the Statement of Imputation of Misconduct are reproduced below:

“STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SH. RISHI PAL TOMER, PGT (CHEM.), GBSSS NO.1, NAJAFGARH, DELHI.

ARTICLE-I

Sh. Rishi Pal Tomer working as PGT (Chem.) in Govt. Boys Sen. Sec. School No.1, Najafgarh, Delhi has repeatedly shown in-subordination and dis-regard towards his seniors order.

Thus by doing the said acts, the official has violated the provision of Rule 3 of CCS (Conduct) Rules, 1964. Thereby rendering him liable to action under Rule 14 of CCS (CCA) Rules, 1965.”

“STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF THE ARTICLES OF CHARGES FRAMED AGAINST SH. RISHI PAL TOMER, PGT (CHEM.), GBSSS No.-1, NAJAFGARH, DELHI.

ARTICLE-I

Due to introduction of new streams in some schools of district SW-B, some teachers were deputed to perform duty for three days in the schools where the new streams were introduced. In this process, Sh. Rishi Pal Tomer, PGT (Chem.), GBSSS No.-1, Najafgarh, Delhi was deputed to GBSSS No.-3, Najafgarh, Delhi for three days as a internal arrangement vide order no.DDE/SW-B/Z-22/2619 dated:-09.08.2011. A letter dated 19.08.2011 has been received from Sh. R.S. Tomer, PGT that he is unable to perform this duty and most of the officers, Principal/V. Principal/Teachers/officials are not aware about their duties and responsibilities. But involved in different types of corruption and not aware about their subordinate and as well as welfare of the students. A memorandum dated:- 25.08.2011 was issued by DDE(SW-B) to him with directions to join his duty immediately. A reply dated :- 27.08.2011 has been received from Sh. Tomer that he is unable to perform the duty in both the schools. It is subject of chemistry not political Science or History. He also submitted that it is his past experience that those Principals and teachers are involved in corruption, they are closely related to the officers of the district. He has given suggestion that he could complete the course during autumn or winter breaks. On 22-09-2011, the teacher has joined the duty in GBSSS No.-3, Najafgarh, Delhi.

A school order no.18 dated:- 17.04.2012 was issued to Sh. Rishi Pal Tomer, PGT (Chem.) by the Principal, GBSSS No.-1, Najafgarh, Delhi to take over the charge of Class XII-A as you have deputed as class teacher. But the official has refused to do so. Ms. Santosh, Water woman of the school has given the statement that the official refused and threw the register. The Vice Principal also confirm the same. A memorandum dated :- 20.04.12 was issued to him by Principal, GBSSS No.-1, Najafgarh, Delhi. In his reply dated :- 23.04.12, he has submitted that he is lab incharge and alleged against the Principal for biased attitude. A memorandum dated :- 27.04.12 was again issued to him that the lab assistant holds incharge of the lab, therefore he has to take charge of the class. A reply dated :- 01.05.12, he again denied

to comply and use un-parliamentary language in respect of his principal.

To inquire into the matter, an inquiry was conducted by Mrs. Omeshwara Singh, Principal, SKV No.-1, Palam Enclave and Superintendent, SKV No.-1, Palam Enclave. It has been observed by the inquiry committee that the official has taken photographs of school premises without taking any permission from competent authority. The inquiry committee has submitted the report dated :- 07.08.12 concluding that Sh. R.S. Tomer is habit of making unwanted compliant against HOS, teachers and other staff of the school and frequently violated the orders of the HOS, even questioning the orders of higher authorities i.e. Directorate of Education, which shows is unenthusiastic attitude towards the Policy of Govt. as well as the duties assigned to him as teacher.

In light of his persistent in-subordination, the disciplinary authority has decided to initiate D.P. under Rule 14 of CCS (CCA) Rules, 1965 against him.”

3. The applicant approached this Tribunal through OA No.4093/2012 with the grievance that despite the appointment of Presenting Officer/Inquiry Officer (IO) vide order dated 23.10.2012 the respondents were not taking any further action and as he was going to retire from service on 31.07.2013 it may adversely affect his retiral dues/benefits, re-employment etc. The OA was disposed of vide order dated 05.12.2012 with a direction to the respondents that if they wished to continue the enquiry proceedings, then it should be completed within a maximum period of three months. The applicant again approached this Tribunal in CP No.209/2013 in OA No.4093/2012 complaining non-compliance of Tribunal's order. The CP was closed on 18.07.2013 taking note of the submission of the respondents that the enquiry had been completed and DA had also passed order

dated 28.06.2013. The applicant has challenged the impugned orders mainly on the following grounds:

(1) The charge sheet was vague and no enquiry can be based on bogus charge as held in **Union of India vs. Gyan Chand**, 2009 (12) SCC 78.

(2) The report was not prepared by the IO. As could be seen from the Annexure-15 of the OA the purported Enquiry Report sent to him vide memorandum dated 28.03.2013 was not signed by the IO.

(3) There was *mala fide* on the part of Respondent no.4 (R-4) and Respondent no.5 (R-5). Action against the applicant was initiated because he had complained about the corrupt activities of R-4 and R-5.

(4) The applicant was a Group-B Non-Gazetted employee, and therefore, his DA would be the Chief Secretary vide order no. F.DE3(14)/E-III/2001/6118-6177 dated 29.03.2010.

(5) The finding of the IO is not based on evidence and the DA has also accepted report of the IO without applying its mind. In this regard the applicant has relied on the judgment of Hon'ble Madras High Court in **Kumari C. Gabriel vs. State of Madras**, (1959) 2 MLJ 15.

(6) Relying on **Kannia Lal vs. State**, AIR 1959 Raj L.W. 392 and **Union of India and others vs. J. Ahmed**, Civil Appeal No.2152 of 1969 decided on 22.03.1979, the applicant has contended that there was no “misconduct” made out against him.

(7) The DA has imposed the penalty on the applicant without there being sufficient evidence and only on the basis of mere suspicion, which was bad in law. He has relied on **Srinivasa vs. State**, AIR 1961 MLJ 211. It has been contended that the applicant who is already under suspension and has challenged the FIR the DA should not have punished the applicant just to favour the accused.

(8) The IO transgressed the law in carrying out cross examination of the applicant during the enquiry. Relying on **S.Krishnan Niar vs. Divisional Superintendent, Southern Railway**, (1973) 2 SLR 353, the applicant has contended that the IO was pre-determined to prove the charge against the applicant.

(9) The applicant has cited **Central Bank of India vs. P.C.Jain**, AIR 1969 SC 983 arguing that a fact sought to be proved must be supported by evidence made in the presence of person against whom the enquiry is allowed and that the statements made behind the back of person charged are not

to be treated as substantive evidence. The IO has violated principles of natural justice, which is an essential component of any disciplinary proceeding.

(10) The IO did not comply with Rule 14 (18) of CCS (CCA) Rules as the applicant was not given opportunity to submit his explanation.

(11) The applicant had made complaint against the Principal and Dy. Director, R-4 and R-5, and therefore, no charge sheet could have been issued by Dy. Director being involved in personal capacity.

4. Learned counsel for the applicant highlighted the fact that the report of the IO was not signed by her. It was sought to be established that after the submission of the defence statement on 04.03.2013 how could the IO complete the report on the same day. He alleged that the enquiry report was actually not prepared by the IO but it was written by the Dy. Director, R-4 and was later signed by the IO. He further argued that IO did not follow the mandatory procedure of Rule 14 & 18 of the CCS (CCA) Rules and on that ground alone the entire disciplinary proceeding was liable to be quashed. The finding of the IO was not based on the evidence as the Peon Book where the orders alleged to have been disobeyed were served to the applicant was not produced. The written brief submitted by the applicant was not taken into

account by the IO. Learned counsel also submitted that the penalty imposed by the DA was defective because the Chief Secretary was the DA in the case of the applicant, who is a Group-B Non-Gazetted officer. The DA as well as AA in their orders did not consider the contentions of the applicant and these orders cannot be considered as a reasoned and speaking order which is a requirement of law following the Supreme Court judgment in ***SI Roop Lal Vs., Lt. Governor Through Chief Secretary Delhi & Ors.*** (2000) 1 SCC 644. In support of the allegation that Resp. No.5 was biased, learned counsel referred to the ACR of the period from 01.04.2011 to 31.03.2012 where the respondent no.4 as Head of the school had graded the applicant as 'Average' but the next higher officer disagreed with the same and upgraded the ACR to 'Very Good'.

5. Learned counsel for the respondents denying all the contentions of the applicant submitted that the purpose of judicial review is only to see whether the applicant had been given full opportunity to defend himself in the departmental proceedings and whether the DA had proceeded against him in accordance with law. The law prohibits the Tribunal from re-appreciating the evidence which has already been gone into by the IO and a view has been taken by the DA on the basis of the principle of preponderance of probability. With regard to the competence of respondent no.3 as DA, learned counsel stated that

it was a wrong submission because the post of PGT had not been upgraded to Group-B Non-Gazetted level. The required amendment to the Recruitment Rules are yet to be carried out with regard to the procedures being not followed by the IO, the learned counsel submitted that the applicant had been provided all the documents demanded by him for his defence as per the rules. He was given opportunity to examine himself as defence witness or subject himself for general examination but he did not agree to that. He also did not produce any defence witness to support his case. He denied that there was any bias or *mala fide* on the part of any of the officers in the department against him. He also submitted that the orders passed by the DA and AA were detailed orders that took into account the submissions made by the applicant in his representation/appeal. He also refuted the statement of the applicant that there was any FIR registered against the applicant or there was any case pending in a Court of law.

6. We have heard the learned counsel for the parties and perused the record.

7. The first ground taken by the applicant is that charge against him is vague and cited the judgments of Hon'ble Supreme Court in **Gyan Chand** (supra). A perusal of the charge memo shows that while the Articles of Charge are cryptic, the Statement of Imputation of Misconduct, which is Annexure-2 to the

Memorandum of Charge gives complete details of the alleged misconduct of the applicant. The Anneuxre-1 and Annexure-2 of the charge memo read together do not leave any vagueness or lack of clarity about the charge. It is settled law that Statement of Imputation of Misconduct is an integral part of the chargesheet. This contention of the applicant is without any basis, and hence the judgment quoted by the applicant is also not applicable.

8. A lot of emphasis has been put on the fact that the enquiry report that was forwarded to the applicant vide memorandum dated 28.03.2013 was not signed by the IO, and therefore, raised suspicion that the IO never submitted any report especially considering the fact that the defence statement of the applicant was also submitted on the same day as the date of the enquiry report, i.e. 04.03.2013. It is noticed that the applicant has filed a copy of the IO's report which he got from the DA for making his representation, but as pointed out by the respondents, the report was inadvertently not signed by the IO. Later IO submitted a signed copy of the report vide letter dated 06.06.2013. What is significant to note here is that there is no allegation that there was any difference between the unsigned copy and the signed copy except that the two were submitted with some lapse of time in between. This contention of the applicant has also been dealt with by the DA in his order dated 28.06.2012. It is also noted that this Tribunal had vide order dated 05.10.2012 given a

maximum period of three months to the respondents to complete the enquiry proceedings. It would be, therefore, not inconceivable that the IO finalized and submitted the report within a short time after receiving the defence statement. Another crucial aspect is whether the contentions raised in the written defence statement of the applicant had been covered in the IOs report or not which could have caused prejudice to him. The applicant has failed to specify the contentions that have not been covered in the IO's report. He has also failed to mention that there was a time limit given by the IO for submission of his defence brief which was twice extended by the IO but the applicant failed to submit his written brief within that time limit. The relevant portion of the IO's report is reproduced below:

“9. CO was directed to present his brief on 01.03.2013 by 10:00 AM as per daily order sheet dt. 25.02.2013. He again did not comply and has requested for extension of time. I.O, expressed her concern over the time limit posed by Hon'ble CAT but still permitted for extension of one day to C.O. for submitting his brief on 02.01.2013. Not realizing the importance of time at this stage of inquiry process, he did not submit his brief on 02.01.2013 without any intimation to I.O. even by 2:00 PM After which I.O. informed Disciplinary authorities. This act of C.O. again shows his disregard to decisions of seniors and insubordination.”

9. Further the same contentions as raised in the defence brief have been mentioned in his representation on the report of the IO and the DA has dealt with it in detail in its order dated 28.06.2013. Therefore, the applicant cannot complaint of any violation of principles of natural justice.

10. With regard to the *mala fide* on the part of R-4 and R-5 no evidence has been placed on record to support the allegation except a statement that his relationship with the R-4 and R-5 were strained. A lower grading given by the Controlling Officer in the Annual Performance Report cannot be a proof of *mala fide*. We are afraid only a statement of this nature is not sufficient to establish *mala fide* on the part of the superior officers when the charged officer is accused of insubordination. The applicant has also argued that the disciplinary action against him was initiated by R-4 while the punishment was awarded by respondent no.3 and the actual disciplinary authority in this case would be respondent no.1. This has been effectively answered by the respondents in their counter by pointing out that the Rule 13 (2) of CCS (CCA) Rules provide that the authority, who is competent to impose the minor penalty was competent to initiate disciplinary proceeding. For the imposition of any of the major penalties, notwithstanding that such disciplinary authority is not competent under the rules to impose a major penalty. In this case, in reply to the grounds in para 5 (d) of the counter filed by the respondents it has been stated that DA's approval was obtained before issuing charge sheet to the applicant. It is also noted that the penalty order has been passed by respondent no.3 and not by respondent no.4. It has been categorically stated by the respondents that the State Government had not agreed for the

upgradation of posts of teachers on the basis of pay scales without amending the Recruitment Rules and the process of amendment of Recruitment Rules had been initiated. Thus no legal infirmity can be attributed to the order passed by the R-4 as DA. Another important ground taken by the applicant is that provision of Rule 14 (18) of CCS (CCA) Rules was not followed by the IO. Under this rule if the applicant had not subjected himself to be examined as a witness, he is to be generally questioned by the IO with reference to the evidence against him that has come on record during the enquiry. The respondents have placed a copy of daily order sheet dated 16.02.2013 of the DE along with their counter reply. A perusal of this order sheet shows that on 16.02.2013 the IO had asked him whether he would like to be examined as his own witness. CO had declined. IO then decided to examine the CO generally on the next date of hearing. On that date, i.e. 19.02.2013, the IO had again asked the applicant whether he wanted to be examined as his own witness, which the applicant declined and thereafter general examination of CO with the help of DA was done by the IO. Thus the violation of rule 14(18) is not substantiated.

11. The applicant has also alleged that certain documents which he had asked for to prove his innocence were not supplied to him as also he was denied the opportunity to lead the defence. The aforementioned order sheets dated 16.02.2013 and 19.02.2013

also show that CO had been asked whether he would like to produce any witness in support of his case and his answer was in negative. The order sheet dated 04.01.2013 shows that the applicant had asked for 17 documents and all those documents except document no.15 and 17 which were not available, were provided to the applicant. The applicant has not brought out anywhere in the OA as to how these two documents had prejudiced his defence. With regard to the Peon Book wherein the orders which he is alleged to have violated was served on him, it is observed that this contention is hardly relevant considering the fact that it is not the case of the applicant that the reason for non-compliance was that he never received those orders.

12. Another plea of the applicant is that a finding of the IO is not based on any evidence. It is noted that the disciplinary enquiry was conducted in accordance with the rules and the charges were proved with the help of documents and witnesses. The IO has evaluated the evidence in respect of the charges, and thereafter given his finding. It is trite that it is beyond the scope of judicial review to re-appreciate the evidence produced before the IO as laid down by the Hon'ble Supreme Court in **B. C. Chaturvedi vs. U.O.I.**, (1995) 6 SCC 749. The applicant has also contended that no misconduct had been made out against him and relied on **Kannia Lal** (supra) and **J.Ahmed** (supra). We have examined this contention but are unable to accept the same because the

allegation against the applicant which has been proved by the IO do not also fall in the category of negligence or an act done in good faith. In this view of the matter, the judgment cited by the applicant would not be relevant.

13. Another argument of the learned counsel for the applicant was that the orders of the DA and AA were not speaking orders as the contentions raised by the applicant were not dealt with in these orders. A perusal of these orders filed at Annexure-1 & 2 would show that all the contentions of the applicant had been dealt with before the DA came to the conclusion regarding the guilt of the applicant and quantum of punishment. The AA has also considered the main grounds of appeal and passed its order.

14. In view of the conclusions arrived at in the preceding paras, we do not find the judgments cited by the applicant to be relevant and helpful to his case.

15. Taking into account the entire conspectus of the case and for the aforementioned reasons, we do not find any merit in the OA and the same is dismissed. No costs.

(V.N.Gaur)
Member (A)

(Justice M.S. Sullar)
Member (J)

‘sd’

03rd December, 2016