CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.381 OF 2014
New Delhi, this the 7th day of February, 2018

CORAM:
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND
HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

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Trilok Singh,
s/o Sh.Girwar Singh,
working as PGT (Pol.Science),
posted in Govt. Boys Senior Secondary School,
Alipur, Delhi 36
r/o 1011, Tigipur Road, Bhakhtawarpur,
Delhi 36 …….. Applicant

(By Advocate: Mr.Yogesh Sharma)

Vs.

1. Govt. of NCT of Delhi,
   Through the Chief Secretary,
   New Secretariat,
   Near I.P.Estate,
   New Delhi.
2. The Director,
   Directorate of Education,
   Govt. of NCT of Delhi,
   Old Sectt., Delhi.
3. The Dy.Director of Education,
   Distt. North West 'A',
   BC Block, Shalimar Bagh,
   Delhi ……. Respondents

(By Advocate: Mr.Vijay Kumar Pandita)

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ORDER

***Per* RAJ VIR SHARMA, MEMBER(J):**

Memorandum dated 6.2.2012 (Annexure A/3) was issued by the Disciplinary Authority (DA) proposing to take action against the

applicant under Rule 16 of the CCS (CCA) Rules, 1965 and requiring the applicant to make such representation as he might wish to make against the proposal. In the statement of imputation of misconduct enclosed with the Memo dated 6.2.2012(ibid), it was alleged that while working as a Post Graduate Teacher (PGT) (Political Science) in Government Co-Ed.SSS, B-Block, Holambi Kalan, Delhi, the applicant failed to motivate the students for which the result of Political Science students of Class XI-A and XI-B of the first term (SA-I) and 2nd term (SA-II) for the year 2010-2011 remained poor, i.e., 1.4% & 0% for the first term, and 25.3%, and 12.3% for the 2nd term (SA-II). Resultantly, the annual result of the Political Science students of Class XI-A and XI-B also remained poor. The result of Political Science students improved a lot after his transfer when the Director of Education granted special permission for the failed students of Political Science of Class XI-A and Class XI-B to re-appear in Political Science along with students of common compartment school examination 2011. It was, therefore, alleged that the above act of the applicant reflected lack of devotion and dedication to his duties thereby contravening the provisions contained in Clause (ii) of sub-rule (1) of Rule 3 of the CCS (Conduct) Rules, 1964. The applicant submitted his representation dated 14.2.2012 (Annexure A/4) explaining the circumstances under which the results of the aforesaid students remained poor. After considering the materials available on record and the pleas taken by the applicant in his representation, the DA held the charge against the applicant to have been proved, and imposed upon

applicant the "penalty of withholding of one increment for one year without cumulative effect", vide order dated 13.3.2012 (Annexure A/1). The appeal dated 30.3.2012 (Annexure A/7) made by the applicant against the said penalty order was rejected by the Appellate Authority (AA), vide order dated 14.1.2013(Annexure A/2). Being aggrieved thereby, the applicant filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

> "(i) That the Hon'ble Tribunal may graciously be pleased to pass an order quashing the impugned penalty order dated 13.3.12, appellate authority order dated 14.1.2013, charge sheet dt. 16.2.12 and whole proceedings, declaring to the effect that the same are illegal, arbitrary, against the rules and against the principle of natural justice and consequently the applicant is entitled for all the consequential benefits including arrears of difference of pay and allowances with interest.
>
> (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant with the cost of litigation."

2. Resisting the O.A, the respondents have filed a counter reply.

3. No rejoinder reply has been filed by the applicant.

4. We have carefully perused the records and have heard Mr.Yogesh Sharma, learned counsel appearing for the applicant, and Mr.Vijay Kumar Pandita, learned counsel appearing for the respondents.

5. Mr.Yogesh Sharma, learned counsel appearing for the applicant, drew our attention to the order dated 14.1.2013 (Annexure A/2) passed by the AA, and submitted that the AA rejected the applicant's appeal solely on the basis of a report submitted by the team of officers after holding

a preliminary enquiry into the matter. Copy of such preliminary enquiry report was never supplied to the applicant by the authorities. Thus, the applicant was denied an opportunity to explain the circumstances, if any, appearing against him in the said preliminary enquiry report. Therefore, the impugned orders, having been passed in clear violation of the principles of natural justice, are unsustainable in the eyes of law. Mr.Yogesh Sharma also invited our attention to an order dated 13.5.2009 passed by the coordinate Bench of the Tribunal in OA No.21 of 2009 (**Urmil Gupta Vs. Kendriya Vidyalaya Sangathan)**, and submitted that on the similar facts and circumstances, the Tribunal quashed the orders passed by the DA and AA.

6. On the other hand, Mr. Vijay Kumar Pandita, learned counsel appearing for the respondents, submitted that there was sufficient material/evidence to prove the charge against the applicant. The DA and AA considered the materials available on record as well as the pleas taken by the applicant and recorded their findings in a fair manner. The procedure established by law was duly followed. Thus, there was no infirmity in the orders passed by the authorities. It was also submitted by Mr. Vijay Kumar Pandita that when the DA did not rely on the purported preliminary enquiry report to return the finding that the charge was proved against the applicant, and when the AA did not reject the applicant's appeal solely on the basis of the purported preliminary enquiry report, it cannot be said that the AA, only after taking into account the purported preliminary enquiry report, rejected

the applicant's appeal. Therefore, there is no substance in the contention of Mr.Yogesh Sharma, learned counsel appearing for the applicant, that the impugned orders passed by the DA and AA, being violative of the principles of natural justice, are unsustainable.

7. It is no more *res integra* that the power of judicial review does not authorize the Tribunal to sit as a court of appeal either to reappraise the evidence/materials and the basis for imposition of penalty, nor is the Tribunal entitled to substitute its own opinion even if a different view is possible. Judicial intervention in conduct of disciplinary proceedings and the consequential orders is permissible only where (i) the disciplinary proceedings are initiated and held by an incompetent authority, (ii) such proceedings are in violation of the statutory rule or law, (iii) there has been gross violation of the principles of natural justice, (iv) there is proven bias and mala fide, (v) the conclusion or finding reached by the disciplinary authority is based on no evidence and/or perverse, and (vi) the conclusion or finding be such as no reasonable person would have ever reached.

8. In **B.C. Chaturvedi v. Union of India**, AIR 1996 SC 484, reiterating the principles of judicial review in disciplinary proceedings, the Hon'ble Apex Court has held as under:

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent

> officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent office is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

9. In **R.S. Saini v. State of Punjab and ors**, (1999) 8 SCC 90, the Hon'ble Apex Court has observed as follows:

> "We will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

10. In **Government of Andhra Pradesh v. Mohd. Nasrullah Khan,** (2006) 2 SCC 373, the Hon'ble Apex Court has reiterated the scope of judicial review as confined to correct the errors of law or procedural error

if it results in manifest miscarriage of justice or violation of principles of natural justice. In para 7, the Hon'ble Court has held:

> "By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority….."

11. We have carefully perused the charge memo dated 6.2.2012, the applicant's representation against the charge memo, and his appeal petition against the penalty order, and the orders passed by the DA and AA. In the charge memo dated 6.2.2012 there was no mention of any report submitted by the team of officers after holding preliminary enquiry into the matter. In his representation dated 14.2.2012, the applicant did not dispute the poor results of the students in Political Science. It was pleaded by the applicant that he sincerely performed his duties and took all possible steps to motivate the students, and that the students were responsible for the poor results. After considering the materials available on record and the pleas taken by the applicant, the DA held that the charge was proved against the applicant. The order dated 13.3.2012 (Annexure A/1) passed by the DA does not reveal the purported preliminary enquiry report to have been taken into account by the DA. It transpires from the order dated 14.1.2013 (Annexure A/2) that while taking into consideration all the materials available on record and upholding the penalty order, the AA referred to the purported report submitted by the team of officers after making a preliminary enquiry. When

the order passed by the AA was not based solely on the purported report of preliminary enquiry, we are not inclined to accept the contention of Mr.Yogesh Sharma, learned counsel appearing for the applicant, that the impugned orders were passed by the DA and AA without following the principles of natural justice inasmuch as copy of the purported report of preliminary enquiry report was never supplied to the applicant. After considering the materials available on record, we are also of the view that the conclusions reached by the said DA and AA cannot be said to be perverse or based on no evidence.

12. In **Urmil Gupta Vs. Kendriya Vidyalaya Sangathan** (supra), the coordinate Bench of the Tribunal found, *inter alia*, that no reasons were recorded by the DA and AA in the impugned orders in support of their findings that the charge was proved against the applicant. It was also found by the coordinate Bench of the Tribunal that there was no allegation against the applicant that the failure of 9 students was attributable to her. Thus, the said decision, being distinguishable on facts, is of no help to the applicant in the instant case.

13. After having given our thoughtful consideration to the facts and circumstances of the case and the rival submissions, in the light of the decisions referred to above, we have found no substance in the submissions made by Mr.Yogesh Sharma, learned counsel appearing for the applicant.

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

15. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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