

**Central Administrative Tribunal  
Principal Bench, New Delhi**

**OA No. 1399/2014  
MA No. 3566/2018**

New Delhi, this the 5<sup>th</sup> day of September, 2018

**Hon'ble Mr. K.N. Shrivastava, Member (A)**  
**Hon'ble Mr. S.N. Terdal, Member(J)**

1. Sh. Vijay Pal Bansal  
R/o H.No. 596/B/20A/3A  
Nakul Gali  
Vishwas Nagar  
Shahdara, Delhi – 110032. ...Applicant

(By Advocate : Mr. S.S. Parihar)

**Versus**

1. The Commissioner, MCD  
Through its Dy. Education Officer  
EDMC, Shahdara, South Zone  
Delhi -110032.
2. Sh. Pal Singh, Principal Nigam Vidyalaya  
MCD School, New Ashok Nagar  
Delhi – 110091.

**Also at :-**

House No. 330, Mohalla Panditwala  
Village Kondli, Delhi – 110091.

...Respondents

(By Advocate : Ms. Sangita Rai)

**ORDER (ORAL)**

**Mr. K.N. Shrivastava:**

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Through the medium of this MA, the respondents have submitted that there were some palpable errors in the counter

reply filed on their behalf at pp. 37-42, which the respondents would like to correct, and have accordingly filed this MA with the prayer to allow them to carry out the corrections and to file the corrected reply. A copy of the corrected reply has also been placed on record along with MA.

2. We have perused the contents of the MA as well as the corrected reply.

3. Considering the nature of prayer made, we allow this MA and accordingly, the corrected reply filed on behalf of respondents is taken on record.

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4. The applicant was working as Primary Teacher in the Municipal Corporation Primary School Kondli Village, Shahdara, Delhi (South) Zone. On 14.08.2006, Smt. Vidya Devi, Municipal Councilor was invited by the school to hoist the National Flag. It is alleged that the applicant did not participate in the flag hoisting ceremony and, on the contrary, was found consuming liquor along with two other persons, which was detected when Smt. Vidya, Municipal Councilor, took a round of the school. Consequently, the applicant was proceeded against departmentally and Annexure A-7 charge-memo was issued to him. Pursuant to the charge-memo, enquiry was conducted. The Enquiry Officer, vide his Annexure A-9 report dated 21.05.2009,

concluded that the charge leveled against the applicant and two others could not be proved.

5. The disciplinary authority, however, did not agree with the finding of the Enquiry Officer and decided to issue a disagreement note, which was done vide Annexure A-12 letter dated 31.08.2010, enclosing therewith a photocopy of notings of official file.

6. We have perused A-12 letter purported to be the disagreement note. We notice from its enclosure, which is a photocopy of the note sheet of the official file that the disciplinary authority, namely, the Deputy Commissioner, Shahdara (South) Zone, for the reasons recorded in the said office note, had decided to issue disagreement note. However, instead of issuing a formal disagreement note, as required under the Rules, a shortcut method was adopted, as noticed hereinabove. A photocopy of the office note with a cyclostyled letter dated 31.08.2010 Annexure A-12 was issued considering that it would suffice for the disagreement note. We are afraid that Annexure A-12 cannot be called a disagreement note by any stretch of imagination. Hence, we hold that no disagreement note, in fact, was issued. It is also noticed from the records that subsequent to the issuance of Annexure A-12 letter, the respondents issued Annexure A-13 show-cause notice dated 25.07.2011, which the applicant replied vide his Annexure A-14 letter dated 14.09.2011.

Finally, the disciplinary authority, vide its impugned Annexure A-1 order dated 21.02.2012, imposed a penalty of 50% cut from the pension of the applicant for a period of 5 years.

7. As we have observed hereinabove that Annexure A-12 letter cannot be called as disagreement note, subsequent action of the respondents in terms of issuance of Annexure A-13 show-cause notice and Annexure A-1 penalty order would appear to be nullity in law, in view of law laid down by the Hon'ble Apex Court in ***Coal India Ltd. & Ors. Vs. Ananta Saha & Ors.*** (2011) 5 SCC 142 wherein it has been observed as under :-

"30. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls."

8. In view of the ratio of law laid down by Hon'ble Apex Court, Annexure A-1 impugned order 21.02.2012 as well as Annexure A-13 show cause notice dated 25.07.2011 are quashed and set aside with liberty to the respondents to issue a proper disagreement note and take subsequent action thereafter, if they so wish.

9. We are informed that the respondents, vide Annexure A-2 order, have already ordered for 50% cut in pension for five years.

10. In view of our direction in para (8) supra, we direct the respondents to refund the amount recovered within a period of two months from the date of receipt of this order.

11. In view of disposal of the OA, all ancillary Applications also stand disposed of.

There shall be no order as to costs.

**(S.N. Terdal)**  
**Member (J)**

**(K.N. Shrivastava)**  
**Member (A)**

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