

*Reserved*

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**CIRCUIT SITTING : GWALIOR**

**Original Application No.202/00463/2017**

Gwalior, this Thursday, the 10<sup>th</sup> day of May, 2018

**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Gyanendra Swaroop Bhatnagar, S/o late Shri C.S. Bhatnagar,  
Age – 56 years, Occupation – Service TGT (Hindi), R/o – Flat  
No.201/593, Pitambara Villa, Suresh Nagar, Thatipur, Gwalior  
(M.P.) 474011. Mob. No.9424645771

**-Applicant**

**(By Advocate – Shri Akhil Sinha)**

**V e r s u s**

1. Kendriya Vidhyalaya Sangathan through its Commissioner,  
Shaheed Jeet Singh Marg, 18, Institutional Area, New Delhi  
110011.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan,  
Regional Office – Grand Parade Road, Agra Cantt., Agra (U.P.)  
282001.
3. Deputy Commissioner, Kendriya Vidyalaya Sangathan,  
Bhopal Regional Office – Opposite Maida Mill, Near Income  
Tax Office, Bhopal (M.P.).
4. Principal, Kendriya Vidyalaya No.4, Maharajpura, Bhind  
Road, Gwalior (M.P.) 474020.
5. Munendra Singh Chauhan, Principal, Kendriya Vidyalaya  
No.4, Bhind Road, Gwalior (M.P.) 474020

**-Respondents**

**(By Advocate – Shri Rajneesh Sharma)**

*(Date of reserving order : 08.05.2018)*

**ORDER****By Ramesh Singh Thakur, JM.**

This Original Application has been filed against the order dated 15.05.2017 (Annexure A-1), whereby the minor penalty of withholding of one future increment of pay effective from 01.07.2017 without cumulative effect for a period of two years, has been imposed on the applicant.

2. The applicant has sought for the following reliefs:

**“8. Relief’s sought-**

The Impugned order dated 22.05.2017/15.05.2017 Annexure A-1 may be declared illegal and the same be quashed. Further the respondents may kindly be ordered and directed to allow the applicant’s case for voluntary retirement under VRS scheme. Any other relief which this Hon’ble Court may deem fit for doing justice in the matter may kindly be allowed. Costs of the petition may also kindly be allowed.”

3. The applicant is a Trained Graduate Teacher (Hindi), present posted in Kendriya Vidhyalaya, Agra on deputation.

The case of the applicant is that vide application dated 05.04.2017 (Annexure A-2), he sought permission from respondent No.2 to meet the respondent No.1 regarding certain difficulties faced by him. However, the respondent No.2 did not

pay any heed on his application. The applicant, thereafter, made a representation dated 10.04.2017 (Annexure A-3) to respondent No.1, alleging misbehavior of respondent No.2 and other superior officers towards the applicant and requested to repatriate him back to KV, Gwalior.

4. It has been submitted that after the representation made by the applicant on 10.04.2017, the respondent No.2 issued a memo dated 13.04.2017 (Annexure A-4), asking him to file his explanation within a period of five days from the date of receiving the memo, failing which, disciplinary action shall be taken as per CCS (CCA) Rules, 1965. The applicant, vide his reply/explanation dated 22.04.2017 (Annexure A-5), denied the charges levelled against him. However, the respondent No.2, without considering his reply and other material placed before him, has passed the impugned order of punishment dated 15.05.2017 (Annexure A-1).

5. The respondents have filed their reply. It has been submitted that the order dated 15.05.2017 has been passed by the authority, while exercising the powers conferred under Rule 16 of CCS (CCA) Rules, 1965. The punishment order was passed after affording opportunity to the applicant by giving

him show cause notice/memo dated 19.04.2017, asking his explanation in regard to the complaint and conduct on behalf of the applicant. It has been further submitted that the applicant has admitted the fact that he unauthorizedly took entry and met with Assistant Commissioner on 05.04.2017.

6. It has been further submitted by the respondents that regarding the complaint of the applicant dated 10.04.2017 received in the office of respondent No.2 through letter dated 26.04.2017, the Deputy Commissioner, vide letter dated 04.05.2017 (Annexure R-2), has sought comments from Shri V.K. Singh, Assistant Commissioner (respondent No.2). After receiving the comments from the respondent No.2, the report dated 15.05.2017 (Annexure R-3) was sent to respondent No.1. It has also been submitted that reply to the memo dated 13.04.2017, was duly considered by the Disciplinary Authority and after due consideration, the decision was taken for withholding of one future increment of pay effective from 01.07.2017 without cumulative effect for a period of two years. Thus, the penalty has been imposed under the provisions of Rule 16 of the CCS (CCA) Rules, 1965. Taking into account the misconduct of the applicant, no further enquiry was

required in the matter although a fact finding enquiry was conducted by the respondents. The regular enquiry is only compulsory when the charges are levelled under Rule 14 of the CCS (CCA) Rules, 1965. Therefore, the impugned order is just and proper.

7. We have heard the learned counsel for the parties and have gone through the documents and annexures available on record.

8. In the present O.A, the main question for determination is whether, while imposing the punishment for minor penalty, any enquiry is to be done or not when the charges are specifically denied by the delinquent employee.

9. The applicant has relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh, Bench at Gwalior in Writ Petition No.3021/2014 (**Bholeram Soni vs. Union of India and Others**) dated 09.01.2015, which reads as under:-

“7. The core issue is whether in the aforesaid factual backdrop, it was necessary to conduct the enquiry. Disciplinary authority opined that since the allegations are based on documentary evidence, there is no need to conduct a departmental enquiry. In the opinion of this Court, the point involve in this matter is no more rest integra. The curtains are finally 4 WP.3021/2014 drawn by the Apex Court in the case

of O.K. Bhardwaj vs. Union of India & Ors., (2001) 9 SCC 180. In the said case, the Apex Court opined as under:-

“Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with.”

**10.** Thus, it is clear that when allegations are factual in nature and are denied by the delinquent employee, enquiry needs to be conducted in order to fulfill the requirement of principle of natural justice.

**11.** As per Annexure A-5, the applicant, while replying to the memo dated 13.04.2017, has specifically denied the charges levelled by the authority. So, as per law settled by the Hon’ble Apex Court, which has been subsequently followed by the Hon’ble High Court, as discussed above, enquiry needs to be conducted to find the factual accuracy. In the present case, the applicant has been prejudiced of his valuable right as per principle of natural justice to put forth his defence by leading evidence in the enquiry. If enquiry would have been conducted, the applicant would have been in a position to lead the evidence

to establish his defence. We are not convinced with the reply filed by the respondents that the applicant has admitted the fact regarding the meeting with the Assistant Commissioner on 05.04.2017. Merely, to meet the Assistant Commissioner, does not prove the misconduct of the applicant. So, to establish the fact of misconduct, which has been specifically denied by the applicant, it was required to be proved if any enquiry was instituted. Thus, we find that the instant case is fully covered by the judgment passed by the Hon'ble High Court of Madhya Pradesh in the case of **Bholeram Soni** (supra) and the law settled by the Hon'ble Apex Court in the case of **O.K. Bhardwaj** (supra).

**12.** In view of the above, this Original Application is allowed and the impugned order dated 15.05.2017 (Annexure A-1) is quashed and set aside. No order as to costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**

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