

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 111 of 2012

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)
Hon'ble Mr.Swarup Kumar Mishra, Member (J)

Debendra Nath Swain, aged about 47 years, S/o Late Gobardhan Swain, At - Kunjiapatna, PO - Nuapalamhat, Dist. - Cuttack, working at present as Post Graduate Teacher (Math.), Jawahar Navodaya Vidyalaya, At/PO- Konark, Dist. - Puri.

.....Applicant.

VERSUS

1. Union of India, represented by Deputy Commissioner I/c Navodaya Vidyalaya Samiti, Regional Office, 160 Zone-II, M.P. Nagar (MP) – 462011.
 2. Joint Commissioner (Admn.), Navodaya Vidyalaya Samiti Headquarters, A-28 Kailash Colony, New Delhi – 110040.

.....Respondents.

For the applicant : Mr.P.K.Das, counsel

For the respondents: Mr.C.M.Singh, counsel

Heard & reserved on : 7.1.2019 Order on :

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this Original Application (in short OA) under section 19 of the Administrative Tribunals Act, 1985, being aggrieved by order dated 2.11.2010 which is the charge memo issued against the applicant under rule 16 of the CCS (CCA) Rules, 1965 (in short Rule) for minor penalty and order dated 4.5.2011 (Annexure-A/3) imposing punishment of withholding one increment for a period of one year without cumulative effect and order dated 23.1.2013 (Annexure-A/6) of the Appellate Authority rejecting the applicant's appeal against the punishment order. Main reliefs sought for by the applicant are as under:-

"(A) The office memorandum dt. 2.11.2010, the charge memo annexed under Annexure – A/1 and the impugned order dt. 4.5.2011 annexed under Annexure – A/3 and order dt. 23.1.2013 under Annexure A/6 be quashed holding the same as illegal and invalid in the eye of law.
(B) any other appropriate order(s)/direction(s) be passed which deems just and proper."

2. The applicant, while working as a post graduate teacher in Mathematics (in short PGT) posted at Jawaharlal Navodaya Vidyalaya (in short JNV),

Konark, Puri, was issued a charge memo dated 2.11.2010 under the rule 16 for minor penalty for failing to achieve the benchmark specified by the respondents. It stated as under:-

"That the said Shri D.N. Swain while working as PGT Maths at JNV Distt.-Puri (Orissa) produced 50.14% subject average in his/her subject in Class-XII in CBSE board Examination-2010 which is below the target fixed by the Samiti i.e. 75%.

Time to time the Samiti has issued instructions to the teachers teaching board classes to strive for achieving the desired result but the said Shri D.N. Swain, PGT Maths failed to maintain his/her devotion to the duties, resulting thereby the targeted result could not be achieved by him/hers and hence he/she contravened the provision of Rule 3(1)(II) of CCS (Conduct) Rules, 1964."

3. The reply was submitted by the applicant on 24.11.2010 and after considering the said reply, the disciplinary authority issued the punishment order dated 4.5.2011, stating as under:-

"WHEREAS, the explanation submitted by the teacher was not found convincing/satisfactory. The teacher has failed to impart the quality teaching. Hence, the students could not perform well in the Board Exams in most of the cases. Though the Samiti has supplied necessary study materials, Question Bank and provided all infrastructural facilities including modern teaching aids, the said teacher did not perform duties assigned to him/her sincerely. Owing to lack of devotion to the duties, the bench mark fixed by the Samiti could not be achieved.

WHEREAS, the teachers are being imparted necessary training from time to time to improve their professional knowledge and skill. Even then the performance of the teacher is far below the expectations of the Samiti. Thus, it is an act of sheer negligence on the part of the said teacher in imparting quality teaching to the rural talented children selected through All India JNV Selection Test.

NOW THEREFORE, the undersigned is of the view that ends of justice would be met if a minor penalty of withholding of one increment for a period of one year without cumulative effect is imposed upon Shri D.N. Swain, PGT Mathematics. AND THEREFORE, a penalty of withholding of one increment for a period of one year without cumulative effect upon Shri D.N. Swain, PGT Mathematics is hereby imposed effective from the date of his/her next increment as admissible under the rules. The withholding will not have the effect of postponing his future increments of pay."

4. Being aggrieved, the applicant filed appeal dated 29.6.2011 (Annexure-A/4), mainly on the following grounds:-

- (i) Applicant has been a sincere and devoted teacher and he completed the course in time, making optimum use of study materials.
- (ii) Prior to 8 years from 2010, no training has been imparted to the applicant.
- (iii) There were a good number of students having poor fundamentals, particularly the students who came from JNV, Rayagada on mini migration.
- (iv) No fail system allowed all students to go up in the ladder without any checks.
- (v) Previous two batches, the applicant's performance was 100% and year subsequent to 2010, when proceeding was initiated, his performance was also 100% with the subject average of 62% marks.

5. In para 4.12 of the OA, the applicant has raised the ground that the Appellate Authority has not considered the points raised in the appeal. The impugned appeal order has been passed in a very mechanical manner. In reply,

the respondents, in the counter, have simply mentioned that the appeal order has considered the appeal submitted by the applicant.

6. Under the rule 27(2) of the CCS (CCA) Rules, 1965, the manner of consideration of appeal filed by the charged official against order of punishment imposed in a disciplinary proceeding, has been specified. It states as under:-

"27. Consideration of appeal

(1).....

(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-

(a) whether the procedure laid down in these rules have been complied with and if not, whether such

non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or
 (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case : provided that-

(i) The Commission shall be consulted in all cases where such consultation is necessary;

(ii)

(3) In an appeal against any other order specified in rule 23, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

7. From above, it is clear that it is the responsibility of the Appellate Authority to consider if the procedure has been followed, whether findings of the disciplinary authority are warranted by the evidence on record and whether quantum of penalty is adequate. The Appellate Authority is also required to pass reasoned order, as specified in Government of India's Decision No. 4 after the rule 15, which states as under:-

"(4) Disciplinary cases – need for issuing speaking orders by competent authorities :-

As is well known and settled by courts, disciplinary proceedings against employees conducted under the provisions of CCS (CCA) Rules, 1965, or under other corresponding rules, are quasi-judicial in nature and as such, it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary/appellate/reviewing authorities under the relevant rules and the orders issued by such authorities should have the attributes of a judicial order. The Supreme Court, in the case of Mahavir Prasad Vs. State of U.P. (AIR 1970 SC 1302), observed that recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy, or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

2. However, instances have come to the notice of this Department where the final orders passed by the competent disciplinary/appellate authorities do not contain the reasons on the basis whereof the decisions communicated by that

order were reached. Since such orders may not conform to legal requirements, they may be liable to be held invalid, if challenged in a court of Law. It is, therefore, impressed upon all concerned that the authorities exercising disciplinary powers should issue self-contained speaking and reasoned orders conforming to the aforesaid legal requirements.

3."

8. From above, it is clear that the Appellate Authority is required to pass orders with reasons and since he is required to see whether the procedure has been followed and whether the findings of the disciplinary authority are based on evidence, it is necessary for him to consider all relevant grounds mentioned in the appeal pointing out such deficiencies. In this case, the appeal dated 29.6.2011 (Annexure-A/4) of the applicant, mentioned the point regarding his 100% achievement in previous two years and in the year subsequent to the year 2010. The order dated 23.1.2013 (Annexure-A/6) did not consider this point, which was very relevant to establish the applicant's credential as a teacher.

9. We take note of the fact that without examining all the grounds mentioned in the appeal, which was being considered by the Appellate Authority, following observations have been recorded by the Appellate Authority in his order dated 23.1.2013:-

"AND WHEREAS, it is also observed that he secured 50.14% as subject average in the subject of Maths against the target of 75% fixed by the Samiti, Thus, there is a decline of 24.86% in his subject average for Class XII CBSE examination 2010. The reasons put forth by the teacher is not convincing. JNVs being a residential and co-educational institutions, where talented children get admission at class VI level and remain up to Class XII, it would not be justified to blame the students for their lack of basics in Maths or in any subject for that matter. Since talented children are admitted into the Jawahar Navodaya Vidyalaya having residential system, their all round development including academic excellence and co-curricular activities etc. are the responsibility of the Vidyalaya in general and the subject teacher in particular. The contention of the appellant that some of his students had meritorious performance and achieved laurels cannot be a reason to justify his poor performance, in terms of not achieving the bench mark set by the Samiti. The aim of the institution is to have better performance in respect of all the students and not in a few students. Moreover in JNVs where students are available round the clock with the teachers, not achieving the targets fixed in the CBSE examination cannot be tolerated."

10. If we examine the order dated 23.1.2013 vis-a-vis the provisions of the rule 27(2), it is obvious that the ground relating to the applicant's performance of 100% in his subject during previous two years and for subsequent year to the year 2010, has not been considered by the Appellate Authority. It is further noticed that the Appellate Authority did not consider and dispose of the appeal as per law within a reasonable time before the applicant filed this OA in February, 2012. The Appellate Authority acted only after the Tribunal directed him to act as per the interim order dated 16.2.2012. The Appellate Authority without considering a relevant ground regarding performance of the applicant, has upheld the penalty imposed by the disciplinary authority. If the applicant's

contention that although he could not achieve the benchmark during 2010 due to certain difficulties, but his performance in previous two years as well as subsequent year to year 2010 was 100% will be found to be correct then the findings of the Appellate Authority could have been different.

11. Learned counsel for the applicant has cited the case of **Pawan Kumar Agarwala -vs- General manager-II and Appointing Authority, State Bank of India and Others [(2015) 15 SCC 184]** at the time of oral submissions. In this case there were deficiencies in the procedure adopted in the disciplinary proceedings. The disciplinary Authority reversed the findings of some charges without giving opportunity to the charged officer or show cause in the matter. The list of witnesses and copy of the documents was not furnished along with the charge sheet. Although the disciplinary authority proposed a punishment of reduction of basic pay for three years, but it was enhanced to dismissal from service at the instance of the CVO. Under these circumstances the punishment order was set aside. The facts in the present OA are different since in the case of the applicant, the proceedings under Rule 16 for minor penalty was initiated and there is no averment that there has been any deviation from the procedure, except for non-consideration of the applicant's submissions by the authorities. Hence, the judgment cited will not apply to decide the present OA.

12. In view of above, the impugned order dated 23.1.2013 (Annexure-A/6) of the Appellate Authority is not sustainable in law. Hence, the said order dated 23.1.2013 is quashed and the matter is remitted to the Appellate Authority (respondent no.2) to consider the points including the point regarding the applicant's performance during before and after the year in question as mentioned in the appeal dated 29.6.2011 (Annexure-A/4) in accordance with the law and dispose of the said appeal dated 29.6.2011 by passing a reasoned order, copy of which shall be communicated to the applicant within a period of one month from the date of receipt of a copy of this order. The OA is allowed in part as above with no order as to costs

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath