

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/661/2013

Date of Reserve: 01.03.2019

Date of Order: 18.04.2019

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

V.Satyanarayan Murty, aged about 45 years, S/o. Of V.Dharma Rao, At-Paloor Bangla Street, Berhampur, Dist-Ganjam – at present residing in KVS QRS. No.Type-3/3, Bhubaneswar – working as an Assistant, KVS Sambalpur.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
Smt.J.Pradhan

-VERSUS-

1. The Commissioner, 18, Institutional Area, Shaheed Jit Singh Marg, New Delhi-110 602.
2. Joint Commissioner (Admn.), Kendriya Vidyalaya Sangathan (HQ), 18, Institutional Area, Shaheed Jit Singh Marg, New Delhi-110 602.
3. The Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar Colony, Mancheswar, Bhubaneswar, Dist-Khurda, PIN-751 017.
4. Principal, Kendriya Vidyalaya Sangathan, Sambalpur, At/PO/Town/Dist-Sambalpur.

...Respondents

By the Advocate(s)-Mr.H.K.Tripathy

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

- i) To quash the memorandum of charges dated 03.12.2012 and punishment order dated 14/16.08.2013 under Annexure-A/10 & A/17 respectively.
- ii) To direct the Respondents to restore the pay of the applicant in Rs.12,860/- (GP Rs.4200/-).

2. Facts of the matter in brief are that the applicant while working as Assistant, Kendriya Vidyalaya, Sambalpur was served with a Memorandum of

Charge dated 03.12.2012(A/10) proposing to take action against him under Rule-16 of CCS(CCA) Rules, 1965, in respect of misconduct committed by him during the year 2012-13, while he was working as Assistant, Kendriya Vidyalaya Sangatha, Regional Office, Bhubaneswar. The Articles of Charge read thus:

Article-I

That Shri Velpula Satya Narayana Murty while working in Kendriya Vidyalaya Sangatha, Regional Office, Bhubaneswar as Assistant during the year 2012-13 (Presently working as Assistant in KV, Sambalpur) an Office Order No.F.15029/6/2011-KVS (BBS)/69511 dt. 19.03.2012 was issued to the said Shri Murty, Assistant assigning the work in Admn. Section in addition to his normal work in Accounts Section in KVS, RO, Bhubaneswar. The said Shri Murty, Assistant did not carry out the said Office Order dt. 19.03.2012 and he has failed to attend the assigned work in Admn. Section. That apart, another Office Order No.F.15029/6/2012-KVS(BBS)/9063 DT. 19.06.2012 was issued to the said Shri V.S.N.Murty, Assistant for shifting him from Accounts Section to Admn. Section in KVS, RO, Bhubaneswar. The said Shri Murty, Assistant was reluctant and hesitant as well as adamant and he has failed to report in Admn.Section in disobedience of the order dt. 19.06.2012 issued to him with the foul intention that not to work in Admn.Section. Such act of the said Shri Murty, Assistant is unbecoming as a Government employee working in KVS and prejudicial to the organization which tantamount to insubordination and disobedience to the orders of the competent authority and gross misconduct in contravention of Rule-3(1)(i) & (iii) of CCS(Conduct) Rules, 1964. Said Shri V.S.N.Murty, Assistant has thus committed misconduct in violation of Rule-3(1)(i) & (iii) of CCS(Conduct) Rules, 1964 rendering him liable to disciplinary action under CCS(CCA) Rules, 1965 as extended to KVS employee.

Article-II

That Shri Velpula Satya Narayana Murty while working in Kendriya Vidyalaya Sangatha, Regional Office, Bhubaneswar as Assistant during the year 2012-13 (Presently working as Assistant in KV, Sambalpur) was under occupation of staff Quarter No.Type-III/3 at Kendriya Vidyalaya Sangathan, Residential Complex, Mancheswar, Bhubaneswar. That the said Shri Murty, Assistant transferred from KVS, RO, Bhubaneswar to KV, Sambalpur in public interest vide Transfer Order No.F.15046/1/2012-KVS(BBS)/12748 dt. 01.08.2012 under para-7(e) of the transfer guidelines of KVS and the said Shri Murty, Assistant after his transfer did not apply to the competent authority for retention of the said Quarter No.Type-III/3 under his

occupation beyond the permissible period of two months from the transfer.

That apart, a letter No.F.15062/1-12-KVS(BBS)/20645-20646 dt. 08.10.2012 was issued to the said Shri Murty, Assistant with the direction for vacating the Quarter No.Type-III/3 under his occupation at KVS, RO, Residential Complex, Bhubaneswar by 20.10.2012 but the said Shri Murty, Assistant has failed to vacate the said quarter and kept the said Quarter No.Type-III/3 under his occupation unauthorisedly without permission of the competent authority beyond the permissible period of two months after his transfer. Such act of the said Shri Murty is an unbecoming as Government employee working in KVS and disobedience to the order of the competent authority which tantamount to gross misconduct in contravention of Rule-3(1)(ii) & (iii) of CCS(Conduct) Rules, 1964.

Said Shri V.S.N.Murty, Assistant has thus committed misconduct in violation of Rule-3(1)(i) & (iii) of CCS(Conduct) Rules, 1964 rendering him liable to disciplinary action under CCS(CCA) Rules, 1965 as extended to KVS employee.

Article-III

That Shri Velpula Satya Narayana Murty while working in Kendriya Vidyalaya Sangatha, Regional Office, Bhubaneswar as Assistant during the year 2012-13 (Presently working as Assistant in KV, Sambalpur) was dealing with (1) (a) Maintenance GPF Cashbook, (b)Release of funds (c) Submission of information/requisition to KVS(HQ), New Delhi and Vidyalaya, (d) Maintenance of KVSEWS Cash Book-placing requisition to KVS(HQ), New Delhi – release of funds and all related correspondence and preparation of annual accounts of Pay anomaly cases of PGTs, PRTs, & Misc. Categories of teachers & (4) Pay fixation cases upto Vice Principal of KVs, Bhubaneswar region including KVS, RO, Bhubaneswar staff. That the said Shri Murty, Assistant did not attend the assigned works pertaining to pay fixation and release of claims under KVSEWS on priority basis and 86 (eighty six) pay fixation cases as well as 40(Forty) cases relating to claims under KVSEWS kept pending. The employees even retired from KVS service in the year 2010, 2011 and 2012 (upto 13.07.2012) but the said Shri Murty, Assistant has failed to attend the assigned work on priority basis and kept pending the applications of such retired employees for years together as a result the claims under KVSEWS scheme has not been released in time creating an embarrassing situation for the organization. Such act of the said Shri Murty, Assistant is an unbecoming as a Government employee working in KVS which tantamount to dereliction of duties and gross misconduct in contravention of Rule-3(1)(ii)& (iii) of CCS(Conduct) Rules, 1964.

Said Shri V.S.N.Murty, Assistant has thus committed misconduct in violation of Rule-3(1)(i) & (iii) of CCS(Conduct) Rules, 1964

rendering him liable to disciplinary action under CCS(CCA) Rules, 1965 as extended to KVS employee.

3. As instructed, the applicant submitted his representation dated 17.12.2012(A/11) against the said Memorandum of Charge to the Deputy Commissioner, KVS, RO, Bhubaneswar (Res.No.3). Thereafter, the Deputy Commissioner, KVS in the capacity of Disciplinary Authority imposed the punishment on the applicant vide order dated 19.12.2012 (A/13) which reads as follows:

“Now, therefore, the undersigned being the competent authority hereby imposes the minor penalty upon the said Shri V.S.N.Murty, Assistant, KV, Sambalpur reducing his pay by one stage from Rs.12,860/- (Grade Pay Rs.4200/-) to Rs.12,360/- (Grade Pay Rs.4200/-) in the time scale of pay (PB-2 Rs.9300-34800/- and grade Pay Rs.4200/-) without cumulative effect for a period of three years with immediate effect and not adversely affecting his pension with further direction that Shri Murty, Assistant will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay”.

4. Against the above order of punishment, the applicant preferred an appeal dated 05.02.2013 (A/14) to the Joint Commissioner(Admn.), KVS (Res.No.2). Since his appeal was not considered and disposed of, the applicant had approached this Tribunal in O.A.No.248 of 2013 and on the basis of the direction issued by this Tribunal on 25.4.2013, Respondent No.2 being the Appellate Authority considered the appeal and disposed of the same vide order dated 14/16.08.2013(A/17), in the following terms:

“The penalty order passed by the Disciplinary Authority is having partially minor and major penalties in it and it is not acceptable and not implementable on technical reasons. Unfortunately the Disciplinary Authority issued such an order for the reasons best known to her. Only due to this reason the intervention of the Appellate Authority is required. Accordingly, from the documentary evidences it is proved that the Appellant is not performing to the expectation of his superiors and disobeying the

orders of his superiors, polluting the atmosphere of the KVS, RO, Bhubaneswar. The attitude of the Appellant is not acceptable and it is against the Administrative protocol and disturbed the congenial atmosphere of the office. Hence the Appellant should not be left scot free for his wrong doings. To give a strong message in the interest of the system, I have decided to tone down the penalty imposed upon the appellant vide order dated 19.12.2012 purely on technical grounds and it is therefore ordered that the pay of Shri VSN Murty, Assistant, KV, Sambalpur be reduced by one stage from Rs.12860 + 4200(GP) to Rs.12360 + 4200 (GP) in the time scale of pay of Rs.9300-34800 + 4200 (GP) for a period of one year without cumulative effect and not adversely effecting his pension with immediate effect".

5. Aggrieved by this, the applicant has approached this Tribunal praying for the reliefs as referred to above.

6. The grounds urged by the applicant in support of the relief sought for are that all the charges levelled against him are false and fabricated. In the appeal the applicant pointed out that the Disciplinary Authority has imposed major penalty against the disciplinary proceedings under Rule-16 of CCS(CCA) Rules, 1965. Although the Appellate Authority held that the punishment imposed by the Disciplinary Authority is partially minor and partially major and the same is not acceptable and implementable on technical reasons, but disposed of the appeal without considering all the points raised in the appeal. Applicant has submitted that the Appellate Authority quoted the contents of the entire appeal in the order except Paragraph-5. In Paragraph-5 the applicant had submitted in detail the chronological events for a deeper understanding of the issues. Had the Appellate Authority taken into consideration Paragraph-5 of the appeal, he would have come to a different findings otherwise than what has been decided by him while disposing of the appeal. In this respect, the applicant has brought to the notice of the Tribunal some office orders dated 19.03.2012, 19.06.2012 and note sheet dated 19.6.2012 to fortify his claim.

7. Per contra, respondents have filed a

detailed counter. They have submitted that the Appellate Authority after taking into consideration the appeal preferred by the applicant as well as all the relevant documents has passed the order. Therefore, there is no case made out by the applicant for intervention of this Tribunal.

8. I have heard the learned counsels for both the sides and perused the materials on record including the rejoinder filed by the applicant. We have also gone through the written notes of submissions filed by the parties.

9. In the written notes of submission filed by the applicant, it has been pointed out that by the time appeal was preferred by the applicant on 05.02.2013, his O.A. No.590/2012 filed before this Tribunal challenging the order of transfer had already been disposed of on 29.01.2013. Thereafter, the Respondents challenged this order of the Tribunal before the Hon'ble High Court which formed the subject matter of W.P.(C) No.5082/2013 and the Hon'ble High Court disposed of the said Writ Petition vide order dated 22.04.2013 whereafter, the SLP was also disposed of by the Hon'ble Supreme Court vide order dated 25.11.2012. According to applicant, as on date of filing of appeal, Writ Petition was not there. Therefore, nothing was mentioned in the appeal about the Writ Petition. It has been pointed out by the applicant that the allegation levelled by the respondents regarding suppression of fact, i.e., non disclosure of disposal of Writ Petition and dismissal of SLP is absolutely false and vague. On the other hand, from the order dated 22.04.2013 of the Hon'ble High Court, a prima facie ground came into being that the transfer of the applicant from Bhubaneswar to Sambalpur has been made on the ground of non discharging of duty which substantiates that he has been punished twice on the self-same allegation by way of disciplinary proceedings. He has further pointed out that the orders passed in the

O.A.No.590/2012, Writ Petition No.5082/2013 and the SLP have no bearing on the present case and therefore, the question of suppression of facts does not arise. The applicant has pleaded that the Appellate Authority vide his order dated 14/16.08.2013 has specifically given a finding that the order passed by the Disciplinary Authority is partially major and partially minor. It is the case of the applicant that the orders of the Appellate Authority does not come within the purview of Rule-11 of CCS(CCA) Rules, 1965 as the modified punishment affecting his pension amounts to imposition of major punishment under a minor departmental proceedings which per se is illegal and unreasonable and does not stand the judicial scrutiny. By cutting the judgment of the Hon'ble Supreme Court in State Financial Corporation vs. Jagadamba Oil Mills (AIR 2002 SCC 834), the applicant has pointed out that every case has to be decided according to its own merit.

10. On the other hand, in the written notes of submissions filed by the respondents, it has been submitted that after verifying the entire records, the Hon'ble High Court vide judgment dated 22.04.2013 (R/10) came to the conclusion that the present applicant hesitated to discharge his duty as assigned to him which is clear disobeying the orders of his superior and polluting atmosphere of the KVS and against the Administrative Protocol. The SLP filed by the applicant before the Hon'ble Supreme Court was dismissed vide order dated 25.11.2013. It has been submitted that it is the settled position of law laid down by the Hon'ble Supreme Court in 2009(8) Supreme 556 – Edukanti Kistamma (dead) the Lrs. & Ors. – KVS S-Vankatareddy (dead) the Lrs. & Others that challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained.

11. From the above, it is an admitted position that the applicant in the instant case, has been proceeded against departmentally under Rule-16 of CCS(CCA) Rules, 1965 which is on the subject of minor penalty proceedings. In this connection, I have gone through the appeal dated 05.02.2013(A/14) submitted by the applicant to the Appellate Authority. In Paragraph-5 of the appeal, the applicant while submitting chronology of events, in Paragraph-5, he had mentioned as under:

"6. The order dated 19.12.2012 also deals in falsehood. In the wake of interim order dated 30.8.2012 of Hon'ble CAT, a representation was sent by Speed Post No.E0513979465IN on 04.09.2012 through proper channel requesting permission to retain the quarter. No order having been passed even after being reminded on 17.11.2012, the licensee was not at all at fault in retaining the quarter. There was no duty allotment order assigning pay fixation to the appellant. The fact of having made requisition of funds for EWS and actual cause of delay in disbursement to be on account of non-release of funds by HQ have been suppressed. Any order dealing in falsehood and/or suppression is invalid in law and is liable to be set aside".

12. It seen from the orders of the Appellate Authority that applicant had been issued with an order dated 8.10.2012 for vacating the staff quarters but he did not vacate the same. Therefore, in the face of order dated 8.10.2012, applicant's representation dated 04.09.2012 for retention of quarters stood rejected. The further contention of the applicant that the order of the Appellate Authority does not come within the purview of Rule-11 of CCS(CCA) Rules, 1965 and the punishment as modified by the Appellate Authority affecting his pension amounts to major punishment under a minor departmental proceedings falls to the ground in view of Rule-11(iii)(a) of CCS(CCA) Rules, 1965, which reads as under:

"Rule-11(iii)(a) reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension".

13. Since the appellate Authority in modification of the punishment imposed by the Disciplinary Authority has awarded punishment by reducing the applicant by one stage from Rs.12860 + 4200(GP) to Rs.12360 + 4200 (GP) in the time scale of pay of Rs.9300-34800 + 4200 (GP) for a period of one year without cumulative effect and not adversely affecting his pension with immediate effect, in our considered view, this punishment is well within the ambit of Rule-11 of CCS(CCA) Rules, as above.

14. However, it is the case of the applicant that had the Appellate Authority taken into account the grounds urged in Paragraph-5 of the appeal, then, he would have come to a conclusion otherwise than what has been arrived at vide his order dated 14/16.08.2013(A/17) and to this extent, a prejudice has caused to him. I also find from the orders of the Appellate Authority that even though in his order, he has mentioned about the chronological events as submitted by the applicant in his appeal, but he has not dealt with the same with reference to materials on record while passing the order under dated 14/16.08.2013(A/17) and to that extent the order of the appellate authority suffers from infirmity. In view of this, I am of the considered view that the ends of justice would be met if the matter is remitted back to the Appellate Authority to give a relook to that part of the submission made by the applicant in his appeal at Paragraph-5 only and pass an appropriate order within a period of 45 days from the date of this order. Ordered accordingly.

16. In the result, the O.A. is allowed to the extent indicated above, with no order as to costs.

(SWARUP KUMAR MISHRA)

MEMBER(J)

