Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH JABALPUR

ORGINAL APPLICATION NO.200/00636/2012

Jabalpur, this Monday, the 6th day of May, 2019

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

Smt. Sarita Rajesh Jha, Aged about 51 years, Wife of Shri Rajesh Jha, Working as TGT (PHE) at Kendriya Vidyalaya (1st Shift) Bhopal (MP) Resident of H-26, Sterling Castel, Opposite Bawarchi Restaurant Hoshangabad Road, Bhopal (MP) **- APPLICANT**

(By Advocate – Shri Alabhya Bajpai)

Versus

1. Union of India, Through the Secretary, 'C' Wing, Shastri Bhawan, Human Resource Department, New Delhi-110001

2. Kendriya Vidyalaya Sanghatan, Through its Commissioner, 18 Institutional Area, Saheed Jit Singh Marg, New Delhi-110602

3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Opposite Maida Mill, Bhopal (MP)-462001

4. Deputy Commissioner, Kendriya Vidyalaya Sangathan, (Vigilance Section), 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110602 **- RESPONDENTS**

(By Advocate – Shri S.S.Chouhan)

(Date of reserving the order: 11.09.2018)

O R D E R

By Navin Tandon, AM.-

The applicant is aggrieved by imposition of penalty of reduction to a lower stage in the pay band 9300-34800 – GP 4800 by one stage from 19240+4800 to 18540+4800 for a period of two years without cumulative

effect and further that she will not earn increment during the currency of penalty.

2. The brief facts of the case as submitted by the applicant are as under:-

2.1 The applicant joined the services of the respondents on 12.08.1983 on the post of Physical Education Teacher (for brevity '**PET**').

2.2 She was appointed as Resource Person in the National Level Sports Meet which was organized by Kendriya Vidyalaya Sangathan (for brevity '**KVS**') Bhopal in association with the official of MP Amateur Athletic Association during the period from 12.10.2007 to 16.10.2007.

2.3 In furtherance to the preparation and conduct of sports meet, the applicant had submitted requirements for the purposes of food articles, photocopy machines on hire and other necessary expenditures which were duly sanctioned by the Principal of the same school. She had also demanded certain amount for miscellaneous expenses as also for payments to be made to the technical officials who had attended the Sports Meet. The said amount was also duly sanctioned by the Principal who was Coordinator of the Sports Meet.

2.4 Due to some anomalous complaint the respondent No.1 had issued an order of suspension on 10.04.2008 (Annexure A-10).

2.5 Subsequently a charge sheet was issued on her vide memorandum dated 21.05.2008 (Annexure A-11). She submitted her reply to the charge sheet on 05.06.2008 (Annexure A-12).

2.6 Her suspension was revoked on 01.09.2008 (Annexure A-14).

2.7 She was supplied a copy of the enquiry report by the disciplinary authority vide memo dated 30.11.2009 (Annexure A-16). She submitted her detailed representation against the report of the enquiry officer on 13.12.2009 (Annexure A-17).

2.8 However, without considering her detailed representation, the disciplinary authority vide order dated 05/09.02.2010 (Annexure A-1) imposed upon her the penalty of reduction to a lower stage in the pay band 9300-34800 – GP 4800 by one stage from 19240+4800 to 18540+4800 for a period of four years without cumulative effect with a further direction that she will not earn increment during the currency of penalty. However, it was further directed that this reduction will not have any effect of postponing her future increments of pay. The period of her suspension with effect from 10.04.2008 to 04.09.2009 has been ordered to be treated as dies non for all purposes.

2.9 Her appeal against the punishment order was rejected by the appellate authority vide order dated 13.08.2010 (Annexure A-2)

2.10 Thereafter, the applicant preferred a revision, which was also rejected by the revisionary authority vide order dated 18.10.2011 (Annexure A-3).

3. The applicant has prayed for the following reliefs in this Original Application:-

> *"**8. Relief Sought:** It is, therefore, humbly prayed that the Hon'ble Tribunal may kindly be pleased:-*
> *(i) To declare the entire proceedings initiated against the petitioner vide order dated 10.04.2008 (Annexure A-10) as void ab initio.*
> *(ii) To quash the orders dated 5/9-02-2010 (Annexure A-1) passed by Disciplinary Authority,13.08.2010 (Annexure A-2) passed by Appellate Authority and 18.10.2011 (Annexure A-3) passed by Revisional Authority.*
> *(iii) To direct the respondents to release all financial and consequential benefits in favour of the present petitioner.*
> *(iv) To issue command to respondents for production of entire record for kind perusal by Hon'ble Tribunal.*
> (v) *To grant any other relief deemed just and proper in the facts and circumstances of the case*."

4. On the other hand, the respondents have submitted as under:-

4.1 The disciplinary action was initiated against the applicant in accordance with the prescribed procedure contained in CCS (CCA) Rules, 1965, affording her all possible opportunity in her defence.

4.2 All the four charges levelled against the applicant have been established as per the enquiry report submitted by the enquiry officer.

4.3 Considering her appeal sympathetically, the penalty imposed upon her by the disciplinary authority has already been toned down by the

appellate authority from four years to two years which is commensurate to the proved charges.

4.4 The revision- petition filed by the applicant was also considered but rejected. Thus, the OA filed by the applicant is liable to be dismissed.

5. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. The learned counsel for the applicant has vehemently argued that all the disciplinary, appellate and revisionary authorities while passing the impugned orders had neither considered the contentions of the applicant, denying allegations levelled against her, nor discussed the findings of the enquiry officer. The appellant had also pleaded biasness on the part of the enquiry officer/presenting officer and, therefore, it was obligatory on the part of the disciplinary, appellate & revisionary authorities to have applied their mind to the contentions raised by the applicant.

7. On perusal of the orders passed by the disciplinary and appellate authorities we find that both the authorities have not discussed the contentions raised by the applicant in her defence brief and in the appeal. Though, the appellate authority while taking the matter leniently toned down the penalty (originally imposed upon the applicant by the disciplinary authority) to reduction to a lower stage in the pay band of

9300-34800 + GP 4800 by one stage from 19240 + 4800 to 18540 + 4800 for a period of 2 years without cumulative effect.

8. On perusal of the order passed by the revisionary authority dated 18.10.2011 (Annexure A-3) we find that in her revision-petition the applicant had raised the as many as 25 submissions, which were duly mentioned in the order passed by the revisionary authority:-

> *"(1). The Appellate Authority by passing the impugned order has not assigned any reason for conforming the findings recorded by the Disciplinary Authority while holding her guilty of misconduct of the charge levelled against her.*
> *(2). The Appellate Authority has merely reproduced the charges imposed against the revisionist and the grounds mentioned by revisionist in her memo of appeal without applying its mind to the grounds and has passed the non-speaking order.*
> *(3). The Appellate Authority ought to have applied its mind himself for assigning reasons for disagreeing with the contentions raised by the revisionist in her memo of appeal.*
> *(4). The Appellate Authority ought to have assigned reasons specially in the present case, because the revisionist had taken the plea of biasness on the part of the Inquiry Officer and Presenting Officer.*
> *(5). The findings recorded by the Appellate Authority saying that in view of natural justice, he is inclined to tone down the penalty is reflecting the fact that there is substance in the contentions raised by the revisionist in her memo of appeal but the substance has not found place in the impugned order.*
> *(6). The Hon'ble Apex Court in several judicial pronouncements have held that assigning reasons is mandatory in the light of the fact that the Appellate Authority or Revisioning Authority is to be in a position to appreciate the basis of finding and their correctness on the touch stone of basic principles of justice and equity.*
> *(7). The non-assigning of reason it decapitated the higher authority to appreciate the basis on which the penalty was imposed. Therefore, the whole purpose of availing the remedy of appeal or revision becomes redundant.*

(8). The Appellate Authority ought to have set aside the findings of the Disciplinary Authority on the ground that the department has not suffered any pecuniary loss due to the negligence and attitude on the part of the revisionist.
(9). The contentions raised by the revisionist in its memo of appeal should have been considered.
(10). The order passed by the Disciplinary Authority is perverse and illegal in the light of the fact that the Disciplinary Authority while passing the impugned order has not considered the contentions of the revisionist which vitiates the impugned order at the very threshold.
(11). The impugned order is illegal being a non-speaking order, the mere perusal of the impugned order would show that the Appellate Authority while imposing the penalty on the revisionist has not recorded any reasons for arriving at such a conclusion. The Hon'ble Supreme Court of India in Haji Abdul & Co. Vs. UOI & Ors AIR 2002 SC 2423 has observed that "Further, it is also evident that the impugned order is a non-speaking order. Unfortunately, the High Court missed these germane aspects, therefore, the order of the High Court under challenge cannot be sustained". The reproduced para lay down the law that the non-speaking order cannot be sustained in the eyes of law and therefore the impugned order in the present case deserves to be set aside on this ground alone.
(12). The Appellate Authority did not even discuss the basis of enquiry officer in coming on to the opinion about the guilt of the revisionist which fulfils the impugned order.
(13). It is evident from the last portion of the order that the Appellate Authority has not carried to apply his mind on the facts of the case and thereafter form his opinion.
(14). The Hon'ble Supreme Court in Secretary, Agricultural Produce Market Committee Vs. Quasami Jaznab Ajmatalla & Another, (2009) 9 SCC 219, Para 8 & 9 has observed that "we are conscious of the high pendency and work load on the High Courts. Some learned Judges in their effort to speed up disposals and reduce pendency tend to write cryptic and short orders. While expedition and brevity is to be encouraged and appreciated, the importance of reasons in support of the decision cannot be ignored. If judgements in first appeals are written without reference to facts (where decision in on facts) or without assigning any justifiable reasons for the decision, they will be open to legitimate criticism. The litigants will be puzzled by the lack of reasoning and will lose faith in the institution. Further any

appellate court will not be able to fathom whether the judgment is correct or not.

(15). The revisionist had also pleaded biasness on the part of the Disciplinary Authority to have applied her mind to the allegations levelled by the revisionist. The absence of such application of mind vitiates the proceedings.

(16). The pronouncing of order by the Appellate Authority cannot be a mere formality and, therefore, the Disciplinary Authority is not required to supply reasons for the conclusions drawn by her.

(17). The Appellate Authority has not even considered the pleadings of the revisionist that the Disciplinary Authority has not supplied her with the copy of the documents which have been used against her. The Appellate Authority ought to have instructed the Disciplinary Authority to supply the revisionist with the documents.

(18). It is well established principle of law that if the Charged Officer is not supplied with the documents used against it then the same shall be violative of principles of natural justice which required opportunity of hearing to the revisionist and if the documents are not supplied then it means that the fair hearing has not been given to the revisionist.

(19). The respondents have not considered the judicial pronouncement relied on by the revisionist in her representation which laid down the law that the misconduct means job done with guilty intention, but not the action done with bona fide intention.

(20). The Disciplinary Authority out to have considered the reasons given by the revisionist while denying the allegations against her.

(21). The revisionist while refuting the first charge has referred to the letter written by the Secretary, M.P. Amateur Athletic Association which contained the request to the KVS to provide for at least 60- persons rather than 40 persons for smooth function of the sports event but the Appellate Authority did not dwell into the merits of the submissions made by the revisionist.

(22). The revisionist in response to the second allegation/ charge submitted that the allegation of the Inquiry Officer that without obtaining permission from the Principal, the revisionist installed the photocopy machine in the sports arena is ill founded which is proved from their own documents only. The documents marked SE 2 and SE 3 clearly show that the Principal sanctioned the proposal of the installing the machine and only thereafter such steps were taken by the revisionist.

(23). The revisionist also refuted the third allegation on the ground that it has come very clearly in the evidence that the outside

visitors used the taxi vehicle and not the private vehicle of the revisionist. Ignorance of this evidence on record before pronouncing the impugned order renders the order not in accordance with the material available on record and therefore liable to be set aside in the interest of justice, equity and good conscious.
(24). The revisionist categorically denied the fourth allegation pertaining to employing 10 labourers without permission of the Principal. In this regard, it is submitted that the labourers were appointed in furtherance of the aforementioned letter written by the Secretary, MP Amateur Association and the same was duly sanctioned by the Principal and therefore, the allegation is without any substance.
(25). The Disciplinary Authority ought to have considered the fact that no payment for taxi or 10 labourers is done by the Sangathan and, therefore, it has not suffered any loss for which the revisionist is being penalized".

8.1 However, we find that after reproducing the above submissions in the revisionary order, the revisionary authority had not at all considered the specific allegations made by the applicant in his revision-petition. The revisionary authority has simply rejected all the above submissions and in conclusion, the revisionary authority has only observed thus:

"*The Inquiry Officer, after due examination of the records, and facts of the case has already proved the charges. The revisionist has not put forth facts to disprove them. The only material that appeal to the undersigned is the record submitted by the revisionist regarding permission accorded by the Principal for installation of Photostat machine which is related to Article II of the charge-sheet. Though such an action involving financial implication should have been done after following due procedure required for hiring such services, the record show that this has been done with the knowledge of the Principal, therefore, this aspect deserves consideration. However, it is seen that the Appellate Authority has already taken a lenient view by reducing the penalty by half i.e. reduction of pay in the pay band from four years to that of 2 years and, therefore, I am not inclined to go further to tone down the*

penalty further considering the nature of misconduct and gravity of the charges that were proved".

9. We find that since none of the authorities have dealt with specific averments made by the applicant in his defence brief, appeal and revision-petition. The fact that all the orders have merged into the final order passed by the revisionary authority, we are of considered opinion that the revisionary authority is now required to reconsider the whole matter and pass a reasoned speaking order by considering all the averments made by the applicant in his revision-petition in respect of each charges, and if need be by giving a personal hearing to the applicant.

9.1 Further we find that the appellate authority had toned down the penalty, which was earlier imposed by the disciplinary authority, and converted it into a penalty of reduction to lower stage in the time scale of pay for a period of two years without cumulative effect, which comes under the heading of 'minor penalty' [see Rule 11(iii)(a) substituted by G.I Dept of Per. & Trg notification dated 23rd August,2004]. However, while passing the order dated 18.10.2011 (Annexure A-3), the revisionary authority had not taken into account Government of India, Department of Personnel & Training O.M. No.11012/15/85-Estt. (A) dated 3rd December, 1985, [Reproduced as Administrative Instruction No.3 below F.R.54-B, Swamy's Compilation of FRSR Part-I Twenty Second Edition 2013], which clearly stipulated that the period of suspension is to be

treated as duty if minor penalty only is imposed. We find that no such order, in this regard, has been passed by the revisionary authority while affirming the appellate order. For the purpose of ready reference, we may here reproduce the relevant excerpt of aforementioned O.M. dated 03.12.1985 as under-

> *"(3)* ***Period of suspension to be treated as duty if minor penalty only is to be imposed.-*** *Reference is invited to O.M. No. 43/56/64-AVD, dated 22-10-1964 [not printed], containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under suspension, if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CCA) Rules, 1965, had suggested that in cases where a Government servant, against whom an inquiry has been held for imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for the suspension period. Government have accepted this suggestion of the Staff Side.* ***Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable under F.R. 54-B"****.*
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> (emphasis supplied)

10. In this view of the matter, this Original Application is partly allowed. The impugned order dated 18.10.2011 (Annexure A-3) passed

by the revisionary authority is quashed and set aside. The revisionary authority, while passing the order, shall comply with the directions contained in para 9 and 9.1 above and pass a reasoned and speaking order within a period of 90 (ninety) days from the date of receipt of certified copy of this order. He is further directed to communicate the order to the applicant

11. Respondent No.2 is directed to ensure that the above order of this Tribunal is complied with within the stipulated period.

12. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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