

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 046/00403 of 2015

Date of Order: This, the 17th day of January 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER

Sri Mantosh Kumar
Son of Shri Kameshwar Prasad Singh
Presently working as PGT (Computer Science)
Kendriya Vidyalaya, Dimapur
Sewak Colony, Dimapur, Nagaland – 797113.

... Applicant.

By Advocate: Mr. C.S. Hazarika & Ms. S. Begum

-Versus-

- 1 The Kendriya Vidyalaya Sangathan
Represented by its Chairman
18, Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016.
2. The Joint Commissioner (Admin)
Kendriya Vidyalaya Sangathan
18, Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016.
3. The Deputy Commissioner
Kendriya Vidyalaya Sangathan
Tinsukia Region, OIL Campus, Duliajan
District – Dibrugarh-786602 (Assam).
4. The Principal
Kendriya Vidyalaya, Lokra
P.O. – Lokra, District – Sonitpur (Assam)
Pin – 784102.

5. Shri Vijesh Kumar
The Principal
Kendriya Vidyalaya, Lokra
P.O. – Lokra, District – Sonitpur (Assam)
Pin – 784102.
6. The Principal
Kendriya Vidyalaya, Dimapur
Sewak Colony, Dimapur
Nagaland – 797113.

... Respondents

By Advocate: Mr. M.K. Majumdar, KV Standing Counsel
None for private respondent No. 5

ORDER

N. NEHSIAL, MEMBER (A):

In the present O.A. No. 046/00403 of 2015, the applicant has sought to set aside and quash the following:

- “(i) the charge memorandum dated 25.02.2013 issued by the respondent no. 4 to the applicant proposing to take action against him under Rule 16 of the CCS (CCA) Rules, 1965 as extended to employees of KVS.
- (ii) the penalty order dated 31.08.2013 issued by the respondent no. 4 to the applicant imposing a penalty of ‘CENSURE’ upon the applicant, and
- (iii) the appellate order dated 27.07.2015 issued by the respondent no. 3 to the applicant rejecting the appeal preferred by the applicant against his penalty and upholding the aforesaid penalty order.”

2. Facts of the case are that the applicant initially joined service on 05.09.2007 under the respondent Sangathan as a Post Graduate Teacher (PGT in short) at KV, Sector-8, Rohini, New Delhi – 85. Subsequently, he was transferred to KV, Lokra, Tezpur, Assam and joined on 27.06.2011. While working in KV, Lokra, he was issued a memorandum No. F. 41/KVL/2012-13 dated 27.11.2012. He was also issued another Memorandum No. 65-A/2012-13/KVL/Acad dated 31.01.2013 under Rule 16 of CCS (CCA) Rules, 1965. Subsequent to this, another Memorandum No. 65/KVL/2012-13 dated 25.02.2013 was issued to the applicant under Rule 16 of CCS (CCA) Rules, 1965. The imputation of misconduct as contained in the Memorandum were as hereunder:-

- (a) Regarding Vidyalaya Website Discrepancies,
- (b) Regarding Financial Discrepancies,
- (c) Regarding Wastage and Misappropriate Use of Vidyalaya Resources,
- (d) Regarding Miscellaneous Discrepancies/ Misconduct Behaviour, and
- (e) Regarding improper maintenance of records.

The said act on the part of Mr. Mantosh Kumar PGT (CS) tantamount to failure to maintain absolute integrity, unbecoming KVS employee and having habitual negligence which constitutes a misconduct

under Rule 3(1) (i) & (iii) and Rule 3-C of CCS (conduct) Rule, 1964 as applicable to KVS employee and code of conduct of teachers prescribed in article 59 (For teachers) of education code of KVS.

3. The above disciplinary proceeding under Rule 16 of CCS (CCA) Rules, 1965 was concluded and the applicant was imposed penalty of 'CENSURE' for having unsatisfactory performance, being discourteous, unpersuasive and unacceptable thereby committing misconduct and misbehaviour in terms Rule of CCS Conduct Rules 1964 and under Article 59-(18), (22), (28) & (34 a-ii) of Education Code for Kendriya Vidyalaya.

4. It is observed in the order imposing the above penalty of 'CENSURE' that the Disciplinary Authority has added involvement of the applicant in groupism and created a lobby against Principal which is highly objectionable as narrated at para 4 of the order dated 31.08.2013. The applicant had submitted his appeal on 10.10.2013 and this has been disposed of by the Appellate Authority vide order dated No. 42063/2014-15/KVS (RO)/TSK/Admn dated 27.07.2015, Annexure-14, page 185 to the O.A. in which the following aspects alleged misconduct and misbehavior of the applicant has been enumerated by the Appellate Authority.

- (i) Shri Mantosh Kumar did not maintain the Computer Department and Vidyalaya websites as per KVS criteria since July, 2012.
- (ii) He has been lethargic, apathetic and nonchalant attitude.
- (iii) Shri Mantosh Kumar was not able to perform his duties with efficiency.
- (iv) He did not take care of the Computer related articles and no substantial effort was initiated to repair dysfunctional articles. Moreover, after repeated directions, he did not provide the details of computers with specification to the Principal, KV, Lokra.
- (v) Shri Mantosh Kumar was not able to perform his duties with efficiency as time table In-charge. He failed to allot the free periods methodically, as a result the classes went without teacher.

5. Heard Mr. C.S. Hazarika, learned counsel for the applicant and Mr. M.K. Majumdar, learned KV standing counsel for the respondents. Perused the pleadings and all the documents.

6. We have gone through the entire records and pleadings and the submissions made by the applicant as also by the respondent authorities. It will be seen from the records that there have been modification of points of charges against the applicant from time to time and different conduct rules being quoted to have been violated by the applicant. In the initial charge memo, in

addition to other aspect, Rule 3-C of CCS (Conduct) Rule 1964 was inserted. Rule 3-C of CCS pertains to prohibition of sexual harassment of working woman whereas nothing has been elaborated about the sexual harassment charge against the applicant in the charge sheet. In the order of imposition of penalty of CENSURE on the applicant, details of the CCS (Conduct) Rule 1964 has not been mentioned at all. But no specific Rule of CCS (CCA) Conduct Rules 1964 that too non-existence is quoted and Article 59-(18), (22), (28) & (34 a-ii) of Education Code for Kendriya Vidyalaya has been highlighted. In the dismissal of applicant's appeal, the Appellate Authority has highlighted the following vague and general alleged lapses/misbehavior on the part of the applicant.

- (ii) He has been lethargic, apathetic and nonchalant attitude.
- (iii) Shri Mantosh Kumar was not able to perform his duties with efficiency.
- (iv) He did not take care of the Computer related articles and no substantial effort was initiated to repair dysfunctional articles. Moreover, after repeated directions, he did not provide the details of computers with specification to the Principal, KV, Lokra.
- (v) Shri Mantosh Kumar was not able to perform his duties with efficiency as time table In-charge. He failed to allot the free periods methodically, as a result the classes went without teacher.

Even alleged violation of Code of Conduct Rule for KVS teachers has been modified from Article 59 like clause (18), (22), (28) & (34 a-ii) of the Education Code to Article 59 (12), (22) & (23) of KVS Education Code.

7. From the above facts and records, it is amply clear that the entire disciplinary proceedings from the beginning till disposal of his appeal has been vitiated by respondent authorities. The points of charges against the applicant has been modified from time to time without following the prescribed procedure. Though the applicant has been imposed only penalty of 'CENSURE', the entire proceedings deserves to be set aside. Accordingly, we hereby set aside the disciplinary proceeding as well as imposition of penalty of 'CENSURE' vide order dated 31.08.2013.

8. O.A. stands allowed. No order as to costs.

(N. NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)