

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS : GWALIOR

ORIGINAL APPLICATION NO.202/01010/2015

Jabalpur, this Friday, the 27th day of September, 2019

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

Rajesh Prasad Soni S/o Shri Arjun Prasad Soni, Aged 41 years,
Occupation – Service – Presently posted as PGT (Commerce),
Kendriya Vidhyalaya No.2, Airforce Station, Maharajpura,
Gwalior-474020 (M.P.) **- APPLICANT**

(By Advocate – Ms.Smrati Sharma)

Versus

1. Union of India through Secretary, Ministry of H.R.D.
New Delhi-110 001.

2. Deputy Commissioner, Kendriya Vidhyalay Sangathan,Agra Region,
Grand Parade Road, Agra Cantt., Agra (U.P.) Pin 282001.

3. Principal, Kendriya Vidhyalaya, L.B.S.N.A.A.,Pologround, Mussoorie,
Uttarakhand – Pincode-248179 **- RESPONDENTS**

(By Advocate – Shri Ashish Saraswat for respondents 2 & 3)

(Date of reserving the order: 13.05.2019)

ORDER

By Navin Tandon, AM.-

The applicant is aggrieved by imposition of penalty of withholding
of one increment.

2. The brief facts of the applicant's case are as under:-

2.1 While he was posted as Post Graduate Teacher (for brevity 'PGT')
(Commerce) in Kendriya Vidhyalaya (for brevity 'KV') L.B.S.N.A.A.,
Masoori Dehradun, he was served with a charge sheet dated 25.04.2014

(Annexure A-2) under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 containing 8 Articles of charges.

2.2 He submitted his reply to the above charge sheet on 02.05.2014 (Annexure A-3).

2.3 Thereafter, the respondent No.3 without conducting a regular enquiry imposed penalty of “withholding of two future increments for three years without cumulative effect” vide order dated 12.05.2014 (Annexure A-4).

2.4 He appealed against the imposition of penalty. When it was not decided, he approached this Tribunal in OA/202/00706/2015.

2.5 His appeal against the above penalty order was decided by the appellate authority vide order dated 01.10.2015 (Annexure A-1) by toning down the penalty to “one future increment for three years without cumulative effect with stipulation that he needs to be more cautious and responsible in future so that this type of things do not arise in future”.

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

“(8.1) That, the impugned order contained in Annexure A/1 and A/4 may kindly be quashed with all consequential benefits directing the respondents to restore the benefits withdrawn in pursuance to penalty order Annexure-A/1 and A/4.

(8.2) Cost of the petition be awarded or any other order or direction deemed fit in the circumstances of the case, be issued in favour of the petitioner.”

4. The respondents in their reply have submitted as under:-

4.1 The procedure as contemplated under the rules was duly complied with and after conducting fact finding enquiry over 8 articles of charges, after affording due opportunity of hearing and following the procedure as contemplated under the rules, the order of penalty has been passed.

4.2 No regular enquiry is required if charge sheet is issued under Rule 16 of the CCS(CCA)Rules, 1965. Regular enquiry is only compulsory when charge sheet issued under Rule 14 of the CCS(CCA)Rules.

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

6. During the course of arguments the learned counsel for the applicant has placed reliance on the decision of Hon'ble High Court of Madhya Pradesh at Gwalior in the matters of **Bholeram Soni Vs. Union of India and others**, Writ Petition No.3021/2014 decided on 09/01/2015. In the said matter the Hon'ble High Court relying on the decision of Hon'ble Supreme Court in the matters of **O.K.Bhardwaj Vs. Union of India and others**, (2001)9 SCC 180, has held that when allegations are factual in nature and are denied by the delinquent employee, enquiry needs to be conducted in order to fulfil the requirement of principle of

natural justice. In this regard she has also placed reliance on an earlier decision of this Tribunal in the matters of **Gyanendra Swaroop Bhatnagar Vs. Kendriya Vidhyalaya Sangathan & others**, Original Application No.202/00463/2017 decided on 10.05.2018.

7. On perusal of the charge sheet we find that following charges were levelled against the applicant (i) for his failure in timely collection & deposit of computer fund from commerce students during 2012-13; (ii) for his writing a complaint directly against the Principal to higher authority; (iii) visiting KVS Regional Office without permission; (iv) for his negligence towards his duties; (v) for his disobedience and wilful denial of orders of higher authorities; (vi) for tampering with the documents in TA Bill; (vii) for sitting in illegal dharana; and (viii) for using unprofessional and irrelevant language against the Principal.

8. On a careful perusal of the reply submitted by the applicant on 02.05.2014 (Annexure A-3) we find that instead of submitting his case, the applicant has mainly questioned the authority of the Principal on many aspects, which cannot be expected from a subordinate staff. As per Rule 16(1)(b) of CCS(CCA) Rules, enquiry is to be conducted at the discretion of the disciplinary authority. In this case, the applicant has neither categorically denied the charges levelled against him nor had asked for any detailed enquiry on the allegations levelled against him.

Thus, the judgments relied upon by the learned counsel for the applicant and referred to in para 6 above are distinguishable on facts.

9. Whereas the disciplinary authority in his order dated 12.05.2014 (Annexure A-4) has specifically stated that the representation submitted by the applicant on 02.05.2014 consisting of six hand written pages was duly considered by him. He has specifically stated in the order that the charge sheet has been issued to the applicant on the facts and figures available in office. There was no bias against anyone. After considering the representation submitted by the applicant, and the facts of the case, the disciplinary authority imposed penalty of “withholding of two future increments for three years without cumulative effect” w.e.f. 1.7.2014 upon the applicant.

10. The appellate authority vide his order dated 01.10.2015 (Annexure A-1) after having gone through the reasons/facts submitted by the applicant in his appeal, toned down the penalty to “one future increment for three years without cumulative effect with stipulation that he needs to be more cautious and responsible in future so that this type of things do not arise in future”.

11. Law relating to scope of judicial review in disciplinary proceedings is well settled by Hon'ble Supreme Court in **B.C.Chaturvedi Vs. Union**

of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80, wherein it has been observed as under :-

*“(12). Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power, and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. **Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceedings.** Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives supports therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. **The disciplinary authority is the sole judge of facts.** Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. **The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence** and to arrive at its own independent findings on the evidence.....”*

(13). The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C.Goel (1964) 4 SCR 718: AIR 1964 SC 364, this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

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*(18)...the disciplinary authority and on appeal the appellate authority, being fact finding **authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, can not normally substitute its own conclusion on penalty and impose some other penalty.** If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof".*
(emphasis supplied)

12. In the instant case we find that the applicant was given full opportunity to defend his case. As many as eight charges were leveled against him. The applicant has not raised any issue about the competence of the authorities to hold enquiry. We find that principles of natural justice were duly complied with during the course of enquiry, in as much as before imposing the minor penalty, the applicant was given due opportunity to submit his case and only after considering the representation of the applicant the disciplinary authority has imposed the minor penalty. Thus, we do not find any illegality or irregularity in the impugned orders passed by the disciplinary as well as by the appellate authorities. Only a penalty of withholding of one future increment for three years without cumulative effect has been imposed upon the applicant as a reformative measure, which does not seem to be

disproportionate looking to the charges proved against the applicant, warranting our interference.

13. In this view of the matter, we do not find any merit in this Original Application. The same is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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