

16

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.3047/2003

New Delhi this the 17th day of December, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Shri J.P.S. Rathore,
S/o late Shri C.L. Singh,
R/o C-23-A, Mahendra Park,
Pankha Road,
New Delhi-110 019.
Applicant

(By Advocate Shri M.K. Bhardwaj)

-Versus-

Union of India & Others through:

1. The Secretary,
Ministry of Human Resource and Development,
Department of Education, C-Block,
Shastri Bhawan,
New Delhi-110001.
2. The Chairman, KVS,
Department of Education, C-Block,
Shastri Bhavan,
New Delhi-110001.
3. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016.

-Respondents

(By Advocate Shri S. Rajappa)

ORDER

Mr. Shanker Raju, Hon'ble Member (J):

Applicant impugns respondents' order dated 7.7.2003,
whereby consequent upon his retirement on 31.7.2000 a
penalty of 20% cut in basic pension for a period of five years
has been imposed.

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2. Applicant, before his superannuation, was served with a memorandum under Rule 14 of the CCS (CCA) Rules, 1965 for six articles of charge on 21.7.99. During the course of the inquiry applicant was allowed to take assistance of a Defence Assistant. However, the Inquiry Officer (IO) on 5.7.2002 wound up the inquiry and thereafter in the light of the decision of the Tribunal in OA No.295/2000 decided on 10.7.2000 to complete the inquiry by 31.7.2002 the IO after winding up the inquiry intimated the Presenting Officer forwarded his written brief on 8.7.2003 to applicant and vide letter dated 10.7.2002 the charged officer was directed to file his written brief by 18.7.2003, which was filed on 17.7.2002. Thereafter the IO held applicant guilty of the charge and this finding was forwarded and in compliance of the Rules with the approval of Chairman, KVS the penalty was imposed, giving rise to the present OA.

3. A plethora of legal grounds have been taken by the learned counsel for applicant to assail the proceedings and final order, but at the outset, it is stated that the IO has acted in violation of Rule 14 (11) of the CCS (CCA) Rules, 1965, by not considering the statement of applicant and issuing a finding without recording reasons.

4. On the other hand, learned counsel for respondents vehemently opposed the contentions and stated that the import of the finding and its conclusion is that the defence statement was considered by the IO, as such no prejudice has been caused to applicant.

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5. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view which is supported by Rule 14 (19) of the Rules ibid where the Inquiring Authority after completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government servant, or permit them to file written briefs of their respective case, if they so desire. An ex-parte inquiry can also be held if no such brief is accorded.

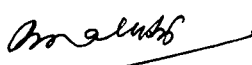
6. From the report of the IO we find that despite closure of the inquiry on 5.7.2002 the Presenting Officer was allowed to submit his brief on 9.7.2002 and on 10.7.2002 applicant was accorded an opportunity to submit his written brief on 18.7.2002 and the same undisputedly was submitted on 17.7.2002, yet in the finding of the IO which was prepared and submitted on 20.7.2002, there is no reference to the defence statement or contentions of defence taken by applicant in his written brief.

7. The Apex Court in **Anil Kumar v. The Presiding Officer**, 1998 SCC (L&S) 813 has held that for want of discussion by the IO as to why the prosecution has overweighed the defence put-forth by the delinquent the findings are not sustainable. Moreover, it is incumbent upon the IO under Rule 14 (23) of the Rules ibid to consider the defence produced by the charged officer. As this has not been done the report of the IO is an ex-parte report, without dealing with the contentions of applicant, which has greatly prejudiced him and is in violation of the principles of natural

justice. The subsequent orders passed by the authorities have also not considered this aspect of the matter and is an illegality as well.

8. The other legal grounds taken by applicant are not adjudicated upon.

9. In the result, for the foregoing reasons, OA is allowed. Impugned order is quashed and set aside. Respondents are directed to restore back to applicant his withheld 20% pension within a period of three months from the date of receipt of a copy of this order. No costs.


(S.K. Malhotra)
Member (A)


(Shanker Raju)
Member (J)

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