

(2019) 09 DEL CK 0516

In the Delhi High Court

Case No : Civil Writ Petition No. 10481 Of 2019

Directorate Of Education & Ors

APPELLANT

Vs

Brahampal Singh

RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3

Citation : (2019) 09 DEL CK 0516

Hon'ble Judges : G.S.Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Gaurav Dhingra, M.K. Gaur

Final Decision : Dismissed

Judgement

G.S. Sistani, J

CM. APPL 43340/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

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3. The petitioners are aggrieved by an order dated 28.03.2019 passed by the Central Administrative Tribunal (the Tribunal), by which OA filed by the respondent herein stands allowed.

4. Some necessary facts which are required to be noticed for disposal of this writ petition are that the respondent was working as a Trained Graduate Teacher (English) with the Directorate of Education (DOE), Government of NCT of Delhi. Disciplinary proceedings were initiated against him. A charge-memo was issued vide order dated 15.04.2008 wherein the petitioners proposed to hold an inquiry against the respondent under Rule 14 of the CCS(CCA) Rules, 1965. The

statement of charges as framed are reproduced hereinunder:

"Article-I

That Sh. Braham Pal Singh, TGT (English) while working in GBSS, Mubarakpur Dabas has been found to lure the students for tuition and make discriminatory behaviour with the students who do not take tuitions from him.

The above act of Sh. Braham Pal Singh, TGT (English) is unbecoming of a Government servant and is in violation of Rule 3 of CCS (Conduct) Rules, 1965.

Article-II

That Sh. Braham Pal Singh, TGT (English) while working in GBSS, Mubarakpur Dabas has been found not to mark the presence or absence in the attendance register of students of class-VI.

Thus, Sh. Braham Pal Singh, TGT (English) failed to maintain devotion to duty and act with in a manner of unbecoming of a Government servant and thereby violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

Article-III

That Sh. Braham Pal Singh, TGT (English) while working in GBSS, Mubarakpur Dabas has been found that during the unit test he has left the attendance column/marks column blank.

The above act of Sh. Braham Pal Singh shows that he has least respect for the Departmental norms and failed to maintain devotion to duty and acted in a manner which is unbecoming of a Government servant and is in violation of Rule 3 of CCS (Conduct) Rules, 1964.

Article-IV

That Sh. Braham Pal Singh, TGT (English) while working in GBSS, Mubarakpur Dabas has been found in the habit of leaving the school at his will without obtaining the permission of the HoS. When he was asked for his absence by the HoS, he behaves rudely by using filthy language.

The above act of Sh. Braham Pal Singh is subversive of discipline of the school and is unbecoming of a Government servant and is in violation of Rule 3 of CCS (Conduct) Rules, 1964."

5. An inquiry was ordered against the respondent. The Inquiry Officer submitted a report dated 22.07.2008. In the report, it was held that the charges against the respondent were not proved. The Disciplinary Authority issued a disagreement note dated 18.04.2011 and after considering the representation of the respondent, an order dated 11.08.2011 was passed, which imposed a punishment of "reduction to one lower stage in the time scale of pay for a period of one year" and directed that "he would not earn increment of pay during the period and on expiry of the period, the reduction will not have the effect of

postponing the future increments of pay".

6. An appeal filed by the respondent was rejected by the appellate authority on 19.10.2012, which led to the filing of the OA by the respondent before the Tribunal. The Tribunal has allowed the OA, which has led to filing of the present writ petition.

7. The learned counsel for the petitioners submits that the allegations against the respondent were grave and serious as an anonymous complaint was received against the respondent that he would lure students to take tuitions from him and pressurize them either by not marking their attendance in the register or keep the attendance blank and, moreover he was in the habit of leaving the school at his will. He submits that the Disciplinary Authority was well within its right to differ from the inquiry report; and keeping the totality of the facts and circumstances into consideration, the disagreement note was submitted and finding the explanation given by the respondent to be not satisfactory, punishment was awarded.

8. We have heard the learned counsel for the petitioners.

9. On a reading of the disagreement note, which has been placed on record and has been referred to by the learned counsel for the petitioners; and since the reasons for the Disciplinary Authority to differ from the Inquiry Officer are not discernible from the disagreement note, we are compelled to examine the Inquiry Report, copy of which has been placed on record. We have examined the Inquiry Report closely and deem it appropriate to reproduce some portions, which are given below:

"In the examination in chief he has submitted that his predecessor Sh. C. Singh who has expired on 17/03/08 and he joined the present school on 15/05/08 as Vice Principal/HOS, Mubarakpur Dabas. He further submitted that during the period under his control the C.O. always obtained permission before leaving the school. Further the C.O. never behaved rudely by using filthy language and the conduct of C.O. was satisfactory. In the last he has submitted that from the period 15/05/08 to till date the C.O. neither lures the students for any kind of tuition nor he threatened any student to fail.

During cross-examination by Sh. Arun Kumar, D.A. he has submitted as under:

"Q.1 Have you seen any evidence of luring the student (sic students) for tuition (sic tuitions) or making discriminatory behavior with the students?

Ans. I have not seen any evidence of luring the student (sic students) or discriminating between the students. Further I have not received any such complaint from the students.

Q.2 Whether the C.O. has left attendance column blank in the attendance register as far as Original record is concerned?

Ans. After inspecting the original I found that C.O. has not left any column blank

in the attendance register.

Q.3 Whether you have found any attendance column blank during the unit test as far as Original (sic is) concerned?

Ans. After inspecting the original I found that C.O. has not left any column blank in the attendance register during the unit test.

Q.5 Whether you have found any memo or direction or SCN issued to the C.O. that he has left the school at his will without obtaining prior permission of HOS?

Ans. No, I do (sic did) not found (sic find).

Q.6 Whether you have found any memo or direction or SCN by the then HOS that the C.O. behave (sic behaved) rudely or used filthy language?

Ans. No, I do (sic did) not found (sic find).

Q.7 Whether it is true that the record of unit test which has been shown to you is not a primary record but have (sic has) to be prepared from the award list?

Ans. Yes.

Q.8 Whether it is true that the record mentioned in the teacher diary has to be verified by the HOS and the HOS must check the marks mentioned in the Award-list?

Ans. Yes.

Q.9 Whether it is true that the record of unit test as mentioned in the teachers diary is to be verified from any person or not?

Ans. Yes, it has to be verified by the School official.

Q.10 Whether by leaving any column blank in the record of unit in test the teacher's diary any favour can be made to any person?

Ans. No.

Q.11 Whether it is true that the column left blank in the marks of unit test in teacher's diary belong to earlier period i.e. of approx. 2 to 3 months earlier and between this period the teachers diary has been checked?

Ans. I have inspected the original record and found that the column left blank are crossed by the E.O. Zone 12 and some of the column belongs to 1st unit test and after 1st unit the teachers diary was verified by the then HOS."

...On 22-10-09 in the first instance he has submitted his statement but later on when the cross examination started he requested for change of his statement and adjournment, so the next date of hearing was fixed for 03-11-09.

In the examination in chief Sh. S.S. Sehrawat has submitted that he along with E.O. Zone XII had inspected the GBSS Mubarakpur Dabas. He found that the

attendance of the students was not marked by the C.O. on daily basis rather it was marked in a very casual manner with no continuity. Some of the students informed during the inspection that the teacher was making constant pressure upon them for tuition. When they did not accept to this pressure they were awarded poor marks in the exam.

During the cross examination of Sh. S.S. Sehrawat by Sh. Arun Kumar, D.A. (relevant questions are reproduced below)

Q.12 Who is the custodian of attendance register.

Ans. The H.O.S. is custodian of attendance register.

After inspection of the original attendance register of Class VI-C of the C.O. by Sh. S.S. Sehrawat the D.A. has asked the following questions.

Q. What are the irregularities observed by you? Ans. At present there is no irregularities found.

Q. Whether there is sign of any inspection team member in the attendance register inspected by you?

Ans. No, none of the team member has (sic members have) put the signature in the attendance register.

Q. Can you identify the column alleged by you as blank in the attendance register?

Ans. No.

Q. What is the meaning of daily basis or casual basis continuity?

Ans. The meaning of both the words are same, the column of previous days of attendance register are not marked. At present there is no anomalies in the attendance register.

Q. Whether it is true that none of the student have given the statement against the C.O. but just to create false case you have mentioned about the statement that's why you do not know the name of the students and not taken their written statement before the C.O.?

Ans. The students (sic have) given the statement verbally and statement was not taken in writing by me. However I do not know the name of the students. The C.O. was not allowed in the room as I think the students will come in the pressure.

Q. Whether the four students when you alleged that they have complaint about the C.O. asked anything about the marks given to them?

Ans. The four students told that the C.O. has given them less marks.

Q. Whether you are sure that the answer sheets were checked properly or not of

that four students?

Ans. I have not checked the answer sheets.

Q. Whether any students told you that during the unit test the C.O. has ever put attendance in spite of absence of the students?

Ans. No, such instance comes during the inspection.

Q. Whether nay (sic any) students has (sic have) told you that the C.O. has make (sic made) discretionary behavior with the students who do not take tuition from him?

Ans. No such instance comes during the inspection.

Q. Whether you have found that the C.O. left attendance column/marks column blank during the test. If yes please identified (sic identify) from the original record?

Ans. As far as original record produced before me I cannot identified (sic identify).

Q. Whether any official or any person has told that C.O. left the school without obtaining permission or is in a habit of leaving school without permission of the H.O.S.?

Ans. No such information has been received.

Q. Whether you have verified that the students who have claimed before you that they were awarded poor marks in the Exams?

Ans. I have not verified any such thing.

Q. Whether you have any documentary evidence in support of the allegation that the C.O. lure (sic lured) the students for tuition?

Ans. No, I do not have any.

Q. Whether you can identified (sic identify) those four students who have alleged the C.O. lure (sic lured) them for tuition?

Ans. I cannot identified (sic identify).

Q. Whether you or any team member checked the teacher's attendance register?

Ans. No, we have not checked."

10. In the backdrop of the foregoing depositions recorded, the short question which arises for our consideration is whether the conclusion arrived at by the Disciplinary Authority was based on any evidence on record; or whether the conclusion arrived at is based on no evidence.

11. Upon examination of the inquiry report, in particular the depositions, we are of the view that in the present case there is no evidence to show that either the

attendance register was left blank; or that the respondent would leave the school at his will without informing the Head of School; or that he lured students for tuition; and accordingly, there is no basis for the Disciplinary Authority to have differed from the view taken by the Inquiry Officer. We are accordingly of the view that the Tribunal has correctly reached the conclusion that the charges against the respondent were not proved and allowed the OA.

12. In the case of *Union of India v. P. Gunasekaran*, reported at (2015) 2 SCC 610, the Apex Court, in paras 12 and 13, has held as under:

"12. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappraisal of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappraise the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

13. Applying the law to the facts of the present case, we find no infirmity in the order passed by the Tribunal, which would require interference by this Court under Article 226 of the Constitution of India. We find no merit in the writ petition. The same is accordingly dismissed.

CM.APPL 43341/2019(stay)

14. The application stands dismissed in view of the order passed in the writ petition.