

(2023) 03 CAT CK 0059

In the Central Administrative Tribunal

Case No : Original Application No. 202, 00455 Of 2018

Jeewan Ram Meena

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 27-03-2023

Acts Referred:

Central Civil Services (Classification Control And Appeal) Rules, 1965 — Rule 14, 16

Citation : (2023) 03 CAT CK 0059

Hon'ble Judges : Akhil Kumar Srivastava, Member (J); Member (J), Member (A)

Bench : Division Bench

Advocate : Alok Katare, Rajneesh Sharma

Final Decision : Partly Allowed

Judgement

JUDGMENTTAG-JUDGMENT

Akhil Kumar Srivastava, Member J

1. By way of this Original Application applicant has sought setting aside of order dated 26.06.2015 (Annexure A/1) and order dated 07.03.2018 (Annexure A/2) passed by the respondents and direction to the respondents to release the consequential benefits and monetary benefits thereupon along with interest @ 9% p.a.

2. The facts of the case are that the applicant was appointed as PRT in the year 1995 and was promoted as TGT on 31.05.2008. While serving at Sheopur the applicant was issued a memorandum dated 05.05.2015 (Annexure A/3) whereby statement of imputations of misconduct was imposed upon him under Rule 16 of CCS (CCA) Rules, 1965. The applicant submitted his reply on 14.05.2015 (Annexure A/4), denied the charges leveled against him. However, the respondent without considering his reply, has passed the impugned order of punishment dated 26.06.2015 (Annexure A/2) whereby the minor penalty of withholding of one increment without cumulative effect for a period of three years has been imposed on the applicant. Thereafter the applicant preferred an

appeal before the respondents which was decided in compliance of order dated 10.01.2018 passed by this Tribunal, whereby the order dated 26.06.2015 passed by the disciplinary authority was upheld by the appellate authority vide order dated 07.03.2018 (Annexure A/2).

3. The respondents in their reply have submitted that the order dated 26.06.2015 and 07.03.2018 have been passed by the competent authority, while exercising the powers conferred under Rule 16 of CCS (CCA) Rules, 1965. The appellate authority has confirmed the order passed by the disciplinary authority. The disciplinary authority passed the order after affording opportunity to the applicant by giving him show cause notice/memo dated 05.05.2015, asking his explanation in regard to the complaint received from the parents of the students and the misconduct on behalf of the applicant. It has been further submitted that the applicant has admitted the facts as mentioned in the complaint and explained the reasons in regard to complaint which was submitted by the parents. It is submitted by the respondents that one of the complaint was made by Mr. Sehgal on his letter head who was the parent of student of Class X of the school and second one is the joint complaint by the other parents of the students of the school. Further it is submitted that the disciplinary authority who imposed the minor penalty is competent authority to decide whether regular inquiry is required or not. The reply of the applicant was duly considered by the disciplinary authority and after due consideration the authority passed the order of penalty of withholding of one increment without cumulative effect w.e.f.01/07/2015 for a period of three years. The respondents have followed the process and afforded the opportunity to the applicant by seeking explanation and applicant does not denied the allegation against him. It is the discretion of the disciplinary authority to conduct the detailed enquiry but it not mandatory to conduct a detailed inquiry for inflicting the minor penalty. The regular inquiry is only compulsory when the charges are leveled under Rule 14 of the CCS(CCA)Rules, 1965. Therefore the impugned order is just and proper.

4. In rejoinder the applicant has submitted that he never accepted the charges leveled against him. Further merely writing a phone number and complete address would not proved the charges against the applicant.

5. We have heard the learned counsel for both the parties and have gone through the pleadings and documents annexed therewith.

6. In the instant case, the main question for determination is whether, while imposing the punishment for minor penalty, any enquiry is to be done or not when the charges are specifically denied by the delinquent employee.

7. The applicant has relied upon the order dated 10.05.2018 passed by this Tribunal in O.A. No.202/463/2017 whereby the judgment of Hon'ble High Court of Madhya Pradesh, Bench at Gwalior in Writ Petition No.3021/2014 (Bholeram Soni vs. Union of India and Others) dated 09.01.2015 has been relied upon, which reads as under:-

"7. The core issue is whether in the aforesaid factual backdrop, it was necessary to conduct the enquiry. Disciplinary authority opined that since the allegations are based on documentary evidence, there is no need to conduct a departmental enquiry. In the opinion of this Court, the point involve in this matter is no more rest integra. The curtains are finally drawn by the Apex Court in the case of O.K. Bhardwaj vs. Union of India & Ors., (2001) 9 SCC 180. In the said case, the Apex Court opined as under:-

"Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."

Thus, it is clear that when allegations are factual in nature and are denied by the delinquent employee, enquiry needs to be conducted in order to fulfill the requirement of principle of natural justice.

8. On perusal of the reply to the memo dated 05.05.2015, the applicant has specifically denied the charges levelled against him by the authority. So, as per law settled by the Hon'ble Apex Court, which has been subsequently followed by the Hon'ble High Court, as discussed above, enquiry needs to be conducted to find the factual accuracy. In the present case, the applicant has been prejudiced of his valuable right as per principle of natural justice to put forth his defence by leading evidence in the enquiry. If enquiry would have been conducted, the applicant would have been in a position to lead the evidence to establish his defence. The reply filed by the respondents submitting that the applicant has admitted the fact regarding beating the students, misbehaving with the parents, creating hurdles and showing non cooperation with the officer in charge of a school, we are not convinced with the same as merely writing a complaint on letter head, does not prove the misconduct of the applicant as the respondents have not attached the said with their reply. So, to establish the fact of misconduct, which has been specifically denied by the applicant, it was required to be proved if any enquiry was instituted. Thus, we find that the instant case is fully covered by the judgment passed by the Hon'ble High Court of Madhya Pradesh in the case of Bholeram Soni (supra) and the law settled by the Hon'ble Apex Court in the case of O.K. Bhardwaj (supra).

9. In view of the above, this Original Application is partly allowed. Impugned order dated 26.06.2015 (Annexure A-1) and order dated 07.03.2018 (Annexure A-2) are quashed and set aside. Respondents are directed to conduct de-novo inquiry by affording opportunity of hearing to the applicant. No order as to costs.