

(2018) 08 CAT CK 0008

In the Central Administrative Tribunal

Case No : Original Application No. 2796 Of 2013

Rajnish Kumar

APPELLANT

Vs

Navodaya Vidyalaya Samiti And Ors

RESPONDENT

Date of Decision : 31-08-2018

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(i), 3(1)(ii), 3(1)(iii)

Citation : (2018) 08 CAT CK 0008

Hon'ble Judges : Nita Chowdhury, Member (A); S.N. Terdal, J

Bench : Division Bench

Advocate : Yogesh Sharma, S. Rajappa

Final Decision : Dismissed

Judgement

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Nita Chowdhury, Member (A)

1. By filing this OA, the applicant has sought the following reliefs:-

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned penalty order dated 24.5.2011, appellate authority order dated 31.07.2012, charge sheet dated 20.03.2009, inquiry office report communicated on 14/21.10.2010 and whole inquiry proceedings declaring to the effect that the same are illegal, unjust, against the rules, against the principle of natural justice and against the law of the land and consequently pass an order directing the respondents to restore the pay of the applicant with all other consequential benefits impugning the arrears of difference of pay and releasing of benefits of MACP Schemes etc

(ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

2. Brief facts of the case are that the applicant, who is working as Catering

Assistant in Navodaya Vidyalaya Samiti (NVS) was served a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 vide Memorandum dated 20.3.2009 with an opportunity to him to submit his written statement in his defence, the following article of charges:-

"ARTICLE-I

That the said Sh. Rajneesh Kumar, Catering Assistant at Jawahar Navodaya Vidyalaya Jaffarpurkalan Delhi-II while carrying out the duties of Catering Assistant on 24-25 January 2009 was supposed to perform the following duties towards mess and dinning hall as per Navodaya Vidyalaya Samiti-Hqrs. Circular F. No.25-5/99-NVS (Acad.), dated 26.02.2001 contain in Compendium of Circulars Vol-I:-

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On 24.01.2009 after taking dinner, all the students moved to their dormitories. But, on 25.01.2009 early in the morning of intervening night of 24th & 25th January at around 2.30 a.m. some students had indisposition of vomiting and los motions. Those students who complained of sickness were taken by the House Masters & parents of children to nearby Rao Tula Ram Hospital which is a Delhi Government Hospital located at aboutg one K. M. distance from the Vidyalaya. About 160 students were treated at the same hospital.

The sickness of children in such a large scale is caused either due to food poisoning or some foul play done to the food stuff by some miscreant (s). If it happened due to food poisoning the responsibility directly goes to the Catering Assistant under whose control the food was prepared. If a foul play was done the supervision and security of good stuff was very poor. Again the responsibility for this lapse lies on the supervisor of the mess i.e. Catering Assistant. In both the cases Sh. Rajeneesh Kumar, Catering Assistant has neglected his lawful duty of preparing good quality, fault free and protected food stuff to be served to the children.

ARTICLE-II

That the said Sh. Rajneesh Kumar, Catering Assistant, Jawahar Navodaa Vidyalaya Jafarpurkalan, Delhi is alleged to have not got washed the fruits and vegetable items with dilute potassium permagnate before cooking on 24.01.2009 which is breach of directions of the Samiti Contained in Navodaya Vidyalaya Samiti-Hqrs. Circular F. No.5-4/87-88/NVS (Admn.) dated 17.05.2008. Had the vegetables been washed with potassium permagnatethe foreign contents in the vegetables could have been washed or killed and the incidence of loose motions/ vomiting could have been avoided. Being a Catering Assistant he has failed to manage the Vidyalaya mess resulting in a serious incidence of large scale sickness of children occurred on 24-25 January 2009.

ARTICLE-III

That Sh. Ranjeesh Kumar, while working as Catering Asstt. At Jawahar Navodaya Vidyalaya Jaffarpurkalan Delhi-II is alleged to have not made any efforts for proper protection of eatables, food stuff and kitchen area from rodents, cats, dogs etc. which is contravention of the directions contained in Samiti's circular F. No.5-4/99-NVS (SA) dated 30.08.1999.

Further, the news of the above incident came into the notice of the media and the same was telecasted by various T.V. channels immediately and was published in the leading newspapers also on 26.01.2009. Thus, the image of this prestigious Navodaya Vidyalaya located in the capital of India is tarnished in public due to his negligence.

Thus, Sh. Ranjeesh Kumar, Catering Assistant, Jawahar Navodaya Vidyalay Jaffarpurkalan, Delhi II failed to maintained absolute devotion to duty which is unbecoming of an employee of the Samiti thereby contravening Rule 3 (1) (ii) and (iii) of CCS (Conduct) Rule 1964."

2.1 The applicant made a detailed representation dated 25.4.2009 against the said chargesheet. However, the Disciplinary Authority decided to conduct an inquiry against the applicant and appointed one Dr. Chob Singh as an Inquiry Officer.

2.2 According to the applicant, the Inquiry Officer conducted the inquiry in his own way without following the principle of natural justice, without following a procedure prescribed under Rule 14 of CCS (CCA) Rules and even without giving any opportunity to the applicant to submit his defence and concluded the inquiry in short cut method and completed the same only in two dates, i.e., 19.1.2010 & 25.2.2010.

2.3 The Inquiry Officer submitted his report and the same was communicated to the applicant by the Disciplinary Authority vide letter dated 14.2.2010 in which the Inquiry Officer proved the charge nos.1 and 3 and not proved the charge No.2.

2.4 Against the said Inquiry Officer report, the applicant submitted his detailed reply in which specifically alleging violation of Rules and principle of natural justice by Inquiry Officer.

2.5 Besides aforesaid, the applicant also explained each and every facts of his defence and evidence which were not considered by the Inquiry Officer at all in his report.

2.6 However, according to the applicant, the Disciplinary Authority without considering the representation submitted by him against the said Inquiry Officer's report and without considering the pleas taken by him in his representation against the IO's report, passed the impugned order dated 24.5.2011 and imposed a minor penalty of withholding of one increment for one year without cumulative effect. The Disciplinary Authority while passing the aforesaid impugned order has held that all the charges are proved whereas the

IO proved only two charges, out of three charges.

2.7 Against the aforesaid penalty order, the applicant preferred an appeal dated 18.7.2011 to the Appellate Authority. The Appellate Authority, according to the applicant, gone beyond its jurisdiction and elaborated the charges in its own way and tried to justify the charges which is not permissible in the eyes of law as at the stage of Appellate Authority, the Appellate Authority has no power to clarify the charges or to elaborate the charges. The Appellate Authority rejected the appeal of the applicant vide impugned order dated 31.7.2012.

2.8 Being aggrieved by the aforesaid actions and orders of the respondents, the applicant has filed the instant OA seeking the reliefs as quoted above.

3. Pursuant to notices issued to the respondents, they filed their reply in which they have stated that the applicant was issued a chargesheet under Rule 14 of CCS (CCA) Rules, 1965, vide Memorandum dated 30.4.2009 with an opportunity to the applicant to submit his written statement in his defence within a period of 10 days. However, applicant submitted his application dated 9.4.2009 seeking grant of extension of 15 days to submit his written statement and the same was acceded to by the competent authority vide Office Memorandum dated 22.4.2009. Thereafter applicant had submitted written statement dated 25.4.2009 denied the charges levelled against him. The said written statement was considered by the competent authority which found the same unsatisfactory and accordingly Inquiry Officer, namely, Dr. Chob Singh, Assistant Commissioner and Shri H.C.S. Rathor, O.S., JNV Distt. Tonk (Raj.) as presenting officer were appointed by the Disciplinary Authority and later on due to administrative reasons, in place of Shri H.C.S. Rathor, Shri S.F. Haque, O.S., JNV Distt. Bharatpur (Raj.) was appointed as presenting officer vide office order dated 31.8.2009.

3.1 After conducting the inquiry, the Inquiry Officer had submitted his report on 6.9.2010, which was forwarded to the applicant with an opportunity to submit his representation within a period of 15 days, vide office letter dated 21.10.2010. In response to the same, the applicant had submitted his representation dated 6.11.2010 which was considered by the disciplinary authority and reached to the conclusion that the applicant is guilty. Finally, a penalty of withholding of one increment for the period of one year without cumulative effect was imposed upon the applicant vide office order dated 24.5.2011.

3.2 Later on, the applicant preferred an appeal dated 18.7.2012 before the Appellate Authority, i.e., Joint Commissioner (Admn.) NVS against the said penalty order dated 24.5.2011 and the said appeal was rejected by the Appellate Authority vide order dated 31.7.2012.

3.3 The respondents submitted that inquiry was conducted as per procedure laid down in CCS (CCA) Rules, 1965 and vide Order Sheet No.07 dated 25.2.2010 (Annexure R-1), the applicant admitted that he got the ample opportunities to defend the case and further the applicant had no grievances in any matter in the

inquiry. They further stated that applicant has never objected to non-following the prescribed procedure as laid down in CCS (CCA) Rules, 1965 during the course of inquiry.

3.4 They further stated that as per Daily Order Sheet (DOS) No.03, the applicant was requested to intimate the name of his Defence Assistant to the IO but he had not intimated. Further, as per the said DOS No.05, the applicant has already referred to have any Defence Assistant in the case. Besides above, as per DOS No.03, the applicant was given ample opportunities to submit the list of documents and witnesses required for the purpose of his defence. As per DOS No.04, the applicant intimated that he does not require any documents for his defence. Further, as per DOS No.05, the case of prosecution witness of the defence was taken up and applicant himself produced as defence witness who was cross examined by the Presenting Officer & IO. Thus, IO has not skipped the mandatory stage which can be verified from the Inquiry Report.

3.5 The respondents also stated that the aforesaid punishment imposed upon the applicant by the Disciplinary Authority after considering the report of the Inquiry Officer, representation of the applicant and all other relevant records.

3.6 Lastly they stated that the instant OA is liable to be dismissed by this Tribunal.

4. The applicant has also filed his rejoinder reiterated the averments made in the OA and denied the averments made by the respondents in their counter affidavit.

5. We have heard Shri Yogesh Sharma, learned counsel for the applicant, and Shri S. Rajappa, learned counsel for the respondents and have also perused the pleadings available on record.

6. Shri Yogesh Sharma, learned counsel for the applicant, submitted that the inquiry proceedings initiated by the inquiry officer are vitiated as the relevant Rules and principle of natural justice have not been followed by the IO while conducting the inquiry. To this contention, Shri S. Rajappa, learned counsel for the respondents submitted that while conducting the inquiry, the Inquiry Officer has followed all the rules and procedures as also principle of natural justice as is evidence from the Daily Order Sheets annexed with the counter affidavit. We have also perused the same, we find that inquiry proceedings were initiated as per rules and principles of natural justice have also been followed by the IO.

7. Another contention of learned counsel for the applicant is that while IO vide his report dated 6.9.2010 concluded that only charge nos.1 and 3 were proved and charge no.2 was not proved but the Disciplinary Authority held that all the charges have been proved. To this contention, learned counsel for the respondents submitted that the Disciplinary Authority after consideration of the IO report as well as representation submitted by the applicant against the said IO report, held that applicant being the Catering Assistant is found to be negligent towards his duties as during the said inquiry proceedings, the applicant

himself admitted that in School Mess, presence of cats and dogs are normal which shows that hygienic condition of Mess is not proper and being the incharge of the said Mess, the applicant is duty bound to take care of such hygienic condition and he ought to have taken necessary security steps to prohibit entry of such animals in Mess premises. The applicant should have discussed this issue with the Principal to resolve the same but he failed to do so. Because of this unhygienic condition, on 24.1.2009 after dinner, on the next day, i.e., 25.1.2009, approximately 160 children suffered from vomiting and loose motion and they were immediately taken to the hospital which tarnished the image of the school and therefore, charges levelled against the applicant stood proved. Counsel further submitted that the Disciplinary Authority imposed the punishment upon the applicant vide impugned order on the basis of the observations made by it in its order dated 24.5.2011 on the basis of the report of the IO as well as after considering the representation submitted by the applicant. We have also perused the order of the Disciplinary Authority and find that Disciplinary Authority gave its observations in its order dated 24.5.2011 on the basis of the report of the IO and imposed the punishment upon the applicant. Therefore, the technical plea raised by the applicant's counsel that the Disciplinary Authority held that all the charges were proved against the applicant is not sustainable in the eyes of law having regard to the observations made by the Disciplinary Authority in its aforesaid order.

8. The applicant has also questioned the order passed by the Appellate Authority on the ground that the said Appellate Authority had exceeded its power as the charges cannot be explained and specified in the appellate Order. We have also perused the said impugned order of the Appellate Authority, we do not find any illegality in the said order passed by the Appellate Authority.

9. Counsel for the applicant has also raised the plea that the punishment awarded to the applicant by the disciplinary authority is disproportionate to the gravity of the misconduct alleged against the applicant.

10. So far as the contention of applicant that punishment awarded is not commensurate with the gravity of misconduct alleged against the applicant is concerned, It is well settled proposition of law, as held by the Hon'ble Apex Court in catena of cases, that it is only in those cases where the punishment is so disproportionate that it shocks the conscience of the court that the matter may be remitted back to the authorities for reconsidering the question of quantum of punishment. In Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad reported in 2010 (3) ALSJ SC 28 it has been held by Hon'ble Supreme Court as under:-

"The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal it cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of

the Court/Tribunal".

11. Having regard to the gravity of the article of charge nos.1 and 3, and the punishment awarded by the disciplinary authority vide impugned order dated 24.5.2011, we are of the considered view that punishment imposed by the impugned order dated 24.5.2011 is not so disproportionate that it shocks the conscience of the court, therefore, we do not think any case is made out for interference by the Tribunal even on the question of quantum of punishment.

12. In view of the above, for the foregoing reasons, we do not find any justifiable reason to interfere with the impugned orders. Accordingly, the instant OA being devoid of merit is dismissed. There shall be no order as to costs.