

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 04.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.29589 of 2015

and

M.P.No.1 of 2015

CDS Yadav TGT (Hindi)
Kendriya Vidyalaya
Minambakkam, Chennai - 600 027 Petitioner

Vs.

1. The Joint Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016.
2. The Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Chennai Region, IIT Campus,
Chennai - 600 036.
3. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104 ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for a writ of certiorari, calling for all the records connected in passing order dated 08.07.2015 in O.A.No.1301 of 2013 on the file of 3rd respondent in confirming the order No.F.17062/AP-25/2012-KVS (Vig)/1150-1154 on the file of the 1st respondent dated 14.08.2013 and the order No.17062/92/CDSY-TGT/2011-KVS(CHER)/8407 on the file of the 2nd respondent dated 28.08.2012 and quash the same.

For Petitioner : Mr.M.Selvaraj

For Respondents 1 & 2 : Mr.M.Vaidyanathan

R3 - Tribunal

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order of the Central Administrative Tribunal made in O.A.No.1301 of 2013 dated 08.07.2015.

2. Facts deduced from the material on record are that, when the writ petitioner was working at Kendriya Vidyalaya, Meenambakkam, he was issued with Charge Memorandum dated 05.04.2011, which is extracted hereunder

KENDRIYA VIDYALAYA SANGATHAN

REGIONAL OFFICE

IIT CAMPUS, CHENNAI

F.17062/92/CDSY-TGT/2008-KVS (CHER)

Date: 05.04.2011

MEMORANDUM

1. The undersigned proposes to hold an inquiry against Sh.CDS Yadav, TGT (Hindi), working in Kendriya Vidyalaya, Minambakkam under Rule 14 of the CCS (CCA) Rules, 1965. The substance of the imputations of misconduct or misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (annexure-1). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (annexure iii & iv).

2. Sh.CDS Yadav, TGT (Hindi), is directed to submit within 10 days of the receipt of this memorandum, a written statement of his defense and also to state whether he desires to be heard in person.

3. He is further informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically, admit or deny each article of charge.

4. Sh.CDS Yadav, TGT (Hindi) is further informed that if he does not submit his written statement of defense on or before the date specified in para 2 above, or does not appear in person before the inquiring authority, or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS (CCA) Rules or the orders / directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex-parte.

5. Attention of Sh.CDS Yadav, TGT (Hindi) is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government Servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the department. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Sh.CDS Yadav, TGT (Hindi) is aware of such a representation and that it has been made at his instance and action may be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.

6. The receipt of the memorandum may be acknowledged.

(N.R.Murali)

Assistant Commissioner

To
Sh.CDS Yadav, TGT (Hindi), - Through Principal
Kendriya Vidyalaya,
Minambakkam

3. Following an enquiry, the disciplinary authority, by order dated 28.08.2012, imposed a penalty of reduction of pay of two stages for a period of three years without cumulative effect from 01.09.2012 and further ordered that the writ petitioner would not earn increments of pay during the period of reduction, but on the expiry of the said period, reduction will not have effect of postponing his future increments and the same would not affect his pension. TA/DA claims were disallowed and TA advance was ordered to be recovered from the writ petitioner.

4. Being aggrieved by the same, writ petitioner preferred an appeal dated 15.09.2012 to the Joint Commissioner, Kendriya Vidyalaya Sangathan, New Delhi. After considering the grounds of appeal and the material on record, the appellate authority vide order dated 17.08.2013, decided not to intervene with the penalty order and accordingly confirmed the penalty. Discussion of the appellate authority, on the merits of the contentions of the writ petition, at paragraph Nos.6 (I) to 6 (IV) are extracted.

6.(I) The Appellant was charge sheeted vide Memorandum dated 5.4.2011 for major penalty proceedings false TA/DA Bills claim and insubordination with the Principal, KV Minambakkam. On consideration of the C.O's submission the D.C., KVS, R.O., Chennai imposed the following penalty vide order 28.8.12 "reduction of pay by two stages

from Rs.24,490/- (19690 + 4800) to Rs.23060 (18260 + 4800) in the time scale of pay of Rs.9300-34800 with Grade Pay of Rs.4800 for a period of 3 years w.e.f. 01.09.2012 with further direction that the CO will not earn increments of pay during the period of reduction and that on the expiry of this period the reduction will not have the effect of postponing his future increments of pay and also will not adversely affect his pension. This apart the TA/DA claims being fraudulent are also disallowed and the TA advance shall be recovered from the employee"

II) It is seen that while the CO was posted temporarily at KV Vijayanarayanam he had submitted bills of his TA/DA claims which was found to be false on a discreet enquiry conducted by the Deputy Commissioner, KVS, RO, Chennai. Thereafter he was charge sheeted for major penalty proceedings under Rule 14 of CCS (CCA) Rules 1965. It is observed that during the inquiry the IO & PO had visited to Vijayanarayanam to verify the place of stay of the CO i.e. Saachari Guest House, 76-5/2, Main Road, Parapadi and found that the guest house is not existing in that address. The action of IO & PO is not at all wrong and they have tried to establish the truth in this episode. It is pertinent to mention that the CO also accompanied the IO / PO to the place and he did not objected their visit and could not prove that he had stayed in the guest house. In the Bill No.89/111/123/152/154 a phone No.0250191015 is given and during the inquiry the CO submitted that it is not a phone No. and it is an electrical meter no. It is not understood how electrical meter No. is printed in the compute generated guest house bill as a phone number. This itself show the needle of doubt towards the CO. The bills produced by the Appellant are not having Tin No., PAN No/Service tax No. etc., which are mandatory under rules. He also produced certificate dated 08.02.2011 signed by one Shri Arunachalam Achari without mentioning the total amount collected from the CO. It is on record that Shri Arunachalam Achari is the owner of SA complex wherein 8-10 rooms are available out of which 4 have been rented for commercial purpose and 4 for individual purpose on monthly rental basis. The CO in his submission made to the IO also stated that he claimed conveyance charges as per his eligibility for all the days including Saturdays, Sundays and break except for C.L. availed by him. He also said that he has claimed all the bills as per KVS Rules and according to his eligibility.

III) It is pertinent to mention that in his appeal itself at point 7 he mentioned that "punishment imposed upon the appellant is too severe, since no loss was caused to the Government because only bill for TA/DA was submitted by the appellant, which can be returned with the observation or rejected, instead of Disciplinary action was taken with malafide intention to punish the appellant." This also once again proved beyond doubt that the CO has claimed false TA/DA bills to the tune of Rs.1,06,740/- from KVS, R.O., Chennai even though the bills are not settled to him. The bills are a computer generated format and without utilizing the facilities the Appellant claimed the bill as per his entitlement which is a serious misconduct on his part. The mind set of the Appellant is bad in law and it is a serious misconduct on his part to produce false claims as per his entitlement.

IV) The CO also found committed insubordination with the Principal, KV, Minambakkam on trivial issues mentioning the proverb "Vinashkala Vipreed Budhi" without application of mind and also justified his action saying that suitable reply was given in his literary vocabulary which is not acceptable.

5. Appellate authority also has given an anxious consideration to a role of a teacher and at paragraph No.6(V), observed as follows:

6 (V). Teachers are expected to behave as a role model in KVs so that they can imbibe good qualities among students. Unfortunately here it is seen that the Charge Officer miserably failed to go come up to the expectations of the system and Society. He could not work as a role model at KV, Vijayanaraynam / Minambakkam due to his serious misconduct. In my opinion teachers are enjoying great respect in the society and teachers like the Appellant are tarnishing the image earned by teachers through their sincere and committed work in the society.

6. On the plea of natural justice and the procedure followed, at paragraph Nos.6 (VI) and (VII), the appellate authority has ordered as follows:

"6.(VI). The Appellant was given an absolute opportunity by the Inquiry officer to defend his case as per rules. However, he did not take any assistance of Defence Assistant and he himself

defended his case, and so in such situation he should prove his innocence regarding the charges framed against him but he failed to do so.

(VII). In my opinion the CCS (CCA) Rules 1965 have been followed scrupulously by the IO while conducting the DP initiated against the Appellant. As the Appellant caught trapped totally due to his misconduct he could not prove his innocence against the charges. Principal being the head of the Institution and the Appellant is expected to behave properly with him and it is also part and parcel of administrative protocol. If the Appellant is having any issue with the Principal it should be discussed across the table for its settlement or he can represent his case in a polite way in writing. More than this he is not permitted to do whatever he likes in the school administration as per conduct Rules. I am totally convinced with the action initiated against the Appellant by the DC, KVS, RO, Chennai and by which a strong message has been send to the staff of KVs, working in the KVS, RO Chennai. So that such mis-conducts will not happen in future in the Region. The penalty order dated 28.08.2012 imposed upon the Appellant is just and fair and I feel that the Dy. Commissioner, KVS, R.O., Chennai has taken a lenient view upon the Appellant and imposed such a mild penalty upon him even though the Appellant deserve Severe penalty for such misconduct, which is not expected from any teacher.

Accordingly, I have decided not to intervene with the penalty order issued to the Appellant and the penalty order dated 28.08.2012 is hereby confirmed and upheld. Accordingly, the appeal dated 15.09.2012 of the Appellant is considered and rejected. The appeal preferred by Dr.CDS Yadav, TGT (Hindi), KV Minambakkam, is disposed of in compliance with order dated 04.07.2013, issued by CAT Madras Bench in OA No.877/2013."

Being aggrieved by the abovesaid orders, writ petitioner has filed O.A.No.1301 of 2013 before the Central Administrative Tribunal, Madras.

7. Though, the writ petitioner has assailed the correction of the abovesaid orders, on the grounds interalia that both the authorities have failed to consider his case in proper perspective and rendered a perverse finding not supported by evidence on record and also contended that the report of the inquiry officer did not disclose as to how she had arrived at the conclusion stating that the charges were proved, the respondents, have countered the same as hereunder.

"9. In their reply, the respondents have submitted that the IO followed the procedure laid down in the CCS (CCA) Rules, 1965. While the Applicant was entitled to TA/DA for performing duty at KV Vijayanarayanam as he was deputed in public interest, but he did not prefer his claim in accordance with the rules. Though, he produced bills in support of the expenditure incurred, the bills lacked genuineness. He had produced bills purportedly issued by a Guest House called Saachari Guest House at the tour station. On discreet enquiry, it emerged that there was no such Guest House. The computer generated bills were found to be false. Further, a certificate dated 08.02.2011 issued by one Shri Arunachalam Achari showed that he collected rent at the rate of Rs.600/- per month from the Applicant for residing at his residence. The bills produced by the Applicant for commuting between residence and the Vidyalaya also turned out to be false. The Applicant's attempt was to defraud the Sangathan by producing false claims. The I.O., was justified in visiting the area to verify the existence of such a Guest House. While the Applicant paid only Rs.600/- per month, his claim of Rs.15,000/- per month was an act of misconduct. Further, the statement of the Applicant Vinaash Kale Viprit Budhi [Literally means during the time of our destruction, we act contrary to our intelligence] was mischievous and unwarranted.

10. The Respondents have further submitted that the gravity of misconduct of the Applicant who is a Teacher is such that a major penalty should have been imposed upon the Applicant in view of the production of false claims. The Appellate Authority disposed of the appeal in a most dispassionate manner. The Appellate Authority came to the conclusion that the quantum of penalty imposed was less than what the Applicant actually deserved given the gravity of misconduct committed by the applicant. The Disciplinary Authority showed leniency keeping in view the age of the Applicant and the number of years of service the Applicant rendered in the Sangathan and only imposed a minor penalty."

8. Taking note of the statement of the applicant 'Vinaash Kale Viprit Budhi' (Literally means during the time of our destruction, we act contrary to our intelligent) and after considering the comprehensive report of the enquiry officer dated 26.03.2012, the Central Administrative Tribunal, Madras

Bench adverted to the contentions of the petitioner, paragraph Nos. 16 and 17 as hereunder.

16. The first Article of charge is clearly more serious. In the statement of imputation of misconduct or misbehaviour in support of Article of charge II framed against the Applicant (Annexure II of charge-memo) after setting out the details of the bills submitted by the Applicant purported to have been issued by Saachari Guest House at 76-5/2, Main Road, Parpaddi, Tirunelveli District, it is said that inquiry conducted by staff revealed that no such Guest House existed, and that it was one house with 4 rooms owned by one Shri Arunachalam Achari which was located there for which the rent charged was only Rs.600 per month. On the other hand the Applicant had produced bills as if he was paying Rs.500 per day giving rise to suspicion about the genuineness of the bill. Further the conveyance bills submitted by the Applicant for undertaking trips between temporary residence and KV Vijayanarayanam appeared to be fake which could be gauged from the Sl.Nos. of the bills. In the inquiry by the IO, the charged official (CO) was examined followed by examination of State Witnesses (SWs) 1 and 2, that is (1) Ramesh Pandian, PGT (Chemistry), KV Vijayanarayanam and (2) V.Thulasidasan, TGT (WE), KV Aruvankadu and an opportunity given to the CO to Cross-examine them. The Applicant's contention that the inquiry was conducted behind his back, is not tenable when the witnesses whose statements were relied upon were offered for cross-examination by him.

17. The IO submitted a comprehensive report dated 25.07.2011. It is said in the Report that the PO (Presenting Officer), the IO (Inquiry Officer) and the CO (Charged Official) visited Parapadi and saw the SA Complex where 76-5/2 room is situated but found no name plate with the name of Saachari Guest House. The CO was questioned on this. In the bills, the electrical meter number instead of phone number was given against the entry "PH" in the bill. The examination of SW1 and SW2 also indicated that no Guest House with the name Saachari Guest House could be located at Parapadi and in any case with number 76-5/2, that one room was available with number 76-5/2 for which the owner was one Arunachala Asari and the room rent Rs.600 per month, which was negotiable. The Applicant was given opportunity to cross-examine both SW1 and SW2, but he chose to cross-examine only SW2. The stand taken by the Applicant in the inquiry was that his claim for

TA/DA and conveyance was in accord with the KVS Rules and his eligibility. The Applicant was labouring under a misconception that he could claim the maximum TA/DA and conveyance charges allowed under the rules regardless of the actual expenditure incurred by him. He defended the usage of the expression "Vinaash Kale Viprit Buddhi" by stating that it was the right reply to the letter of his Officer. The acts of omission and commission on the part of the Applicant constitute misconduct."

9. After considering the meaning of the word 'misconduct' as explained in Union of India and Ors Vs. Harjeet Singh Sandhu, reported in AIR 2001 SC 1772 : JT 2001 (4) SC 597, and Union of India Vs. V.J.Ahmad, reported in AIR 1979 SC 1022, the Central Administrative Tribunal, Madras Bench, found that a case of misconduct on the part of the writ petitioner has been clearly made out.

10. Considering the aspect as to whether, the Court / tribunal, can re-appreciate the entire facts, by assuming the role of an appellate authority, Central Administrative Tribunal, Madras has taken note of the decisions of the Hon'ble Apex Court in State of Andhra Pradesh Vs. S.Sree Rama Rao, reported in 1963 (3) SCR 5; 1963 AIR 1723, High Court of Judicature, at Bombay Vs. Shastrikant S. Patil, reported in (2000) 1 SCC 416: AIR 2000 SC 22 : (1999) 5 SLR 615, Apparel Export Promotion Council Vs. A.K.Chopra, reported in 1999 (1) SCC 759, State of Madras Vs. G.Sundaram, reported in AIR 1965 SC 1103, and the tribunal has categorically found that there are no materials warranting reversal of the finding recorded by the inquiry officer and confirmed by the appellate authority.

11. On the proportionality, of the penalty and recovery, at paragraph Nos.24 and 25, the tribunal held as follows:

"24. It is seen that the order of the Disciplinary Authority dated 28.08.2012 and that of the Appellate Authority dated 14.08.2014 are speaking / reasoned orders. The Applicant was given reasonable opportunity and the principles of natural justice were followed. The penalty imposed cannot be said to excessive or grossly disproportionate to the acts of omission / commission on the part of the Applicant. It is, therefore, not possible to interfere with the order of penalty passed by the Disciplinary Authority which was upheld by the Appellate Authority.

25. In regard to recovery of TA/DA and conveyance charges, the Applicant has sought in OA No.1108 of 2012 quashing of the order of recovery dated 15.09.2012 which was consequential to the

order of penalty dated 28.08.2012, impugned in OA.No.1301 of 2013, which inter alia provided for recovery of TA/DA advance. It would be unreasonable to deny the entire TA/DA claim including conveyance charges merely because the Applicant claimed excess amount on production of alleged false bills. The respondents ought to allow the TA/DA claim limiting the recovery to the difference between the advance drawn already and the entitlement as arrived at in the local inquiry and the relevant TA/DA rules. If necessary, further inquiry may be made with the Applicant in this regard and after arriving at that amount to be allowed, to regulate the claim as expeditiously as possible."

12. Though, the learned counsel for the petitioner reiterated the very same grounds, and sought for interference with the orders of the disciplinary and appellate authorities, this Court, is not inclined to accept the same. However, when he sought for modification of the order by imposing a lesser penalty Mr.M.Vaidyanathan, learned counsel for Kendriya Vidyalaya Sangathan, was instructed to get instructions. Reverting he submitted that when a teacher, has claimed a false TA/DA and on evidence found to be a serious misconduct, he does not deserve any lighter penalty than what has already been imposed by the authority.

13. Mr.M.Vaidyanathan, learned counsel also relied on few decisions, as to when, interference can be made and that too in a very limited restricted exceptional cases. He also submitted that the case of the respondent does not fall under an exceptional case nor the punishment can be termed as shockingly disproportionate.

14. Misconduct is proved. In Union of India v. G.Ganayutham reported in 1997 (7) SCC 463, the Hon'ble Supreme Court summed up the legal position relating to proportionality and at Paragraphs 31, held as follows:

31. The current position of proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegally or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the

law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards....."

15. In State of Meghalaya and others Vs. Mecken Singh N.Marak, reported in (2008) 7 SCC 580 at paragraph Nos.14 to 17, the Hon'ble Supreme Court held as follows.

"14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

15. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental inquiry, the court should also take into consideration, the mental set up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision making process. If the charged employee holds the position of trust where honesty and integrity are in-built requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands.

16. The respondent belonged to a disciplined force. He was supposed to carry out instructions given to him by his superior. Not only he flouted the instructions but conducted himself in such a manner that he caused loss of part of pay to be deposited with the exchequer and loss of service revolver with ammunition which could be misused. When a statute gives discretion to the administrator to take a decision, the scope of judicial review would remain limited. The proved charges clearly established that the respondent, who was a police officer failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the exchequer and society.

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the Appellate Authority should be directed to reconsider the question of imposition of penalty. The High Court in this case, has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the Appellate Authority to impose any other punishment short of removal. By fettering the discretion of the Appellate Authority to impose appropriate punishment for serious misconducts committed by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background, the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted."

16. In *Chairman cum MD, Coal India Limited v. Mukul Kumar Choudhuri* reported in 2009 (8) MLJ 460 (SC), after referring

to a catena of decisions on the proportionality, the Hon'ble Supreme Court, at Paragraph 26, held as follows:

"26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months."

17. In Lucknow K.Gramin Bank (Now Allahabad, U.P.Gramin Bank) & Anr Vs. Rajendra Singh, reported 2013 (12) SCC 364,

on the Doctrine of Proportionality, at paragraph No.16, the Hon'ble Supreme Court, summarised as follows :

16. This, according to us, would be the harmonious reading of Obettee (P) Ltd. and Rajendra Yadav cases.

The principles discussed above can be summed up and summarized as follows:

(a) When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;

(b) The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;

(c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;-

(d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

(e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co- delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable."

18. Keeping in mind the principles to be followed in the matter of interference with the penalty and while considering

the facts and circumstances of this case, where a teacher has made a false claim TA/DA and found to have misconducted, this Court is not inclined to interfere with the penalty. Order of the Central Administrative Tribunal, is sustained and the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar
ars/skm

To

1. The Joint Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016.
2. The Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Chennai Region, IIT Campus,
Chennai - 600 036.
3. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104

+1cc to Mr.M.Vaidyanathan, Advocate, S.R.No.14249

W.P.No.29589 of 2015

AK(CO)
CA(15/04/2016)

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