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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4479/2017**

RISHIPAL SINGH TOMER

..... Petitioner

Through: Mr T.D. Yadav, Adv.

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondents

Through: Mr Anuj Aggarwal, ASC,
GNCTD with Ms Deboshree Mukherjee,
Adv for respondents 1 to 4

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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23.05.2017

The petitioner has preferred the present writ petition to assail the order dated 03.12.2016 passed by the Central Administrative Tribunal (CAT) in Original Application (OA) No.565/2014.

The Tribunal by the impugned order has dismissed the said Original Application preferred by the petitioner, wherein he assailed the order imposing punishment upon him dated 28.06.2013 passed by the Disciplinary Authority and the order dated 22.01.2014 passed by the Appellate Authority. The petitioner also sought other consequential reliefs with regard to restoration of withheld increments and release of financial upgradation under the ACP Scheme, etc.

The petition was serving as PGT (Chemistry) under the

respondent-Directorate of Education. He was issued charge memorandum dated 26.09.2012 making allegations of repeated insubordination and disregard towards the orders issued to him by his superiors. The statement of Articles of Charge framed against the petitioner reads as follows:-

“STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SH. RISHI PAL TOMER, PGT (CHEM.), GBSSS NO.1, NAJAFGARH, DELHI.

ARTICLE-I

Sh. Rishi Pal Tomer working as PGT (Chem.) in Govt. Boys. Sen. Sec. School No.1, Najafgarh, Delhi has repeatedly shown in-subordination and dis-regard towards his seniors orders.

Thus by doing the said acts, the official has violated the provision of Rule 3 of CCS (Conduct) Rules, 1964. Thereby rendering him liable to action under Rule 14 of CCS (CCA) Rules, 1965”

“STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF THE ARTICLES OF CHARGES FRAMED AGAINST SH. RISHI PAL TOMER, PGT (CHEM.), GBSSS NO.1, NAJAFGARH, DELHI.

ARTICLE-I

Due to introduction of new streams in some schools of district SW-B, some teachers were deputed to perform duty for three days in the schools where the new streams were introduced. In this process, Sh. Rishi Pal Tomer, PGT (Chem.), GBSSS No.1, Najafgarh, Delhi was deputed to GBSSS No.3, Najafgarh, Delhi for three days as an internal arrangement vide order No. DDE/SW-B/Z-22/2619 dated 09.08.2011. A letter dated 19.08.2011 has been received from Sh. R.S. Tomer, PGT that he is unable to perform this

duty and most of the officers, Principal/V. Principal/Teachers/Officials are not aware about their duties and responsibilities. But involved in different types of corruption and not aware about their subordinate and as well as welfare of the students. A memorandum dated 25.08.2011 was issued by DDE (SW-B) to him with directions to join his duty immediately. A reply dated 27.08.2011 has been received from Sh. Tomer that he is unable to perform the duty in both the schools. It is subject of chemistry not political science or history. He also submitted that it is his past experience that those Principals and teachers are involved in corruption, they are closely related to the officers of the district. He has given suggestion that he could complete the course during autumn or winter breaks. On 22.09.2011, the teacher has joined the duty in GBSSS No.3, Najafgarh, Delhi.

A school order no. 18 dated 17.04.2012 was issued to Sh. Rishi Pal Tomer, PGT (Chem.) by the Principal, GBSSS No.1, Najafgarh, Delhi to take over the charge of Class XII-A as you have deputed as class teacher. But the official has refused to do so. Ms. Santosh, Water woman of the school has given the statement that the official refused and threw the register. The Vice Principal also confirm the same. A memorandum dated 20.04.2012 was issued to him by Principal, GBSSS No.1, Najafgarh, Delhi. In his reply dated 23.04.2012, he has submitted that he is lab incharge and alleged against the Principal for biased attitude. A memorandum dated 27.04.2012 was again issued to him that the lab assistant holds incharge of the lab, therefore, he has to take charge of the class. A reply dated 01.05.2012, he against denied to comply and use un-parliamentary language in respect of his principal.

To inquire into the matter, an inquiry was conducted by Mrs. Omeshwara Singh, Principal, SKV No.1, Palam Enclave and Superintendent, SKV No.1, Palam Enclave. It has been observed by the inquiry committee that the official

has taken photographs of school premises without taking any permission from competent authority. The inquiry committee has submitted the report dated 07.08.2012 concluding that Sh. R.S. Tomer is habit of making unwanted complaint against HOS, teachers and other staff of the school and frequently violated the orders of the HOS, even questioning the orders of higher authorities i.e., Directorate of Education, which shows is unenthusiastic attitude towards the Policy of Govt. as well as the duties assigned to him as teacher.

In light of his persistent in-subordination, the disciplinary authority has decided to initiate D.P. under Rule 14 of CCS (CCA) Rules, 1965 against him.”

Since the petitioner was aggrieved by the non-finalization of the said enquiry, he approached the Tribunal by filing Original Application No. 4093/2012. Orders were passed in the said Original Application on 05.12.2012 with a direction to the respondents to conclude the enquiry, if they so desired, within three months. Thereafter, the petitioner preferred CP No. 209/2013 complaining about the non-compliance of the order of the Tribunal. The said Contempt Petition was closed on 18.07.2013, since, by then, the enquiry report had been received from the Enquiry Officer, and the Disciplinary Authority had also passed the order dated 28.06.2013 imposing punishment upon the petitioner. The petitioner preferred a departmental appeal, which too was rejected by the Appellate Authority vide order dated 22.01.2014.

The petitioner assailed the departmental proceedings and the impugned orders passed against him on the ground that the charge-sheet was vague. He further claimed that the report had not been prepared by the Enquiry Officer. This submission was founded upon his claim that the

Enquiry Report as furnished to him was not signed by the Enquiry Officer. He also claimed *mala fides* on the part of the respondents Nos. 4 and 5-who were the Deputy Director of Education and the Head of School/Principal, GBSSS No.1, Najafgarh, New Delhi. He claimed that the disciplinary proceedings were initiated against him since he had made complaints of corruption against the said respondents. He also claimed that he was a Group-B Non-Gazetted employee and, therefore, his Disciplinary Authority would be the Chief Secretary and not the Director of Education who passed the order of punishment against him. In this regard, he placed reliance on an order dated 29.03.2010. The petitioner also claimed that the findings of the Enquiry Officer were not based on evidence and the Disciplinary Authority had accepted the enquiry report without applying his mind. He claimed that his alleged conduct did not tantamount to misconduct. He also claimed that penalty had been imposed upon him on the basis of mere suspicion. He claimed that the Enquiry Officer transgressed the law in carrying out the cross-examination of the petitioner during the enquiry. He claimed that the charges against him were not proved and substantiated. He also alleged non-compliance of Rule 14(18) of CCS (CCA) Rules and that he was not given an opportunity to submit his explanation. He claimed that respondent No.4/Deputy Director could not have issued the charge-sheet to him, since he had made allegations against him.

The Tribunal has considered each of the submissions advanced by the petitioner and rejected each one of them.

Before us, the petitioner has firstly argued that the appellate order passed by the Appellate Authority is unreasoned. The Appellate Authority has summarized the findings returned by the Disciplinary Authority in the

order imposing penalty upon him. He has also taken note of the submissions advanced by the petitioner/appellant. He has rejected the appeal by observing that the grounds raised by the petitioner are more of a technical nature and that the disciplinary proceedings were decided on the principles of preponderance of probabilities.

When the petitioner approached the Tribunal, he raised all the grounds available to him before the Tribunal, and argued the same at length and invited the decision of the Tribunal after examination of all the submissions. He did not confine his grievance only to the aspect of the appellate order not being a detailed one-in relation to each of his submissions raised in his appeal. Thus, the grievance of the petitioner that the appellate order did not elaborately deal with all his submissions loses significance, since all these submissions have, in any event, been elaborately discussed by Tribunal in the impugned order. Even otherwise, before us the petitioner has not been able to point out even a single argument, which he may have raised in his appeal, and which-on merit, has not considered by the Tribunal. In view thereof, we are of the opinion that no prejudice, has been suffered to the petitioner even if it were to be assumed that the appellate order was not as elaborate as it could have been.

The next submission of the learned counsel for the petitioner is that the copy of the Enquiry Report provided to him was not a signed copy.

The Enquiry Report was forwarded to the petitioner vide memorandum dated 28.03.2013. The petitioner was granted 15 days' time to submit his representation. Merely because Enquiry Report, as provided to the petitioner, may not have been signed by the Enquiry Officer, in our view, no prejudice has been suffered by the petitioner. It is not that the

Enquiry Report provided to him, is not the actual one. The Enquiry Officer, or the respondents have not resiled from the Enquiry Report, as provided to the petitioner. No rule or law has been cited by the petitioner to say that the copy of the Enquiry Report furnished to the delinquent has necessarily to be a signed copy. The authenticity of the said document was never in doubt since it was furnished to the petitioner officially by the Assistant Director of Education (Vig.). The Tribunal has also duly considered the aforesaid submission of petitioner.

The next submission of the learned counsel for the petitioner is that he had submitted his representation before the Enquiry Officer. However, the same was not considered and, on the same day, the Enquiry Report was made. This aspect has been duly considered by the Tribunal in para 8 of the impugned order. It appears that since the enquiry had to be completed in a time bound manner on account of the order passed by the Tribunal in earlier proceedings (as taken note hereinabove), the Enquiry Officer made the report. The defence statement was submitted by the petitioner belatedly and not within the time granted for the said purpose. In fact, time was twice extended by the Enquiry Officer to enable the petitioner to submit his defence statement, but he did not do so. In these circumstances, obviously, the Enquiry Officer was left with no option, but to submit his report. If he had not submitted the report initially, the petitioner would have created a ground of 'delay' in conclusion of the enquiry proceedings.

The submission of the petitioner that the enquiry was not initiated by the Competent Authority has also been considered by the Tribunal and, in our view, rightly rejected. The disciplinary proceedings were initiated by issuance of the charge memorandum under the signature of respondent

No.4/Deputy Director with the approval of the Disciplinary Authority, i.e., the Director of Education. Pertinently, the penalty was imposed upon the petitioner by the Disciplinary Authority himself. Merely because the charge memorandum may have been under the signature of the Deputy Director, the same is not incompetent, particularly when the same was issued after obtaining the prior approval of the Director of Education.

The submission of *mala fides* levelled by the petitioner against respondent Nos. 4 and 5 have also been examined by the Tribunal found to be meritless. Learned counsel for the petitioner has submitted that he had made a complaint against respondent No.4 to the Director of Education on 22.09.2011. Only thereafter, the charge memorandum was issued on 26.09.2012.

It is seen from the record that an office order dated 09.08.2011 was issued by the Deputy Director/Respondent No.4 with regard to the internal arrangement of several teachers, which was to take immediate effect. Under this order, in all 28 teachers were directed to discharge their functions as teachers in their respective subjects at different schools of the GNCTD. Under this order, the petitioner was required to serve at GBSSS No. 1, Najafgarh as well as GBSSS No.3, Najafgarh on alternate days. This order also shows that there were others, namely, Shri Raj Kumar, Vinod Chander and Smt. Manju who were similarly required to serve in two schools on alternate days. Pertinently, both the schools in which the petitioner was required to teach on alternate days were situated side by side in the same campus. When the said order was issued, the petitioner sent his communication dated 19.08.2011, refusing to comply with the same and also making allegations against officers/principles/vice-principles/teachers and

other officials-that they were not aware of their duties and responsibilities, and they were also involved in different kinds of corruption. The petitioner was then issued a memorandum dated 25.08.2011 by the Deputy Director to explain his refusal to comply with the office order and to make objectionable allegations against the officials and his superiors. Only when the said memorandum was issued, the petitioner sent the communication dated 22.11.2012 to the Director of Education alleging harassment and abuse of power by respondent No. 4. From the aforesaid, it cannot be said that respondent No.4 had acted *mala fide* against the petitioner. The conduct of the petitioner in disobeying the orders, and making wild allegations against his superior had already been actioned vide by memorandum dated 25.08.2011, i.e., much prior to the allegations of harassment made by the petitioner against respondent No.4. Even otherwise, the said allegations are vague and non-specific.

Lastly, learned counsel for the petitioner has argued that the punishment imposed upon is disproportionate to his misconduct.

A perusal of the charge-sheet would show that the misconduct was not very grave. The misconduct did not involve moral turpitude. No allegation of corruption was made against the petitioner. It only brought out a couple of instances of insubordination by the petitioner. Pertinently, though the petitioner initially refused to serve on alternate days in the two schools, i.e., GBSSS No.1 and GBSSS No.3, he actually fell in line and complied with the order on 22.09.2011 as noted in the charge-sheet itself.

The punishment imposed upon the petitioner is of reduction to two lower stages in time scale of pay till his retirement on superannuation with immediate effect, with further direction that such reduction will adversely

affect his pension.

Learned counsel for the petitioner submits that the effect of the punishment is that his pension stands reduced by about Rs.5000/- per month, and the said adversity will continue to affect him for the rest of his life.

Having heard the learned counsels, we are of the view that the penalty imposed upon the petitioner-keeping in view the nature of his misconduct, is indeed quite harsh. Looking to the nature of the misconduct which is proved against the petitioner, we accordingly modify the penalty and direct that the reduction to two lower stages in the time scale of pay till the retirement of the petitioner on superannuation, shall cease to have effect on the date of retirement of the petitioner and, accordingly, his pay shall stand restored at the same level at which it was prior to the reduction. His pension shall accordingly be computed and paid him. The arrears of pension which will become due on account of modification of the penalty shall be paid within the next three months and this pension shall accordingly be revised within the same period.

Learned counsel for the petitioner submits that he has not been granted the benefits of ACP/MACP scheme. We find from the impugned order that the said aspect has not been examined. Accordingly, it is left open to the petitioner to pursue his claim for grant of ACP/MACP benefits, and if he is so found entitled, the same shall be released to the petitioner.

The petition stands dismissed in the aforesaid terms.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 23, 2017/bg