



2024:DHC:9269



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

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Date of Decision: 29th November, 2024+ **W.P.(C) 5741/2017****AJMER SINGH**

.....Petitioner

Through: Mr. Jai Anant Dehadrai, Advocate
with Mr. Siddharth Sharma, Mr. Chaitanya Singh,
Mr. Mohd. Tasnimul Hassan and Mr. Martin G.
George, Advocates with Petitioner in person.

versus

DIRECTOR OF EDUCATION & ORS

.....Respondents

Through: Ms. Latika Choudhary, Advocate for
R1.

Ms. Kawalpreet Kaur, Mr. Vinod Kumar Singh
and Ms. Nayab Gauhar, Advocates for R3.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.****CM APPL. 30161/2017**

1. This is an application preferred on behalf of the Petitioner under Section 151 CPC seeking permission to amend the prayer clause in the writ petition.

2. With the consent of the parties, being a formal amendment laying challenge to punishment order etc., the application is allowed.

3. Application stands disposed of.

W.P.(C) 5741/2017 and CM APPL. 30162/2017

4. This writ petition has been preferred on behalf of the Petitioner under Articles 226/227 of the Constitution of India *inter alia* challenging the



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impugned judgment of the Delhi School Tribunal ('DST') dated 18.05.2017 as well as the order of Respondent No.3 School dated 24.05.2014 imposing the penalty of compulsory retirement, with consequential benefits.

5. Facts to the extent necessary are that Petitioner was appointed as Class IV employee in Khalsa Girls Senior Secondary School/Respondent No. 3 herein ('School') on 19.06.1978. He was promoted as Lab Assistant w.e.f. 08.12.1981 and was granted selection grade w.e.f. 01.08.1982. In contemplation of departmental proceedings, Petitioner was suspended on 22.09.2011. Charge sheet was issued on 07.11.2012 against the Petitioner with 09 Articles of Charge and Inquiry Officer ('IO') was appointed on 05.01.2013. After conclusion of the inquiry, IO tendered his report on 17.07.2013 rendering a finding that the charges were proved. The report was furnished to the Petitioner who submitted his objections against the same. The inquiry report together with documents was sent to the Directorate of Education ('DoE') for approval of proposed penalty of 'removal from service' of the Petitioner under Rule 120(2) of the Delhi School Education Act and Rules, 1973 ('DSEAR'). Director of Education observed that Articles of Charge levelled against the Petitioner do not warrant imposition of penalty of removal from service except Charge at Article-VI, which was not proved beyond doubt and in this context, recommended penalty of compulsory retirement on the Petitioner.

6. Based on the recommendation of DoE, Chairman of the School passed an order on 24.05.2014 imposing the penalty of compulsory retirement on the Petitioner w.e.f. 28.04.2014. Petitioner preferred an appeal to the Appellate Authority followed by several reminders to decide the appeal but there was no response. Petitioner filed a writ petition being W.P.



(C) 7973/2014 before this Court, which was withdrawn vide order dated 19.11.2014 and Petitioner was granted liberty to approach the DST for appropriate relief against the impugned order. Petitioner thereafter approached DST and filed an appeal bearing No. 65/2014. DoE and the School filed their replies to the appeal and vide the impugned judgment dated 18.05.2017, DST dismissed the appeal and upheld the punishment order.

7. Learned counsel for the Petitioner submits that Petitioner had rendered a long and dedicated service in the School and was granted promotion as Lab Assistant as well as selection grade. Several certificates in appreciation and commendation of his hard work, integrity, sincerity etc. were issued by the Principal/Vice Principal/Lab In-charges and his service of 30 years prior to the issuance of the impugned charge sheet, was unblemished. A pre-planned conspiracy was hatched against the Petitioner and documents were forged and fabricated to create evidence only because Petitioner was a whistle blower and was highlighting the wrongdoings in the School including acceptance of bribes at various levels. Petitioner had made several complaints to the different Authorities in the School against 'X', the complainant teacher bringing to light her conduct and to warn her to be careful, but no action was taken and in retaliation and as a counterblast, the complainant made false complaints on 21.03.2011 and 22.03.2011 to the School management, falsely alleging that Petitioner was putting pressure on her for sexual favour, leading to disciplinary proceedings against the Petitioner.

8. Learned counsel contended that there were violations of principles of natural justice as well as procedure during the departmental inquiry. It was



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urged that after the IO commenced examination-in-chief of the listed witnesses on 11.03.2013, statement of one of the witnesses, namely Sh. A.P.S. Bindra was recorded. Daily order-sheet dated 11.03.2013 with statement of Sh. A.P.S. Bindra was sent to the Petitioner through post on 12.03.2013, which was received by him only on 16.03.2013. Despite the absence of the Petitioner on 14.03.2013, the IO recorded the statements of Mrs. Malvinder Kaur, Mrs. Monika Mittra, Mrs. Kanta Devi, Mrs. Anupama Verma, Mrs. Manjeet Kaur and the complainant and instead of deferring the proceedings for cross-examination by the Petitioner, he closed the evidence of these witnesses, which caused a serious prejudice to the Petitioner as he was unable to cross-examine the most crucial witness of Charge VI i.e. the complainant. It was argued that the IO ought to have ascertained whether the communication dated 11.03.2013 was served on the Petitioner before proceeding to examine the crucial witnesses and closing the evidence. Tracking IDs of letter dated 11.03.2013, enclosing the proceedings of 11.03.2013, evidence that the letter was dispatched only on 12.03.2013 and was received by the Petitioner on 16.03.2013 and thus he was unaware that the next date fixed by the IO was 14.03.2013. Petitioner had raised this important issue before the DST and argued that the inquiry stood vitiated as he had been deprived of a crucial right of cross-examining the witnesses, but instead of accepting his plea and looking into the justified reason for his absence on 14.03.2013, DST brushed aside the plea blaming the Petitioner and his Defence Assistant ('DA') for abstaining from the proceedings. DST also overlooked the fact that Petitioner had been regularly attending the inquiry and did not attend the hearing on 14.03.2013 only because he had no intimation of the said date.



9. It was further argued that this is a case of no evidence as none of the witnesses produced by the School gave evidence to establish the charges levelled against the Petitioner. In fact, perusal of the evidence would show that the witnesses were tutored as they gave verbatim statements and referred broadly to the joint complaints/representations. Even during the cross-examination, answers to the questions put by DA were evasive and/or in a denial mode. In a departmental inquiry, the onus to prove the charges is on the prosecution, through oral and documentary evidence and in the present case the onus was not discharged, which fact was highlighted by the DoE, after detailed assessment of the inquiry report and the documents on record.

10. Petitioner questioned the power of the DoE under Rule 120(2) of DSEAR to modify the proposed penalty or recommend a punishment. It was argued that DoE only has the power to either approve or not approve the penalty proposed by the School and even on this aspect, DST has erroneously held that Section 8(2) of DSEAR does not bar the DoE from modifying the punishment recommended by the Managing Committee of the School on the basis of findings in the inquiry report. A bare reading of Section 8(2) shows that it only mandates that no employee of a recognised private school shall be dismissed, removed or reduced in rank nor otherwise terminated except with the prior approval of the Director and does not give any power to the DoE to suggest a penalty. In the present case, contrary to the position of law, DoE recommended the penalty of compulsory retirement and purely on this basis, the impugned punishment order was passed by the School.



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11. Learned counsel appearing on behalf of the School, *per contra*, argued that the allegations against the Petitioner are serious which includes the charge of putting pressure on the complainant for sexual favour, over the past one year. IO has examined the evidence on record, both oral and documentary and come to a finding that all charges were proved. Petitioner was habitual of making rude and unwarranted remarks against the members of the staff and members of the Managing Committee and harassed the lady members and therefore, disciplinary proceedings were rightly initiated against him. It was denied that the Petitioner was deprived of opportunity of cross-examining the complainant and other witnesses on 14.03.2013 and urged that DST has rightly held that it was the Petitioner who on his own volition decided to stay away from the proceedings. Assuming for the sake of argument, that the letter dated 11.03.2013 was received by the Petitioner on 16.03.2013, this cannot be taken as an excuse for non-appearance on 12.03.2013 since the Petitioner was aware on 11.03.2013 itself, when he attended the proceedings, that the next date was 14.03.2013. Counsel for DoE supports the penalty order on the ground that an authority, which has the power to approve or disapprove the proposed penalty, has the power to modify the punishment.

12. Heard learned counsels for the parties and examined their rival contentions.

13. Insofar as the submission of the Petitioner that there was violation of principles of natural justice as well as procedure during the departmental inquiry is concerned, I find merit in the same. Petitioner has taken a stand and supported it with Tracking IDs that letter dated 11.03.2013, intimating the next date of hearing for examination of witnesses i.e. 14.03.2013, was



dispatched only on 12.03.2013 and was received by the Petitioner on 16.03.2013. Thus, the Petitioner was unaware that the next date of hearing before the IO was 14.03.2013 and/or that on the said date, the material witnesses were to be examined. Even as per DoE, Petitioner was regularly attending the inquiry proceedings along with his DA prior thereto and hence Petitioner's absence not being deliberate, he can neither be blamed for not appearing before the IO on 14.03.2013 nor made to suffer the consequences thereof. To this extent, the finding of DST is erroneous and deserves to be set aside.

14. Having travelled on the wrong path of holding that Petitioner is to be blamed for his absence, DST arrived at a wrong conclusion that there was no procedural infirmity in recording evidence of prosecution witnesses on 14.03.2013 in the absence of the Petitioner or his DA. In my view, IO ought to have deferred the examination of the witnesses knowing that the witnesses including the complainant, were material witnesses and were to depose with respect to Charge VI, which was a serious charge. The result of this lapse of the IO was that the Petitioner lost a valuable right to cross-examine the witnesses and the examination-in-chief went unrebutted. Petitioner has certainly been prejudiced on this score. The Supreme Court in *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and Others*, (2013) 4 SCC 465, held that denial of right of cross-examination is violation of principles of natural justice and I quote:-

“24. A Constitution Bench of this Court in State of M.P. v. Chintaman Sadashiva Waishampayan [AIR 1961 SC 1623] held that the rules of natural justice require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-



examine witnesses, would violate the principles of natural justice.

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27. In *K.L. Tripathi v. SBI* [(1984) 1 SCC 43 : 1984 SCC (L&S) 62 : AIR 1984 SC 273], this Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also *Union of India v. P.K. Roy* [AIR 1968 SC 850] and *Channabasappa Basappa Happali v. State of Mysore* [(1971) 1 SCC 1 : AIR 1972 SC 32] .) In *Transmission Corpn. of A.P. Ltd. v. Sri Rama Krishna Rice Mill* [(2006) 3 SCC 74 : 2006 SCC (L&S) 467 : AIR 2006 SC 1445], this Court held : (SCC p. 80, para 9)

“9. In order to establish that the cross-examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilised for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the appellate authority as to how he has been prejudiced by the refusal to grant an opportunity to cross-examine any official.”

28. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the Government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. He can, therefore, do so by cross-examining the witnesses produced against him. The object of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross-examination.

29. In *Rajiv Arora v. Union of India* [(2008) 15 SCC 306 : (2009) 3 SCC (Cri) 977 : AIR 2009 SC 1100] this Court held : (SCC p. 310, paras 13-14)



“13. ... Effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation. ...

14. The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the appellant by such non-examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review.”

30. The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice.”

15. In ***Rajiv Arora v. Union of India and Others***, (2008) 15 SCC 306, the Supreme Court again highlighted the importance of effective cross-examination by the charged officer. In one of the earlier decisions in ***State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan***, 1960 SCC OnLine SC 82, the Supreme Court observed that it was hardly necessary to emphasise that the right to cross-examine the witnesses, who gave evidence against a charged officer is a valuable right. In ***National Institute of Electronics & Information Technology v. Kalpana Dudeja and Others***, 2019 SCC OnLine Del 10748, the Division Bench of this Court was dealing with a case where the IO denied opportunity of cross-examining the prosecution witnesses, all of whom were examined in the absence of the charged officer and subsequently, the IO tried to make up the lapse but by that time, the defence was disclosed. Division Bench observed that the purpose of cross-examination would stand defeated at that stage and upheld



the order of the Central Administrative Tribunal quashing the inquiry proceedings and the penalty. SLP (C) No(s). 5385/2020, against the said decision was dismissed by the Supreme Court on 17.03.2020. From the above conspectus of the judgments, there can be no doubt that cross-examination of the prosecution witness by the charged officer is a very valuable right and part of the principles of natural justice as this would enable him or her to demolish the testimony of the prosecution witnesses and prove his/her defence. Non-cross examination of the material witnesses including the complainant did cause irreparable prejudice to the Petitioner and vitiates the inquiry.

16. Petitioner had raised this important issue before the DST but the Tribunal, without delving into the reason or cause for the absence of the Petitioner and his DA and ascertaining whether the absence was justified, blamed them for their non-appearance on 14.03.2013. DST completely glossed over the observation of DoE while dealing with Charge VI that the IO ought not to have proceeded without giving an opportunity to the Petitioner to cross-examine the crucial witnesses and that this procedure was in violation of principles of natural justice. DST has erred in overlooking that Petitioner had made several complaints against the complainant and taken a categorical position that the allegations which were subject matter of Article-VI were a counter blast. This important aspect of the matter was also highlighted by DoE in its order, which DST extracted in the impugned judgment, but did not deal with.

17. Reading of the depositions of the witnesses shows that most of the witnesses have tendered verbatim statements, broadly focussing on only one aspect that joint complaints/representations were made. This fortifies the



stand of the Petitioner that the witnesses were tutored and given a pre-written brief to depose against the Petitioner. Another glaring illegality in the inquiry is that majority of the documents were merely tendered and not proved by any witness. Significantly, even the inquiry report reflects a reverse engineering to somehow implicate the Petitioner and there is no independent analysis of the evidence indicating the basis of holding the charges to be proved. There is a pattern in the findings of the IO, inasmuch as for every charge, the IO has simply referred to the contents of the memos/documents relied upon by the School, presumed the allegations contained therein to be the gospel truth and completely discarded the defence of the Petitioner on the ground that it was irrelevant. Relevant part of the inquiry report is extracted hereunder, for ready reference:-

“Charge – 1

Pertains to S. Ajmer Singh being habitual absence without permission and overstaying on leave and using abusive language or disturbing the peace at the place of his employment.

As per the exhibited document No. E 1 to E 4, vide which Manager issued a Memo dated 06.07.2010 to Sh. Ajmer Singh on a/c of leaving the School premises during the working hours and remaining on leave without prior permission. Also a Memo dated 14.07.2010 was issued for not receiving the earlier Memo dated 06.07.2010 and also making derogatory remarks to the Chowkidar sent to deliver the Memo. The statement of Chowkidar dated 14.07.2010 is an ample evidence to establish the act of refusal of receiving the Memo. The Manager vide dated 14.07.2010 written to Dy. Dir. Of Education conveying the act of misconduct and misbehavior by Sh. Ajmer Singh with complete details for initiating a disciplinary action against him. This clearly establishes that the CO used abusive language against the Manager and torn the Memo which was to be received by him. The GO did not make any substantive submissions in r/o his defense, in the defense statement submitted by him in response to the General Examination. He has only alleged S. APS Bindra and the Manager which is totally irrelevant and has no grounds of defense taken by him against this charge.

Thus, the above submission substantiates the allegations in this Charge and hence the charge stands prove.



Charge – 2

Pertains to wilful disrespect to the constituted authority whereby he has misrepresented to the department his grievances making false allegations against the School Managing Committee.

As per the exhibited documents No. E 5 to E 6, which states the act of misconduct as the CO has been making representations to the higher authorities without exhausting the prescribed channel and also making allegations against the Managing Committee of the School without valid grounds and also using indecorous language for the Managing Committee in these representations. The Manager and Vice Principal vide Memo dated 25.09.2010 warned Sh. Ajmer Singh that his act of submitting representation to higher authorities of the department without getting it approved by the School Authorities is an act which is viewed as violating code of conduct and gave him an opportunity to submit a reply in stipulated time failing which disciplinary action will be initiated against him. The letters dated 03.07.2010, 21.07.2010 is an ample proof on the part of Sh. Ajmer Singh making direct complaint that to with baseless grounds.

The CO in his defense statement against this charge is once again only alleging the PC and the Manager S. Baljeet Singh and S. APS Bindra which has no relevance pertaining to this charge. Also the mention of Parmesh, Peon and the School Authorities in the matter of some amount of Rs.3.40 lacks is totally irrelevant. The other allegations made in his defense against this charge in the defense statement finds no place as it appears that he is only framing a story and concluding it in his favor which has no relationship with this charge. He only made a repetition of the allegations which are baseless and does not substantiate the ground of his defense.

The above submissions substantiates the allegations made in this charge and the charge is proved.

Charge – 3

Pertains to act of misconduct of an employee which amounts breach of trust and faithfulness of the employee.

As per the exhibited documents No. E 7 to E 9, which are the Memos issued to the Charged Employee on account of doing an act by calling the media persons in the school premises and making a direct communication to the media of the press bringing bad name not only to the institution but also to the Department / Management. The Manager vide Memo dated 27.09.2010 issued to Sh. Ajmer Singh clearly warned him of calling Media persons in the School and providing them information's and photographs which is not only a violation of Code of Conduct but also a breach of trust against the institution and the Management. The act of providing information's and photographs (taken on mobile camera) to the media is a



breach of trust against the institution.

Further, his act of obtaining various documents through RTI and unofficially providing the same to the Departmental Inquiry Committee is highly objectionable which amounts to misconduct on a/c of breach of trust. This act on the part of Sh. Ajmer Singh made irreparable damage to the girls School whereas Hon'ble Supreme Court directs an absolute secrecy in the matter of Inquiries of Sexual Harassment. Demanding of information's through RTI vide RTI dated 13.09.2010 by Sh. Ajmer Singh trying to obtain documents pertaining to female teachers. Inquiry report in the matter of complaint of Sexual Harassment of girls students and also making false complaints to National Commission of Women in order to put undue pressure on female teachers of the School is construed as an act of misconduct. His sending complaints regarding the same to Director of Education, Dy. Dir. Of Education, Education Officer and SHO, Delhi Police is totally unqualified and as he has no authority on the issues which are already taken up by the School Management, by Director/PIO RTI vide his letter dated 02.02.2011 refused to provide the information sought by Sh. Ajmer Singh (the applicant) as it relates to personal information regarding girls students and also a matter of serious nature. Sh. Ajmer Singh in his reply dated 30.09.2010 Memo dated 27.09.2010 showed total disrespect to the School Authorities and making false and baseless allegations on the School Management and thus was not found suitable.

The Charged Employee in his written submissions in response to General Examination is void of any valid grounds for his defense in this serious act. In his submissions he has only repeated what he has mentioned in his defense statement pertaining to Charge – 2 which has no relevance to this charge which does not substantiates his ground for his defense.

The above submissions clearly substantiates the allegations in this charge and hence the charge is proved.

Charge – 4

Pertains to violation of code of conduct and gross moral misconduct - act of Indiscipline, riotous and disorderly behavior during and after working hours of the Institution.

As per the exhibited documents No. E 10 to E 14 Which are the joint representations dated 03.09.2010 and 31.01.2011 made by the female teaching staff and other employees of the School and also a complaint of the female teaching staff and other employees against the Charged Employee submitted to SHO Police vide representation dated 03.02.2011.

The depositions made by Female staff members and other staff members annexed In folder No. P-2 and the cross examinations by the DA of the CO In folder No. P-2 clearly establishes that the CO has been using abusive language; with the Female staff, misbehaving and threatening, causing mental torture and terrorizing the teachers with dire consequences which



compelled the entire employees to make a joint representation to the School Managing Committee and the Police authority. In order to get a redressal to their grievance. Consequently the Manager Issued a Memo dated 30.09.2010 to the Charged Employee. The Manager vide this Memo alleged the action of provoking students against the Vice Principal, using abusive and obscene language with teaching staff, threatening the Head of the School, provoking the School Staff against the School Management, threatening the School Staff to challenge their promotions, creating an unwanted atmosphere in the girls institution with only female teachers which is a serious violation of Code of Conduct. All the employees of the School submitted a representation dated 03.09.2010 to the Chairman of the School Management in r/o complaint against Sh. Ajmer Singh regarding threats, misbehavior, misconduct and provoking the girls students. The School staff also submitted a Joint representation dated 31.01.2011 with further complaints against Sh. Ajmer Singh. The School employees also submitted a complaint dated 03.02.2011 regarding the same to SHO, Police Station, Pahar Ganj, Delhi. The Management found these complaints against Sh. Ajmer Singh of a very serious nature and thus wrote a letter dated 28.10.2010 conveying about the same complaints against Sh. Ajmer Singh to Director of Education, Dy. Dir. Of Education, Education Officer Zone – 28, Commissioner of Police, Dy. Commissioner of Police, Assistant Commissioner of Police, SHO P.S Pahar Ganj, Hon'ble Chief Minister Delhi, Minister of Women and Child Welfare, Lt. Governor GNCTD.

The deposition made by the witnesses clearly establishes the fact that their representation was due to Intolerable, terrorizing and disrespectful behavior on the part of the CO.

The depositions made by the witnesses in response to the cross questioning by the Defense Assistance of the Charged Employee does not show deviation in their stand hence the depositions made by the witnesses are in order.

The CO in his defense statement submitted in response to General Examination has only made allegations on the IO and the PO besides repeating the same point of defense as mentioned in the earlier charges which has no relation and relevance pertaining to this charge.

The above submissions substantiate the allegations made in this charge and hence the charge is proved.

Charge – 5

The Charge pertains to insubordination / disobedience, riotous and disorderly behavior and act of habitual absence without permission, thus violating the code of conduct.

As per the exhibited documents No. E 15 to E 20 which is in the form of



Memo issued to the Charged Employee on account of act of misconduct shown by the Charged Employee wherein he forcefully snatched the attendance register from Head of the School and shouted threateningly in the presence of other employees of the School. The Vice Principal vide a letter dated 29.01.2011 written to Chairman / Manager of the School Management submitted a complaint against Sh. Ajmer Singh. The contents of the complaint is self evidence showing the act of nuisance, misconduct, misbehavior, de-reliction of duty and serious indiscipline caused by Sh. Ajmer Singh in the smooth functioning of the School. S. APS Bindra vide his complaint dated 29.02.2011 which is self explanatory showing the safety and the security of the School caused by misconduct and misbehavior of Sh. Ajmer Singh. Further to it the Manager and the Vice Principal also lodged a complaint dated 29.01.2011 against Sh. Ajmer Singh. The contents in the complaint are evidently self-explanatory. Finally the Manager issued a Memo dated 31.01.2011 to Sh. Ajmer Singh for his serious act of misconduct, and misbehavior. Sh. Ajmer Singh refused to receive the Memo when given to him by S. APS Bindra. He in the presence of Vice Principal shouted abusively and called the Manager as " NAKLI MANAGER ". On a/c of his serious misconduct the Manager wrote a letter dated 31.01.2011 to Dy. Dir. Of Education and Director of Education. The depositions made by the witness S. APS Bindra as annexed in folder No. P-2 clearly establishes the misconduct and the use of abusive language and absence from the duty of the Charged Employee. Further to it he tried to make a physical assault on him using a abusive and threatening language. The Charged Employee along with his defense assistant did not cross question the witness on the day of hearing.

The Charged Employee in his defense statement in response to general Examination only alleges S. APS Bindra having connivance with Manager and Head of the School and also raising the issue of Rs.3.5 lakhs as already mentioned in defense of other charges, which once again, has no relevance to this charge. His contention that he (Ajmer Singh) is a pious, selfless, meritorious Sikh finds no grounds for his defense for this charge.

The above submissions on the basis of exhibited documents and depositions made by the witness amply substantiate the allegations in this Charge and hence the charge is proved.

Charge – 6

The Charge pertains to the act of Sexual Harassment of a working Women which amounts to a misconduct and hence a violation of code of conduct.

As per the exhibited documents No. E 21 which constitutes a Complaint lodged by the female teacher to the School Management and the Memo issued by the Manager In response to the complaint of Sexual Harassment. X in her complaint dated 21.03.2011 has clearly spelled the bad, intensions of Sh. Ajmer Singh. The contents of the complaint are self



explanatory as Sh. Ajmer Singh was making advances towards a widow lady and was expecting a favour. Further X in her another complaint dated 22.03.2011 against Sh. Ajmer Singh was submitted to Complaints Committee of Sexual Harassment in which she has narrated the incident in detail which is self explanatory. The affected female teacher X as witness in her deposition annexed in folder No. P-2 has made the submissions which are in total agreement with her complaint clearly showing an act of Sexual Harassment on the part of the Charged Employee. The Charge Employee along with his defense assistance willfully remained absent on the day of hearing and hence no cross examination made by them.

The charged Employee in his statement of Defense submitted in response of General Examination once again has alleged the IO, the PO and S. APS Bindra. Beside that he also submits a cooked up story of fake degree of X and the involvement of Manager, HQS and S. APS Bindra framing a charge of Sexual Harassment. The Charged Employee is trying to show in his submission that he was some sort of authority in the DPC matters though he was only holding a post of Lab. Asstt. His contention that the complaint of Sexual Harassment is instigated by the School Management finds no ground because the affected teacher being a female has admitted in her deposition that she was under no pressure while making the complaint and the statement. Thus the grounds of defense mentioned by CO has no relevance.

The above submissions made by the witness along with the exhibited documents substantiate the allegations in the Charge and hence the charge is proved.

Charge – 7

The Charge pertains to violation of the code of conduct whereby the CO has made wrong, false, malafied and baseless allegations against the Head of the School and the Managing Committee of the School making the representations to the Government authorities.

The exhibited documents No. E 22 is an ample proof to prove that the Charged Employee has been in a habit of such representations without any grounds and evidence in its support. Sh. Ajmer Singh vide his letter dated 25.08.2010 written to Sh. Krishna Murti, Director of Education made a complaint contending about MACP, demand of 5% share by School Management, harassment caused to him by Management. He also made these representation on the same ground to Lt. Governor GNCTD, Chief Minister Delhi, Secretary Education, Commissioner Police, DCP, AGP, SHO, and also reminders dated 10.09.2010, 08.11.2010, 24.12.2010, 24.01.2011, 01.02.2011, 24.03.2011. Such act on the part of the employee is a violation of code of Conduct as per the rules of DSEAR - 1973. All the witnesses in their respective depositions have submitted regarding this particular behavior of the Charged Employee. The grounds made by the Charged Employee in his written defense submitted in response to his



general examination do not counter this allegation of the Charge. In his defense statement pertaining to this charge he has mentioned regarding some Peon by the name Sh. Parmesh and a story cooked up which has no relevance to this charge. He has again repeated the baseless allegations on PO for flouting the procedure of the Inquiry. Also alleging that the suspension, the Charge Sheet and the whole School Management has hatched a conspiracy though he (Ajmer Singh) is a pious, selfless, meritorious Sikh doing no illegal activity.

He could not place the grounds of his defense and hence the above submission clearly substantiates the allegations made against the Charged Employee in this charge and the charge is proved.

Charge – 8

The Charge pertains to violation of the code of conduct whereby the Charged Employee has made various representations to departmental authorities making false allegations against the Head of the School and the Managing Committee of the School which amounts to violation of the code of conduct as per the rules DSEAR-1973.

The exhibited documents No. E 23 dearly substantiates the allegations made in the charge. Sh. Ajmer Singh vide letter dated 18.05.2011 written to Dy. Dir. Of Education and Accounts Officer made a representation without getting it approved by the School Management besides he also alleged that School Management is making unqualified deductions in r/o withdrawal of ACP II. He also made a representation 08.06.2011 to Dy. Dir. Of Education and Education Officer a reminder to his earlier representation dated 18.05.2011. Both the above representations were made directly to the Departmental Officials without obtaining prior permission from the employer i.e. the School Management.

The Charged employee in his defense statement has not only repeated his submissions made earlier but has also alleged the involvement of Deputy Director and Education Officer of the Education Department without adducing evidence in support of these allegations. Hence his grounds of defense is rejected as it is irrelevant and thus the charge is proved.

Charge – 9

The Charge pertains to violation of the code of conduct whereby the Charged Employee has made 2 representations to Delhi Govt. alleging that the Manager and the Head of the School has embezzled Rs 3.5 Lakhs. By this act he attempted to malign the image and reputation of School Managing Committee and Hon'ble Members.

The exhibited documents No. E 24 and the repetitive act of making false allegations and writings to the higher authorities of the Govt. departments without any grounds and evidence to support them clearly establishes the violation of the code of conduct. Sh. Ajmer Singh vide his representation dated 06.06.2011 addressed to Dy. Dir. Of Education, Education Officer



and Accounts Officer making allegation on School Management regarding embezzlement of Rs.3.5 lakhs rupees. He also forwarded the copy of the same dated 01.09.2011 to Education Minister, Finance Minister, Dir. Of Education, Vigilance Officer, Controller of Accounts. All these representations were totally false without any evidence in support of them.

The Charged Employee in his defense statement has repeated the same story as mentioned earlier and thus has not made his ground of defense against this charge.

Thus the above submissions substantiate the allegations in the charge and hence the charge is proved.

Thus, in my opinion the Article I (Charge 1 - 9) is proved fully based on the facts and the circumstances and the evidence adduced as per the deposition, exhibited documents and the cross examination of the listed witnesses.

The Article II is also proved as it is interdependent on Article I of the Charges and when Article I of the Charges is proved, it also proves the act of misconduct and misbehavior of S. Ajmer Singh, acting in a manner showing breach of trust and violating the code of conduct thereby he is liable for initiation of Disciplinary action for imposition of a major penalty under rule 120 of DSEAR -1973.

Hence, this article of charge is also proved.”

18. It is a settled law that even though in a departmental inquiry, the standard of proof is preponderance of probability, the onus to establish the charges is on the department through the Presenting Officer and once the evidence is led, the IO is required to look into the evidence of the prosecution and the defence and come to a finding, after analysis and deliberations. The inquiry report, as noted above, is a classic case where the IO started with the presumption that Petitioner was guilty and in that light, accepted the contents of the memos etc. relied upon by the School to be correct and true. The DST did not look into the aspect whether the charges were proved by the IO on the basis of any evidence and/or whether the IO was correct in rejecting the defence of the Petitioner as being irrelevant. DST also glossed over some significant observations of the DoE, which are extracted hereunder, for ready reference:-



“I. The charges at Article-I & V are related to unauthorised absence and use of abusive language against the staff Head of School and manager. It is seen that the period of unauthorized absence shown in the inquiry and which has been held to be proved is for a period of either one or two days or for a short period within the same day.

II. Charges at Article-II & VII related to filling of representations to higher authorities without making any oral/written representation to the school. In the case of Article No.II it is seen that the CO had made atleast one representation. Dated 21.06.2010 as has been acknowledged in the charge sheet as well as the inquiry report. Since it agreed that the CO had previously filed at least one representation, it is not clear how representing for his service benefit/grievance tantamount to violation of the Conduct Rules Further, regarding article no. VII it is observed that the 10 has held that the complaints/allegations made by the CO to various authorities are baseless. However, the allegations/complaints of the CO and the reply/stand of the school authorities regarding them have not been examined before arriving at the conclusion.

III. Article No. IV is related to provoking the students to give representation to the inquiry team of the Education Department and using abusive and obscene language with the female teaching staff. However, the 10 in his inquiry report has not examined the issue of how the CO provoked the students in making the alleged representation the deposition of the female staff only Establishes issue of using abusive language etc against the CO.

IV. Article No-III is regarding informing the media and providing them with photographs of the incident of dead rat being found in the Mid Day Meal. The 10 has relied only on the memo issued by the Manager for establishing the mid charge as proved. No evidence or witness was examined to prove that the CO had circulated the photographs or had called the media persons, in the school premises. As regards obtaining information under RTI or providing the same to the Departmental Inquiry Committee, the same cannot be construed to be a violation of Conduct Rules unless the same is used for nefarious activities or creating mischief.

V. As regards Article No. VIII regarding complaint made to the Dy. Director of Education/Education Officer of the Directorate for making unqualified deductions in respect of withdrawal of ACP-II without obtaining prior permission of the employer, it is observed that the withdrawal of ACP and subsequent deductions were made by the school authorities with the approval of the district authorities and therefore the CO was well within his right to make representation to the DDE/DE. Further, the 10 has also not brought out the rule position wherein prior permission of the employer is required for making representation to higher authorities in service matters.



VI. Regarding Article No. IX it is observed that the IO has held the charge to be proved as the CO has not been able to provide any evidence.

VII. The article No. VI of charge-sheet regarding putting undue pressure for sexual favour on X, Language Teacher of the first shift of the school is a very serious charge deserving exemplary punishment if the same is proved. However, an examination of the proceeding and the submissions of the Charged Official raises question about the charge being held to be proved. It is seen that the IO in his inquiry report has stated that during the hearing on 11.03.2013 the CO and his DA had not co-operated and showing disregard had left the room of inquiry proceeding without appending signature on the statement/deposition of Sh. APS Bindra, UDC as well as the order sheet. Further reading of the report shows that the Presenting Officer had submitted the list of witnesses to be called on the next date of hearing i.e. 14.03.2013 which included the name of X, Language Teacher who had raised the issue of sexual harassment. The IO has mentioned that the daily order sheet was sent to Charged Officer by speed post vide letter dated 11.03.2013, however he has not ascertained or brought on record as to whether the same was received by the CO or not. It is subsequently observed that on 14.03.2013 although the CO was not present the TO proceeded with the matter ex-parte and recorded the statement of Prosecution Witnesses including X, Language Teacher who had raised the issue of sexual harassment. Since the CO had been attending the proceedings during the previous hearings, the IO should have given him further opportunities before proceeding ex-parte. This is also in violation of the principles of natural Justice as the CO has not got the opportunities to cross examine a crucial witness who had levelled the particular charge against him. This is even more relevant considering the submissions of the Charged Official regarding various complaints dated 11.09.2006, 18.04.2010, 17.07.2010, 29.07.2010, 17.09.2010 and 20.04.2011 stated to have been made by him against the aforesaid X. The above facts have vitiated the inquiry proceeding, particularly with reference to this charge, to a certain extent and create doubt, on the fact of the charge being reasonably proved.

VIII. It is a fact of the matter that the punishment/penalty to be imposed on a charged officer should be commensurate with the gravity of the charge being proved. The articles of charge made against the CO in the present case do not warrant imposition of the extreme penalty of removal from service except the charge at article no. 6. However, even this charge cannot be considered to be proved beyond doubt”

19. Be it noted that DoE has observed that the charges, save and except, Charge VI were not such that warranted a major penalty and in fact, made observations in favour of the Petitioner to the extent of holding that he was



not responsible with respect to majority of the allegations. For the charge of unauthorized absence, it was observed that the absence was for a period of either one or two days or for a short period within the same day. For Charges II and VII, DoE observed that there is no violation of conduct Rules in an employee making a representation to ventilate his grievances with respect to service disputes. For Charge IV, DoE observed that the IO had not examined the crucial issue of how the Petitioner provoked the students in making the alleged representation and there was no evidence to establish the charge. In respect of Charge III, Director was of the view that the IO had only relied on the memo issued by the Manager and that apart there was no evidence or witness to prove that Petitioner had circulated the photographs or called the media persons in the School premises and that obtaining information under the RTI Act cannot be construed as violation of conduct Rules. Likewise, for Charge IX, DoE has disagreed with the inquiry report on the ground that there was no evidence to establish the same. As for Charge VIII, DoE observed that the School had withdrawn the ACP and made deductions without the approval of the District Authorities and the Petitioner was well within his right to make representation to Director of Education and that IO had not brought forth the rule position whereby prior permission was required for making representation to higher authorities. These observations are evidence of the fact that the IO's findings that the charges are proved, are unsubstantiated by evidence.

20. Insofar as Charge VI is concerned, there is no doubt that the allegations were serious. However, this by itself cannot be the reason for the IO to come to a finding of guilt against the Petitioner. Whatever be the gravity of the allegations, procedures of departmental inquiry have to be



scrupulously followed and principles of natural justice cannot be given a go by. It bears repetition to state that DoE was also of the view that Petitioner was regularly appearing on the dates fixed by the IO and thus the IO should not have proceeded in Petitioner's absence on 14.03.2013 to close the evidence of the complainant without giving him a chance to cross-examine. This illegality goes to the root of the matter and was enough for the DST to set aside the inquiry proceedings and the punishment, which was not done. DoE had also highlighted that Petitioner had made several complaints against the complainant much prior to her complaints and this fact has also been overlooked by DST and erroneously, the Tribunal has agreed with the School, which cannot be countenanced.

21. A perusal of the impugned judgment passed by the DST also shows that decision of the Tribunal is broadly coloured by the seriousness and gravity of the allegations and in this backdrop, the Tribunal has gone a step forward to hold that several ladies had complained against the Petitioner alleging sexual harassment, oblivious of the fact that there was no charge to this effect. Another glaring error in the impugned judgment is reliance on the judgments, which were wholly inapplicable to the present case. In the context of the plea of the Petitioner that he was not given opportunity to cross-examine the complainant, reliance was placed on the judgment of the Supreme Court in *Avinash Nagra v. Navodaya Vidyalaya Samiti and Others, (1997) 2 SCC 534*, where it was held that an inquiry is not a panacea but a nail in the coffin and it was hazardous to expose young girls to tardy process of cross-examination, which was not the case here since it was nobody's case that the complainant should not be exposed to cross-examination. Reliance by DST on the judgment of this Court in *Kendriya*



Vidyalaya Sangathan & Ors. v. Gauri Shankar, 2007 SCC OnLine Del 1648, was also inapt. The said case turned on its own facts and in a contextual situation, the Court held that it will be embarrassing for students and guardians to participate in an inquiry. This was a case which related to consumption of liquor and harassment of students and in the given facts, the Court came to a conclusion that the Tribunal had acted in complete indifference and lack of sensitivity in setting aside the order of termination. In *C. Parthiban and another v. Dr. K. Meena, Convenor, Vice-Chancellor Committee, Bharathidasan University, Tiruchirapalli, and others, 2007 SCC OnLine Mad 79*, the Madras High Court no doubt held that in absence of Rules prescribing any special procedure, the decision of the Vice Chancellor to change the mode of inquiry in order to protect the modesty of girl students to prevent their unnecessary exposure was justified. It bears repetition to state that in the present case, the complainant had offered herself for cross-examination and never took a stand that it would embarrass her or expose her if she was subjected to cross-examination.

22. Another significant aberration has taken place in the present proceedings. School had referred the matter to DoE for approval in consonance with Section 8(2) of DSEAR, which provides that no employee of a recognised private school shall be dismissed, removed or reduced in rank nor his service be otherwise terminated except with the prior approval of the Director. This provision only deals with the obligation of the School to seek prior approval of the Director before imposing the punishments mentioned therein and as and when the approval is sought, it is for the DoE to either grant the approval or reject the request. This provision, in my view, does not envisage a situation where the DoE while disagreeing that



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prescribed punishment under Section 8(2) can be imposed, has the power to modify the punishment. Reading of impugned order dated 24.05.2014, whereby penalty of compulsory retirement was imposed on the Petitioner shows that the punishment was imposed purely on the recommendation of DoE with no independent application of mind by the Disciplinary Committee. This Court is unable to read Section 8(2) to mean and connote that DoE has the power to modify the proposed penalty and assuming that there is any such power, the recommendation to impose the harsh penalty of compulsory retirement does not fit into the observations of the DoE, referred above.

23. For all the aforesaid reasons, this Court is unable to uphold the impugned judgment dated 18.05.2017 passed by the DST in Appeal No.65/2014 as also the penalty of compulsory retirement. Accordingly, writ petition is allowed quashing and setting aside the judgment of the DST as well as the charge memo, inquiry proceedings and the penalty order. Petitioner has reached the age of superannuation on 30.09.2015, during the pendency of this writ petition and therefore, it is directed that he be granted notional reinstatement with all consequential retiral benefits.

24. Pending application also stands disposed of.

JYOTI SINGH, J

NOVEMBER 29, 2024/shivam