



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 995/2012

Smt. Satya Garg W/o Dr. R.C. Garg, aged 58 years, R/o B-34,
Subhash Enclave, Air Force Scheme, Jodhpur (presently working
as Vice Principal K.V. No.2, AFS, Jodhpur).

-----Petitioner

Versus

1. Kendriya Vidyalaya Sangathan through its Commissioner,
18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi
- 110016.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi
- 110016.
3. The Assistant Commissioner, Kendrya Vidyalaya Sangathan
(Regional Office), Sector 30-A, Gandhinagar (Gujrat).
4. The Assistant Commissioner, Kendrya Vidyalaya Sangathan,
92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur - 302015.

-----Respondents

For Petitioner(s) : Mrs. Satya Garg - present in person
For Respondent(s) : Mr. Gaurav Ranka for
Mr. Muktesh Maheshwari.

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL**

Reportable

Order

Conclusion of Arguments &

Reserved on : 06 /04/2026

Pronounced on : 20/04/2026

(Per Sunil Beniwal, J.)

1. The present writ petition has been preferred by the petitioner, being aggrieved by the order dated 13.01.2012 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur ('the Tribunal') in Original Application No. 134/2010, whereby the OA was dismissed.



2. The brief facts, in a nutshell, which led to the filing of the present writ petition are that the petitioner filed an Original Application ('OA') bearing No. 134/2010 challenging the order dated 01.05.2009 passed by the Disciplinary Authority, whereby the petitioner was held guilty of the charges levelled against her and a major penalty was imposed upon her, directing that she be demoted to the lower post of Vice Principal in the pay scale which she was drawing prior to her promotion to the post of Principal. Apart from this, she was debarred from further promotion till her retirement. The petitioner also challenged the order dated 02.03.2010, whereby the Appellate Authority affirmed the order dated 01.05.2009 passed by the Disciplinary Authority.

2.1 The OA filed by the petitioner was decided by the Tribunal, comprising two members, i.e. one Judicial Member and one Administrative Member, vide order dated 18.08.2011. The Judicial Member, Dr. K.B. Suresh, partly allowed the OA and, out of the five charges levelled against the petitioner, Charges No. 2 to 5 were quashed. However, in relation to Charge No. 1, it was held that the process of inquiry was not in accordance with law, and as a result, the punishments imposed upon the petitioner by the Disciplinary Authority as well as the Appellate Authority were quashed and set aside, while granting liberty to hold a fresh inquiry after affording adequate opportunity of hearing to the parties.

2.2 The second Member, Shri Sudhir Kumar (Administrative), did not agree with the findings and conclusion arrived at by the Judicial Member and, therefore, gave a dissenting note holding that the inquiry had been conducted in accordance with law. He





found no reason to interfere with the well-reasoned orders passed by the Disciplinary Authority as well as the Appellate Authority and held that the OA was liable to be dismissed.

2.3 In view of the conflicting opinions of the two Members, the matter was referred to the Third Member, i.e. Hon'ble Mr. Justice K.S. Rathore (Judicial Member). The Third Member agreed with the opinion expressed by the earlier Member, Shri Sudhir Kumar (Administrative), and, in view of the concurrence of the two Members in holding that the orders passed by the Disciplinary Authority and the Appellate Authority were in accordance with law, the OA filed by the petitioner came to be dismissed.

In the above given circumstances, the petitioner being aggrieved by the order dated 13.01.2012 (majority view), has preferred the present writ petition.

3. The petitioner appeared in person and made the following submissions :-

(i)- The Tribunal committed a serious error in affirming the orders passed by the Disciplinary Authority and the Appellate Authority and, while doing so, completely ignored the most important and vital fact that the policy in force at the relevant point of time, i.e. in the academic year 2005-2006, clearly provided that, in no event, could a student be detained until the elementary classes were completed. Referring to the said policy, the petitioner submitted that the principal allegation against her pertains to the award of grace marks to one student, Master Rohit, and promoting him from Class VII to Class VIII. The said allegation is false and highly improbable in view of the policy. It was argued that there was no reason for the petitioner to award





grace marks, as, in any event, the student, Master Rohit, was to be promoted to the next class in view of the policy. Therefore, these allegations have been made with the mala fide intent to damage the career of the petitioner, who otherwise has had an unblemished record throughout.

(ii)- At the relevant point of time, there were more than 4,000 students, and there was no reason why the petitioner would show any benevolence to a particular student by awarding grace marks, more so when promotion to the next class was certain in view of the policy in force in the year 2006.

(iii)- While arguing the writ petition, the petitioner produced an extract from the Gazette of India Extraordinary and relied on Section 16, which, according to her, clearly provides that "no child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education."

(iv)- The Judicial Member, namely Dr. K.B. Suresh, rightly allowed the OA and passed a well-reasoned and justified order. Charge Nos. 2 to 5 were not found proved, and the same was also accepted by the Administrative Member and the Third Member. However, Charge No. 1 was also not proved against the petitioner; nevertheless, liberty was granted to the Department to hold a fresh inquiry, if at all it so wished.

(v)- The petitioner also relied on Article 106 of the Revision of Education Code for Kendriya Vidyalaya Sangathan to contend that no child in the elementary classes could be detained. She further submitted that grace marks were granted to the student, Master Rohit, as she, being the Principal of the school, had the power to grant grace marks up to 10 marks.





(vi)- The petitioner had asked the subject teachers to re-check the answer sheers of the student, Master Rohit, as certain questions in the answer sheet of the said student in question had remained unchecked.

In view of the above submissions, the petitioner contended that she had no intention to show undue favour to any particular student and that what she did was in accordance with law. Referring to the findings recorded by the Judicial Member, namely Dr. K.B. Suresh, she submitted that the writ petition deserves to be allowed and that the order passed by the majority Members of the Tribunal, as also the orders of the Disciplinary Authority and the Appellate Authority, be quashed and set aside.

4. Per contra, learned counsel appearing for the respondents vehemently opposed the submissions made by the petitioner and advanced the following submissions:-

(i)- In the year 2006, when the alleged incident occurred and the inquiry was held, there was no no-detention policy in force.

(ii)- The Principal had no authority to grant more than 10 grace marks. However, in the present case, student Master Rohit was awarded more than 10 grace marks to ensure his promotion from Class VII to Class VIII.

(iii)- The documents on which the petitioner has relied, and which have been shown before this Court, do not form part of the pleadings. Be that as it may, the policy of not detaining any student up to the elementary classes was introduced for the first time in the year 2009, when the Right of Children to Free and Compulsory Education Act, 2009 came into force.





(iv)- The petitioner has referred to policies/rules/provisions which were introduced in the year 2009; however, in the present case, the issue relates to the academic year 2005-2006. The inquiry was held with reference to the provisions which were in force at the relevant time, and therefore, the petitioner cannot be permitted to rely on provisions which had no applicability to the facts and circumstances of the present case.

(v)- Learned counsel, while referring to the five charges levelled against the petitioner, argued that there were serious allegations against her, which included not only awarding grace marks to student Master Rohit de hors the rules, but also manipulating the answer sheets.

(vi)- Learned counsel for the respondents contended that, as far as Charge No. 1 is concerned, the same was thoroughly inquired into by the Disciplinary Authority and was found proved, and that the entire procedure adopted while holding the inquiry was in accordance with the prescribed procedure. The procedure adopted by the Disciplinary Authority was found to be in accordance with law by the majority Members of the Tribunal as well.

In view of the concurrent findings of the two authorities below and the Tribunal, it was contended that the writ petition filed by the petitioner deserves to be dismissed.

5. Heard the petitioner so also learned counsel for the respondents and perused the material available on record.

6. It is to be noted that, though various grounds were raised in the OA questioning the orders passed by the Disciplinary Authority as also the Appellate Authority, and in the writ petition the correctness of the order passed by the majority of the Members of





the Tribunal has been questioned, the petitioner has chosen not to press those submissions while arguing the writ petition and has heavily relied upon the policy indicating that no student up to the elementary classes would be detained. This Court takes note of the fact that the document which the petitioner had shown before the Court during the course of arguments was not part of the record. However, the petitioner had shown a piece of paper, stated to be part of the Gazette of India, and referred to Section 16, which is reproduced as under:

“16. No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.”

6.1 While referring to the aforesaid Section, the petitioner argued that there was no reason to manipulate the answer sheets or to award grace marks to student Master Rohit, in view of the policy/provisions allegedly in force in the year 2006, which clearly provided that no student could be detained up to the elementary classes. It was strongly argued that, in view of the policy, student Master Rohit was in any case to be promoted and, therefore, all the allegations of manipulating the answer sheets and awarding grace marks have been made only to damage the career of the petitioner.

6.2 Learned counsel for the respondents, while responding to these submissions, not only argued but also submitted that the document shown by the petitioner before the Court, though an extracted piece of paper from the Gazette of India, upon examination, was found to be part of the Right of Children to Free and Compulsory Education Act, which was introduced in the year





2009. The submission made by learned counsel for the respondents, upon being verified by this Court, was found to be correct, as the no-detention policy was introduced in the year 2009. Therefore, the submission of the petitioner that there was no occasion for her to extend such benefit when it was not at all required is found to be incorrect.

6.3 It is noted that Section 16 of the Right of Children to Free and Compulsory Education Act, 2009 is *ad verbatim* the same as the provision upon which the petitioner has relied. This further fortifies the submission made by learned counsel for the respondents. It is also to be noted that, subsequently, in the year 2019, an amendment was made and the no-detention policy itself was done away with. Be that as it may, for the present case, the only issue which requires consideration is whether the provision relied upon by the petitioner was applicable in the academic year 2005-2006 or not, and the answer to that proposition is simply 'No'.

7. So far as Charge No. 1 is concerned, it pertains to the award of grace marks in excess of 10. It was alleged that the petitioner, who was the Principal at the relevant point of time, had not only awarded bonus marks in excess of what was permissible in accordance with law, but had also pressurized the teachers to re-check the answer sheets. The Administrative Member, namely Shri Sudhir Kumar, and subsequently the Judicial Member, namely Hon'ble Mr. Justice K.S. Rathore, not only considered the record of the inquiry but also quoted the relevant part of the findings recorded by the Disciplinary Authority in their orders. Even this





Court, while examining the record, the averments made in the OA, the reply to the OA, as also the additional affidavit submitted by the respondents on 13.12.2010 in compliance with the directions issued by the Tribunal on 17.09.2010, along with the reply to such additional affidavit submitted by the petitioner, finds that there was a specific assertion with regard to the award of additional 09 marks in Science, 07 marks in English, and 08 marks in Maths. The assertions made by the respondents in paragraph No. 2 of the additional affidavit dated 13.12.2010 remains uncontroverted, which further indicates that the petitioner not only awarded grace marks, but that such award of grace marks was also in violation of the Education Code for Kendriya Vidyalayas.

For ready reference, the relevant extract of Article 106 is reproduced as under:

“Article 106. Promotion Rules :

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C) For Classes VI to IX and XI

Each student would need to pass the continuous and comprehensive evaluation as well as the annual examination separately with at least 33% marks. Thus, each child shall need to obtain not less than 20 marks out of 60 in each subject in the continuous and comprehensive assessment for class VI onwards and 13 marks out of 40 in annual e being promoted to the next class. To pass the examination, a student must obtain not less than 33% marks in each of the academic subjects viz Languages, Mathematics, Science and Social Studies and at least 33% in the aggregate.

D) In classes IX and XI if a candidate secures less than 33% in one or two subjects in the session-ending examination, he will be eligible to take the supplementary examination in those subjects. The candidate will be promoted to the next higher class only if he/she secures 33% marks in each of these subjects in the supplementary examination. The supplementary examination shall be conducted 3 weeks after the declaration of the results and would be conducted under the supervision of the Assistant Commissioner.

E) Grace Marks :





Grace marks will be awarded to the students of classes Vi to VIII only, and shall not be more than 10 in all subjects put together restricted to a maximum of 5 marks in one subject. These would be awarded on the actual marks obtained by a student without reducing them to the weightage of 60 or 40 while bringing out the final assessment.

That is to say, that these 05 marks in a subject can be awarded either in session-ending examination of 100 marks paper or in continuous comprehensive evaluation before reducing the marks to the weightage of 60 or 40. This can either be in the session-ending examination or continuous comprehensive evaluation or split up in both. The ceiling for a subject shall remain 05 marks.”

7.1 A bare reading of Article 106 of the Education Code for Kendriya Vidyalayas further indicates that, in no event, could grace marks exceeding 10 be awarded. However, in the present case, marks exceeding 10 were awarded, which further proves that the petitioner had shown undue favour to one particular student. The reason also appears to be apparent, as there was no policy in force, as claimed by the petitioner, providing for automatic promotion irrespective of the marks obtained in the class in which the student was studying.

8. This Court takes note of the fact that no arguments have been advanced by the petitioner questioning the orders passed by the Disciplinary Authority, the Appellate Authority, or the Tribunal. Nevertheless, this Court deems it appropriate to consider the findings and conclusions recorded by the said authorities, so also the quantum of punishment imposed, so as to satisfy itself whether the penalty awarded is disproportionate to the nature of the misconduct alleged and whether the same is otherwise in accordance with law.

8.1 At this stage, it would be apposite to reproduce the findings recorded by Dr. K.B. Suresh (Judicial Member) in the order dated





18.08.2011, as also the observations made by Shri Sudhir Kumar (Administrative Member) in his dissent note dated 18.08.2011, and the observations made by the Third Member, Hon'ble Mr. Justice K.S. Rathore (Judicial Member), in the order dated 13.01.2012:

“Order dated 18.08.2011 (Dr. K.B. Suresh – Judicial Member)

12. We also note that from concerned rules the applicant could have taken the permission of the Assistant Commissioner and pass a failed student if there are sufficient reasons to do so. There is no evidence available anywhere as to when Sh. Vijay Vir Singh handed over the key, to correct and rechecking the examination papers before the key were handed over to Ms. Sunita Rathore. The applicant would say that she had requested the concerned teacher to make the correction as there was complaint that answer book were not properly evaluated. Therefore, improper procedure has been adopted during the inquiry and thereafter it has vitiated the whole inquiry and its order and the whole proceedings connected with it have to be declared as illegal and quashed.

13. But, we are also conscious of the fact that the degree probity required from a teacher are somewhat nearer to what is required from Judges. There are at least minor unanswered questions. We found that in the result analysis, sheet sent on 03.04.2006 the number of pass is given is 108 and in the report sent on 17.5.2006 the number of pass is given is 109 in the 7th class. Therefore one student who had apparently failed has subsequently passed. Illumination is not available as to what role the applicant might have in this transaction. But, at the same time the result of 12th class are good. It must be said in this connection that general view of the teaching community was that while the applicant was said to be a rough and tough and strict disciplinarian even the Chairman of the Managing Committee praised her efforts and the general indication is that she is sincere in her efforts. But we cannot come to a conclusion that even if the applicant had decided by herself to give a failed students more marks than he deserves the level of complicity which can be attached for such a subjective decision is to be far different from the one that is arrived at by the authorities therefore on cumulative consideration of everything the followings orders are issued:-

1. The charges Nos. 2 to 5 in its entirety with all the process connected with it up to the appellate decision are held to be perverse and opposed to facts, evidence, natural justice, law and is hereby quashed.
2. The 1st charge in relation to the 1st charge and the process of inquiry and the way in which evidence was adduced, the way the evidence was not co-elative, non-examination of the complainer etc. had terminated the process and vitiated the inquiry and the whole of the proceedings consequential to it resulting from the inquiry to the appellate order are hereby quashed.





3. In consequence thereof all the punishments imposed on applicant vide Annexure A-1 & A2 are hereby quashed.

4. The applicant is to be restored to the stage of the Principal with immediate effect and either posted earlier place of posting or at an appropriate place of choice obtained from her if such earlier post is not available.

5. But at the same time the charge no.1 is retained for the authority to have a fresh look into the matter, a fresh determination if warranted and obtained appropriate evidence from the complainer and hold a fresh inquiry after observing rules of justice and granting adequate opportunity of being heard and ensuring fair methodology of unbiased trial, i.e. if the authorities found the one charge now remaining alone is conspicuous and significant as to warrant further action by a recourse of a speaking order in view of the troubles suffer by the applicant.

14. The O.A. is allowed to the limited extent above. No order as to costs. All the documents are returned herewith.

Order dated 18.08.2011 (Mr. Sudhir Kumar – Administrative Member) :

10. In this particular case, according to the records produced by the respondents, a proper departmental inquiry has been conducted. A charge sheet memo was issued to the applicant on 18.10.2007 and Inquiry Officer and the Presenting Officer were appointed on 13.12.2007. The first Preliminary hearing was held on 16.12.2008 at which the applicant appeared as the charged officer. The further progress of enquiry was made on 22.4.2008, 8.5.2008, 1.7.2008, 4.7.2008, 25.7.2008, 30.7.2008, 4.9.2008, and 11.9.2008, as given in page 2 of the inquiry report contained in the departmental file presented before us. The charged officer has submitted her representation, and, after the written brief submitted by the Presenting Officer, the applicant as the charged officer submitted her supplementary reply also. The applicant was allowed to cross-examine the witnesses produced during the inquiry and on 1.7.2008, she was also intimated that she had got an option to appear herself also as her own witness, which she had declined, and had chosen to submit her case through proof and documents.

11. Having gone through the voluminous file relating to the conduct of inquiry submitted before us by the respondents, it is clear that the entire procedure as prescribed in respect of the conduct of the disciplinary inquiries has been scrupulously followed by the respondents. That being the case, since it appears to me that the findings of the Disciplinary Authority are based on some evidence, and that as laid down by the Hon'ble Supreme Court in the case law as cited above, it is not for this Tribunal to try to re-appreciate the evidence, and substitute the findings of the Disciplinary Authority and the Appellate Authority with our own findings.

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15. Coming to the facts of the case also, I am fully convinced that the respondents have not erred in holding the applicant guilty of some of the charges with which she was charged with. In regard to





the charge relating to Article of Charge No.1, it is clear from the evidence as brought on record by both the applicant and the respondents that one student, Master Rohit, of the 7th class had failed in the result declared on 31.3.2006. He had failed in three subjects namely, English, Maths and Science. The Education Code of the Kendriya Vidyalaya Sangathan allowed the applicant" as the Principal" to allow up to 10 grace marks to any student in any one subject, while sitting as the Chairperson of the concerned committee for awarding such grace-marks, and the minutes of that committee ought to have been recorded in the Order Book of the School and preserved. In regard to this charge, in the report of the Disciplinary Inquiry as submitted by the Inquiry Officer Dr. V.K. Gautam through his letter dated 29.9.2008, the case of the Disciplinary Authority has been mentioned as follows:-

"Smt. Satya Garg worked as Principal, at K.V. AFS Bawana during 2005-06. She while functioning as Principal directed Shri Vijayvir Singh, PGT (Phy), the examination Incharge on 4.4.2006 (while the student was declared failed on 31.3.2006) for re- evaluation of answer sheets of Master Rohit a failed student of class VII-C (failed in English, Math and Science subjects) in contravention of Article 106 (G) of the Education Code and on refusal by Shri Vijayvir Singh she directed him on 5.4.06 to handover the keys of Examination Department and she herself tampered with the answer sheets and promoted the student in violation of rules."

16. In regard to this charge, the evidence produced on behalf of the Disciplinary Authority, and on behalf of the Charged Officer has been recorded by the Inquiry Officer as follows:-

"EVIDENCE ON BEHALF OF THE DISCIPLINARY AUTHORITY"

"Shri Vijay Vir Singh, PGT (Phy), KV, BSF Anupgarh, who had earlier worked at KV AF S Bawana from 2.9.03 to 31.3.2008, was the first witness from the prosecution side (SW-1). Shri Singh was examined cross-examined and re-examined on 1.7.2008. He confirmed that CO had asked him to re-evaluate the papers of Master Rohit in the subject in which he was declared failed and a few days after charge of examination was taken from him. He came to know about the promotion of Master Rohit to class VIII when Shri R.S. Bharaj, EO visited the Vidyalaya."

"Smt. Sunita Rathore, PGT (Bio) KV AFS Bawana was examined as prosecution witness No. 2 (PW-2) on 1.7.2008. She was not cross examined by the CO. The PW 2 Intimated that she was handed over the keys/charge of the examination room on 17.4.2008 and she was aware about the promotion of Master Rohit."

"Smt. Geeta Syal, TGT (SST) KV AFS Bawana was examined as prosecution witness No. 3 (PW-3) on 1.7.2008. She confirmed that she was made class teacher of VII-C on 1.4.2006. The name of Master Rohit was on the attendance register but he was not attending the class. She was teaching Social Studies to class VII-C and when she saw Master Rohit attending the class VIII-C she





brought this to the notice of Principal and showed her the class attendance register of class VII-C. The Principal took the class attendance register of class VII-C from her and wrote against the name of Master Rohit that he has been promoted to class VIII. This was not admitted by the CO. The CO did not cross examine the PW-3."

EVIDENCE ON BEHALF OF THE CHARGED OFFICER:

"The defence document NO. 1 is copy of order book containing minutes recorded about supplementary examination, granting grace marks signed by a committee of six persons including CO. The original order book is not available in the Vidyalaya. About Article of Charge NO. 2 the CO states that she Joined KV Bawana only in November 2005 so she cannot be blamed for the contractual appointments made prior to her. In 2006-07 she made appointments with the approval of VMC/VAC. The CO has submitted a copy of letter dated 23.3.06 addressed to Chairman, VMC seeking permission for appointment of Ms. Pooja Goyal from PRT panel as spoken English teacher. She has produced copy of letter vide which the services of black listed fir were terminated."

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21. Nowhere in her O.A. or any other pleadings the applicant has been able to deny this, or convincingly state that she did not tamper with the answer sheet of the concerned student. She has also not been able to explain the disappearance of the original order book of the Vidyalaya, and other relevant records, in which, with the signatures of the other Members of the Grace-Marks committee, she could have awarded ten grace marks. In her pleadings she has taken the plea that she was empowered under the Education Code of the KVS to award grace marks, but she has failed to show anywhere in the said Education Code that she could have awarded grace marks to a student in as many as three subjects namely, English, Maths and Science, that too much more than the ten grace marks in one subject which she was empowered to award, in consultation with the Grace Marks Committee.

22. To my mind it will be a sheer waste of effort hereto try to juxtapose the other charges, and the case of the Disciplinary Authority, and the Charged officer, and the findings, in respect of the other four Articles of charge. In the position in which the applicant was, the mere fact of the First Article of Charge itself having been proved satisfactorily was sufficient for the Disciplinary and Appellate Authorities to have passed the impugned orders.

23. The Hon'ble Supreme Court has held in a number of cases that society expects a level of exemplary behavior from the people who are in a position to be emulated by others in the society at large. The Principal of a Kendriya Vidyalaya, as Head of the Institution, the number one of the Body of teachers available in the Vidyalaya, and a role model for the teachers and students, cannot act in a manner as capricious as the applicant appears to have acted. Therefore, in my opinion, the respondents have actually awarded





very little punishment to the applicant, and she perhaps deserved even harsher punishment, even for the one single Article of Charge conclusively proved against her. I am therefore of the opinion that the O.A. is liable to be dismissed, with heavy costs being imposed upon the applicant, because of many sentences in her pleadings and submissions almost amounting to perjury, which can be elicited from the contents of her O.A. and various pleadings.

Order dated 13.01.2012 (Hon'ble Mr. Justice K.S. Rathore – Judicial Member)

17. I have carefully examined the judgments relied upon by the Hon'ble Member (A) and having considered the ratio decided by the Hon'ble Supreme Court and applying the same to the facts and circumstances of the present case, it is clear that entire procedure as prescribed in respect of conduct of disciplinary proceedings has been followed by the respondents after providing ample opportunity to the applicant to defend her case and also provided chance to cross-examine the witnesses. Therefore, I am fully agree with the observations made by the Hon'ble Member (A) that in the case of disciplinary enquiries, the Courts and Tribunals cannot sit as a reviewing authority or as a review court. Neither do the disciplinary enquiries concerned social economic justice of the society at large. The procedure relating to disciplinary enquiries are concerned only with the fact as to whether the fundamental right of the charged official to be entitled to a proper hearing, and a chance to properly defend himself/herself, has been provided to him/her or not. As discussed hereinabove, the applicant was provided opportunity to defend her case and she has availed the opportunity to represent her case and cross-examined the witnesses. In such a situation, the conclusion drawn by the Enquiry Officer, the findings arrived at by the Disciplinary and Appellate Authorities should not be interfered with.

18. Having considered the views expressed by the Hon'ble Member (J) and Hon'ble Member (A), it reveals that both the Hon'ble Members are in agreement only to the extent of Charge No.1 which is proved against the applicant but the Hon'ble Member (J) has not agreed upon the punishment awarded by the Disciplinary Authority whereas the Hon'ble Member (A) was of the view that "the respondents have actually awarded a very little punishment to the applicant, and she perhaps deserved even harsher punishment even for the one single Article of Charge conclusively proved against her" as one student Master Rohit, of 7th Class had failed in the result declared on 31.3.2006. He had failed in three subjects namely English, Maths and Science. The Education Code of Kendriya Vidyalaya Sangathan allowed the applicant as Principal to allow up to 10 grace marks to any student in any one subject while sitting as the Chairperson of the concerned committee for awarding such grace marks and the minutes of that committee ought to have been recorded in the Order Book of the school and preserved. In the enquiry report, the Inquiry Officer has considered the statement of Shri Vijayvir Singh, PGT (PHY), Smt. Sunita Rathore PGT (Bio) and Smt. Geeta Syal TGT (SST). Shri Vijayvir Singh confirmed that CO had asked him to re-evaluate the papers of Master Rohit in the subject in which he was declared failed and a





few days after the charge of examination was taken from him. He came to know about the promotion of Master Rohit to Class VIII when Shri R.S. Bharaj, EO visited the Vidyalaya. Smt. Sunita Rathore in her statement stated that she was handed over the keys/charge of the examination room on 17.4.2008.

19. Having considered the statement and the record of the case, the Enquiry Officer given the following findings:

"As regards Article-I three SWs were examined who confirmed their earlier statements. The CO took away the charge of examination room from PW-I and kept the charge with her upto 16.4.2006 and that after tampering with the records promoted Master Rohit to Class VIII, and then handed over the charge to PW-2 on 17.4.06. As claimed by CO, if the answer sheets corrections were carried out before declaration of the result the same/corrections should have been initialed with date but that was not done. The answer sheets of Master Rohit Bhati do not contain corrections under the signature of subject teachers. His name continued in the class register of VII and when class teacher SW-3 brought this to the notice of CO, she herself recorded that the student has been promoted. The original "Order Book" and other relevant records are not available in KV, AFS Bawana through AC (DR). It is further reported that the CO has not given proper charge of the school and that she handed over only cashbook and keys of some almirah. The charge levelled against the CO is proved."

20. Considering the finding given by the Enquiry Officer, I am in agreement with the opinion expressed by the Hon'ble Member (A) The Enquiry Officer arrived at conclusion that charge Article-I levelled against the applicant has been fully proved. The finding given by the Enquiry Officer is supported by evidence, as discussed hereinabove. As per the ratio decided by the Hon'ble Apex Court in the judgments referred to hereinabove, the applicant being Principal of Kendriya Vidyalaya, as head of the institution is not expected to act in the manner in which she has acted. In the result, I am fully agree with the opinion expressed by the Hon'ble Member (A). Therefore, the OA being bereft of merit deserves to be dismissed with no order as to costs."

8.2 What can be discerned from the decisions of the authorities is that the Judicial Member, Dr. K.B. Suresh, found serious infirmities in the conduct of the departmental inquiry and held that the procedure adopted stood vitiated for non-observance of fair process, non-correlation of evidence, and failure to examine material persons including the complainant. While noticing certain





unanswered circumstances in relation to the change in the pass figures of Class VII and the subsequent promotion of one student, the learned Member nevertheless took the view that the degree of culpability attributed to the applicant by the authorities was not borne out in the manner alleged. On that reasoning, charges Nos. 2 to 5 were held to be wholly unsustainable and charge No. 1, as dealt with in the inquiry and consequential orders, was also held to be vitiated, resulting in quashing of the punishment and restoration of the applicant to the post of Principal. At the same time, liberty was reserved to the authorities to take a fresh look only with respect to charge No. 1, if so warranted, after following due process, observing principles of natural justice, and holding a fair inquiry on proper evidence.

8.3 Further, Mr. Sudhir Kumar, Administrative Member, and Hon'ble Mr. Justice K.S. Rathore, Third Member, both found the departmental proceedings to have been conducted in accordance with the prescribed procedure and after affording full opportunity to the applicant to defend herself and cross-examine the witnesses. They accepted that the Tribunal could not re-appreciate the evidence as an appellate forum so long as the findings of the disciplinary authority were based on some evidence. Both placed decisive emphasis on Charge No. 1, namely, the irregular promotion of Master Rohit, who had failed in three subjects, by holding that the applicant, though empowered only to grant limited grace marks in one subject through the prescribed committee mechanism, had failed to justify the grant of marks in multiple subjects and could not explain the tampering with records





or disappearance of the original order book. On that basis, they concluded that Charge No. 1 stood conclusively proved, that the findings of the Inquiry Officer and Disciplinary Authorities were supported by evidence, and that the punishment did not warrant interference, rather, the Administrative Member even opined that a harsher punishment could have been justified. Consequently, the Third Member concurred with the Administrative Member and held that the Original Application deserved dismissal.

8.4 It is noted that the major penalty has been imposed upon the petitioner as per Rule 11(vi) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

For ready reference, Rule 11(vi) is reproduced as under:-

“11. Penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

XXX

XXX

XXX

(vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time scale of pay, grade, post or service;”

8.5 A bare perusal of the above Rule reflects that the power has been vested in the Disciplinary Authority to impose the penalty of reduction to a lower time-scale of pay, grade, post, or service for a period to be specified in the order of penalty, together with consequential directions regarding the effect of such reduction. Once the statute confers such discretion upon the competent





authority, and the punishment imposed falls within the ambit of the Rule, no fault can be found with the same. That apart, since no arguments have been advanced by the petitioner questioning the quantum of punishment on the ground of it being *dehors* the Rules or it being highly disproportionate to the charges found to be proved against her. That being so, this Court finds no reason to interfere with the orders passed by the Disciplinary Authority, the Appellate Authority and the Tribunal.

9. In view of the discussion made above, this Court has no hesitation in concluding that the majority view expressed by the Tribunal was well reasoned and justified and requires no interference by this Court. As a consequence thereof, the present writ petition fails and is hereby dismissed.

10. Any pending application(s) stand(s) disposed of.

(SUNIL BENIWAL),J

(ARUN MONGA),J

Rmathur/-