

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 3267/2002

This the 11th day of July, 2003

HON'BLE SH. V.K. MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Ms. Reetu Srivastava
D/o Shri D.N. Srivastava,
184/7, Babuk Purwa Colony,
Kidwai Nagar, Kanpur - 200 011.

Applicant

(By Advocate: Ms. Manita Verma)

Versus

1. Kendriya Vidyalaya Sangathan
Vigilance Section,
18 Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016.
through the Commissioner
2. Joint Commissioner (Admn.)
Kendriya Vidyalaya Sangathan,
Vigilance Section,
18, Institutional Area
Shaheed Jeet Singh Marg,
New Delhi - 100 016.
3. The Principal,
Kendriya Vidyalaya,
No. 1 AFS,
Jamnagar (Gujarat)

Respondents

(By Advocate: Sh. S. Rajappa)

ORDER (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant impugns an order dated 18.9.2002 vide which the appellate authority had confirmed the order passed by the disciplinary authority whereby the applicant had been removed from service in exercise of the power provided under the provisions of Article 81 (d) of Education Code for Kendriya Vidyalaya for her unauthorised absence.

2. The facts in brief as alleged by the applicant are that applicant was appointed against a temporary post of Trained Graduate Teacher and was posted on probation for a period of 2

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years and her service conditions were governed by Education Code for Kendriya Vidyalayas. In pursuance of her appointment she joined on 1.11.2001 at Kendriya Vidyalaya, AFS Jamnagar as a fresh appointee. Applicant applied for two days casual leave from 12.11.2001 to 13.11.2001 prefixing Sunday on 11.11.2001 and suffixing 14.11.2001 to 16.11.2001 on account of Deepawali Holidays. Thus after availing the said leave she was supposed to resume duty on 17.11.2001 but applicant alleges that on 18.11.2001 she informed the respondent that she was suffering from enteric fever and on the basis of medical advice, required rest and requested for medical leave. It is further stated that due to further deterioration in health, applicant was advised against joining her duties. Again on 2.12.2001 she informed the respondents about her medical condition and requested for grant of medical leave for further four weeks w.e.f. 2.12.2001. On 7.12.2001 applicant was informed by telegram that her leave has not been granted. However, the applicant continued to remain absent and she informed the department about her continued ill health and despite her willingness to join her duties she was forced once again to apply for further extension of leave on medical grounds to Resp. No.3. But Resp. No.3 again sent a telegram informing that her leave extension was not granted and she was requested to return to duty. On 8.2.2002 applicant was informed by Assistant Commissioner, Kendriya Vidyalaya Sangathan with regard to provisional loss of lien on post.

3. In terms of Article 81 (d)(1), it is also stated that as per provisions of Article 81 (d)(3) applicant was given an opportunity to show cause as to why a provisional loss of lien be not continued. Applicant was also required to make a written representation within 10 days to the Assistant Commissioner failing which an order confirming loss of lien

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would be passed under Article 81(d). The said order was received by the applicant on 14.2.2002. Applicant again informed that due to medical reasons she was unable to attend her duties and she again requested for extension of leave on medical grounds. In view of her sickness she requested that she might be permitted to join her duties. However, the Assistant Commissioner ultimately confirmed the order of provisional loss of lien on post. Though before that she was directed to join her duties on or before 15.3.2002 for her personal hearing failing which loss of lien will be continued. Applicant sent a fax to the respondents stating that it would not be possible to get the train reservation at such short notice so as to join duty on 15.3.2002 she will be able to join only from 18.3.2002. But on 16.3.2002 applicant again sent a telegram to Resp. No.3-school seeking for more time to join duty since riots were going on in Gujarat and keeping in view personal safety it is not possible for applicant to travel by train. In the meanwhile on 9.4.2002 Assistant Commissioner confirmed the order dated 8.2.2002 regarding voluntary abandonment of service and loss of lien on the post of TGT (English) and applicant was deemed to have been relieved from 17.11.2001 under Article 81(d). Thereafter applicant made various representations to the authorities in order to explain her predicament and the reason for not being able to join on 15.3.2002 though she was granted a personal hearing on 27.8.2002. But after the personal hearing Resp. No.2 confirmed the order dated 9.4.2002 passed by the Assistant Commissioner, the present OA has been filed.

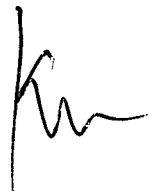
4. In order to challenge the same, applicant submits that she was genuinely under medical supervision and was medically unfit to join her duties and she has been advised against joining her duties. It is further submitted that she was not



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provided sufficient time to join duties as per memo dated 7.3.2002 issued by the Assistant Commissioner. When she was asked to appear on 15.3.2002 for personal hearing or alternatively to report for duty which was in violation of principles of natural justice since sufficient time was not provided to the applicant to reach Jamnagar which requires 13 hours of train journey. It is further submitted that since riots had broken out in Gujarat because of that also the applicant could not make it to reach Jamnagar so for that reason the impugned order should be quashed. It is further submitted that Article 81 (d) of Education Code has not been applied in proper perspective.

5. Respondents are contesting the OA. Respondents submitted that applicant was supposed to resume duty on 17.11.2001 but she did not report for duty and sent an application dated 18.11.2001 alongwith a medical certificate from the private practitioner for leave for 15 days w.e.f. 18.11.2001 to 1.12.2001. Instead of joining on 2.12.2001, she sent an application dated 2.12.2001 for extension of leave for four weeks. When a second time extension of leave application was received applicant was duly informed that leave has been refused but still applicant did not join. Then a show cause notice under Article 81(d) was issued to the applicant and applicant did send a representation expressing her inability to join but again the applicant was told that she should join duty on 15.3.2002 or appear before the Assistant Commissioner for personal hearing. But she neither reported for duty nor she appeared before the Assistant Commissioner on 16.3.2002 rather she sent another telegram dated 13.3.2002 requesting that she will join on 18.3.2002. Though she submitted that it was not safe for her to reach Jamnagar by train or by bus and she ought to have join at any cost but she was given ample



opportunity to join duty so she cannot take shelter on one pretext or the other to join duty nor she can plead that she was prevented from joining duty.

6. Thus, it is submitted that the order of removal has been properly passed and it has been upheld by the appellate authority and appellate authority is of the view that ample opportunity has been granted to the applicant.

7. We have heard the learned counsel for the parties and perused the material on record.

8. The only grievance of the applicant is that she has not been granted ample opportunity under Article 81 and because of her illness she could not join duty earlier and later because of riots in Gujarat she could not reach to report for duty at Jamnagar as conceded by the learned counsel for the applicant. Though the applicant has also submitted that Article 81(d) has not been properly applied as she has not been afforded sufficient opportunity and her case of non-reaching at Jamnagar due to riots which had broken out in Gujarat, the department should have considered the case in a proper perspective that the applicant was prevented from joining duty because of riots.

9. In reply to this, counsel for respondents submitted that the provisions of Article 81(d) of the Education Code had been approved by the Delhi High Court in case of Prem Juneja vs. Union of India 2003 1 AD (Delhi) 57, as the Hon'ble High Court has held that Article 81(d) of Education Code is not violative of Article 14 & 16 of Constitution. This makes a provision for providing opportunity to an employee to show cause against



the view of concerned authority that employee has lost his lien on the post on the ground of his unauthorised absence from duty.

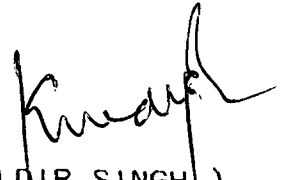
10. We have also considered the rival contentions and the only question is to be seen is whether the applicant has been provided fair and requisite opportunity as per provisions of Article 81(d) of Education Code. It is an admitted case of the applicant that uptill 15.3.2002 she was granted opportunity to join duty or to appear before the Assistant Commissioner to explain her absence. Applicant could not reach on 15.3.2002 because of shortage of time and non-availability of reservation in train. Therefore, she had informed vide a telegram that she would be reaching there on 18.3.2002. But still the applicant did not reach there and sought extension of leave. But even on 18.3.2002 she did not reach and she made again a request vide her letter dated 16.3.2002 to provide her a new date for joining duty. She had taken a plea that sicne there were riots in Gujarat she was forced not to undertake a journey but no report has been placed on record whether there was infact any hinderance for her to proceed to Jamnagar. Rather she had submitted that she had been watching News on television at her residence meaning thereby that she did not leave her residence and she did not face practically any hinderance on her way to Jamnagar. No clipping of any newspaper report or the order passed by any law enforcing authorities has been placed on record which may show that the route to Jamnagar had effected by riots during the said period when she was supposed to join the duty.

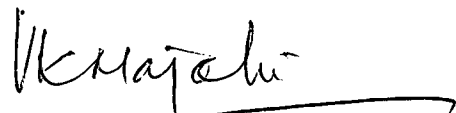
11. Thus, it shows that the applicant herself had not taken any steps towards joining her duty as poer her own telegram to join duty at Jamnagar and there is no merital on record to

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show that she was prevented by any sound reason for not joining the duties particularly after her own telegram that she would be joining on 18.3.2002. So we find that Article 81(d) has been rightly invoked by the respondents and a proper opportunity had been granted to the applicant before declaring that applicant had abandoned the service of her own. Before passing the order the applicant was also afforded opportunity of personal hearing, but it is applicant who did not avail the same. As such there is no violation of principle of natural justice.

12. In view of our discussion above, we find that the order passed by the authorities are justified orders and are in accordance with provisions to Article 81(d). No interference is called for. OA is, accordingly, dismissed.


(KULDIP SINGH)
Member (J)


(V.K. MAJOTRA)
Member (A)

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