

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2248/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 20th day of December, 2000

Indra Sharma
c/o Principal (Retd.)
AFS, Dadri, Dist. Gautam Budh Nagar
U.P.
presently at
D-211, Sarita Vihar
New Delhi. ... Applicant

(By Shri Irshad Ahmad, Advocate)

Vs.

1. Union of India through
Secretary
Human Resource & Development
Ministry of Human Resources &
Development
Government of India
New Delhi.
2. Commissioner
through Deputy Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area,
Shahid Jeet Singh Marg
New Delhi.
3. Sri. Geeta Ram
Commissioner for Department of Inquiries
Kendriya Vidyalaya Sangathan
18, Institutional Area,
Shahid Jeet Singh Marg
New Delhi. ... Respondents

(By Shri L.R.Khatana, proxy of Shri S.Rajappa,
Advocate)

O R D E R (Oral)

Justice V. Rajagopala Reddy:

The applicant, Smt. Indra Sharma, who
retired as a Principal of Kendriya Vidhyalaya
Sanghtan, Air Force Station, Dadri, was charged under
Rule 14 of the CCS (CCA) Rules on the following nine
Articles of charges:

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ARTICLE-I

"That the said Smt. Indra Sharma, Principal (under suspension) while functioning as Principal, AFS Dadri during July, 1993 unauthorisedly appointed Sri Dinesh Chand Sharma as Group 'D' in violation of standing instructions given by HQ KVS letter No.F-7-747/90-KVS (O&M) dated 8.7.93 as circulated by Assistant Commissioner, Regional Office, Delhi vide letter No.F.6-1(i)/93-KVS(DR) dated 21-7-93 and in Education Code Article No.39 and the aforesaid act constitutes a misconduct which is violative of rule 3 (1) (i) and 3 (1) (iii) of C.C.S. Conduct Rules 1964 as extended to KVS employees.

ARTICLE II

That the said Smt. Indra Sharma, Principal (Under suspension) while functioning as Principal in Kendriya Vidyalaya, AFS, Dadri during August, 1993 authorised and introduced one Sri Satish Chand Goel to sign cheques of school fund account in violation of Article 87 of the Accounts Code for Kendriya Vidyalayas and fraudulently attempted to encash Rs.59,854/- vide Cheque No.347979 which was also objected to by the Bank Authorities vide their letter dated 1.9.93. She also got the Cheques on the same date with an evil design.

The actions of Smt. Indra Sharma are violative of rule 3 (1) (i) and 3 (1) (iii) of C.C.S. Conduct Rules, 1964.

ARTICLE III

That the said Smt. Indra Sharma, Principal (under suspension) while functioning as Principal, Kendriya Vidyalaya, AFS Dadri go a Cheque No.347994 dated 30.9.93 for Rs.8947/- payable as "yourself" signed from the Chairman, VMC, which was later fraudulently tampered with by her and converted into 'Self' and the cutting was attested by her. Smt. Indra sharma then attempted to draw the amount and utilise the same for illegal purposes without the knowledge of Chairman, VMC by indulging in above acts thus Smt. Indra Sharma violated the Rule 3 (1) (i) and 3 (1) (iii) of CCS Conduct Rules 1964.

ARTICLE IV

That the said Smt. Indra Sharma, Principal (under suspension) while functioning as Principal, Kendriya Vidyalaya, AFS Dadri during October, 1993 addressed a letter dated 1.10.93 to Branch Manager, SBI, Dadri Ghaziabad (UP) for opening the current Account of K.V.A.S. Dadri immediately and without the permission of Chairman, VMC. She also unauthorisedly addressed a letter No.KVS/93-94 dated 4.11.93 to Manager, PNB AFS Dadri for closing of Bank Account No.1299 (Pupil Fund) and to Transfer the balance to SBI Account No.SB/C&I-80 which is violative of instructions issued in Chapter 21 of Accounts Code on Pupil Fund.

Smt. Indra Sharma has thus violated Rule 3 (1) (i) and 3 (1) (iii) of C.C.S. Conduct Rules 1964.

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ARTICLE -V

That the said Smt. Indra Sharma, Principal (under suspension) while functioning as Principal, Kendriya Vidyalaya, AFS Dadri during the period from 1.10.92 did not deduct the Income Tax at source from her salary as per provision of Article 117 of the Accounts Code and also under Section 204 of the Income Tax Act, 1961 which is a penal offence and is a misconduct within the meaning of Rule 3 (1) (i) and 3 (1) (ii) and 3 (1) (iii) of C.C.S. Conduct Rules, 1964.

ARTICLE VI

That the said Smt. Indra Sharma, Principal (under suspension) while functioning as Principal, Kendriya Vidyalaya, AFS Dadri from 1.10.92 failed to occupy the accommodation provided for the Principal by the Air Force Authorities of AFS Dadri. She also claimed HRA during this period without proper Authority which is contrary to the instruction contained in Appendix 10 para 5 of the Accounts Code and has thus committed a misconduct within the meaning of 3 (1) (i) and Rule 3 (1) (iii) of CCS Conduct Rules 1964.

ARTICLE VII

That the said Smt. Indra Sharma, Principal (under suspension) while functioning as Principal, Kendriya Vidyalaya, AFS Dadri frequently altered the school hours thereby reducing the working time of staff which is in violation of standing instructions that a Vidyalaya having classes beyond 6th standard must function for 6 hours 10 minutes. Smt. Indra Sharma altered timings of the school from 9.00 hrs to 14.35 hrs., i.e., the school functioned for 5.35 hours, i.e., 35 minutes less than the officially prescribed hours. This act of Smt Sharma, Principal (under suspension) is violative of standing instructions of K.V.S. and constitutes misconduct within the meaning of Rule 3 (1) (ii) and Rule 3 (1) (iii) of C.C.S. Conduct (Rules) 1964.

ARTICLE VIII

That the said Smt. Indra Sharma, Principal (under suspension) without the permission of competent authority used to leave the school before the school hours and remained absent without valid leave sanctioned. During the period of 23rd August, 93 to 10th November, 93 she remained absent for six days, i.e., 8th, 14th, 21st 22nd, 30th September, 93 and 9th Nov., 93. During the above periods she also left school early without any valid permission..... Smt. Indra Sharma are violative.....

ARTICLE IX

That the said Smt. Indra Sharma, Principal (under suspension) while functioning as Principal, Kendriya Vidyalaya, AFS Dadri claimed her salary on the basis of LPC which is not signed by the Chairman, VMC, K.V. Ambala NO.4, who is the competent authority in such matters in respect of the Principal and has thus violated the provision of Article 56 (g) read with Article No.56(h) of the Education Code. Thus the act of Principal Smt. Indra Sharma of claiming salary without obtaining proper LPC duly signed by Chairman,

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VMC, KV NO.4 Ambala is of unbecoming of a KVS Employee and she has thus committed a misconduct within the meaning of Rule 3 (1) (iii) of C.C.S. Conduct Rules, 1964 as extended to the employees of the Sangathan."

2. Since the applicant denied the charges, an enquiry was ordered and she was found guilty of the Articles No.I to IV and IX and Article VIII (partly proved) and not guilty of Articles VI and VII. The disciplinary authority agreeing with the findings of the enquiry officer imposed the punishment of 25% cut from her gratuity and that the period of suspension from 6.11.1993 till the date of retirement, i.e., 30.9.1996 should be treated as 'dies non', by the impugned order dated 29.1.1999. This order is impugned in this OA.

3. The learned counsel for the applicant has taken us through the Articles of Charge to contend that none of the charges should have been held as proved as there was no material in support of the charges.

4. The learned counsel for the respondents, Shri L.R.Khatana, contested the case to submit that the applicant had violated the various provisions under the Education Code, Accounts Code, she was rightly found guilty of the charge on the basis of the evidence in the case.

5. We have given careful consideration to the submissions made. Nine Articles of charge are framed against the applicant who was working as Principal in

the Institution. We will now consider each Article of charge to find that the same was properly proved or not.

Article-I:

6. This charge pertains to the appointment of one Shri Dinesh Chand Sharma, Group 'D' employee, who was appointed by the applicant in violation of the Education Code as well as the OM dated 8.7.1993. It is the contention of the learned counsel for the applicant that the Principal being the appointing authority under the Education Code, and the letter asking him not to appoint any employee, having not been despatched, the appointment made by her cannot be faulted. As per Article 39 of the Education Code, the process of recruitment to Group 'D' shall have to be made by the Vidhyalaya Management Committee (in short, VMC) and it has to appoint Vidhyalaya Appointment Committee (VAC) which is the selection authority for appointment of Group 'D' posts. The Principal is only appointing authority, in the sense that the order of appointment would be issued by him/her out of the select list prepared by the VAC. The impugned appointment has been made by the Principal without there being any recruitment as per the Article 39 of the Education Code or selection by the VAC. The reliance placed by the applicant on Article 43 where Principal has shown as appointing authority is thus wholly baseless. The Principal cannot appoint any person but only issue appointment order on the basis of the selection made by the VAC. This Article shows the category of employees and name of the appointing

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authorities. We find that finding, on this Article No.I, of the enquiry officer in this regard cannot be questioned.

Article-II & III:

7. These Articles relates to the tampering of the Cheques. It is seen that the cheques which were initially drawn 'Yourself' have been tampered with and were altered 'Self' by the applicant with her attestation. The contention of the learned counsel for the applicant that the alteration was found necessary for the purpose of making prompt payments to the staff. Hence they cannot be treated as amounting tampering the cheques. The cheques in question S-3 and S-4 were drawn for an amount of Rs.59,854/- and Rs.8,947/- respectively. They wee initially to be paid 'Yourself' but they were altered to 'Self' and one Shri S.C.Goel has been nominated by the applicant, as authorised signatory. Ultimately the Cheques were dishonoured and no amount was lost to the Institution. However, the enquiry officer upon consideration of the material on record found that the Cheques were found tampered, and that Shri Goel was not nominated by the Chairman and was therefore not authorised to sign the Cheques. Even if no loss is caused to the Institution, still as the misconduct lies in the action of the applicant in attempting to draw the amount into her account by altering the Negotiable Instrument. The enquiry officer has rightly found that these Articles were proved. We do not find any justification in interfering with these findings.



Article IV:

8. This charge pertains to the transfer of Accounts from Punjab National Bank to State Bank of India unauthorisedely. The contention is that there was no prohibition from transferring the Accounts from PNB to SBI and in view of the fact that the PNB was charging commission on transactions whereas SBI is not and SBI was also within a kilometre radius from the Institution the accounts has been transferred. The enquiry officer however found that there was no cause of transferring the Accounts from PNB to SBI particularly when the SBI was ten kilometres away as reported by the Chairman, KVS vide letter dated 25.10.1993 exhibits as S-15. It is therefore seen that on the basis of the evidence on record the enquiry officer has come to the finding that SBI was far away and that such transfer was not unauthorised by the management. If there is any prior authorisation for such transfer but no such authorisation was shown to us. Hence, the enquiry officer findings cannot be faulted. We do not therefore find any irregularity in this finding.

Article-V:

9. This Article pertains to the deduction of the Income Tax by the applicant out of the payments chargeable under the Head 'Salary'. Nothing is brought out to show how the omission in deduction of the Income Tax constitutes the misconduct under the Rules. It is seen that the applicant had got Permanent Account Number (PAN) and she has been



assessed for the Income Tax and paid the tax. The contention of the learned counsel for the respondents since she was expected to deduct the Income Tax as per the provisions of the Income Tax Act and if she has failed to do so, she has committed a misconduct cannot be accepted. It is for the Income Tax authorities to find any violation of the provisions of the Act and if there is such violation, to punish her as per the Act. A misdemeanour in this regard on the part of the applicant cannot be treated as misconduct. The finding of the enquiry officer in this regard cannot be accepted and the same has been set-aside.

Article-VI and VII:

^{Held,}
10. Not proved by the enquiry officer.

Article-VIII:

11. It is alleged that the applicant was not regular in her duties and that she had absented herself on 8.9.1993, 14.9.1993, 21.9.1993, 22.9.1993 and 30.9.1993. But the enquiry officer exhibited S-5(a), which is the attendance register, in which it was shown that she was on duty on the above dates, except on 30.9.1993, when she was on casual leave. Even if there was no initials on 30.9.1993 to show that she was on casual leave but all the other days she was on duty. No other instance was made as a part of the charge to show that she was habitually absent. This finding is sought to be proved by the enquiry officer by shifting burden on the applicant to prove that she was not habitually absented. This is not correct. It is for the prosecution to prove that she

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was absent. Hence, it cannot be said that this charge was proved. A finding in this regard is also set aside.

Article-IX:

12. A finding of the enquiry officer against this Article should also be set aside. This relates to the drawing up of pay in the new station upon her transfer without properly obtaining the Last Pay Certificate (in short, LPC) from the previous School. It is contended that she herself has signed the LPC. If there is any irregularity in drawing the pay or issuing the LPC the pay section authority should have rejected the same. The mere fact of drawing the pay by signing the LPC herself, a mistake, cannot be construed as misconduct and as it is common knowledge that even in the absence of LPC, the applicant could draw her pay provisionally. In our view, this cannot be treated as misconduct. This finding also is set aside.

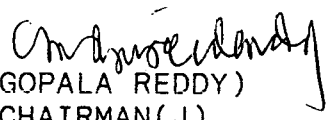
13. Thus, as a result, the findings of the enquiry officer against the Article No.I to IV are properly proved, findings in respect to Article-V set-aside, Articles-VI and VII already not proved by the Enquiry Officer and Articles VIII and IX are also set aside.

14. Thus the Article I to IV are finally proved and other Articles are not proved.



15. Since the disciplinary authority imposed the punishment taking into consideration the other Articles, namely, Article V, VIII and IX as also proved, which are set aside by us the impugned order is liable to be set aside. It is accordingly set aside. Hence the matter is remanded to the disciplinary authority to pass a final order afresh after giving an opportunity to the applicant for hearing and taking into consideration of Article I to IV only as proved and other Articles are not proved. The finding to treat the period of suspension as 'dies non' is also set aside and it will also have to be considered by the disciplinary authority, within a period of three months from the date of receipt of a copy of this order. The OA is accordingly allowed. No costs.


(GOVINDAN S. TAMPI)
MEMBER(A)


(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

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