

Central Administrative Tribunal  
Principal Bench

- 27 -

O.A. No. 588 of 1999

New Delhi, dated this the 19<sup>th</sup> JULY, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Dr. S. Padmanabhan,  
159, Kalidas Road,  
Ram Nagar,  
Coimbatore-9  
Tamil Nadu  
Present at New Delhi. .... Applicant

(By Advocate: Shri K. Venkatramani,  
Sr. Advocate with Ms. V. Mohana)

Versus

1. Kendriya Vidyalaya Sangathan  
through its Chairman  
18, Institutional Area,  
Shahid Jeet Singh Marg,  
New Delhi-110016.
2. Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shahid Jeet Singh Marg,  
New Delhi-110016. .... Respondents

(By Advocate: Shri L.R. Khatana, proxy  
counsel for Shri S.Rajappa)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns Rule 81(b) Kendriya  
Education Code as being illegal, void and unconstitutional.  
He seeks quashing of the Office Memorandum dated  
10.12.98 issued under Rule 14 CCS (CCA) rules and  
also prays for quashing of the orders dated 10.2.99  
(Annexure A-1) withdrawing the charge sheet issued to  
applicant and terminating his services after  
dispensing with the regular D.E. He prays for  
reinstatement with all consequential benefits.

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2. Applicant who joined as P.G.T. (Physics) in Kendriya Vidyalaya, Gandhinagar, Gujarat in 1972 was promoted as Principal on 24.8.95 and joined the Kendriya Vidyalaya, Srinagar as such. It is his case that on 12.8.97 when he was taking a round of the primary section he met one Miss Meena Kumari, a minor school student of Class II, who told him that she wanted his signature in a sheet of paper. Since he had kept his seal in the house, the applicant took her to his house and after reaching there, he unfolded the paper and found that the paper was to be signed by her parents. He states that he told the same to the girl and started going towards the school along with her, but when he just opened the door he found four or five teachers standing there including Mrs. Shafique, PRT, Ms. Devendar Kaur, Mr. Bhatt, Mr. Maqbool, Lab. Asst., and Mr. Rahman etc. Immediately thereafter Mrs. Shafique took the child aside and inquired something from her and went away. Applicant states that later on at about 3.00 p.m. parents of Miss Meena Kumari came along with that child and started shouting at him saying that he had misbehaved with the child and thus done a great harm. Applicant states that he refuted the allegation and took them to the Chairman of the Kendriya Vidyalaya Sangathan, Srinagar where he explained the incident to the Chairman and told him that nothing had happened as alleged by the child's parents.

3. Applicant states that on 13.8.97 the Chairman sent two of his officers to enquire about the incident. On 14.8.97, there was news item in a local newspaper regarding the alleged incident. Thereafter applicant was called by the Chairman who asked him to leave Srinagar immediately and go to Jammu. Applicant states that on 15.8.97 he reached Jammu and met Assistant Commissioner, KVS and handed over a latter written by the Chairman. On seeing the letter the Assistant Commissioner gave him another letter and sent him to Srinagar again. Applicant states that on 16.8.97 he presided over the Independence Day celebration in the School and met the Chairman thereafter. On the same day applicant gave a written representation to the Chairman refuting all allegations against him (Annexure A-3). However, upon being advised by the Chairman to go back to Jammu as it was dangerous for him to remain in Srinagar applicant states that he proceeded to Jammu on 18.8.97 and was working with the Assistant Commissioner in the Jammu region. Applicant states that on 4.11.97 he was met by one Shri S.D. Sharma who asked him to give a statement in regard to the incident of 12.8.97, in which applicant pointed out that <sup>he</sup> had not done anything wrong and also mentioned that he had taken the child Meena Kumari to his house more than five times and there had been no complaints (Annexure A-5). Applicant states that in December, 1997 he proceeded on leave and returned to Jammu only in June, 1998; thereupon he was asked by Shri S.D. Sharma to give another statement which applicant

gave on 17.6.1998 (Annexure A-6) in which again he denied any wrongful has been done and prayed that he be posted anywhere outside Srinagar.

4. Applicant states that on 5.8.98 he was transferred as Principal to KVS, Itanagar, Arunachal Pradesh (Ann. P-6) where he was working without any hindrance. Thereupon all of a sudden he received a charge sheet dated 7.12.98 (Annexure A-7) calling upon him to submit a written statement within a period of 10 days on the allegation that he exhibited immoral behaviour towards child Meena Kumari of sevenyears and also misbehaved with another student Miss Shahnaz, a Class IX student. Applicant states that on 16.12.98 he sent his detailed reply to the Charge Sheet (Annexure A-8) and did not hear anything further in the matter till February, 1999, but all of a sudden he received two orders both dated 10.2.99 (Annexure A1 & A-2) one of which withdrew the charge sheet dated 10.12.98 on the ground that it was not reasonable practicable to hold the enquiry, and the other terminated applicant's services with immediate effect in exercise of the powers conferred under Article 81 (b) of the Education Code for Kendriya Vidyalayas.

5. Applicant contends that he had been denied an opportunity even to defend himself due to illegal dispensing with the regular enquiry, which is violative of principle of natural justice and hence illegal, void and unoperative.

6. Respondents have filed their reply, in which it is stated that while working as Principal, Kendriya Vidyalaya, Srinagar, applicant was found guilty of exhibiting immoral sexual behaviour towards a minor girl Miss Meena Kumarri, a Class II student. The Assistant Commissioner, Jammu conducted an independent investigation and found that applicant was a man of undesirable behaviour sexually perverted person and found him blame-worthy. It is further stated that the Enquiry Officer and the Chairman, Vidyalaya Management Committee of the Kendriya Vidyalaya No. I also found that applicant not only exhibited immoral sexual behaviour towards Meena Kumarri but also towards Miss Rinki of Class IV and Miss Shahnaz of Class VIII by taking them to his residence with ulterior motive. It is further stated that due to administrative reasons a fresh enquiry by the Assistant Commissioner, Jammu Region was conducted by two officers of the Sangathan who submitted their report that the misconduct of the applicant of applicant towards Meena Kumarri was established beyond doubt. Thereupon Officiating Commissioner initiated disciplinary proceedings. It is submitted that applicant was transferred to K.V. Itanagar, Arunachal Pradesh and simultaneously a charge sheet under Rule 14 CCS (CCA) Rules was served upon him vide O.M. dated 7.12.98. Thereafter applicant submitted his reply on 16.12.98 wherein he denied the charges and though he denied the exhibition of immoral sexual behaviour towards Meena Kumarri, he had admitted the fact that he took her to his residence in school hours on the plea that he was

teaching her English as she was weak on the subject. It is further stated that after careful consideration of the relevant facts and the manner in which applicant misbehaved with girl students, and upon consideration of the facts and records of the case including applicant's own submission, the Commissioner, KVS, found that it was not advisable to produce girl child who was about seven years of age to rigorous examination and cross-examination during enquiry proceedings which may be fatal to her psyche as she had already undergone the trauma of sexual harrassment and furthermore having regard to the social consequence caused to the parents, it was decided to withdraw the disciplinary proceedings vide O.M. dated 7.2.99 with immediate effect and by subsequent order dated 10.2.99 terminate applicant's services under Article 81(b) of the Education Code.

7. We have heard Shri K. Venkatramani, Ld. Senior Cousen on behalf of applicant assisted by Ms. V. Mohana and Shri L.R. Khatana, proxy counsel for Shri S. Rajappa for respondents.

8. Chapter VIII of the Education Code of the K.V. Sangathan <sup>is</sup> on of the subject of Discipline. Articles 80 and 81 of Chapter VIII are extracted below:

80. Discipline--Extension of the Application of central Civil services (Classification, Control and Appeal) Rules, 1965.

All the employees of Kendriya Vidyalayas, Regional offices and the Headquarters of the Sangathan are subject to the

disciplinary control of the Sangathan. It has been decided that the CCS (CCA) Rules, 1965 as amended from time to time, will apply mutatis mutandis to all members of the staff of the Sangathan, except when otherwise decided, and that the appointing, disciplinary and appellate authority for the various posts will be as in the Appendix XIX. [In the above Rules, for the words "Government Servant" wherever they occur, the words "Member of staff of Kendriya Vidyalaya/Kendriya Vidyalaya Sangathan", may be substituted].

81. (a) Termination of Services under the Terms of Appointment

An exception to the rules mentioned in the preceding Article may, however, be made in the following types of cases:

- (i) In the case of a purely temporary employee who is known to be of doubtful integrity or conduct, but where it is difficult to bring forth sufficient documentary or other evidence to establish the charges, and whose retention in the Vidyalaya, etc. will be prejudicial to the interests of the institution.
- (ii) In the case of a temporary employee suspected of grave misconduct, where the initiation of regular proceedings against him in accordance with the provisions of the CCS (CCA) Rules, 1965 is likely to result in embarrassment to a class of employees and/or is likely to endanger the reputation of the institution.

In cases of the above type, the appointing authority may record the reasons for termination of the services of the employee in its own record and thereafter terminate the services of the employee under the terms of appointment without assigning any reason. Where the appointing authority is the Principal, action to terminate the services of an employee under the terms of appointment shall be taken only after obtaining the prior approval of the Assistant Commissioner.

(b) Termination of Services of an Employee Found Guilty of Immoral Behaviour towards Students

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Wherever the Commissioner is satisfied after such a summary enquiry as he deems proper and practicable in the circumstances of the case that any member of the Kendriya Vidyalaya is prima facie guilty of moral turpitude towards any student, he can terminate the services of that employee by giving him one month's or three month's pay and allowances according as the guilty employee is temporary or permanent in the service of the Sangathan. In such cases procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of the Kendriya Vidyalaya Sangathan, shall be dispensed with, provided that the Commissioner is of the opinion that it is expedient to hold regular enquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Commissioner shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services.

9. Appendix XIX of KVS Education Code contains a Schedule which describes the appointing authority for various posts under the Sangathan and the disciplinary/appellate authority for various penalties which may be imposed on its incumbents based on the CCS (CCA) Rules, 1965.

10. The first question that arises is whether the impugned termination order dated 11.2.99 is an appealable order in terms of the KVS Education Code or not. In this connection our attention has been invited to letter No. F.11-8/99-KVS (Vig.) dated 11.11.99 (copy taken on record) which provides for appeal against termination order passed under

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Article 81(b) KVS Education Code, by the insertion of Article 81(c) thereof, which has been made w.e.f. 1.10.99. The letter states that the KVS Board of Governors in its meeting dated 16.9.99 approved the proposal to confer right of appeal on the persons whose services have been terminated by the Commissioner, KVS under the provisions of Article 81(b) of KVS Education Code to the Vice Chairman, KVS and accordingly Article 81 (c) has been inserted which provides that an employee of the Sangathan who has ceased to be in Kendriya Vidyalaya Sangathan service by virtue of an order passed against him under Article 81(b) of the Education Code, may prefer an appeal against the aforesaid order to the Vice Chairman, K.V.S. A period of limitation of 45 days from the date of receipt of the order has been provided; the form and contents of the appeal as well as the manner in which the appeal has to be considered has been provided for; and it has been stated that orders passed in appeal shall be final. The aforesaid letter provides that above provisions shall be effective from 1.10.99 and shall apply to those cases only where the orders of termination is made on or after 1.10.99 and appeals against termination orders issued prior to 1.10.99 will not be entertained.

11. On this basis applicant's counsel Shri Venkatramani has argued (and written submissions have also been filed to this effect) that as no appellate

provisions against orders passed under Article 81 (b) exist under the Code applicable to KVS employees, prior to the insertion of Article 81(c) w.e.f. 1.10.99, the impugned termination order dated 10.2.99 is not appealable, because the schedule to the Code cannot be deemed to provide an appeal in the absence of an express provision in the Code itself. It is contended that the appellate remedy which was made available by the insertion of Article 81(c) is expressly stated to be not retrospective vide letter dated 11.11.99 (supra) and had there been pre-existing appellate remedy, against orders passed under Article 81(b) the notification in question would have acknowledged the same. It is contended that merely because Article 80 says "mutatis mutandis" it does not mean that an appellate remedy is available, and the same must be expressly conferred by law. It is further contended that KVS by itself cannot take the stand that Article 81 (c) is in conflict with the existing provisions of the Code as they cannot challenge their own enactments. Since Article 81 (c) was enacted expressly to fill up a gap in the scheme of remedies, which was not available prior to its enactment, and it has expressly been made prospective vide letter dated 11.11.99 this legal position is binding on the Tribunal and in any challenge before the Tribunal, the KVS cannot disown or disregard its own enactments. It has also been argued that in view of the challenge to the vires of Article 81(b) in the O.A., applicant cannot be relegated to any departmental remedy, even if it were conceived to be

in existence because the scope of abuse of power is a matter which cannot be pronounced upon by an appellate authority.

12. On the other hand Shri Khatana has argued that notwithstanding the fact that by the insertion of Article 81(c), an appellate form was provided for, against orders passed under Article 81(b) effective from 1.10.99, but not before, having regard to the contents of the Schedule at Appendix XIX which prescribes that Commissioner, KVS was the Disciplinary Authority in regard to the Principal of KVS and the Chairman of the Sangathan was the appellate authority in respect of all penalties envisaged under Rule 11 CCS (CCA) Rules, the impugned order dated 10.2.99 terminating applicant's services was an appealable order, and applicant was required first to exhaust the available remedy of filing an appeal to the competent authority under Section 21 A.T. Act before approaching the Tribunal, which he had not done.

13. We have considered this question carefully.

14. It is settled law that unless expressly stated so, the Schedule forms part of the KVS Education Code, and the Code would take precedence over any executive instructions. Item 4 of the Schedule provides that in respect of Principals of

Vidyalayas, the Commissioner, KVS is competent to impose all penalties vide Rule 11 CCS (CCA) Rules, and the Chairman of the Sangathan is the appellate authority. Rule 11 (viii) covers removal from service which shall not be a disqualification for future employment under the Government, while Rule 11 (ix) talks of dismissal from service which shall ordinarily be a disqualification for future employment under the Government. It could be argued that the impugned order dated 10.2.99 terminating applicant's services is not an order of removal passed under Rule 11 (viii) or an order of dismissal passed under Rule 11 (ix), but the second proviso to Rule 11 provides that in any exceptional case and for special reasons to be recorded in writing, any other penalty may be imposed. Thus the penalty of termination from service imposed upon applicant in the present case which has undoubtedly been imposed <sup>in circumstances</sup> under exceptional circumstances could very be covered by the second proviso to Rule 11 CCS (CCA) Rules.

15. We have already seen that by Article 80 KVS Education Code, the CCS (CCA) Rules, 1965 as amended from time to time would apply "mutatis mutandis" to all KVS employees (applicant being one such employee) upon whom any of the penalties enumerated under Rule 11 CCS (CCA) Rules could be imposed by the competent authority, and as the second proviso to Rule 11 provides that any penalty other than those enumerated in rule 11 (i) to (ix) CCS

(CCA) rules can be imposed in exceptional cases for special reasons to be recorded in writing, it follows that the penalty of termination of service of applicant by giving him one month's or three month's pay and allowances (depending upon whether he is temporary or permanent) could be imposed upon applicant by the disciplinary authority, viz the Commissioner, KVS, which was done, and against his orders an appeal would lie to the Chairman, KVS even prior to the insertion of Article 81 (c) w.e.f. 1.10.99.

16. We are supported in our view that a statutory appeal against the impugned termination order dated 10.2.99 was available to applicant before the Chairman, KVS, notwithstanding the fact that Article 81 (c) was inserted w.e.f. 1.10.99 vide letter dated 11.11.99, when we peruse the Delhi High Court order dated 19.11.99 in CWP No. 3354/99 R.S. Mishra Vs. Union of India, a copy of which has been filed <sup>by</sup> applicant himself. Like the present applicant, Shri R.S. Mishra had also impugned the Commissioner, KVS order dated 11.2.88 terminating his services under Article 81 (b) KVS Education Code. Shri Mishra challenged the aforesaid order dated 11.2.88 in the Delhi High Court in CWP No. 3354/89 who in its judgment dated 19.11.94 noted that Shri Mishra had filed a statutory appeal against the Commissioner, KVS's order dated 11.2.88 to the Chairman, KVS but without success. In other words the Delhi High Court

as far back as 19.11.94 had recognised that a statutory appeal against the Commissioner, KVS's order under Article 81(b) to the Chairman, KVS was available well before the insertion of Article 81 (c) KVS Education Code w.e.f. 1.10.99 by letter dated 11.11.99.

17. Again a coordinate Division Bench of the Tribunal in its order dated 8.11.99 in O.A. No. 232/99 Dr. B. Lal Vs. Union of India in respect of a similar impugned order dated 23.12.98 issued under Article 81(b) KVS Education Code has held that the same was an appealable order and nothing has been shown to us to establish that the aforesaid order dated 8.11.99 in B. Lal's case (supra) has been quashed, modified or set aside.

18. Under Section 20 A.T. Act the Tribunal shall not ordinarily admit an application unless it is satisfied that applicant has availed of all the remedies available to him under the relevant service rules as to redressal of grievances. No circumstances have been made out to warrant departure from the aforesaid rule in the present case. Applicant cannot be permitted to contend that because he has challenged the vires of Rule 81(b) KVS Education Code he is not required to exhaust the departmental remedy of filing an appeal. In this connection without discussing the vires of Article 81(b) KVS Education Code on merits, it needs to be

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mentioned that in several rulings of various Courts, enclosed by applicant's counsel with the written submissions, including R.S. Mishra's case (supra) and O.A. No. 304/99 A.L.Thirunavukarasu Vs. Commissioner, KVS which was disposed of by the CAT, Chennai Bench vide its order dated 13.6.2000 wherein those applicants had challenged the termination orders passed under Article 81(b), the vires of Article 81 (b) itself was not doubted.

19. In this view of the matter we do not consider it necessary to discuss various grounds taken by applicant on the merits of the O.A. at this stage.

20. In the result we dispose of this O.A. with a direction to respondents that in the event applicant files an appeal within six weeks from today respondents shall waive the bar of limitation on the ground that applicant was pursuing his remedies before the Tribunal, and dispose of that appeal in accordance with rules and instructions by means of a detailed, speaking and reasoned order in accordance with rules and instructions under intimation to applicant within three months from the date of receipt of such appeal.

21. If any grievance still survives it will be open to applicant to seek revival of this O.A. <sup>affr^n</sup> through an M.A. impugning the appellate order as

well.

22. The O.A. stands disposed of accordingly. No costs.

A. Vedavalli

(Dr. A. Vedavalli)  
Member (J)

/GK/

Adige

(S.R. Adige)  
Vice Chairman (A)