

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2363/2004

New Delhi, this the 12th day of August, 2005

Hon'ble Mr. Justice M.A. Khan, Vice-Chairman (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Smt. R.Mithra
Ex. PGT (Physics)
1790, Sector 3, Pushp Vihar
New Delhi.

...Applicant

(By Advocate Shri Rahul Sharma
along with Ms. Jyoti Dutt)

V E R S U S

1. Kendriya Vidyalaya Sangthan
through Joint Commissioner (Admn)
18, Institutional Area, SJS Marg
New Delhi - 110 016.

2. Assistant Commissioner
Kendriya Vidyalaya Sangthan
Regional Office, Dehradun
Uttanchal.

...Respondents

(By Advocate Shri S. Rajappa)

ORDER

Mr. Justice M.A. Khan,

Smt. R. Mithra, PGT (Physics) in Kendriya Vidyalaya, Meerut was removed from service as a result of disciplinary proceedings conducted against her for major penalty under Rule 14 of CCS (CCA) Rules, 1965 (Rules, 1965). She has filed this OA for setting aside the order of the disciplinary authority dated 20.6.2003 (Annexure 1), the order of the appellate authority dated 9.8.2004 (Annexure 1A) and has prayed for her reinstatement in service with all consequential benefits.

2. The memo of charge served on the applicant is extracted below: -

ARTICLE-I

"That Smt. R. Mithra, PGT (Phy.) (under suspension) KV SL Meerut, while functioning as PGT (Phy.) at Kendriya Vidyalaya, SL Meerut during the academic session 2001-2002 was found negligent in teaching work of her subject in class-XI and XII.

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She has not completed the desired course of Physics theory and Practical as per split up syllabus prescribed by the Kendriya Vidyalaya Sangathan for Class-XI and XII which was found during the course of academic inspection and as per the statements dated 9.11.2001 of students of Class-XI and XII of KV SL Meerut and class observation report dated 24.9.2001.

The neglect of work of duty, dereliction of duty, fail to maintain devotion to duty amounts to misconduct. The said act on her part constitutes a misconduct which is in violation of Rule-3 (1) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as extended to the employees of KVS and Article 55 (21) & (22) of Education Code for the Kendriya Vidyalayas.

ARTICLE-II

That the said Smt. R. Mithra, PGT (Phy.) (under suspension) while functioning as PGT (Phy) at KV SL Meerut during the session 2001-2002, pressurized the students of class-XII KV SL Meerut, by calling them at her residence on 12.11.2001 and obtained their statement in her favour and putting the date of statement as 3.9.2001, as per the statement dated 13.11.2001 of seven students of Class-XII of KV SL Meerut.

Pressurizing of the students by calling them at her residence and obtaining false statements is a misconduct and unbecoming of a Government servant. The said act on her part constitutes a misconduct which is in violation of Rule -3 (1) (iii) of the CCS (Conduct) Rules, 1964 as extended to the employees of KVS and Article 54 of Education Code for the Kendriya Vidyalayas."

3. Enquiry Officer appointed vide Memorandum dated 18.1.2002 (Annexure-2) conducted an enquiry and submitted his report dated 25.3.2003 (Annexure-13) holding that both the charges were proved against the applicant. The disciplinary authority after considering the representation of the applicant has passed the order of removal from service, which has been upheld in appeal.

4. The applicant has challenged the disciplinary proceedings and the order passed therein on the following grounds: -

- 1) The applicant's request for producing the additional documents and the witnesses was rejected arbitrarily on flimsy grounds being not relevant.
 - 2) Request for change of Enquiry Officer has been rejected.
 - 3) Enquiry Officer did not adjourn the hearing of 14.2.2003 on account of illness of Defence Assistant and has violated the principle of natural justice.
- 6/10/03

- 4) Sub-Rule 14 (16) (17) & (18) of the Rules, 1965 were not observed.
- 5) As per Rule 14 (19) of the Rules, 1965, the written brief on behalf of the Presenting Officer and the charged official are to be filed on conclusion of the evidence but the Presenting Officer filed the brief even before the applicant was given an opportunity to produce her evidence.
- 6) The Enquiry Officer directed cross-examination of the applicant by post and has not admitted the defence of the applicant in proceedings.
- 7) The disciplinary authority and the appellate authority have not taken into consideration the plea of the applicant raised in representation and appeal.

5. The respondents contested this OA and have denied that there was any illegality and irregularity in the procedure followed by the Enquiry Officer. It was submitted that the applicant was guilty of the serious misconduct since she has not completed her course as per split up syllabus and did not make amend even after oral and written warning and advice of the Principal of the School. She also pressurized the students to make statements in writing in support of her. The grounds pleaded in the OA for assailing the disciplinary proceedings were repudiated. The orders of the disciplinary authority and the appellate authority and the orders of the Enquiry Officer whereby he had rejected the request of the applicant for allowing him to produce the documents and the witnesses holding them to be not relevant in the enquiry or not granting adjournment on 14.2.2003 were justified. Other allegations about bias of Enquiry Officer or her request for shifting out the enquiry proceedings to another place, have also been contested and it is stated that no bias of Enquiry Officer against the applicant was established so her request for change of Enquiry Officer was rightly refused and since the witnesses were the students of the School, it would not have been possible to hold the disciplinary proceedings outside Meerut. Similarly, other allegations made in the OA were denied and the orders of the disciplinary authority and the appellate authority were justified.

6. We have heard the learned counsel for the parties and have gone through the relevant records. Learned counsel for the

Learned Counsel

respondents have also made the records of the enquiry proceedings available for our perusal.

7. On careful consideration of the grounds pleaded by the applicant and perusal of the relevant records, we are of the considered view that this OA should be allowed on two grounds. Firstly, the Enquiry Officer has unjustly refused the prayer of the applicant for producing the additional documents and the witnesses on the ground that they were not relevant to the enquiry. The particulars of documents, which were sought to be produced by the applicant are given in list, which is Annexure R-3. The Enquiry Officer had required the list of documents and the witnesses to be submitted by 17.9.2002. According to the applicant, she sent both the lists to the Enquiry Officer by speed post on 17.9.2002 but they were received by him on 24.9.2002. Enquiry Officer rejected these lists, as appeared from his letter at Annexure-V, on the ground that neither the documents nor the defence witnesses were relevant to the Article of Charge or the line of defence. As such the documents and the defence witnesses were not rejected on the ground that lists were not submitted within the time fixed by him, i.e., by 17.9.2002. We have perused the lists of documents and witnesses, which are at pages 29 & 30. They are reproduced below: -

“(I) LIST OF DOCUMENTS REQUESTED FOR

S. No.	Documents	Need	Source
1.	Certified copy of school time tables for XI and XII classes relating to physics, chemistry & Biology w.e.f. April 2001 up to dates on which charges were made therein including these made on 24.9.2001.	To dispel the charges leveled against me.	KV, SL, Meerut
2.	Certified details of dates on which split-up syllabus for classes XI & XII for 2001-2002 was received by KVS in printed form from the printers.	To dispel the charges leveled against me	KVS HQ Office
3.	Certified details of dates on which these split-up syllabus were dispatched (as per dispatch registers) to (i) different KVs (ii) to KVs of Dehradun Region and (iii) KVs of Meerut.	To dispel the charges leveled against me	KVS HQ and Regional Office KVS Dehradun.
4.	Certified copy of Reports of Academic inspection dated August, 2001 and those of preceding 3 academic sessions.	To dispel the charges leveled against me.	Regional Office KVS Dehradun.
5.	Certified copy of observations made by Shri J.S. Bhandari & his teammates dated 24.9.2001 and those of three preceding academic session.	To dispel the charges leveled against me	Regional Office KVS Dehradun.

6.	Certified copies of practical work done by students of physics for classes XI & XII relating to academic session 2001-2002	To dispel the charges leveled against me	KV, SL, Meerut.
7.	KV, SL, Meerut Teacher's diary & Daily Diary of Smt. S. Mithra relating to academic session 2001-2002.	To dispel the charges leveled against me	Principal, KV, SL, Meerut.

(II) LIST OF DEFENCE WITNESSES, NEEDED

S.No.	Name	Designation	Address	Possible line of deposition
1	Mr. Vikram Singh	PGT (Physics), KV, Bairagarh (Bhopal)	Near Aerodrome Bairagarh, Bhopal	Syllabus coverage in classes XI & XII in 2001-2002 in physics.
2.	Mr. Badar Ahmed	PGT (Bio), KV, SL, Meerut	Staff Quarters, KV, SL, Meerut	- do -
3.	Mr. Inder Jeet Kumar	PGT (Physics), KV No.2, Ambala Cantt.	Staff Quarters KV No.2, Ambala Cantt.	- do -
4.	Mr. Sanjeev Gupta	KV No.1, Ambala Cantt.		- do -
5.	Mr. Mahur	PGT (Physics) KV No.1, Hindon		Dates when split-up syllabus was provided
6.	Mr. P.N. Vats	PGT (Maths), KV, SL, Meerut		- do -
7.	Mr. M.P. Gupta	TGT (Hindi) KV, SL, Meerut		- do -

8. As regards the documents, first article of charge against the applicant is that she had not completed the course of Physics theory and practical as per split up syllabus prescribed by KVS for class IX and XII. Learned counsel of the applicant has argued that the applicant wanted to produce the documents in defence to prove that the split up syllabus was received in September, 2001 and further that the applicant was not given adequate number of practical and theory periods for completion of the course. Learned counsel for the respondents was at pains in justifying the order of the Enquiry Officer that the documents which were at Sl. No.1, 2, 3 & 6 were not relevant for the defence of the applicant. She was accused of not conducting practical class. To be precise, it was alleged that she had conducted only one practical that too of some of the students. Moreover, the article of charge had stated that this deficiency in her teaching was found during the course of academic inspection, as per the statement of the students recorded on 9.11.2001, and Class Observation Report dated 24.9.2001. Strangely, the academic inspection report and Class

Observation Report dated 21.9.2001, though were the basis of the charge of Article No.1 were not cited as documents relied upon by the department in this case. Academic Inspection Report and the Class Observation Report were relevant documents in the enquiry and their denial would certainly cause prejudice to the applicant in her defence. The same would have been the case with regard to applicant's teaching diary for the academic session of 2001-2002.

9. Coming to the list of defence witnesses, learned counsel for the applicant was fair enough to admit that the witnesses whose names appeared at Sl.No.1-4 may not be relevant since they were posted in Kendriya Vidyalaya at Bhopal, Meerut, Ambala Cantt etc. He has not been able to justify the relevancy of their statements as defence witnesses. Their non-production, therefore, cannot cause any prejudice to the defence of the applicant. Learned counsel for the applicant, however, submitted that witness at Sl. No.5-7 were called only to prove the dates on which the split up syllabus was actually delivered to the Teachers during the relevant academic year. Since charge No.1 was mainly based on the applicant not completing the course as per the split up syllabus, it cannot be stated that her contention that the split up syllabus was received late in September, 2001 could not be relevant to her defence and the order of the Enquiry Officer in rejecting her request to that extent has not caused her prejudice in her defence.


10. Further more, it is not disputed that the enquiry proceedings were fixed on 14.2.2003 and on that day, the defence assistant provided to the applicant could not attend the hearing on account of his illness. The applicant's request for adjournment was turned down by the Enquiry Officer on the ground that the request was not supported by the medical certificate of the defence assistant. It is not denied that defence assistant resided in Delhi. It has been stated on behalf of the applicant that defence assistant fell ill and he had consulted a Doctor at Safdarjung Hospital, New Delhi. Indeed a medical certificate was not produced but there was no justification by Enquiry Officer not to give an opportunity to the applicant to produce the medical certificate or give a very short adjournment particularly when such request was not refused for a reason that the applicant was adopting dilatory tactics. Medical Certificate of the defence assistant was produced on subsequent date. Therefore, closing of the defence of

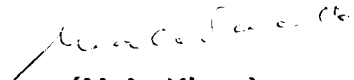
the applicant for unjustifiable grounds has caused prejudice to the defence of the applicant and vitiated the disciplinary proceedings. 7

11. In view of the above, we need not go into other grounds pleaded by the applicant at this stage.

12. The result of the above discussion is that findings of the Enquiry Officer in the disciplinary enquiry dated 11.3.2003 (Annexure A-13), the order of the disciplinary authority dated 19/20-6-2003 (Annexure 1) and the appellate authority's order dated 9.8.2004 (Annexure 1A) are set aside and the enquiry proceedings are remitted back to the Enquiry Officer for deciding the list of documents and the list of defence witnesses submitted vide Annexure R-3 afresh and thereafter proceed further and conduct the remaining enquiry in the light of the observations made herein above. The disciplinary authority shall also thereafter proceed in the matter in accordance with Rules, 1965. The Enquiry Officer and other disciplinary authority shall conclude the proceedings and pass necessary orders in the disciplinary proceedings on conclusion of the enquiry as per rules within a period of four months from the date of receipt of a copy of this order. It will be open to the applicant to prefer an appeal against the order of the disciplinary authority, if necessary, which will be decided by the appellate authority within one month from the date of filing of the appeal. Reinstatement of the applicant in service will be subject to outcome of appeal. It will be open to the applicant to challenge the order of the disciplinary authority and the appellate authority, if necessary, in accordance with law raising whatever other pleas which have been raised in this OA or which will be available to the applicant as per law against the orders impugned in that proceedings.

12. OA stands disposed of accordingly. Parties shall bear their own cost.


(S.K. Malhotra)
Member (A)


(M.A. Khan)
Vice-Chairman (J)

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