

**Central Administrative Tribunal,
Principal Bench**

...

OA No. 2456/2004

New Delhi, this the 15th day of July, 2005

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

R.K. Kapil
S/o Shri B.R. Kapil,
R/o 630, Ward No. 2
Mohalla Khatri Wara,
Faridabad, 21002.

...Applicant

(By Advocate: Shri M. K. Bhardwaj)

-VERSUS-

Union of India & Ors. through

1. The Commissioner KVS,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. The Joint Commissioner (Admn.),
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. The Assistant Commissioner,
KVS Patna Region,
Kankar Bagh, PO Lohia Nagar,
Patna.

...Respondents

(By Advocate: Shri S. Rajappa)

ORDER

By Mr. Shanker Raju, Member (J):

Applicant [ex-Stenographer in Kendriya Vidyalaya Sangathan (for short, KVS)] has assailed an order passed on 18.12.2003, which confirmed loss of lien and removal of the applicant from service w.e.f. 24.5.2003. He also assailed an order passed in appeal on 16.7.2004 where the penalty has been upheld.

2. Relevant brief factual matrix transpires that the applicant joined KVS in 1975 and was promoted as Stenographer. While posted at KVS Headquarters, New Delhi, applicant was transferred to Silchar. A representation preferred against which resulted in modification of transfer order on 7.7.2000 transferring him to Patna. Applicant joined at Patna on 24.7.2000. A request made for treating the intervening period as spent on duty was referred to the Headquarter on 30.08.2000.

3. Applicant, due to illness of his mother, father and wife, had to visit Delhi frequently in February 2002. Applicant applied for leave on account of serious illness of his wife, which was sanctioned upto 21.2.2002. However, a telegram was sent by the applicant on 1.3.2003 to extend his leave upto 18.3.2003 following with further telegrams for extension of leave upto the end of June, 2003. Applicant's leave was sanctioned upto 23.5.2003 and thereafter the leave was refused and a proposal to take action under clause 81(d) of the KVS Code was intimated.

4. A show cause notice dated 27.11.2003 was issued to the applicant for loss of lien, which was received by the applicant on 8.12.2003. Reply sent through speed post on 16.12.2003 was not taken cognizance of as proposal received on 22.12.2003 resulted in confirmation of loss of lien for abandonment of the post and the applicant was removed from service. A detailed appeal preferred met the same fate, giving rise to the present OA.

5. Though several contentions have been raised by Mr. Bhardwaj, learned counsel for the applicant to assail the impugned orders, yet, at the outset, it is stated that as per provisions of Article 81(d) of the Education Code of KVS, vide letter No. F-12-5/2001-KVS (Vig.) dated

24.1.2002 issued by the Joint commissioner, it has been decided in the minutes of Conference held on 17.6.2001 that a Memorandum under Article 81(d) of the Code, when an employee is called for duty, should be accompanied with a copy of the Circular so that the penal action, which is an extreme one, should be made known to the person before its repercussion ensue.

6. In the above light, applicant referred to the decision of this court in OA No. 147/03 in **Smt. Swaran Bala Kumar vs. K.V.S. & Ors.**, decided on 6.1.2004, where on the ground of non-publication and non-forwarding the copy of Circular, an order passed terminating the lien had been set aside.

7. Learned counsel has also referred to the decision of the Division Bench of this Tribunal in OA No. 2344/03 in **Smt. Shikha Grover vs. KVS & Ors.**, wherein similar position was held which has been upheld by the High court of Delhi in WP(C) No. 11839/2004 decided on 9.8.2004 whereby the notice issued is only on a limited issue of entitlement of consequential benefits, otherwise the directions issued and the observations made by the Tribunal have not been interfered with.

8. On the other hand, respondents' counsel vehemently opposed the contentions and stated that the applicant had unauthorisedly absented himself and after 23.5.2003 applicant remained absent without any leave and after refusal of the leave and failure to join duty, a proposal has been made through notice under Article 81(d) of the Code and after accord of reasonable opportunity his lien has been terminated which does not suffer from any infirmity.

9. Learned counsel states that validity of 81(d) has been upheld by the Delhi High Court in **Prem Juneja vs. KVS**, 2003(1)(AD) Delhi 57.

10. Shri Rajappa contends that in so far as **Smt. Swaran Bala's** case (supra) is concerned, in view of the stay of the order of the Tribunal by the Delhi High Court, the issue is still under consideration.

11. We have also perused the record produced by the respondents.

12. It is trite law that unless the directions issued by the Tribunal are over turned, modified or set aside, the decision remains as a precedent to be followed by this Tribunal. We respectfully follow the same.

13. In so far as issuance of loss of lien is concerned, the following observations have been made in **Smt. Swaran Bala's** case (supra):

"38. In so far as the issue whether the provisions of Article 81(d) were published or brought to the notice of all concerned, including applicant, we find that in the notification inserting Article 81(d) in the Code in the endorsement it is made clear that all the principles of KVS may circulate among all the Teachers and employees, including those on leave the aforesaid instructions and obtain signature in token of their acknowledgement. This has reasonable nexus with the object sought to be achieved. As the provisions are a deviation and keeping in view the magnitude and non-availability of Teachers a stringent measure of dispensing with the regular enquiry to do away with the services of employees of KVS is resorted to, it is important to bring it to the notice of the concerned employees/Teachers.

39. The Apex Court in **S.I. Rooplal vs. Lt. Governor**, 2000(1) SCC 644 while dealing with the OM of 1959 relating to counting of service on deputation clearly observed that OM of 25.8.1996 has neither been made public nor was in existence before a being known to any body concerned, as such no reliance can be placed. In nutshell publication of notification and knowledge of the concerned is a sine qua non of its operation. As respondents have failed to bring the provisions of this notification to the knowledge of applicant as assuming she was absent or on leave on 4.9.2000 the circular should have been served upon her and her signature as token of receipt should have been acknowledged. Having no

provision of its publication and circulation on receipt of service and knowledge of applicant the same cannot be acted upon. Moreover, even while in USA applicant though was served with a communication to report back, failing which a disciplinary action would be taken the same is silent on the provisions of this circular, as the aforesaid stringent provision has not been made known to applicant the same has no legal sanctity.

40. We are conscious that the vires of Article 81(d) has been upheld by the High Court in **Prem Juneja's** case (supra) but we are dealing with those aspects which have not been adjudicated and these are the consequences of application of the provisions of notification and Article 81(d). The case is decided in the peculiar facts and circumstances of the OA.

41. In our considered view, we respect and follow the decision of the High Court of Delhi (supra) in so far as vires is concerned but the action should be in consonance with the provisions of Article 81(d) with due regard to the principles of natural justice and fair play."

14. In **Smt. Sikha Grover's** case (supra), the following observations have been made:

"21, Moreover, we find that it is incumbent upon the authorities (KVS) to have published or brought to the notice the provisions of Article 81(d) as the Notification clearly provides that in acknowledgement thereof signature is to be taken from the concerned staff/teacher because the provision is stringent with a cascading effect on service. As there is no material to show that the aforesaid Notification was brought to the notice of concerned employee as well as applicant and their acknowledgement in the form of their signature, keeping in view the decision of the Apex Court in **SI Roop Lal vs. Union of India**, 200(1) SCC 664, the aforesaid action cannot be sustained."

15. The Hon'ble High Court of Delhi, vide order dated 9.8.2004, recorded the following observations:

"Issue notice limiting to the question of whether respondent was entitled to the consequential benefits, dasti and alternatively by other prescribed modes on satisfying the requirements of registry. Petitioner is directed to comply with the order of the Tribunal to the extent that respondent be reinstated within three weeks. List on 26.10.2004.

sd/-

BA Khan, J

Sd/-


Manju Goel, J

August 09, 2004"


16. If one has regard to the above, issuance of notice only on a limited aspect of consequential benefits is an implied affirmation of the findings, as referred to *ibid*, of the Tribunal regarding publication and as the same has attained finality, we are bound to follow it as a precedent.

17. In the result, for the foregoing reasons, O.A. is partly allowed. Respondents are directed to re-instate the applicant in service, who would be placed under deemed suspension with liberty to respondents to resume the proceedings from the stage of furnishing to the applicant a copy of the Notification of Article 81(d) of KVS Code, if so advised.

18. The other legal grounds are not adjudicated upon. No costs.


(S.K. Malhotra)
Member (A)

/na/


(Shanker Raju)
Member (J)
15/7/05