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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2771/2004

New Delhi, this the 10th day of August, 2006

**Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mr. N.D. Dayal, Member (A)**

Smt. Rita Dutta
Ex- UDC, KVS Hqrs
R/o A-2/A-49, Janakpuri
New Delhi.

...Applicant.

(By Advocate: Shri M.L. Chawla)

versus

Union of India through

1. Secretary,
Ministry of Human Resource Deveopment,
New Delhi.
2. The Commissioner
Kendriya Vidyalaya Sangthan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. The Joint Commissioner (Admn)
Kendriya Vidyalaya Sangthan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

(By Advocates: Shri S. Rajappa)

ORDER (ORAL)

By Mr. Shanker Raju, Member (J):

Heard the counsel.

2. Applicant has assailed an order passed on 15.12.2003 imposing upon her a penalty of removal from service, as also an appellate order dated 20.5.2004 and the review order dated 22.11.2005 whereby the appellate order has been upheld.
3. Learned counsel of the applicant, at the outset, states that whereas in the inquiry report the charges are partially proved, the disciplinary authority agreeing with the findings of the inquiry officer imposed the penalty of removal from service without affording a reasonable opportunity as prejudice his case the procedure adopted in contravention of principles of natural justice.

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4. Learned counsel of the respondents, however, rebutted the aforesaid contention stating that the charge against the applicant has been partially proved by the inquiry officer and, as such, she has been held guilty of unauthorized absence and was imposed a punishment which, on affirmation in appeal and review does not suffer from any legal infirmity of the procedure.

5. On perusal of the records and contention of rival parties, it is trite that nothing preclude Disciplinary Authority under CCS (CCA) Rules, 1965 to disagree which had been adopted in the instant case. In so far as procedure for holding disciplinary proceeding by the disciplinary authority to disagree with the findings of the inquiry officer and to impose the punishment, the condition precedent is that tentative reasons are to be recorded by the disciplinary authority and a reasonable opportunity before passing any order is to be accorded which is not only in consonance with the audi alteram partem but also as per principles of natural justice. Inquiry officer in his report while concluding the charge of unauthorized absence from 28.8.2000 to 19.7.2001 observed as under:

"Analysis of facts and conclusion

C.O. and her daughter were getting medical treatment during 1999 and 2001 (D-1 to D-33). She was taking leave in piecemeal and PW-1 got annoyed on such behaviour. He appeared to be biased against lady staff. (statement of DW-3 and C.O). C.O. also met Joint Commissioner (Admn.) and narrated the plight of her family. On his advice, she proceeded on long unspecified spell of leave. The competent authority rejected her application as per rules. As is normally with lady staff, she accord priority to family in such circumstances, she remained on leave and attended the problems of daughter's illness. She also used to send applications /prescriptions and medical certificates of her daughter's illness. Ultimately, she joined duty in July, 2001, when her daughter was better. Her daughter was still taking treatment. PW -1 did not show sympathy, rather reported for disciplinary action. He singled her out for such action, knowing fully well the practice prevalent in KVS in respect of grant of leave to the employees.

C.O. remained absent from duty from 28.8.2000 to 19.7.2000. She was duly informed of her unauthorized absence (P-4 and P-5). C.O. submitted for leave application dated 3.5.2001 (D-23,24 and 25). Further, she proceeded on long leave, which was in the knowledge of Joint Commissioner (Admn.) on whose advice she acted so.

Keeping in view the circumstantial defence, the charge is held as partially proved.

PART IV

FINDINGS

Article of Charge I: Held as partially proved.

Article of Charge II: Held as partially proved.

6. If one has regard to the above and keeping in view the position explained by the applicant, it was observed that the applicant's absence was duly informed through her leave application and she had proceeded on long leave which was in the knowledge of Joint Commissioner (Administration) on whose advice she acted so. If one is above this, then the above is a deemed prior permission of the competent authority before availing leave. The applicant thereafter did not respond to the inquiry report by way of making submission yet the disciplinary authority with the following observations imposed a penalty of removal from service:

"The undersigned being the Disciplinary authority after going through the inquiry report and related documents of the case has come to the conclusion that Smt Ritta Dutta has remained unauthorized absent from her duties from 28.08.2000 to 19.07.2001 and hampered the work in her section. Her aforesaid act constitute a misconduct which shows that she is not interested in her services. The opportunities provided to her for making submission on the Inquiry report by the undersigned were not availed.

Nowtherefore, the undersigned being the competent disciplinary authority after considering the facts of the case decided to impose the penalty of removal from services which shall not a disqualification for future employment under the Government upon Smt Rita Dutta, LDC (under transfer to Kendriya Vidyalaya, Leimakhong) and orders accordingly."

7. Disciplinary authority in his conclusion not only held the applicant guilty for unauthorized absence for the period but also for hampering the work in her Section which constitute a misconduct showing that she is not interested in her service. In a way defence as projected by the inquiry officer and the mitigating circumstances have not been considered to and rather in contravention of the aforesaid findings on disagreement, treating the absence as unauthorized absence, which is not apparent from the inquiry report, has been recorded.

Learned counsel of the respondents states that the inquiry officer in this case has rather acted as a judge whereas his duty is to record findings on and after consideration of the relevant material and therefore, has acted as unbecoming of an inquiry officer.

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8. We are very shocked to hear such an argument from the respondents, an inquiry officer is not alien to respondents is not part of pair system. The fact of applicant being on long leave was in the knowledge of Joint Commissioner should have been taken cognizance of by the disciplinary authority after adopting the proper procedure. It is trite that once the disciplinary authority disagrees and does not follow the adopted procedure, constitutes deprivation of reasonable opportunity resultantly an infraction to the principles of natural justice. In such view of the matter, the order passed by the disciplinary authority as also affirmed in appeal and in review cannot be sustained in law. We are satisfied that the applicant's defence which has not been considered has greatly prejudiced her on adoption of such procedure by the disciplinary authority.

9. In this view of the matter, OA is partly allowed. Impugned orders are set aside. The respondents shall forthwith reinstate the applicant back in service and are at liberty, if so advised, to proceed further in the inquiry from the stage of recording disagreement by the disciplinary authority. The inquiry shall be completed within a period of three months from the date of receipt of a copy of this order, is so initiated the applicant is also directed to cooperate with the respondents in finalizing the same where final orders law, shall take in its own course. The interregnum period would also be decided in accordance with rules and instructions. No costs.



(N.D. Dayal)
Member (A)



(Shanker Raju)
Member (J)

/kdr/