

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. NO. 2864/2004

**New Delhi this the 12<sup>th</sup> day of April, 2006**

**Hon'ble Mrs. Meera Chhibber, Member (J)  
Hon'ble Mr. N.D. Dayal, Member (A)**

Smt. Usha Bisht,  
W/o Major CBS Bisht,  
R/o 40/1, S.P. Road,  
Near Sub Area Gas Agency,  
Garhi Cantt,  
Dehradun (Uttaranchal).

Applicant.

(None present)

## Versus

1. Union of India,  
through the Ministry of Human  
Resource Development,  
New Delhi.
2. Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi.
3. Joint Commissioner (Admn.),  
Kendriya Vidyalaya Sangathan,  
New Delhi.
4. Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
(Jammu Region), Govt. Hospital Road,  
Gandhi Nagar,  
Jammu-180004, Jammu & Kashmir.
5. Principal,  
Kendriya Vidyalaya No. 1,  
Amritsar Cantt (143001) Punjab.

## ... Respondents.

(By Advocate Shri S. Rajappa)

## ORDER (ORAL)

## Hon'ble Mrs. Meera Chhibber, Member (J).

None had appeared for the applicant even on the revised call on 31.3.2006 when counsel for the respondents informed us that earlier also this case was dismissed in default on 3.12.2004 but was subsequently restored to its original number. He, therefore, prayed that no purpose would be served by dismissing it again in default, therefore, it may be decided on merit. Accordingly,



we proceeded to hear the counsel for respondents on 31.3.2006. After hearing counsel for the respondents and going through the pleadings, on one point, counsel for the respondents was not able to satisfy us, therefore, he requested short adjournment to take instructions on the said point. Accordingly, this case was directed to be listed on 4.4.2006 with direction to the respondents to keep the records ready. Even on 4.4.2006, none appeared for the applicant. We are, therefore, deciding the matter by attracting Rule 15 (1) of the CAT (Procedure) Rules, 1987.

2. By this O.A., applicant has challenged the order dated 14.9.2001 whereby applicant was removed from service by attracting the provisions of Article 81 (d) of Education Code for KVS (page 20), order dated 8.5.2003 whereby her appeal was rejected (page 21) and order dated 13.8.2003 whereby she was informed that there is no provision of Revision against removal under Article 81 (d) of the Education Code. She had exhausted all the departmental channels available to her (page 23). She has further sought declaration that Article 81 (d) of Education Code for KVS is ultra vires the provisions of the Constitution of India and a further direction to reinstate her with full consequential benefits and entire salary.

3. The brief facts, as narrated by the applicant are that she was appointed as TGT (Sanskrit), on 14.2.1989 at Kendriya Vidyalaya, New Tehri Garhwal from where she was transferred to K.V. Raiwala, in 1995 and to Kendriya Vidyalaya No. 1, Amritsar Cantt in 1997. It is submitted by her that her husband is an officer in the Indian Army, who keeps getting his posting to different places.

4. While she was posted in Amritsar, she fell ill and was diagnosed with anaemia, hypoproteinema, lumbago and sciatic syndrome. She had thus to seek leave from her school. She gave medical certificate along with her leave application and also sent a telegram to the Principal on 22.6.2001. No reply was given to her application but later on, a memorandum dated 26.7.2001 was issued to her informing her that leave applied by her beyond 21.7.2001 cannot be granted and that she should report for duty immediately on receipt of the letter and not later than 31.7.2001. She has further submitted that the Principal even took recourse to coercive tactics by taking an illegal undertaking from the



applicant that she will not extend her leave. However, since she was not well, she preferred her leave application to the Assistant Commissioner on 27.7.2001 seeking one year EOL on medical ground. Medical certificate was also annexed. Her request was again rejected vide Memorandum dated 10.8.2001 once again directing her to report for duty immediately. She was also directed that in case of illness, she should present herself before the Regional Medical Board in the office of KVS (Jammu Region) on 17.8.2001 at 2 PM for second medical examination. She was also informed that in case of failure, action proposed against her in terms of Article 81 (d) of Education Code would be taken. Since applicant was confined to bed in Lansdown, she sent a telegram on 14.8.2001 expressing her inability to come for medical examination to Jammu. She again requested for grant of EOL. In spite of it, an order dated 23.8.2001 under Article 81 (d) of the Education Code, for provisional loss of lien, was issued calling upon the applicant to show cause as to why the provisional order be not confirmed. She again requested for grant of leave on medical grounds but ignoring her plea, order dated 14.9.2001 was passed confirming the loss of lien.

5. She represented against the order dated 14.9.2001, on 17.10.2001 to the Assistant Commissioner (Jammu Region), but no reply was given thereto. However, later when she came to know that appeal ought to have been given to the Commissioner, KVS, New Delhi, she filed the appeal to the Commissioner on 3.1.2003. However, the Commissioner of KVS also upheld the orders passed by the Assistant Commissioner (Jammu Region) arbitrarily.

6. It is in these circumstances that applicant has challenged these orders, on the ground that Article 81 (d) of the Education Code for KVS is ultra vires. When proper rules have been framed for holding the departmental enquiry under the CCS (CCA) Rules, 1965, enquiry could not have been dispensed with. She has also submitted that as per Circular dated 24.1.2002, she ought to have been referred to the nearest Hospital where she had fallen ill as per clause 3. She was also entitled to get a personal hearing before the issue of final order under clause 8 of the Circular. She further submitted that direction to traverse a



distance of 1012 KM approx. from Lansdown to Jammu itself, was contrary to their own circular, therefore, she could not have been removed from service.

7. O.A. is opposed by the respondents, who have stated that validity of Article 81 (d) of the Education Code for KVS has already been upheld by Chandigarh Bench of the Tribunal as well as Delhi High Court, therefore, that question stands settled now. On merits, they have submitted that applicant was in habit of remaining absent unauthorisedly. She was already given two-three transfers on her request to adjust her, for example, in 1995 she was transferred to K.V. Raiwala on her own request. In the year 1997, she was again transferred to Amritsar from K.V. Raiwala on her own request. In the year 2000 also, since she had absented, she was directed to report for duty at K.V. No. 1, Amritsar and in case of health problem to undergo medical examination before the Medical Board at Jammu, failing which action will be initiated against her. In spite of that, she neither joined duties nor appeared before the Medical Board. On 12.12.2000, she was issued show cause notice under Article 81 (d) (3) of the Education Code for KVS. In the meantime, applicant wished to join the duties, therefore, she was allowed to join duty on 22.12.2000 but within few days on 4.1.2001, she again applied for EOL on medical grounds for three months. This time, she gave in writing that thereafter she will not take long leave. Accordingly, her leave was granted. She was allowed to join on 4.4.2001. In spite of having given her undertaking, she again applied for leave w.e.f. 26.7.2001 i.e. within two months. This time, her request was refused and she was called upon to join her duties immediately. She then applied for transfer to any place near to KV Dehradun and admitted that she has been taking unwanted leave to balance herself causing hardship to students and inconvenience to the Institution. In this representation, no reference was made to her ill health. On 10.8.2001, her request for EOL from 10.8.2001 for one year was rejected. She was asked to report for duty and in case of health problem to appear before the Medical Board, Jammu on 17.8.2001. She neither appeared before the Medical Board nor reported for duty. It is in these circumstances that show cause notice was issued to the applicant on 23.8.2001 under Article 81 (d) (3) of the Education

22

Code for KVS. Instead of replying to the show cause notice, she again applied for grant of medical leave, which shows she was not interested in doing the job.

8. Accordingly, on 14.9.2001, loss of lien was confirmed and she was removed from service with effect from the date she was absent from duty i.e. 25.6.2001. Being aggrieved, she filed appeal against the order of removal and even personal hearing was granted by the appellate authority on 30.1.2003 but since her reply was not found satisfactory, her appeal was rejected on 8.5.2003. They have thus submitted that full opportunity was given to the applicant to join the duties or to appear before the Medical Board but she neither joined the duties nor appeared before the Medical Board. Therefore, her services were rightly dispensed with. Since none had appeared for the applicant and counsel for the respondents was not able to satisfy us as to why she was not asked to appear before the Medical Board somewhere near the place where she had fallen sick, therefore, the case was adjourned for taking instructions on this point, on 31.3.2006. Counsel for the respondents produced the records on 12.4.2006 and explained that Circular dated 24.1.2002 would not be applicable in the present case because applicant was already removed from service on 14.9.2001, that is before the issuance of said circular.

9. We have heard counsel for the respondents and perused the pleadings as well. As far as validity of Article 81 (d) of the Education Code is concerned, it is seen that Division Bench of Chandigarh Bench has dealt with this issue in extenso. The same has also been dealt with by Hon'ble High Court of Delhi in the case of Prem Juneja (supra) as well. Both the Courts have observed that Article 81 (d) was incorporated in exercise of powers conferred by Regulation 22 of the Memorandum and Rules of the Kendriya Vidyalaya Sangathan as Board of Governors is fully authorized to frame the rules. It has also been observed that the intentions of the Board of Governors cannot be doubted as they had introduced the provision with a view to tackle and deal with recalcitrant and irresponsible teachers and other employees who remain absent in an unauthorized manner, thereby jeopardizing the interests of the students and affecting the education system itself. It was, in fact, observed that undoubtedly



the provision had been incorporated for a laudable cause and in the interest of education and the students.

10. It was also observed that the provision of Article 81 (d) had taken care of the principles of natural justice as well, inasmuch as an employee who has been absenting in an unauthorized manner or continues to do so is informed by a notice in writing of the fact of the unauthorized absence and is required to explain the circumstances by making a representation in writing, the reasons for such absence. It is only after considering the representation and if need be, after giving a personal hearing that competent authority decides the issue. In case competent authority is satisfied that absence was beyond the control of employee, the notice is discharged by giving permission to the employee, to join the duties and absence is decided in accordance with rules. If competent authority finds that the absence was deliberate and in fact amounted to voluntary abandonment of service, then only, an order or removal from service/loss of lien is passed and, therefore, the provisions of Article 81 (d) are hedged with appropriate safety valves. It was, therefore, held that it cannot be suggested that the provisions of Article 81 (d) are in violation of principles of natural justice. The Tribunal further dealt with the issue whether Article 81 (d) could dispense with the detailed procedure, as entailed in the CCS (CCA) Rules. By referring to clause 13 of Article 81 (d), it was observed that the detailed procedure for carrying out a departmental inquiry has been dispensed with. Reference was made to different provisions/standing orders made by industrial establishments for curbing the tendencies of employees being on unauthorized absence for number of days and reference was also made to the judgments of Hon'ble Supreme Court of India to dilate upon the principle of prejudice. It was held that it is not necessary to quash the order on the subjective plea of violation of natural justice in a routine manner unless it is shown by the employee that any prejudice has been caused by the said order. In certain situations, even if the order was passed in violation of natural justice, it need not be set aside if no prejudice is caused to the person concerned by the said order. Article 81 (d) was thus upheld by the Tribunal.



24

11. Almost the same views were expressed by the Hon'ble High Court of Delhi as well. In fact, Hon'ble High Court went a step ahead by observing that since employees of Kendriya Vidyalaya Sangathan are not the employees of Government of India but they are employees of the Sangathan. They are, therefore, to be governed by the Education code of Kendriya Vidyalayas. Article 311, according to the Hon'ble High Court of Delhi, would not even be applicable to the employees of Sangathan. Moreover, it was held that Article 81 (d) also provides an opportunity to an employee to show cause against the provisional view of the concerned authority that the employee has lost his or her lien on the post on the ground of unauthorized absence from duty, therefore, it cannot be stated that Article 81 (d) is violative of Articles 14 and 16 of the Constitution. Hon'ble High Court of Delhi also referred to various judgments of Hon'ble Supreme Court and reiterated the principle of prejudice by referring to the judgment of Hon'ble Supreme Court in the case of Aligarh Muslim University and Ors. Vs. Mansoor Ali Khan (2000 (6) Scale 125) and ultimately observed that the question of prejudice does not arise, as petitioner therein had not given any worthwhile explanation for her absence from duty yet an opportunity was given to her by the competent authority. After considering her representation, view taken by the authorities was found to be valid because in that case also petitioner had absented from duty for a long period in spite of her request for leave having been rejected by the authorities.

12. From above judgments, it is now clear that Article 81 (d) of Education Code for KVS is very much valid. In this backdrop, if the facts of present case are seen, we find somewhat the same situation is prevalent in the present case as in the case referred to above. The dates have been given in detail in paras 7 and 8 above, therefore, they are not being repeated. It clearly shows the conduct of applicant. It is seen that initially applicant was given full accommodation by respondents by giving her transfer from one place to the other as per her request in order to accommodate her since her husband was in Army. Even her leave applications were initially allowed but when she applied for leave repeatedly, her request for leave was rejected because respondents found that she was taking



too much leave, which affects the studies of the students as well as the interest of the Institution. It is relevant to note that she was directed earlier also to appear before the Medical Board in the year 2000 but she did not appear, however, in spite of that she was allowed to join the duty in December, 2000 but within few days, she again applied for EOL on medical grounds for three months. This time, she had given in writing that she would not take long leave thereafter. Therefore, even this leave was granted and she was allowed to join on 4.4.2001. Contrary to her assurance, within two months thereafter, applicant again applied for leave with effect from 22.6.2001 to 21.7.2001 i.e. merely after two months of joining the school. This time, her request was not acceded to and she was directed to join the duties but she did not join the duties, rather she requested to either grant her leave or to transfer her to KV Dehradun (letter dated July, 2001). It is seen from the records that she had herself admitted that she is causing hardship to the students and inconvenience to the Institution and on 23.7.2001 she even came to Delhi to meet the Deputy Commissioner, which clearly shows that she was not sick and could travel but still she did not join in spite of her leave having been rejected, she was once again called upon to join the duties immediately and in case of health problem, to appear before Medical Examination Board at Jammu vide letter dated 10.8.2001. Even at this stage, applicant did not bother either to join the duties or to appear before the Medical Board. She also did not request or show to the authorities that she was not able to move to Jammu due to some valid reasons. It was in these circumstances that respondents issued show cause notice under Article 81 (d) (3) of the Education Code for KVS to the applicant on 23.8.2001. Interestingly, even at this stage, instead of replying to the show cause notice, she again requested for medical leave.

13. These facts clearly show that applicant was not at all interested in joining the school or pursuing the studies of the students or to look after the interest of the Institution but she was more keen on taking leave on one pretext or the other without even bothering to comply with the directions given to her from time to time. In these circumstances, if the respondents confirmed her loss of lien after

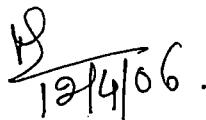
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giving her show cause notice, it cannot be said to be illegal by any stretch of imagination. We are fully satisfied after looking at the records that full opportunity was given to the applicant at every stage and even though she had filed appeal after a delay of about one and a half year, she was still given personal hearing, at that stage also by the appellate authority but since she could not satisfy about her bona fides to the authorities, her appeal was also rejected. In view of the facts, as explained above, no case has been made out by the applicant for interference by the Tribunal.

14. She had relied on circular dated 24.1.2002 to state that Medical Board should have been ordered at the nearest place where she had fallen sick but she cannot get benefit of this circular because this was issued on 24.1.2002 (page 52) whereas applicant was already removed from service vide order dated 14.9.2001 i.e. even before the issuance of this circular. Therefore, this circular will not be applicable in her case.

15. In view of above, we find no merit in the O.A. The same is accordingly dismissed. No order as to costs.

  
(N.D. Dayal) 124.06  
Member (A)

  
124/06  
(Mrs. Meera Chhibber)  
Member (J)

'SRD'