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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA NO. 641/2005 *un*

New Delhi this the 31st day of March, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.SINGH, MEMBER (A)

Vinay Prakash Rawat,
S/o Late Shri Raghunandan Prasad Rawat,
R/o 851, Jamuna Bagh,
Sadar Bazar,
Mathura-281002.

(By Advocate: Sh. L.R.Khatana)

1. Joint Commissioner (Admn.),
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi-110016.
2. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, St. John road,
Bangalore-560042.
3. Shri L.Xavier,
Enquiry Officer & Principal,
Kendriya Vidyalaya,
Hassan-573201.

(By Advocate: Sh. S.Rajappa)

ORDER

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant while working as a Primary Teacher in Kendriya Vidyalaya, Bambolim Camp, Goa of Kendriya Vidyalaya Sangathan (in short, KVS) was served with the Article of Charges for major penalty vide memorandum dated 2.1.2002 (Annexure A-1). The Article of Charge against him read as under:-

"That the said Shri Vinay Prakash Rawat, while functioning as PRT at Kendriya Vidyalaya, Bambolim Camp inflicted corporal punishment on Kumari Mallika, aged 9 years Daughter of Mrs. Yashodara Menon on 27.11.2001 in contravention to the instructions contained in KVS Circular No. 2CDN No.F.11-7/71-KVS dated 1.7.1971 and thus committed misconduct under Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964 as extended to the employees of KVS."

2. The statement of imputations of misconduct in support of the Article of Charge (Annexure-II) is reproduced below:-

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"That the said Sh. Vinay Prakash Rawat, PRT KV Bambolim Camp assaulted and ill-treated Kumari Mallika, aged 9 years of Class II B, KV Bambolim Camp on 27.11.2001 in the classroom.

It is reported by the student that the Science Teacher Mr. Rawat asked her whether she has studied lessons that day. When she replied in affirmative he asked her to name some 'man-made' things. She kept silent. He then asked what were 'natural things'. Again she remained silent. Mr. Rawat then pulled her by her belt, hit her on the heel and slammed her to the ground. Thereafter he pulled her up, hit her on the head and slammed her again on the ground. Again he repeated pulling her up, hitting and slamming her on the ground. The student felt great pain in her head and reached home. She was bleeding from a cut on the left side of her head and her hair was full of blood. She narrated this incident to her grand mother. The P.A. of the student's mother took her to the clinic of Shri R.H.Curchorkar at Panaji.

A preliminary inquiry on the written complaint lodged by Mrs. Yashodara Menon was held on 29.11.2001 at KV Bambolim Camp. It was revealed that Mr. V.P.Rawat beat the students in order to control the class and he has beaten Kumar Mallika and pushed her on the ground.

Action of Sh. Vinay Prakash Rawat, PRT is against the Code of Conduct prescribed for Teachers of KVS and unbecoming of a Teacher in KV. Inflicting corporal punishment to the Children in KV is prohibited as per the KVS Circular No.2 CDN No. F.11-7/71-KVS dated 1.7.1971.

Sh. Vinay Prakash Rawat, PRT has thus acted in a way which is unbecoming of a Teacher and committed misconduct under Rule 3(1) (iii) of CCS (Conduct) Rules as extended to the employees of KVS."

3. The disciplinary authority on the conclusion of the enquiry proceeding recorded the finding that the applicant had inflicted corporal punishment on Kumar Mallika, a student of Class III-B on 27.11.2001 but the corporal punishment had not resulted in any "appreciable injury on the child except if at all the tiny scar seen on her head by the Doctor". The disciplinary authority vide order dated 11.7.2002 (Annexure A-3) agreed with the finding of the enquiry officer. He held that the applicant had contravened the instructions of KVS and was guilty of misconduct under Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 which mutatis mutandis applies to the employees of the KVS. Holding that the charged official was not "a fit person to be kept in the services of KVS and ends of justice would be met" imposed the punishment of removal from service which shall not be a disqualification for future employment in KVS.

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4. Applicant preferred an appeal assailing the order which has been dismissed by the Joint Commissioner (Administration) as appellate authority vide its order dated 8.9.2003 (Annexure A-4). Applicant is aggrieved by these orders and has challenged these orders in this OA.

5. Respondents contested the OA. They have justified the disciplinary proceeding and the punishment awarded by the disciplinary authority as affirmed by the appellate authority.

6. In the rejoinder, the applicant reiterated his own case and denied the case pleaded by the respondent.

7. We have heard the learned counsel for the parties and have gone through the record.

8. It would appear from the Article of Charge (Annexure-I) that the disciplinary proceedings were initiated against the applicant on the ground that he had inflicted corporal punishment on a student Kumari Mallika aged 9 years which contravened the instructions contained in KVS Circular No.2 CDN No.11-7/71-KVS dated 1.7.1971 which amounted to a misconduct under Rule 3(1) (iii) of the CCS (Conduct) Rules, 1964 which are extended to the employees of the KVS.

9. The circular dated 1.7.1971, which was allegedly contravened by the applicant by inflicting corporal punishment of his student, is filed by the applicant as Annexure A-9. Being relevant, it is reproduced as under:-

"The question then arises as to how and by what means can teachers maintain discipline? The good disciplinarian, the successful teacher, rarely has to punish. There is no formula on which he relies; his secret is part of his personality. There are schools, too in which punishment is rarely necessary. It is a little easier to see why they succeed than why individual teachers command respect. Good organization, an orderly life, plenty to do, good teachers, clear direction, the certainty of fair-play-these are the components of a well-run; well-disciplined school. In such a democratic set-up terror has no place. Goodwill and proper direction and guidance will provide a fertile climate for both creativity and productivity.

There is a correspondence between the habits of the home and of the school which cannot also be disregarded. So it will be worthwhile to associate parents to solve individual disciplinary

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problems as they still exercise a powerful influence over their wards.

Proper guidance and care are the other means of reforming indisciplined pupils. Such passive persuasive and reformatory measures will always yield far better results than punitive measures that might breed fear, bitterness, contempt, disappointment and despair. A correction smile, a sympathetic look and affectionate pat on the back will go a long way to transform even incorrigibles. Where necessary the Principal and Teachers should in consultation devise such corrective means as may be deemed useful in cases of habitual defaulters – but not with a rod by inflicting physical pain.

It is, therefore, hoped that once and for all we will give up this coercive type of punishment in our Vidyalayas and in its place foster wholesome positive measure which will enable students to realize where they are wrong and how to correct themselves, thus ensuring their maximum growth in an atmosphere devoid of fear and repression."

10. The first and foremost argument of the learned counsel for the applicant is that this circular is not the departmental instructions in the matter of corporal punishment but it is only suggestion or advisory in nature, therefore, violation of the circular would not tantamount to breach of code of conduct of teachers or a misconduct covered by Rule 3 of CCS (Conduct) Rules, 1964. Indeed the tenor of the circular does give an impression that the KVS authorities had given some suggestions and advice to the teachers working in its organization to desist from inflicting corporal punishment on the students and adopt reformatory measures for improving the discipline and performance of their students. But it is invain to argue that such an advice or suggestion would not form part of the Code of Conduct of the teachers to be followed by them while performing their duties as a teacher. The advice, suggestion or instruction contained in the circular dated 1.7.1971 (Annexure A-9), with whatever name it is called, would be a Code of Conduct expected to be observed by the teacher in performance of their duties as a teacher and the contravention thereof would clearly be a misconduct envisaged by Rule 3 of CCS (Conduct) Rules, 1964. The argument to the contrary advanced on behalf of the applicant is, therefore, repelled.

Mahmood Ali Khan

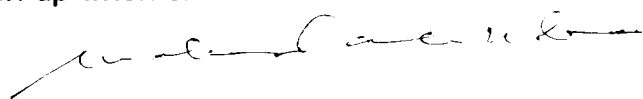
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11. Next it is submitted that the evidence of the witnesses recorded during enquiry proceeding do not prove the charge served on the applicant. His version of the incident is that he had only tried to give a slap gently to Kumari Mallika as a corrective measure since her performance was not well but he did not hit the student since she ducked and in the process lost her balance and sat on her knees. He denied as absolutely false that he had caused bleeding injury on the head of the student. According to him, the whole episode was blown out of proportion since the mother of the said student happened to be a very high beaurocrat in Goa. He further stated that after this incident the Principal and a teacher had also held an enquiry and the Principal by letter dated 29.11.2001, barely two days after the incident, had given him warning of stern action, if such incidents were repeated. He read the statement of Kumari Mallika, the student, the Principal, and the teachers who took classes on the date of incident after his period was over. He also drew our attention to the discrepancies in the statement of Kumar Mallika and Mrs. Saly George, who was the PA to the mother of student. While the child stated that applicant had hit her on head and she fell to the ground once and she had bleeding on the left side of her head. Mrs. George stated that Kumari Mallika told the doctor that the applicant pulled her by her belt and had pushed her to the ground three times. He also read the statement of the Principal Shri V.M.Gokhale recorded by the enquiry officer who confirmed that he had called the students of Class III-B to his office on 28.11.2001 in the presence of two teachers and that the students had told him that Kumari Mallika was beaten up by the applicant but he did not find any wound or traces of blood on her head. According to Ms. Saly George who has taken the child to the Doctor on the same evening, the Doctor did not find any redness or swelling or a wound on the head of the child but after close repeated search, the Doctor could find a tiny cut on the head. Kumari Mallika in

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her statement, on the other hand, stated that she had a bleeding injury on the left side of her head. The teachers who had taken classes after this incident did not find any abnormality in the behaviour of the student Kumar Mallika rather found her quite normal and even saw her taking part in the game. Dr. R.H.Curchorcar who examined the child in the evening of the incident had stated that he searched for the wound and the bleeding on the head of the child but did not find it. He also did not observe any tenderness on the temporal region. Doctor asked Mrs. Saly George and the grandmother of the child to search for the wound and the blood and after searching for it they agreed that there was no wound and bleeding. Thereafter he made another search and could find "a tiny scar on the temporal region but there was no tenderness and bleeding". Counsel vociferously argued that the material contradictions and discrepancies in the statement of these witnesses falsified the allegation that the applicant had inflicted corporal punishment and had caused any bleeding injury on the person of the student which justified the disciplinary proceeding against him or the award of punishment.

12. It is now well-settled that the Tribunal has no power to reappreciate the evidence and reach its own conclusion. But the Tribunal may scan the proceeding to find whether it is a case of no evidence or the finding recorded is perverse? In the present case, the fact that Kumari Mallika had suffered bleeding injury on her head from the corporal punishment inflicted upon her by the delinquent does not seem to have been proved as observed by the enquiry officer also. But on the next day of the incident the Principal called Smt. Ashalata Goankar, senior most teacher and Smt. Padmavai class teacher and asked them to hold inquiry in his presence. The student of Class-III B were called to his chamber and in the presence of the class teacher and another teacher made enquiries about the incident. All the students confirmed that Kumari Mallika was beaten up when she failed to answer



the questions. Smt. Ashalata Goankar had submitted the report on 29.11.2001 (Annexure A-5) to the fact that the applicant had beaten Kumari Mallika and had pushed her to the floor. The Principal had administered warning to the applicant in respect of the same incident vide memo dated 29.11.2001 (Annexure A-5).

13. As noticed above, neither the Doctor nor the Principal found any wound on the head of Kumari Mallika. Had the child been hit by the applicant by hard slap, there should have been at least redness or tenderness on the temporal region, which was not there. At the same time, all the students of the class who seemed to be in the age group of 9-10 years could not have been expected to make a wrong allegation against their own teacher when the incident was enquired into by the Principal on the next day of the incident. There was also no other reason for Kumari Mallika also to make false accusation against the teacher. Had the applicant lifted his hand only to give a slap gently and the child fell to the ground either in the process of saving herself there was no occasion for the students to state that the student was beaten up. Applicant without a murmur on protest not only apologised to the mother of the child when she came to the office of the Principal but also accepted the warning administered to him by the Principal. The finding of the enquiry officer as such that corporal punishment was inflicted by the applicant to the students, therefore, cannot be said to be without evidence to support it.

14. Counsel for applicant has also argued that the respondents had not been provided the assistance of a defence assistant of his choice and that the applicant had requested for providing a retired Army personnel for defending him but it was refused. There is no allegation that the defence assistant named by him was working under the administrative control of the respondent organization. Moreover, the applicant has not obtained consent from person named that he was

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willing to act as a defence assistant. According to the respondents as per the applicable rules applicant could have asked for a defence assistant who was an employee of the KVS. This fact has been disputed by the applicant. Counsel for respondents referred to a decision of a bench of this Tribunal dated 3.9.2003 in OA-3265/2002 Mr. Madhup Mehrotra vs. Union of India where the Tribunal has held that the KVS employees could be provided a defence assistant who is a KVS employee and could not insisted upon providing a serving or retired employees of any other organization. Even otherwise the test whether any irregularity or illegality in the enquiry proceeding has vitiated the proceedings is the test of prejudice. The facts of the case are peculiar and the applicant has failed to satisfy us that the respondent failed to provide a Defence Assistant or absence of the a Defence Assistant, has caused prejudice to the applicant in his defence which is fatal to the proceeding.

15. Learned counsel for applicant, however, seems justified in lamenting that the punishment awarded to the applicant is grossly disproportionate to the gravity of the charge proved against the applicant. Applicant has been punished by the disciplinary authority for violation of the instructions of the KVS, which prohibited infliction of corporal punishment by the teachers on their pupil. In the present case, the charge proved against the applicant is that he had given a slap to a student. On account of this solitary incident, the disciplinary authority had found him unfit to remain in service as a teacher in KVS. As a result of the slap given to the child she had not suffered any bleeding injury which was alleged and which had been so vociferously complained against by her mother. There seems some substance in the argument of the counsel for applicant that harsh punishment was awarded to the applicant for the reason that the victim's mother happened to be a high officer in the State. The Hon'ble Supreme Court in *Devi Singh vs.*

Devi Singh vs. State of Punjab

Punjab Tourism Development Corporation Ltd. and another (2003) 8 SCC 9 relying upon the judgments in Bhagat Ram vs. State of H.P. 1983 SCC (L&S) 342, Ranjit Thakur vs. Union of India 1988 SCC (L&S) 1 and U.P. SRTC vs. Mahesh Kumar Mishra 2000 SCC (L&S) 356 has observed as under:-

"6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case."

16. In Damoh Panna Sagar Rural, Regional Bank and another vs. Munna Lal Jain 2004 (10) SCALE 590, Hon'ble Supreme Court on the question of judicial interference in the quantum of punishment awarded by a disciplinary authority after examining the case law had observed as under:

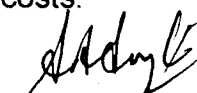
"14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards.

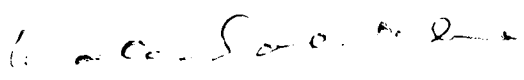
18. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law."

17. The law enunciated by the Hon'ble Supreme Court in the above cited cases when applied to the present case, there is no escape from the conclusion that the penalty of removal from service imposed by the disciplinary authority and upheld by the appellate authority is shockingly disproportionate to the proven charge. The reason therefor has already been noted. Applicant is guilty of giving a slap to a student aged about

9 years which by no stretch of logic would be corporal punishment of such a magnitude that would render him unfit for service as a teacher. The Principal who had also made some enquiry himself found it sufficient to administer a warning to the applicant to desist from repeating it in future. The penalty of removal from service could not have been imposed upon the applicant only as a deterrent to other teachers from doing the same act or to force them to strictly observe the advise and suggestion or instruction which have been given in the circular on corporal punishment.

18. For the reason stated above, we set aside the order of the disciplinary authority and the appellate orders to the extent it had imposed the penalty of removal of the applicant from service and remit the matter back to the disciplinary authority to reconsider the case afresh and impose a penalty which is commensurate to the charges proved against the applicant. This exercise shall be done by the concerned authorities of the respondents within two months from the date on which copy of the order is received by them. The party shall bear their own costs.


(S.A.SINGH)
Member (A)


(M.A. KHAN)
Vice Chairman (J)

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