

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

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OA No.813/2004

New Delhi this the 18<sup>th</sup> day of November, 2004.

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)**  
**HON'BLE MR. SHANKER RAJU, MEMBER (J)**

Krishna Murari Sharma,

-Applicant

(By Advocate Shri M.K. Bhardwaj with Sh. D.N. Sharma, Advocate)

-Versus-

Union of India and others.

-Respondents

(By Advocate Shri S. Rajappa)

1. To be referred to the Reporters or not?
2. To be circulated to other Benches of the Tribunal or not?

*S. Raju*  
( Shanker Raju )  
Member ( J )

(12)

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HON'BLE MR. SHANKER RAJU, MEMBER (J)**

Krishna Murari Sharma,  
S/o Shri M.L. Sharma,  
C/o Dr. R.C. Sharma,  
38, Hari Nagar,  
Maholi Road,  
M A T H U R A-281 004.

-Applicant

(By Advocate Shri M.K. Bhardwaj with Sh. D.N. Sharma, Advocate)

-Versus-

1. Union of India through  
the Secretary to the Govt. of India,  
Ministry of Human Resources Development,  
Kendriya Vidyalaya Sangathan Wing,  
Shastri Bhawan,  
New Delhi.
2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-110 016.
3. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office, 92-Gandhi Nagar Marg,  
Bajaj Nagar, Jaipur-302 015  
(Rajasthan).
4. The Principal,  
Kendriya Vidyalaya No.2,  
KOTA (Rajasthan).

-Respondents

(By Advocate Shri S. Rajappa)

**O R D E R**

**Mr. Shanker Raju, Hon'ble Member (J):**

An indecent act of sexual abuse, outraging the modesty is a crime directed against woman punishable under provisions of Indian Penal Code. An immoral conduct and sexual abuse with a minor girl student by her protector, Guru or a Teacher apart from



a crime is a sin. For rape with a minor penal laws prescribe capital punishment and in service jurisprudence for such a misconduct dispensation of service is the punishment. Article 81 (b) of the Kendriya Vidyalaya Sangathan (KVS) Code is an exception to the procedure for removing a Teacher or employee and it dispenses with holding of a departmental enquiry as not reasonably practicable due to serious embarrassment to the student or the guardian with a sine qua non of recording reasons by the Commissioner. The validity of this rule has already been upheld. In the above conspectus we have before us a rarest of rare case where an employee of the KVS, i.e., a Librarian had sexually abused showing exhibition of immoral sexual behaviour towards a seven year old girl student of KVS, Kum. Prakriti Aparjita.

2. A brief factual matrix is that on 17.1.2002 when Kum. Prakriti has gone to the library applicant made his colleague to sit on another bench and had seated himself on the bench on which Kum. Prakriti was sitting. As she was reading a story on finishing it he has handed over another story of five pages and during this interregnum applicant by lifting the frock of Prakriti started fondling with her private part. On arrival of one of the Teachers applicant had gone out of library. The aforesaid incident was reported by the girl to her mother who in turn informed her husband who had gone to school to verify the incident but as it was closed he has come back. Applicant had also gone to the school and from where he took the address of Prakriti and visited her residence. He has also repented on the incident and felt sorry and had also on a piece of paper by giving his address sought pardon on wrong behaviour with Kum. Prakriti and assured that this would not be repeated in future.

3. Parents of the girl were in constant touch with the Principal and other authorities of the School and ultimately a complaint was made to the Principal on 25.1.2002.

4. On receipt of the complaint by the Principal as per letter dated 24.1.2002, laying down steps to be taken while referring the case for initiating action under Article 81 (b) of the Education Code of KVS, a preliminary enquiry committee was constituted vide letter dated 25.1.2002, which comprise of Smt. Kusum Lata, PGT Hindi, Ms. Asha Vyas, PRT and Sh. B.K. Upadhayaya, PGT (Maths). In this course applicant was provided with the gist of the complaint and statements of Prakriti and others were recorded. Applicant in receipt of letter dated 31.1.2002 has also given his explanation.

5. The enquiry committee recorded its findings, substantiating the charge of immoral conduct against applicant which was sent to the Assistant Commissioner along with report and other documents.

6. Thereafter an enquiry was conducted by the Education Officer where statements were recorded and an explanation of applicant was also sought. Thereupon, vide report of the Education Officer the allegations against applicant had been substantiated. The immoral conduct of applicant was established. The aforesaid report was forwarded to the Commissioner, who after recording reasons for dispensation of enquiry, invoking Article 81 (b) of the Education Code of KVS terminated the services of applicant in lieu of three months pay and allowances. The above order was assailed in appeal by applicant and was affirmed vide order dated 29.1.2004.

7. The above orders dated 1.5.2002 and 29.1.2004 are impugned.

8. Before dealing with the contentions raised by the contesting parties Article 81 (b) of the Education Code of KVS is reproduced:

“81.(b) Termination of Services of an employee found guilty of immoral behaviour towards students.

Whenever the Commissioner is satisfied after such a summary enquiry as he deems proper and practicable in the circumstances of the case that any member of the Kendriya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month's notice or 3 months' pay and allowances accordingly as the guilty employee is temporary or permanent in the service of the Sangathan. In such cases procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of the Kendriya Vidyalaya Sangathan, shall be dispensed with provided that the Commissioner is of the opinion that it is not expedient to hold regular enquiry on account of serious embarrassment, to the student or his guardians or such other practical difficulties. The Commissioner shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of services.”

9. Letter dated 24.1.2002 prescribes steps to be taken for referring the case under Article 81 (b), which is reproduced as under:

“Letter NO.F.11-40/2001-KVS (Vig.) dated 24.01.2002 received from Shri D.S. Bist, Joint Commissioner (Admn. & Vig.), KVS(HQ), New Delhi.

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Subject: Steps to be taken while referring the cases for initiating action under the provisions of Article 81 (b) of Education Code – regarding.

A reference is invited to item No.8 of the minutes of Assistant Commissioner's Conference held on 15th to 17th June, 2001 circulated vide letter NO.1-1/2001-KVS (Admn.II) dated 25.07.2001 on the aforesaid subject.

While dealing with the cases related to immoral sexual behaviour towards girl students it is observed that the cases are not investigated meticulously. At

times the accused gets the benefit due to flaws occurred in the Summary inquiry.

In order to provide protection to the girl students from being sexually harassed by their teachers, the delinquent teachers are to be dealt with firmly without giving them any chance to claim the advantage due to substandard inquiry report. To get rid of such heinous crimes from the Vidyalaya for ever, you may adopt some measures like guidance and counseling etc. whenever any oral or written complaint received from any students/parent about the character of a male teacher it must be taken seriously and facts should be checked by any means. Any teacher whose character is doubtful may be put under constant watch. The points discussed in the Assistant Commissioner's Conference and stated in the minutes may be followed scrupulously.

If any complaint related to immoral sexual behaviour towards girl students is received, the following steps should be taken immediately at Vidyalaya level and Regional Office level.

#### VIDYALAYA LEVEL

1. A written complaint may be obtained from the students/ parents.
2. Case may be brought to the notice of Chairman, VMC.
3. A memorandum may be issued to the teacher by giving the gist of the complaint and in no case copy of the complaint should be given to the teacher.
4. A Committee may be constituted comprising of two or three gents/lady teachers and executive
5. The Committee may obtain the statement of the victim girl and her parents as well as the other students who witness the incident or to whom the victim girl narrated the incident, statement of the teachers should also be obtained to whom the victim girl made the complaint initially.
6. The Committee may ask about the behaviour of the accused teacher towards other girl students and other teachers and their statements may also be recorded.
7. Views of the Principal about the accused teacher may also be obtained.
8. The Committee may discuss the issue with the accused teacher and his statement may be recorded.
9. The Principal may forward the preliminary report with all original statements/documents to the Assistant Commissioner of concerned Regional Office. All these exercise at Vidyalaya level has to



be completed within three days from the date of the receipt of the complaint.

#### REGIONAL OFFICE LEVEL

10. According to the seriousness of the case and the situation prevails in the school due to the incident, the Assistant Commissioner may decide whether the teachers is to be kept under suspension or not.
11. After receiving the preliminary inquiry report from the school the Assistant Commissioner may send a team comprising of an Education Officer, a lady Principal and a senior lady teacher of the Vidyalaya to conduct summary inquiry.
12. The team may discuss the issue with the victim girl(s)/their parent(s), other girl students, teachers, Principal and the accused separately and their statement may be recorded with their signature.
13. The team may be asked to submit a comprehensive report clearly mentioning whether the charge is proved or not against the accused teacher.
14. The Assistant Commissioner may examine the case and decide whether the action is to be taken under the provisions of Article 81 (b) of Education Code for KVs or not.
15. If action has to be taken under the provision of Article 81 (b) of Education Code for KVs. The Asstt. Commissioner may forward the original preliminary inquiry report and summary inquiry report together with all the original documents to the KVS(HQ) with specific comments/recommendations and bio-data of the accused teacher.

Before a case under Article 81 (b) of Education Code for KVs is referred to KVS(HQ) it may please be ensured that all the aforesaid steps are fulfilled for taking further action at KVS (HQ) level.

Sd/-  
(D.S. BIST)  
JT. COMMISSIONER (ADMN.)”

10. The Apex Court in **Avinash Nagra v. Navodaya Vidyalaya Samiti**, (1997) 2 SCC 534, where a similar provision exists to dispense with the enquiry, observed as under:

“11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as “Guru



*Brahma, Gurur Vishnu, Guru Devo Maheswaraha*". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51-A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an enquiring mind but not with blind customary beliefs. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant to mould the caliber, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of pupil and the nature of the activity in which he takes part are material factors

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determining the degree and supervision demanded by a teacher.

12. It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parentis and such is the duty, responsibility and charge expected of a teacher. The question arises whether the conduct of the appellant is befitted with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but a nail in the coffin. It is self-inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact-situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human resources that the appellant was given a warning for his sexual advances towards a girl student but he did not correct himself and mend his conduct. He went to the girls' hostel at 10 p.m., in the night and asked the hostel helper, Bharat Singh to misguide the girl by telling her that Bio-Chemistry Madam was calling her; believing the statement, she came out of the hostel. It is the admitted position that she was an active participant in cultural activities. Taking advantage thereof, he misused his



position and made sexual advances towards her. When she ran away from his presence, he pursued her to the room where she locked herself inside; he banged the door. When he was informed by her roommates that she was asleep, he rebuked them and took the torch from the room and went away. He admitted his going there and admitted his meeting with the girl but he had given a false explanation which was not found acceptable to the Enquiry Officer, namely, Asstt. Director. Director examined the report and found him not worthy to be a teacher in the institution. Under those circumstances, the question arises whether the girl and her roommates should be exposed to the cross-examination and harassment and further publicity? In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls to the tardy process of cross-examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof. In view of his admission that he went to the room in the night, though he shifted the timings from 10 p.m. to 8 p.m. which was not found acceptable to the respondents and that he took the torch from the room, do indicate that he went to the room. The misguiding statement sent through Bharat Singh, the hostel peon, was corroborated by the statements of the students; but for the misstatement, obviously the girl would not have gone out from the room. Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less a *loco parentis* and, therefore, dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice."

11. In another case the Apex Court in **Director, Navodaya Vidyalaya Samiti & Ors. v. Babban Prasad Yadav and Anr.**, 2004

(2) SCALE 400, while reversing order of the High Court laid down

the following principles:

"5. We are of the view that the High Court erred in reversing the decision of the tribunal. The rule quoted earlier, explicitly deals with such a situation as obtains in the present case. The rule is not under challenge. All that is required for the Court is to be satisfied that the pre-



conditions to the exercise of power under the said rule are fulfilled. These preconditions are (1) holding of summary inquiry; (2) a finding in such summary inquiry that the charged employee was guilty of moral turpitude; (3) the satisfaction of the Director on the basis of such summary inquiry that the charged officer was prima facie guilty; (4) the satisfaction of the Director that it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the students or his guardians or such other practical difficulties; and finally (5) the recording of reasons in writing in support of the aforesaid.

6. In this case, all the pre-conditions have been fulfilled. An enquiry Committee was duly constituted. It held an enquiry and came to the conclusion that the respondent was guilty of the offence with which he was charged, namely, writing love letters to the student in question. The Director has recorded the reasons for dispensing with a regular enquiry, reasons which have been upheld as being valid in the decision in *Avinash Nagra* (supra), wherein this Court has held:

“With a view to ensure safety and security to the girl students, to protect their modesty and prevent their unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girl student etc. involving misconduct or moral turpitude, resolution prescribing special summary procedure was proposed and published by notification dated 23.12.1993, after due approval of the Executives of the respondent Samiti. The Minister of Human Resources and Development, Government of India in its Chairman. It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact-situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister Human Resources department Government of India in that behalf.”

7. It is true that the court in *Avinash Nagra* has made the following observations:



“In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month’s notice as he is a temporary employee under probation”.

8. However, the Court goes on to say:

“In the circumstances, it is very hazardous to expose the young girls to tardy process of cross-examination”

9. The last observation was not based on the fact that the employee in that case was a probationer at all. Indeed the embarrassment to the girl student would hardly be different merely because the alleged offender is a permanent employee. Besides under Article 311 (2) itself an enquiry may be dispensed with under certain circumstances. We have no doubt that those circumstances may include a situation as indicated in the rule of the institution as mentioned herein before.

10. The High Court particularly erred in requiring that such a charge needed to be proved beyond all reasonable doubt. This is against the principles governing a departmental enquiry in general and the unchallenged rules of the appellant institution in particular. The reason sought to be given by the Director for dispensing with the enquiry has been held by the High Court to be “unconstitutional and not legal”. This finding is also unacceptable since the Director has used the language of the rule. Further more, having regard to the approval of the rule in question in the decision of Avinash Nagra (supra), it was not open to the High Court to have come to the conclusion that the reason given by the Director for dispensing with the enquiry was unconstitutional or illegal.”

12. The High Court of Delhi in CWP No.3354/89 in **R.S. Mishra**

**v. Union of India**, by an order dated 19.9.94 observed as under:

“Let us, for a moment, accept the argument of the respondents that enquiry can be ordered by anyone and that the words “as he deems proper and practicable” mean only this much that after the enquiry is so held the Commissioner should “deem” the same to be “proper and practicable”. However, unfortunately for the respondents, it is no where borne out from the record that the Commissioner had, after the receipt of the report of Dr. Patel, deemed it be



proper and practicable in the circumstances of the case. My attention was not drawn to anything which could be taken even obliquely as compliance of that requirement. The respondents thus meet their Waterloo on this ground too."

13. A cumulative reading discerns that in case moral turpitude is established against an employee/Teacher the sine qua non is holding of summary enquiry. A finding recorded in the enquiry that the employee is guilty of moral turpitude the Director prima facie formed an opinion about the guilt and recorded reasons that it is expedient to hold enquiry on account of serious embarrassment caused to the student.

14. Though principles of natural justice, concept of fairness and accord of reasonable opportunity are sine qua non of an administrative or quasi judicial order, yet the provisions of Article 311 (2) of the Constitution of India and Article 81 (b) of the KVS Code are exceptions to this. The only requirement is that the highest authority on the basis of material and after the applicant has been accorded an opportunity to put to person his version, if comes to a conclusion of guilt as to the moral turpitude before terminating the services for the reasons to be recorded in writing why holding of enquiry is not expedient.

15. Now, we shall examine the contentions raised by learned counsel of applicant Sh. M.K. Bhardwaj with Sh. D.N. Sharma. Shri Bhardwaj first drawn our attention to the factual aspect of the case by contending that applicant has been falsely implicated as in the past he had made complaint for interpolation in the mark-sheet against one Teacher Smt. Medha and this has been retaliated by her by persuading the parents of Kum. Prakriti to concoct allegations against applicant. In this backdrop it is stated that while applicant was going to his house on 17.1.2002 he was



waylaid by father of Kum. Prakriti viz. Sh. Pankaj who was inebriated, he took him forcibly to his house and under threat and pressure an involuntary statement got recorded. This incident has been reported by his wife to the Principal and DRM, Kota Junction where Sh. Pankaj was employed on 18.1.2002. It is stated further by Sh. Bhardwaj that Sh. Pankaj against whom the authorities have recorded that he is a nuisance maker that so many complaint have been made against him. In nut shell the character of Sh. Pankaj has been highlighted to indicate that he is in the habit of leveling false accusations.

16. Shri Bhardwaj further stated that Smt. Medha who was instrumental in false implication of applicant got signed blank paper from students and on which the complaint of sexual harassment was recorded. In this view of the matter with his representation he has annexed a joint statement by several students and their parents to indicate that applicant had treated the students properly without any complaint. He also states that the students whose statements were recorded have given statements that whatever they have stated about the applicant was wrong and they had not seen him doing any immoral act. Shri Bhardwaj states that though the incident is reported has taken place on 17.1.2002, no complaint was made by the parents till 25.1.2002, which is an unnatural conduct and for want of registration of a case the falsity is apparent on the face of it.

17. As regards the legal submissions, learned counsel states that as per Article 81 (b) of KVS Code and the instructions, it is only the Commissioner who has to order summary of enquiry and this cannot be delegated. As enquiry has not been ordered by the



Commissioner and there are no reasons recorded in the order to dispense with the enquiry the order is without jurisdiction.

18. Relying upon a Constitution Bench decision of the Apex Court in **Managing Director, ECIL v. B. Karunakar**, JT 1993 (6) SC 1, it is contended that the report on the basis of which an adverse action is taken has to be served upon the KVS employee before any adverse action is taken against him. As the summary report was not furnished to applicant this has deprived him an opportunity, vitiating the orders.

19. Learned counsel further states that as per clause 11 of the steps *ibid*, on receipt of the preliminary enquiry report the Assistant Commissioner has to send a team comprising of Education Officer, a lady Principal and Senior Lady Teacher to conduct summary enquiry. As this has not been followed, for want of proper procedure the orders have no sanctity in law.

20. Learned counsel states that as per the decision of the High Court in **R.S. Mishra** (*supra*) as the Commissioner, who alone has to order the summary of enquiry and record a finding having failed to do so the orders are vitiated. The learned counsel further states that termination is a capital punishment in service jurisprudence, keeping in light the long service of about 20 years of applicant and his good record, depriving him an opportunity to show cause and to defend as per the rules vitiates the orders for violation of principles of natural justice.

21. On the other hand, Sh. S. Rajappa, learned counsel has placed reliance on **Babban Prasad Yadav** (*supra*) of the Apex Court and states that the conditions precedent have been fully complied with and as there was material against applicant of immoral sexual behaviour the action taken by applicant is in consonance with the



principles laid down of morality by the Apex Court in **Avinash Nagra** (supra). He has also produced before us for our perusal the complete record leading to termination of applicant.

22. Shri Rajappa states that it has been proved that applicant was prima facie guilty of moral turpitude, as such exercise of powers under Article 81 (b) by the Commissioner, who has recorded reasons to dispense with the enquiry cannot be found fault with.

23. In rejoinder pleas taken in the OA are re-iterated with catena of documents to establish innocence of applicant.

24. We have carefully considered the rival contentions of the parties and perused the material on record. We have also perused the record produced by the respondents.

25. Gurur Brahama, Gurur Vishnu Gurur Devo Maheswaraha has put a Teacher on the highest pedestal. Guru Vashist and Guru Draunacharya had already glorified the above by their dedication, sincerity and conduct. A Teacher is a benefactor and protector of the wards/students. He is a fatherly figure to a student. Parents admit their wards in the school with a sense of security and satisfaction that in their absence they would be imparted higher education and would be taught moral virtues enabling them to shape up in future and to contribute towards progression of the society. A trust is created by this understanding between the parents and the teachers. Any act in breach of this trust may or may not be crime but is an immoral sin. Sometimes a crime doer may be acquitted on the benefit of doubt or on the technicalities.

26. It is logical, rational and view point of a common reasonable prudent man that a father or mother who complaints against a



teacher or employee of the school would not level such allegations which have self-incriminating effect on the ward and also goes beyond all canons of decency in the society to have an effect to assassinate or malign character of a girl child which shall be a permanent blot on her life effecting her future matrimonial prospects. We have no hesitation to hold that by making such a complaint even the dignity not only of child but the parents are put to stake and are lowered. To foresee or to assume that such a compliant where a teacher or an employee of the school is leveled allegations of immorality and sexual abuse with the girl child beyond any normal human behaviour and is unethical, degraded and shameful concept. No doubt, false implications cannot be over-ruled but not to this extent.

27. Having regard to the above, on perusal of the record, we find that applicant had earlier complained against one teacher Smt. Medha for interpolation in the marks. The allegations pertained to the year 2000 and are remote. Why a teacher in 2002 raked up the issue with the applicant when the earlier action had not culminated into sanctions against her or any adverse action using the parents of a girl by persuading them to implicate her daughter to frame up applicant? This is not humanly possible and a reasonable common prudent man would have in negative responded to the above. There may be delay in complaining the allegations which is understandable as it needs heart of a lion to make complaint of sexual abuse relating to a child. It would put in jeopardy the character of the daughter and her repute in the society and is also a self guilt. But one who overcomes this and then makes a complaint there has to be a presumption of genuineness in the action duly corroborated by other evidence.



Shri Pankaj immediately on information of the allegations which were disclosed to his wife by her daughter reacted to the extent of visiting the school and finding no higher official persuaded his complaint from 18.1.2002 onwards till he has been asked to give a complaint in writing, which he had given on 25.1.2002. We should also visualize the apathy of the parents that the person who tried to sexually abuse had visited their residence and sought pardon in writing in his own handwriting. But human psychology and its ire and guilt-feeling persuaded him not to succumb to the tactics of applicant and with all boldness made a complaint. In no manner, in a judicial review, applying the test of a common reasonable prudent man an inference can be drawn that the complainant had framed applicant in such allegations of her child's sexual abuse only because one teacher Smt. Medha had persuaded him. Accordingly the contention put-forth by applicant's counsel that complaint of Pankaj was false, is baseless and an after thought to escape from his moral guilt.

28. As regards the cooked up story, which is corroborated by the complaint made by his wife on 18.1.2002 where she had stated about abduction of applicant and his making statement under threat, the same was the defence of applicant in the preliminary and summary proceedings. If applicant was abducted and threatened with life and Shri Pankaj forcibly made complaint to write something the aforesaid would have been reported by applicant himself and should have been reported to the police. By not doing so, it is established beyond all canons of doubt that applicant who even from the evidence of one of the watchman had visited the school on 17.1.2002 and took address of Pankaj from the school register wanted the matter to be settled and in this



attempt has gone to the residence of minor girl and there being remorse and pretending to be repentant himself gave in writing, admitting his guilt, which is a voluntary statement, given without fear, force and coercion as nothing has been brought on record to the contrary to establish the same. As such, we have no hesitation to hold that the aforesaid complaint is only an afterthought and with a view to create defence of what has been committed by applicant.

29. As regards plea that Pankaj is a quarrelsome person, remains drunk and reliance on two letters of DRM, we find one letter dated 5.11.98 regarding denial of joining on relieving of Pankaj because of some complaint, this does not show that Pankaj is a quarrelsome person. Moreover, an incident of 1998 has remote relation with his conduct in 2002.

30. The plea of applicant that it is only the Commissioner who would order a summary enquiry, we have perused article 81 (b) the only requirement while dispensing with the enquiry is the satisfaction of the Commissioner and his recording reasons. Nowhere it provides that the Commissioner would himself order enquiry. From the perusal of the decision of the High Court in **R.S. Mishra** (supra) we find that it has been held by the Court that on receipt of the report of the summary enquiry if reasons are recorded, the mandatory compliance of requirement of the rules is satisfied. In the present case when the matter was referred to the Assistant Commissioner, an Education Officer conducted the summary enquiry and on receipt of the same the Commissioner has recorded a finding to dispense with the enquiry as not reasonably practicable and had recorded reasons thereof. The



Apex Court in **Babban Prasad Yadav** (supra) has clearly held that even reproducing the language of the rules would be the reasons.

31. As regards the plea that applicant has been deprived of an opportunity, article 81 (b) is an exception to the regular proceedings and if a satisfaction has been arrived at by the disciplinary authority with credible reasons for non-practicability of the enquiry the aforesaid is a valid action as per Constitution of India. We also find that in the preliminary enquiry held by the Principal valid explanation of applicant was taken which even in the summary enquiry was considered and thereafter on prima facie finding of the guilt of sexual abuse of a minor girl the Commissioner after satisfying all the requirements passed the order, which does not suffer from any legal infirmity.

32. As regards the contention that the order of the appellate authority also shows non-application of mind, we have gone through the same and find that the contentions raised by applicant were meticulously considered. The order being a reasoned one, in a judicial review, we have no jurisdiction to interfere with the same.

33. As regards contention raised by applicant's counsel that the certificates of other students clearly show that applicant had treated them well and his previous record was good as well as statements of other students showing that the allegations are concocted had no veracity as this is irrelevant and have been procured later on after the students recorded their statements implicating him. Moreover, while dispensing with the enquiry or holding an enquiry to see feasibility of holding an enquiry strict rules of evidence shall not be made applicable. If there is no motive attributable to complainant Pankaj and her daughter the

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statement of Prakriti is sufficient to prima facie establish the charge against applicant. It requires no corroboration. A minor girl and a child of seven years of age is very close to the God. It is unexpected of her to lie or to fabricate or concoct charges against her own teacher when she is not nursing any grudge against him. Being innocent she reported this matter to the parents who after a lull because of social constraints though persuaded the matter had come up openly as they could not bear the agony of the incident. Smt. Medha even if known to the parents and against whom complaint was made by applicant in 2000 by passage of time it is irrational and illogical to presume or to form an opinion that she settled scores with applicant by involving not only the parents of Prakriti but also leveling allegations to the extent of sexual abuse of the teacher. We do not find any reasonable nexus with the two events. Accordingly the defence put-forth by applicant has no foundation and is an afterthought. May be on the begging and persuasion of applicant after his termination the parents taking pity persuaded their ward and they themselves signed the statement.

34. As regards validity of article 81 (b), its vires is not challenged. We have scanned through the entire record keeping in mind article 81 (b) and the guidelines and steps referred to in letter dated 24.1.2002. We have no doubt in our mind to conclude that the powers have been exercised by the Commissioner strictly in accordance with rules and guidelines.

35. It is trite law that for want of any illegality or infirmity in the proceedings or in the orders we cannot reappraise the facts or substitute another view by stepping into the shoes of the departmental authorities. As already observed, in such a case the



punishment imposed is commensurate with the misconduct and has been inflicted after following due process of law.

36. Denial of reasonable opportunity cannot be a valid ground to assail the proceedings under Article 311 (2)(b) of the Constitution of India or proceedings under article 81 (b), which are analogous. We have no hesitation to hold that keeping in view the tender age of the minor girl, the bent of mind, psychological effect and her repute in the social background, when she has already deposed earlier before the teachers voluntarily without any coercion, force and in front of independent persons like Principal and Teachers who had no ill will or motive towards applicant, the action is legal. Moreover, during the preliminary enquiry conducted by the Principal applicant had been afforded a reasonable opportunity and his defence was not found reasonable rather concocted. Smt. Medha against whom malafides are alleged at no stage of the proceedings was associated in the process, as such taking a view that she influenced the witnesses, the Enquiry Committee members as well as the Commissioner would not be justifiable or logical.

37. As regards contentions raised by applicant of supply of the enquiry report, once the gist is given and the version of applicant has been recorded, the ratio in **ECIL** (supra) would have no application, which has primarily decided the issue of furnishing of enquiry report in a regular departmental enquiry.

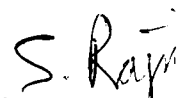
38. However, though the Tribunal has no power to either punish a person or to order compensation, yet after perusing the record and the fabricated defence of applicant, we are pained. Applicant who by his age is at par with the grandfather of Prakriti had foregone all social values, decency and morality as being a

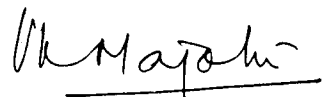


protector has turned into a destructor and had committed such a shameful act, which even God will not condone. Such a heart-less person deserves no sympathy at all. Though in criminology doctrine of punitive-ness is the solution but the recent socio-economic trait and various organisation propagate doctrine of reformation. Belying the aforesaid we have a recent example where one Dhananjay Kumar who also involved himself in sexual abuse of a minor girl had to part with his life. If such a teacher/employee of KVS who has access during his working hours with the girl student is a continuous threat, keeping such an employee/teacher in the Institution not only brings disrepute to the KVS but also lowers its credibility in the eyes of other parents and students. These black sheeps of the society should be fished out.

39. It is a fit case where we would have imposed a cost upon applicant but keeping in view that the same has to be a jolt to the family members of applicant who are already suffering, we have decided otherwise.

40. As the OA is found bereft of merit for the foregoing reasons, it is dismissed. No costs.

  
**(Shanker Raju)**  
**Member (J)**

  
**(V.K. Majotra)**  
**Vice-Chairman(A)**

18-11-04

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