

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD THIS THE 08th DAY OF July 2011

PRESENT

Hon'ble Mr. S.N Shukla, Member (A)

Hon'ble Mr. A.K. Bhardwaj, Member (J)

ORIGINAL APPLICATION NO. 200 of 2004.

Balram son of Gutthu Prasad Yadav (Lab Assistant) Jawahar Navodaya Vidyalaya Dilwara, resident of Village Chhivlaha, Post Hariharpur, District Chitrakot Dham, Karvi.

Applicant

By Advocate : Shri V.S. Singh

Versus.

1. Union of India through Secretary, Ministry of Human Resources Development Department of Education, Government of India, New Delhi.
2. Director (MLI), Navodaya Leadership Institute Jawahar Navodaya Vidyalaya Campus Dhoom Manikpur, Badri District Gautam Budhnagar.
3. District Magistrate/Chairman VMC J.N.V. Lalitpur.
4. Principal, Jawahar Navodaya Vidyalaya, Lalitpur.

Respondents

By Advocate: Shri V. Swaroop
Shri N.P. Singh

O R D E R

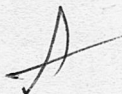
By Hon'ble Mr. A.K. Bhardwaj, Member (J)

The applicant joined as regular Lab Assistant in Jawahar Navodaya Vidyalaya, Dilwara, Lalitpur on 31.3.2000. One Shri S.S. Pandey made a complaint against him that he wrote a love letter to his daughters. Vide order

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dated 15.12.2003, Dy. Director (Administration) directed the applicant to appear before the enquiry committee on 19.12.2003 at 10 A.M and reports to Dy. Director (Pers) for participating in such enquiry. In the meantime by order dated 26.10.2003, the applicant had been placed under suspension by Principal, Jawahar Navodaya Vidyalaya. Having found applicant prima facie guilty of moral turpitude involving exhibition of immoral sexual behaviour towards a girl student of J.N.V, Lalitpur and having considered it is expedient and practicable to hold a regular inquiry under the provision of C.C.S (C.C.A) Rules, 1965. Commissioner, Navodaya Vidyalaya Samiti issued the order dated 7.1.2004 terminating the services of the applicant with immediate effect. The applicant has filed the present Original Application, assailing the order of termination on the following grounds:-

- (i) *His services could not be terminated without holding regular enquiry.*
- (ii) *The reasons given for dispensing with enquiry are not adequate.*
- (iii) *In the absence of enquiry, applicant had no opportunity to produce evidence and defend himself. In view of judgment reported as 1987 SCC LNS 518, Meshram Versus Union of India, the grounds taken*

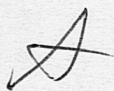


by Commissioner for dispensing with the enquiry is illegal.

- (iv) *The order of termination is in violation of Article 311 of Constitution.*

2. Opposing the Original Application filed by the applicant, respondents have filed a detailed counter reply. The salient contention raised by the respondents are as under:-

- (i) *The necessary party Dy. Director Navodaya Vidyalaya Samiti, Lucknow and Commissioner, Navodaya Vidyalaya Samiti, who are necessary party to the controversy are not impleaded as respondents in the Original Application by applicant.*
- (ii) *Order of the termination is passed in terms of provision of notification dated 20.12.1993, which was appealable before the Chairman, Navodaya Vidyalaya Samiti, New Delhi. However, the applicant did not exhaust the remedy of appeal.*
- (iii) *O.A. is barred by limitation.*
- (iv) *In view of law laid down by the Hon'ble Supreme Court in **Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others - (1997) 2 Supreme Court Cases 534.** The respondents*



are justified for dispensing with the regular enquiry.

- (v) *Action against the applicant was necessitated as he was spoiling the atmosphere of Co-Educational Institution.*

3. As is noted above, the salient contention of the applicant is that the order of termination is stigmatic and could not have been passed without adhering to principle of natural justice and provision of Article 311 of Constitution.

4. In the present case, Navodaya Vidyalaya Samiti which is an autonomous organization of Ministry of Human Resource had issued notification dated 20.12.1993 providing therein that whenever the Director satisfied after such summary enquiry as he deems proper and practicable in the circumstances of the case, that any member of the Navodaya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence of exhibition of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month's or three month's pay and allowances depending upon whether the guilty employee is temporary or permanent in the services of the Samiti. Part 'B' of said notification reads as under:-

"Whenever the Director satisfied after such summary enquiry as he deems proper and practicable in the circumstances of the case, that any member of the Navodaya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence of exhibition of immoral sexual

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behaviour towards any student, he can terminate the services of that employee by giving him one month's or three month's pay and allowances depending upon whether the guilty employee is temporary or permanent in the services of the Samiti. 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 Navodaya Vidyalaya Samiti, shall be dispensed with, provided that the Director 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 Director 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 Samiti informed of the circumstances leading to such termination of service.

The above provisions will take effect from the date of issue of this notification.

*(NEERU NANDA)
Director".*

5. Further in the case of **Avinash Nagra (Supra)**.

Hon'ble Supreme Court ruled that Director has correctly taken the decision not to conduct the enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. Relevant portion of the judgment of the Hon'ble Supreme Court reads as under:-

".....In our considered view, the Director has correctly taken he 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 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 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 toot 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

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rules and denial of cross-examination are legal and not violated by violation of the principles of natural justice”.

6. In ***The Director, Navodaya Vidyalaya Samiti and Ors. Vs. Babban Prasad Yadav and Anr.***, Hon’ble Supreme Court examined the issue identical to one involved in the present case and ruled that under Article 311 (2) itself an enquiry may be dispensed with under certain circumstances and there is no doubt that those circumstances may include a situation as indicated in the Rule of Navodaya Vidyalaya Samiti. The relevant portion of said judgment reads as under:-

“Counsel appearing for the appellant has contended that the rules relating to the dispensation of enquiry had been notified on 20.12.93. These rules specifically provided:-

“Whenever the Director satisfied after such summary enquiry as he deems proper and practicable in the circumstances of the case, that any member of the Navodaya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence of exhibition of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month’s or three month’s pay and allowances depending upon whether the guilty employee is temporary or permanent in the services of the Samiti. 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 Navodaya Vidyalaya Samiti, shall be dispensed with, provided that the Director 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 Director 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 Samiti informed of the circumstances leading to such termination of service.

The applicant’s argument is that the rule quoted above specifically entitled the Director subject to the conditions being fulfilled under the rule to dispense with the enquiry against an employee who is charged with offences of moral turpitude, including immoral behaviour. Learned counsel for the appellant has relied upon the decision of this Court in Avinash Nagra Vs. Navodaya Vidyalaya Samiti & Ors. reported in 1997 (2) SCC 534 where this Court in a



similar situation upheld the exercise of power by the Director in dispensing with a full scale enquiry. According to the appellant, a prima facie finding has been arrived at by the Director on the basis of an enquiry held by a Committee set up for the purpose. The Committee gave a report after affording an opportunity to the respondents and after considering his defence in the matter. It was only on the basis of the report that the Director arrived at the prima facie satisfaction as mandated by the rule in question. On the merits of the case, it is submitted that in view of the Committee's report, the Director's satisfaction that the respondents was prima facie guilty of immoral behaviour could not be said to be incorrect. The committee had relied upon the letters proved to have been written by the respondents to the student which euphemistically speaking were undesirable, having regard to the relationship of trust required to be maintained between a teacher and student. The hand writing on the letters which had been disputed by the respondent, had been established to be his by an expert body which had given a report on the letters having compared them with admitted specimen hand writings of the respondent. It is also submitted that the High Court had erred in relying upon the principle enshrined in Article 311 (2) of the Constitution not only because the provisions of that Article were not applicable to the respondent but also because there were specific rules governing the appellant institution which rule has been considered, construed and approved by this Court in the decision in the case of Avinash Nagra (Supra).

".....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 hereinbefore.

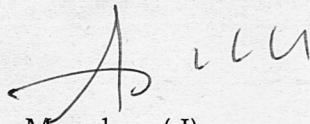
The High Court particularly erred in requiring that such a charge needed to be proved beyond all reasonable doubt. This is against the principles governing a departmental enquiry in general and the unchallenged rules of the appellant institution in particular. The reason sought to be given by the Director 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 this 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".

7. As far as the present case is concerned, in his communication dated Nil placed on record as Annexure 2 to O.A, the applicant has also admitted that the letter written by him was received by Shri Pandey and having received the same Shri Pandey had called him and asked him to return the letter written by his daughter. Order passed by respondents terminating the services of the applicant is in

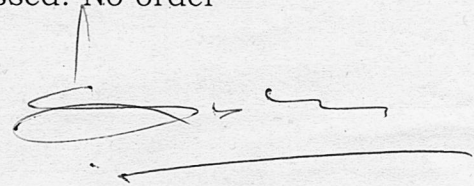
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consonance with the view taken by Hon'ble Supreme Court in the case of **Avinash Nagra (supra)** and **The Director, Navodaya Vidyalaya Samiti and Ors. (supra)**, thus cannot be interfered with.

8. Original Application is accordingly dismissed. No order as to costs.



Member (J)



Member (A)

Manish/-