

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 11 DAY OF November, 2010)

Hon'ble Mr. Justice S. C. Sharma, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No.1084 OF 2005 (U)
(U/S 19, Administrative Tribunal Act, 1985)

Gyan Shanker Srivastava, aged about 47 years, Son of Sri Shiv Shanker Srivastava, Presently, resident of C-119, G.T.B. Nagar, Kareli Housing Scheme Kareli, Allahabad (was serving on the post of PGT (Chemistry) at Kendriya Vidyalaya, NHPC Banbasa, District Champawat (Uttaranchal) but now under orders of termination of service).

.....Applicant.

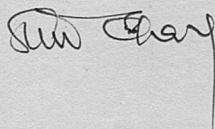
V E R S U S

1. The Union of India, through the Secretary, Department of Education, Ministry of Human Resources Development, Government of India, 6 Shastri Bhawan, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.
3. The Joint Commissioner, Administration, Kendriya Vidyalaya Sangathan (Headquarters), 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.
4. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Hathibarkala, Salawala, Dehradun (Uttaranchal).
5. The Principal, Kendriya Vidyalaya NHPC, Banbasa, District Champawat (Uttaranchal).

.....Respondents

Present for the Applicant: Sri Shayamal Narain

Present for the Respondents: Sri N.P. Singh

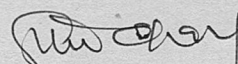


ORDER

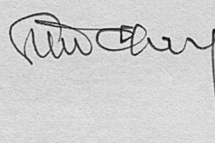
(DELIVERED BY HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER (I))

Under challenge in this O.A. is the Order dated 01st July, 2003 and 03rd September, 2007 passed by the Assistant Commissioner, K.V.S. Regional Office Dehradun (Uttanchal) and the Joint Commissioner (Administration) K.V.S. (Headquarter), New Delhi. It has been prayed that the above order may be quashed. Further prayer has also been made for giving a direction to the Respondents to immediately reinstate the applicant in service w.e.f. 27th May, 2002 at K.V. N.H.P.C. Banbasa, Champawat (Uttanchal) alongwith all consequential benefits including payment of arrears of salary and other allowances with interest ignoring the order dated 19/20.01.2003 posting him to K.V. No.2 Dehradun. The pleadings of the parties may be summarized as follows:-

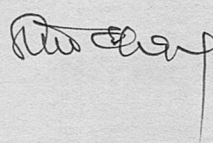
- (i). It has been averred that the applicant was initially appointed as primary Teacher on 17th August, 1981 and posted at KV, Babina Cantt. Jhansi. Applicant had been possessing educational qualification M.Sc. (Chemistry) L.T. degrees. Thereafter he was selected for the post of T.G.T. (Science) and joined at K.V. Jhansi on 4th April 1983. Subsequently he was promoted to the post of P.G.T.



(Chemistry) and posted in that capacity to K.V. Koyla Nagar, Dhanbad, Bihar (now Jharkhand) in December 1991. Thereafter, applicant was transferred to K.V. NHPC Banbasa, District-Champawat (Uttaranchal) and joined on the post of P.G.T. (Chemistry) on 15th November 1999. Applicant's track record in service had been totally unblemished and smooth until after two years of joining at K.V. NHPC Banbasa. Even at Banbasa, between 1999 and 2001 the tenure of the applicant had been excellent. And he had worked as Principal-in-charge on 4.1.2001 under stop gap arrangement following the transfer of Dr. V.K. Agrawal. Sometime about the end of 2000 and beginning of 2001 applicant and one Sri K.P. Dubey T.G.T. (Maths) discovered a large scale bungling in the funds of Vidyalaya Vikash Nidhi and an amount in excess of Rs.8 lakhs has been misappropriated for the purposes of computers and furniture. Applicant and Sri K.P. Dubey raised the banner of protest and requested the Principal and other higher authorities of K.V.S. to take immediate remedial action. A letter was written by Sri K.P. Dubey to the Commissioner K.V.S. on 30th January 2001 and the same was forwarded by the applicant in the capacity of Principal-in-charge and it



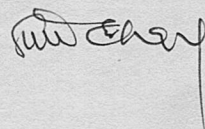
was the beginning of the harassment of the applicant and damage culminating in the termination of his services. That the applicant later on relinquished the officiating charge of the post of Principal on 15th March, 2001. And Shri A.K. Chaturvedi joined as New Principal. On 25th April 2001 applicant was shocked to receive a cryptic order dated 23rd April 2004 signed by the Principal Mr. A. K. Chaturvedi whereby the applicant and Sri K. P. Dubey were directed to vacate the project accommodation within 10 days next i.e. by the 2nd of May. Order was issued on the behest of Vidyalaya Management Committee and memorandum was moved on dated 25th April 2001 before the Principal and Sri V.K. Jain, Chairman, V.M.C./Chief Engineer NHPC Banbasa seeking to know the reasons of passing the order. Applicant also came to know through rumor that the applicant and Mr. K.P. Dubey were sought to be transferred out of K.V., NHPC Banbasa for their role in highlighting the financial wrong doings. A representation was also submitted to the Commissioner K.V.S., New Delhi, setting out his apprehension that of being transferred illegally and malafide at the instance of Mr. V. K. Jain, no response was received by the applicant to the representation and in the



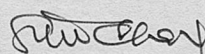
meantime school was closed down for summer vacation w.e.f. 15th May, 2001 till 24th June, 2001. In the middle of summer vacation an order was received dated 13th June 2001 for placing him under suspension in contemplation of disciplinary proceedings. And K.V.S. regional office, Dehradun was declared the Headquarter during the period of suspension. A detailed representation was served on the Assistant Commissioner for reconsideration and recall of the order of suspension. In the representation the applicant also mentioned that in haste an advertisement was issued on 23rd July, 2001 for appointment of temporary Teacher at this place. The request of the applicant was for change of Headquarters from Dehradun to Banbasa was also summarily rejected. On 12th July, 2001 applicant moved a written request for being allowed to proceed on the station leave from Dehradun to Banbasa to look after his ailing wife and permission was granted. This letter was submitted on 12th July, 2001. Thereafter, a major penalty charge memo dated 19th September, 2001 under Rule 14 of the CCS (CCA) Rule 1965 was served. From perusal of the charges mentioned in the article shows that no misconduct is made out against the applicant. The charge memo and the

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disciplinary proceedings were challenged in O.A. No. 2983 of 2001 before the Principal Bench of C.A.T.. Interim order dated 31st October, 2001 was granted and the disciplinary proceedings were stayed. But for want of jurisdiction the O.A. was disposed of on 22nd April, 2002 with liberty to the applicant for approaching the appropriate Tribunal. Thereafter, O.A. No. 17 of 2002 was filed before this Tribunal challenging both the 'Charge Memo' and the 'Suspension Order'. Interim order was granted on 27th May, 2002. But, even after passing the interim order the applicant was not reinstated, hence contempt proceedings were initiated. Sri K. P. Dubey was also suspended and he also preferred an O.A.. The O.A. was disposed of finally on 14th January, 2003 and the applicant was reinstated. On 22nd January, 2003 applicant made a written request to the Principal in order to permit him to resume duties in compliance of the Tribunal's judgment dated 14th January, 2003. But the applicant was not permitted to join the duty. Again letter was sent on 25th January, 2003 for permitting him to resume duties, ultimately the applicant was not permitted. On 28th January, 2003 an order was served on the applicant which appears to have been back dated

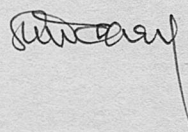


19/20th January, 2003 stating that the order of suspension dated 13th June, 2001 has been revoked w.e.f. 27th May, 2003 and he was being posted at K.V. No.2 Hathi Barkala, Dehradun, against the clear vacancy of PGT (Chemistry) since the post at K.V. NHPC, Banbasa had been filled up by one Smt. Bandana in consequence of the transfer on request from K.V. No.1 Bokaro. Copy of the order dated 19/20th January, 2003 has been annexed. Request of transfer of Smt. Bandana during his suspension was highly irregular and illegal. There was no justification for filling up the vacancy caused by suspension. On 30th January 2003 that illegal request of transfer of Smt. Bandana has been entertained. That he had not completed 5 years tenure of her posting at Banbasa. But this representation dated 30th January, 2003 was rejected summarily by a cryptic order. The order dated 14th February, 2003 was also served which is also illegal. But applicant expressed his willingness to join at Dehradun vide letter dated 25th February, 2003 and prayed for advance of Rs.25,000/- as TA/DA and other entitlements. Only some of Rs.2500/- was sanctioned as TA/DA advance treating the transfer from K.V.S. RO, Dehradun to K.V. No.2 HBK, Dehradun and it is illegal. The stand taken by the

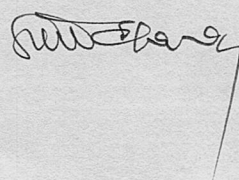


Respondents is illegal and contrary to the rules. The applicant instituted a Contempt Proceedings in violation of the order dated 14th January, 2003. Instead of submitting a reply of Contempt Proceedings, the applicant was served with a notice dated 20th June, 2003 recording the factum of Voluntary abandonment of service and provisional loss of his lien on (Post) under sub-clause (3) of clause (d) of Article 81 of the K.V.S. Education Code, and directing the applicant to show cause as to why the order of provisional loss of lien should not be confirmed. Explanation was submitted by the applicant in pursuance of the notice dated 20th June, 2003 on 25th June, 2003 and the same was rejected on 01st July, 2003 and order of loss of his lien was confirmed and the order was illegal. There was no question of abandonment of service, the applicant was pursuing the matter before C.A.T. and other authorities of the Respondents and a final order was passed for termination of the service of the applicant and the appeal was also dismissed, hence the O.A.

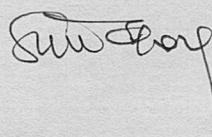
2. Respondents contested the case and filed their Counter Reply and denied all the allegations in the application. However, it has been admitted that applicant was posted at Banbasa. And that the applicant officiated as Principal at K.V. NHPC, Banbsas



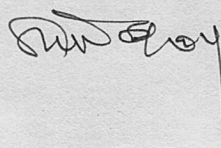
on account of transfer of regular Principal Sri V. K. Agrawal. That applicant pointed out some irregularities in purchase of computer etc. during his period as officiating Principal, since the final purchase of the said procurement of computer was done by the applicant himself on 20th February, 2001. Moreover, the applicant was also in-charge of admission during that period, hence was responsible. Disciplinary proceedings were initiated against the applicant for lodging false allegations, disobedience of the order of Superiors Authorities and engaging of Private Tuitions and the applicant has full liberty to defend himself in the regular departmental proceedings. Departmental proceedings were initiated on receipt of joint complaint against him by the students and parents addressed to the Vidyalaya Management. It was also observed that during the academic session of 2000-01 of K.V., NHPC, Banbasa that 57 students appeared for Class-IX annual examination and only 24 have passed. And the result of K.V., NHPC, Banbasa in which the applicant was found teaching Science was found very poor. In order to dilute the gravity of the effect of complaints against the applicant, the sponsoring authorities issued a notice for vacating the accommodations. Considering the complaints of the students and parents and in order to avoid being victimized the applicant was put under



suspension w.e.f. 13th June, 2001 and the Headquarters was also changed to K.V.S. regional office, Dehradun. It has also been admitted that O.A.No.17 (U) of 2002 was filed by the applicant before the CAT, Principal Bench New Delhi and an interim order was passed, thereafter, an O.A. was instituted in this Bench and Interim Order was passed on 27th May, 2002. Stay vacation application has been moved and while the Stay vacation was pending Contempt petition was moved and as Stay vacation application was pending, hence, the order dated 27th May, 2002 was not complied with. The Contempt Petition was connected with the O.A., and were decided on 14th January, 2003. That the K.V., N.H.P.C. Banbasa is sponsored by National Hydro Electric Power Corporation (N.H.P.C.) which is Public Sector undertaking of Government of India. The applicant had been most disputed teacher amongst the staff of the Vidyalaya. He was involved and indulged in making false complaints against the higher officials in order to hide his poor performance in teaching. Complaints were made against the higher officials of the N.H.P.C. and Commissioner K.V.S. etc without any valid documents and the complaints made during the officiating period of the applicant was found false. The applicant only officiated from 04.01.2001 to 15.03.2001 in the absence of regular Principal. That the complaint

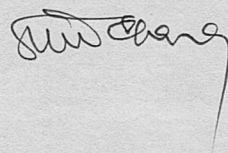


was made after thought and that the applicant filed O.A. No. 17(U) of 2002 and obtained stay order dated 27th May, 2002 staying the operation of suspension order dated 13.06.2001 and 19.06.2001. The operative part of the order dated 14.01.2003 passed in the O.A. was complied with. And in pursuance of the order of the Tribunal dated 14.01.2003 applicant was reinstated and posted at K.V. No. 2 Hathi Barkala on a clear vacancy of PGT (Chemistry) at K.V., NHPC, Banbasa was filled up by the K.V.S. Headquarters on transfer of Smt. Bandana. The pay and allowances due to the applicant w.e.f. 27th May, 2002 to 14th January, 2003 was released and the applicant was required to report for duty, after the order of reinstating the applicant. The representation was made for reconsideration of the matter of re-transfer of the applicant at Banbasa but it was disposed of and the advance of TA of Rs.2500/- was paid to the applicant. In pursuance of the order the applicant did not report to duty at K.V. No.2 Hathi Barkala as intimated by the Principal K.V. No.2 HBK. The Principal K.V., NHPC Banbasa reported that all the books belonging to the applicant were handed over to the applicant. Then an inquiry was ordered against the applicant. Subsequently also applicant was directed to report for duties at K.V. No.2 HBK and to cooperate with the disciplinary proceedings. The appeal

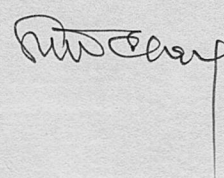


dated 25th February, 2003 was filed with the intention to create hurdle in the disciplinary proceedings. The applicant himself was guilty of non-compliance of the order of the Tribunal. Then the appeal was dismissed by a reasoned and speaking order. The applicant also made request for specific direction to the Respondents for reinstating the applicant on previous place of posting. Applicant himself stated in the representation dated 25th February, 2003 that he will prefer to join at K.V. No.2 HBK, Dehradun. But even after expiry of more than six months the applicant failed to join at new place of posting at K.V. No.2 HBK, Dehradun, hence a show cause notice was served on 20 June, 2003 under article 81(d)(3) of the K.V.S. Education Code. The representation was made and 25th June 2003 in pursuance of the notice and the same was considered by the competent authority and rejected the same on 1st July 2003 and the order was confirmed for loss of lien on the post hold by the applicant. That there is no malafide in the action of the respondents, hence OA is liable to be dismissed.

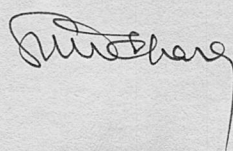
3. We have heard Mr. Shyamal Narain, Advocate for the applicant and Mr. N.P. Singh, Advocate for the respondents, and considered the entire facts, arguments and circumstances of the



case. Learned counsel for the applicant argued that in the background of order dated 1st July 2003 there is a long sequence of events. And with the background of previous history of the events and circumstances of the case a show cause notice dated 20th June 2003 was served and in response of that applicant submitted representation dated 25th June 2003 and the order was passed on 1st July 2003 confirming the loss of lien of the post hold by the applicant. That it shows the blentant high handedness of the respondents. It has also been alleged that the applicant throughout his career had unblemished and bright. Initially applicant was appointed as Primary Teacher and thereafter due to his sincere and hard work he was promoted in the scale of T.G.T. and thereafter in the scale of P.G.T.. Learned counsel for the applicant also argued that unfortunately applicant being the senior most teacher had to officiate on the post of Principal on transfer of Mr. V.K. Agrawal the previous occupant of the post and during the officiation period of the applicant as Principal from 4th January 2001 to 15th March 2001, applicant detected certain irregularities and bungling in the purchase of computer and furniture for the institution. And complaints were made regarding irregularities and bungling of huge amount of Rs.08lakhs in the purchase of computer etc. It was because of the



respondents that the complaints were made against the applicant and he was also put under suspension. That an OA was instituted earlier before the Principal Bench of CAT and an interim order was passed in favour of the applicant, thereafter, OA was dismissed for want of territorial jurisdiction and thereafter the OA was instituted before this Bench of CAT at Allahabad. On 27th May 2002 interim order was passed by this Tribunal staying the operation of the order of transfer. In OA No.17 of 2002 the suspension orders as well as disciplinary proceedings were stayed, but inspite of the interim order respondents failed to obey, and applicant had to move an application for contempt. And ultimately the contempt as well as the OA was disposed of on 14th January 2003. However, learned counsel for the respondent argued that the interim order passed was not complied as an application was moved on behalf of the respondents for vacating the stay order. And during the pendency of the said application the order was not complied with. Learned counsel for the applicant argued that the Tribunal in its order dated 14th January 2003 condemned the act of the respondents. Annexure A-14 is the copy of order dated 14th January 2003 passed on OA No.16 of 2002, K. P. Dubey Vs. Union of India and Others and OA No.17 of 2002, G. S. Srivastava Vs.



Union of India and Others. The contempt petition moved in both the O.As were disposed of by a common order. The Tribunal passed following order:-

"The applicants were to be reinstated immediately after the interim order was passed. It was submitted by the applicants that the respondents did not take any action to reinstate them. This fact has not been disputed by the respondents' counsel. We do not appreciate the inclination of respondents in not complying with the direction of this Tribunal. No body is above law and the respondents have to abide by the rule of law. The order of the Court has to be respected in and complied with unless it is set aside or stayed by Superior Courts.

The Contempt Application No.132 of 2002 (U) and 132 A of 2002 (U) are being disposed of finally. In view of our decision in the O.As No. 16 & 17 of 2002 we don't feel it necessary to proceed further in these Contempt applications and drop the same with the hope that respondents shall in future show respect and regard to the Court's direction. Notices issued to the respondents are discharged. No costs."

4. The above order was passed by the Tribunal in the background that the interim order was passed by Tribunal dated 27h May, 2002, the Memo of charge dated 19th September, 2001 was stayed till the next date, and the suspension order dated 25th September, 2001 was also stayed and further direction was given in the Interim order to reinstate the applicant. But inspite of the order of the Tribunal the applicant was not reinstated on their

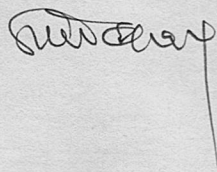
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posts. And that is why the Tribunal had to pass the above order in strong words and it was expected from the Respondents to have respect for the Court's Orders. Learned counsel for the applicant argued that as the respondents have no respect for the Tribunal, Courts, hence they required to be condemned. It is a fact that inspite of the Interim Order of the Tribunal the applicants were not reinstated on their posts. Mr. N. P. Singh, Advocate for the respondents argued that after Interim order dated 27th May, 2001 an application was moved on behalf of the Respondents for vacation of the said order and that is why the respondents were fully justified in not complying with the order. He has also argued that inspite of the fact that the order was not complied with and Contempt proceedings were initiated against the respondents, but even then they were not punished under the Contempt of Court Act. And it shows that respondents were justified. Although, it is not the matter and issue in the present O.A. that whether respondents are justified in not complying with the orders of the Tribunal but it is a fact that an Order was passed on dated 14th January, 2003 reinstating the applicant on his post. Learned counsel for the applicant narrated all these fact in the O.A. and also in the arguments in order to show the background of the case. And the learned counsel for the applicant highlighted

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the conduct of the respondents of disrespect and disobedience of the orders of the Tribunal. In the proceedings of this O.A. we have to confine with the matter in the controversy at present and not with the earlier controversy. Whatever might have been the act and conduct of the respondents in the earlier proceedings that came to end with the final decision of O.A. No. 17 of 2002.

5. Learned counsel for the Respondents also argued that in pursuance of the order of Tribunal dated 14th January, 2003 the applicant was reinstated on his post. Mr. N. P. Singh, Advocate for the respondents also pointed out that during the period of suspension and by the Suspension Order itself the Headquarters of the applicant was changed from K.V. NHPC, Banbasa to K.V.S., Headquarter, Dehradun, and the post was lying vacant. That the respondents being an education institution and in order to safeguard the interest of the Students of the educational institution and due to change of the Headquarter from K.V. NHPC, Banbasa to K.V.S., Headquarter, Dehradun, and the post was lying vacant of P.G.T. (Chemistry) hence Smt. Vandana was posted as P.G.T. (Chemistry) teacher at Banbasa. Learned counsel for the respondents also argued that there were serious complaints against the applicant by the students and their parents

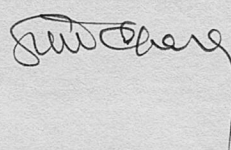


for compelling the students for tuition, hence in order to satisfy the resentment of parents and in the interest of the applicant by placing the applicant under suspension and during the period of suspension his Headquarter was also changed from K.V. NHPC, Banbasa to K.V.S., Headquarter, Dehradun. That applicant also expressed his willingness in his representations to join at K.V.S., Dehradun during his suspension order. He made representations for change of Headquarters from K.V.S. Regional Office Dehradun to K.V. No.2, Banbasa, but representation was rejected and The T.A. was paid to him. Hence the learned counsel for the applicant is not justified that during the period of suspension of the applicant respondents were not justified in entertaining the request transfer of Smt. Bandana from Bokaro and his Headquarter was transferred at K.V.S. Regional officer Dehradun. Hence in order to safeguard the interest of the Students Smt. Bandana was transferred from Bokaro to K.V., NHPC, Banbasa. Because the learned counsel for the applicant vehemently argued that during the period of suspension of the applicant the post hold by the applicant can not be termed as vacant hence the respondents are not justified to transfer some outsider even on his request at his place. That during the period of suspension it will be presumed that post is lying vacant and when the transfer order

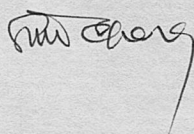
Smt. Bandana

is recalled then applicant must be reinstated at the place where he was put under suspension. Learned counsel for the applicant argued that at this stage it is wrong to allege by the respondents that no post was lying vacant for applicant. It is also argued by the learned counsel for the applicant that after the reinstating of the applicant by this Tribunal the respondents ought to have permitted the applicant to reinstate him at K.V., NHPC, Banbasa.

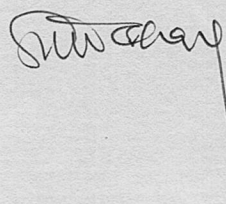
6. It is also not very material to consider for the purpose of deciding the present controversy that whether the applicant ought to have been reinstated at K.V., NHPC, Banbasa, but it is material that whether the respondents were justified in initiating the proceedings under Article 81(d) of the K.V.S., Education Code. In the present case the controversy is that whether the applicant can be termed abandoned the post and hence, proceedings were initiated against the applicant due to absence and the order dated 01st July, 2003 was passed. It is undisputed fact that in pursuance of the Tribunal's Order dated 14th January, 2003 respondents passed an order reinstating the applicant on his post at K.V.S., Regional Office, Dehrdun. And it is also a fact that as the applicant was reinstated with consequential benefits w.e.f. 27th May, 2002 to 19th January, 2003 Whereas, the respondents in



their Counter reply specifically admitted that applicant was reinstated with all consequential benefits as per direction of the Tribunal w.e.f. 27th May, 2002 to 19th January, 2003. That all the back salaries were released in favour of the applicant vide D.D. dated 20th February, 2003 alongwith letter dated 25th February, 2003 Annexure-A-7. That after reinstating of the applicant he was posted at K.V. No.2 HBK in a clear vacancy of PGT (Chemistry). That applicant was required to report for duty at that transferred place. But the applicant made representation on dated 25th February, 2003 and also he applied for advance T.A. as a sum of Rs.25,000/- to report for duty demonstrated as T.A. as D.A. from K.V. Banbasa to the New Place of posting at Dehradun. But the applicant was required to report for duty from K.V.S. Regional Office, Dehradun to K.V. No.2 HBK, hence, only a sum of Rs.2,500/- was released as advance T.A. on dated 05th March, 2003 and this amount of Rs.2,500/- was accepted by the applicant. But inspite of the order of reinstating of the Respondents, applicant failed to report for duty at K.V. No.2, HBK as intimated by the Principal, K.V. No.2 HBK. And Principal, K.V., NHPC, Banbasa has reported that he had handed over the books to the applicant which were kept in Chemistry Lab on dated 20th March, 2003. Inspite of the direction of the Respondents the applicant failed to



report for duty at K.V., HBK, Dehradun. Thereafter, disciplinary proceedings were initiated against the applicant for his absence. And Preliminary hearing was fixed on 20th February, 2003 at Kendriya Vidyalaya No.1 but the applicant did not attend the preliminary hearing. On 05th March, 2003 also the Principal K.V. N0.2 HBK has informed the Assistant Commissioner, K.V.S. regional Office, Dehradun that the applicant has not resumed the duty. Applicant was directed to cooperate with the disciplinary proceedings and report for duty at K.V. No.2 HBK. The applicant filed an Appeal on 25th February, 2003 in order to create hurdle in the disciplinary proceedings initiated against the applicant. And the appeal was dismissed on 31st March, 2003. Inspite of all these proceedings applicant continued to harp the same tune of his reinstating on previous place of posting at Banbasa. After expiry of about six months time when the applicant failed to join at new place of posting at K.V. No.2, HBK, Dehradun, hence a show cause notice was served on dated 20th June, 2003 under Article 81 (d) (3) of the KVS Education Code. In response to the show cause notice a representation was submitted by the applicant on 25th June, 2003 and on 01st July, 2003 the show cause notice was confirmed and it was deemed that the applicant had voluntarily



abandoned from the date of unauthorized absent. That an order was passed under Article 81(d)(3) of the KVS, Education Code.

7. We have of considered the previous history as argued by the learned counsel for the applicant that it was in the background of the order dated 01st July, 2003 hence we have to consider whether the Respondents are justified in invoking the provision of Article 81(d)(3) of the Education Code. The arguments of the learned for the applicant are of two folds. On the one hand learned counsel for the applicant argued that Article 81(d)(3) of the KVS, Education Code is against the spirit of CCS(CCA) Rules and it is against the provisions of Article 14 and 16 of the Constitution of India and that this provision may be declared null and void. And the Second argument of learned counsel for the applicant is that the respondents are not justified in invoking the provisions of Article 81(d)(3) of the KVS, Education Code. It has been argued by the learned counsel for the Respondents that as the applicant had been absented himself insipte of the order of reinstate passed in pursuance of the order of the Tribunal dated 14th January, 2003 and then afterwards disciplinary proceedings were initiated against the applicant and the applicant was not cooperating with the disciplinary

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proceedings and, thereafter, considering the conduct of the applicant under the provision of Article 81(d)(3) of KVS, Education Code a show cause notice was served on the applicant and it was presumed that the applicant has voluntarily abandoned the services. The applicant without any cause failed to report for duty and applicant continuously absenting himself. The respondents' counsel argued that validity of Article 81(d)(3) of the KVS Education Code has been tested by the Hon'ble Apex Court in the case of Prem Juneja Vs. Union of India and Ors., hence, it can't be said at this stage that it is violative of Article 14 & 16 of the Constitution of India or violative of provision of CCA (CCA) Rules. Learned counsel for the respondents also argued that as the applicant had been absenting himself for the last about six months, hence the Respondents have valid reasons for invoking the Article 81(d)(3) of KVS, Education Code. And that the provision is perfectly and fully applicable to the present case.

8. Firstly, we have to examine the validity and legality of Article 81(d)(3) of the KVS, Education Code. It will be just and proper to reproduce the Article 81(d)(3) of the KVS, Education Code which as follows:-

"(1) If an employee has been absent/remains absent without sanctioned leave or beyond the period of

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leave originally granted or subsequently extended, he shall provisionally lose his lien on his post unless:-

(a) he returns within fifteen calendar days of the commencement of the absence or the expiry of leave originally granted or subsequently extended, as the case may be; and

(b) satisfies the appointing authority that his absence or his inability to return on the expiry of the leave as the case may be was for reasons beyond his control. The employee not reporting for duty within fifteen calendar days and satisfactorily explaining the reasons for such absence as aforesaid shall be deemed to have voluntarily abandoned his service and would thereby provisionally lose lien on his post.

(2) An employee, who has provisionally lost lien on his post in terms of the aforesaid provisions; shall not be entitled to the pay and allowances or any other benefit after he has provisionally lost lien on his post;

Provided that payment of such pay and allowances will be regulated by such directions as the appointing authority may issue while ordering reinstatement of the employee in terms of Sub-clause (6) of this Article.

(3) In cases falling under Sub-Clause (1) of this Article, an order recording the factum of voluntary abandonment of service by the employee and provisional loss of his lien on the post, shall be made and communicated to the employee concerned at the address recorded in his service book and/or his last known address, to show cause why the provisional order above mentioned may not be confirmed.

(4) The employee may make a written representation to the appointing authority, within ten days of receipt of the order made under sub-clause(3).

(5) The appointing authority may on receipt of the representation, if any, and perusal of materials available on record as also those submitted by the

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employee, grant, at his discretion, an oral hearing to the employee concerned to represent his case.

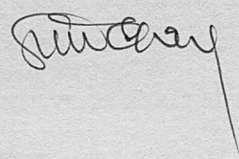
(6) If the appointing authority is satisfied after such hearing that the employee concerned has voluntarily abandoned his service in terms of the provisions of Sub-Clause (1) of this Article, he shall pass an order confirming the loss of employee's lien on his post, and, in that event, the employee concerned shall be deemed to have been removed from the service of the Kendriya Vidyalaya Sangathan with effect from the date of his remaining absent. In case the appointing authority is satisfied that the provisions of Sub-Clause (1) of Clause (d) of this Article are not attracted in the facts and circumstances of the case, he may order reinstatement of employee to the post last held by him, subject to such directions as he may give regarding the pay and allowances for the period of absence.

(7) APPELLATE AUTHORITY : An employee aggrieved by an order passed under sub-clause (6) of this Article may prefer an appeal to the appellate authority as notified by the Kendriya Vidyalaya Sangathan from time to time."

9. In view of this provision an order recording factum of voluntary abandonment of service by the employee and provisional loss of his lien on the post, shall be made and communicated to the employee concerned at the address recorded in his service book. It has also been provided in the provision that the employee may make a written representation to the appointing authority, within ten days of receipt of the order made under sub-clause-3. It has also provided that the appointing authority may on receipt of the representation, if any,

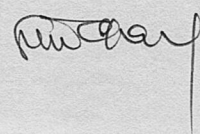
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and perusal of materials available on record as also those submitted by the employee, grant, at his discretion, an oral hearing to the employee concerned to represent his case. And in case If the appointing authority is satisfied after such hearing that the employee concerned has voluntarily abandoned his service in terms of the provisions of Sub-Clause (1) of this Article, he shall pass an order confirming the loss of employee's lien on his post, and, in that event, the employee concerned shall be deemed to have been removed from the service of the Kendriya Vidyalaya Sangathan with effect from the date of his remaining absent. Hence, we have to see whether this procedure has been followed in the case of the applicant? Moreover, it has also provided under Rule 1(A) that if an employee remain absent for a period of 15 days beyond expiry of leave or absent then it may be presumed that he has abandoned the post. Perusal of the provision shows that the Respondents have been armed with the unfettered powers to deal with and defend employee. It has also been opined in the notification issued to add Article 81(d) "*that the Board felt that normal procedure/rule as available under the CCS(CCA) Rule 1965 were cumbersome, dilatory and not sufficient to address the magnitude of the aforesaid problem in the Kendriya Vidyalaya. The Board further felt that continue and uninterrupted availability of*



teachers was a prerequisite to inspire confidence of the students and parents in the system of Kendriya Vidyalayas." And with these background this provision of Article 81(d) (3) of the KVS, Education Code has been enacted.

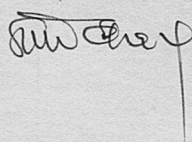
10. We have stated that the learned counsel for the applicant vehemently argued about the validity of this provision. Learned counsel for the applicant also argued that this provision confers the unfettered powers on the Respondent and, hence, it is violative of Article 14 & 16 of the Constitution of India. But, learned counsel for the Respondents argued that it is most relevant to consider that the matter of validity of this provision has been considered by the Principal Bench of the C.A.T. as well as by the Hon'ble High Court of Delhi and Hon'ble Apex Court in the case of Prem Juneja Vs. Union of India & Ors. Learned counsel for the applicant cited the judgment of Principal Bench of C.A.T., New Delhi rendered in the case of Prem Juneja Vs. Union of India & Ors. In O.A. No. 2351 of 2001 dated 13th May, 2002. And after considering validity of this provision the Principal Bench arrived at the conclusion that the above provision of Article 81(d) is properly in accordance of law. It has also been held that this Article is perfectly analogues to the provisions of Aligarh



Muslim University wherein rule 5(8)(I) and 5(8)(II) is identical in nature. The provisions of the Aligarh Muslim University were also considered while considering the provisions of Article 81(d) of the KVS, Education Code. And Principal Bench arrived at a conclusion that *"since this provision of Article 81(d) are somewhat similar to the provisions of Aligarh Muslim University Leave Rules 1969 which also have a similar provisions where the University can treat to have an employee vacated his post even without notice from the date of absence. So we find that the validity of such like rules have already been held and the applicant cannot challenge the validity of these rules particularly so when in the rule adopted by the KVS there is a provision for issuing of show cause notice then an opportunity of representation and hearing is also given and if the authority is not satisfied then the right of appeal has also been given to the employee so we find that this Article 81(d) of the Education Code said to be violative of Article 14 & 16 of the Constitution of India."* With the above observations Principal Bench had considered the validity of this provision. The order passed by the Principal Bench in this case was challenged before Hon'ble High Court at Delhi in Civil Misc. Writ Petition No.4485 of 2002 and the Hon'ble High Court of Delhi had also observed that Article 81(d) of the KVS Education Code is not violative of Article 14 and 16 of the Constitution of India. It has been also observed that this makes a provision for providing

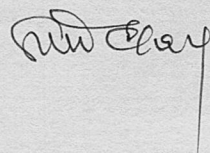
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opportunity to an employee to show cause against the view of concerned authority that employee has lost his lien on the post on the ground of his unauthorized absent from duty. And moreover the right of appeal has also been conferred on the employee if he has not been satisfied with the act of the disciplinary authority. The Hon'ble High Court of Delhi also held that there is no violation of principles of natural justice. The order of the Hon'ble High Court of Delhi was challenged before Hon'ble Apex Court in Special Appeal No.1344 of 2004 and the Apex Court dismissed the Appeal and it means the judgment of the Principal Bench as well as the Hon'ble High Court of Delhi was upheld. The validity of this provision was also considered by Hon'ble High Court of Allahabad in Civil Misc. Writ Petition No.9822 of 2008 in the case of Smt. Poonam Srivastava Vs. Union of India and Ors.. And perused other judgments by this Bench of the CAT. Under these circumstances and in view of the judgment of Hon'ble Principal Bench upheld by Hon'ble High Court of Delhi and confirmed by Hon'ble Supreme Court, in our opinion, Article 81(d) of the KVS Education Code is perfectly in accordance with law and it is not violative of Article 14 and 16 of the Constitution of India. A show cause notice is to be issued to the employee in accordance with the provisions of Article 81(d) of the KVS Education Code.

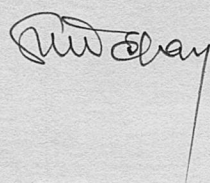


Thereafter the employee may be required to file a representation within a period of ten days and thereafter an order is to be passed and there is provision for appeal.

11. We have also considered that whether the respondents are justified in invoking of Article 81(d) of the KVS Education Code in the case of the applicant. In case if an employee remained absent for a period of 15 days beyond expiry of leaves then the respondents are justified in invoking this provision. We have stated above that the order to reinstate the applicant was passed by this Tribunal on 14th January 2003. And in pursuance of the order of the Tribunal respondents passed order to reinstate the applicant with back wages w.e.f. 25th May 2002 to 14th May 2003. But even the arrears was paid upto 19th January 2003, thereafter, the applicant was required to report to duty at KVS Dehradun. It will not be out of place to mention that during the period of suspension the Headquarter of the applicant was shifted from K.V. N.H.P.C., Banbasa to KVS Regional Office, Dehradun. Under these circumstances it was expected from the applicant that when he will be reinstated then he will resume his duty at KVS Regional Office, Dehradun and thereafter he will be posted at some educational institution. After the order of reinstating the



applicant even then also applicant continued to make representation to change of his place of posting from Dehradun to Banbasa. The representation of the applicant was rejected and as the applicant failed to report for duty inspite of the order of reinstating in pursuance of the order of the Tribunal and hence the disciplinary proceedings were initiated against him. The applicant created hurdles in the disciplinary proceedings and application was moved for change of the Inquiry Officer and change of the headquarter and on rejection of the request of the applicant by the Inquiry Officer an appeal was filed before the competent authority and then the appeal was rejected, afterwards also neither applicant resumed his duties on his new place of posting nor participated in the disciplinary proceedings. On the pretext of not posting at Banbasa where he was posted at the time of suspension, applicant was not justified in not reporting for duty. In order to show his bonafide and respect to the authority it was expected from the applicant to report for duty at the place where he was posted subsequently. The conduct which was expected from the applicant or shown rather conduct and action of the applicant had been of defiant in nature. It was expected from a teacher who is being respected by students to set an example before the students. A teacher must be-have like a role



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 model ~~like~~ of ethics. But, when students will see that their teachers are showing disrespect for their superior then what kind of discipline can be expected from such student. By this state^{of} behavior of the applicant it can not be said that he is justified in not resuming his duties at his new place of posting and it is also not justified that the applicant continued to harp the same tune for his posting at K.V., NHPC, Banbasa. And it is also an undisputed rather established fact that even after order of reinstating, the applicant did not resume duty at the new place of posting. In spite of the fact that he had grievance for posting at Dehradun he should have ²~~been~~ resumed his duties. The applicant was expecting that he will be paid the entire salaries without any work and hence under the garb of lame excuse the applicant continued to harp the same tune of posting at Banbasa and to permit him to join at Banbasa. In the background that there were complaints against the applicant of the students and parents as well as Management of the NHPC, it was not in the interest of the students to keep the applicant at Banbasa. It has also been argued that earlier the applicant was required^{to} vacate^a the house allotted to him in the capacity of the teacher. It will not out of place to mention that the K.V., NHPC, Banbasa is existing within the premises of N.H.P.C. (National Hydro Electric power

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Corporation) and the authorities of the NHPC are also involved in the management of institution and considering the act of the applicant they served a notice to him to vacate the house allotted to him by the NHPC. Respondents can not be said responsible for serving a notice in order to vacate the premises. It was the authorities of the NHPC which required the applicant to vacate the premises. Under these circumstances it was not in the interest of the students or even of the applicant to post him and permit him to resume the duties at NHPC, Banbasa.

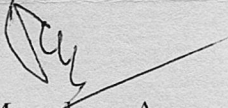
12. Learned counsel for respondents argued that Dehradun is the capital of Uttranchal and hence it can not be said that the applicant was posted to a far off place in order to punish him. It is a fact that Dehrdun is a better place than Banbasa. Hence in our opinion respondents were justified in invoking the provisions of Article 81(d) of the KVS, Education Code.

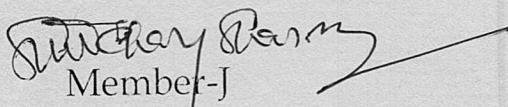
13. For the reasons mentioned above we are of the opinion that Article 81(d)(3) of the KVS Education Code is perfectly in accordance with law. And it is not violatice of Article 14 and 16 of the Constitution of India and its validity had already been tested by the Hon'ble Apex Court. It is analogues to the provisions of

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Aligarh Muslim University. We are also of the opinion that the respondents were fully justified in invoking the provisions of Article 81(d)(3) of the KVS Education Code in the case of the applicant. Applicant remained absent continuously for a period more than of about six months after the order to reinstate him in pursuance of the order of the Tribunal and Respondents were fully justified in invoking the provisions of Article 81(d)(3) of the KVS Education Code in the case of the employee who remained absent for a period of fifteen days after expiry of leave etc.. But the respondents have waited for a period of about six months. But his act and conduct was of in different and defiant attitude. Even appeal was preferred by him and appeal was rejected. Under these circumstances there is no merit in the O.A. and it is liable to be dismissed.

14. O.A. is dismissed. No order as to costs.


Member-A


Member-J

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