

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated : This the 29th day of June 1999

Coram:- Hon'ble Mr. S. Dayal, A.M.
Hon'ble Mr.S.K. Agarwal, J.M.

ORIGINAL APPLICATION NO.528 of 1993

Miss Veronica Lyall
Assistant Teacher
OAK GROVE JUNIOR SCHOOL
Northern Railway, Jharipani
District Dehradun.

. . . Petitioner.

Counsel for the Petitioner:- Sri S.N. Singh, Adv.

Versus

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Chief Personnel Officer &
Executive Governor,
Oak Grove School
Northern Railway,
Baroda House, New Delhi.
3. The Principal,
Oak Grove School,
Northern Railway,
Jharipani- District Dehradun.
4. Union of India through Ministry of
Railway, New Delhi.

. . . Respondents/O.P.

 Counsel for the O.Ps.: Sri A.K. Gaur, Adv.

Order

(By Hon'ble Mr. S. Dayal, Member (A.))


This application has been filed under section 19 of the Administrative Tribunals Act 1985 seeking:-

- i. Setting aside of impugned order dated 5.1.91 by which the applicant has been removed from service appellate order dated 22.7.91 by which appeal of the applicant has been rejected and order dated 25.01.93 by which the revision petition of the applicant is rejected.
- ii. Direct the respondents to allow the applicant to work as Asstt. Teacher in OAK GROVE JUNIOR SCHOOL, Northern Railway, Jharipani, Distt. Dehradun.

2. The case of the applicant as narrated by her is that she was appointed as Assistant Teacher in Oak Grove Junior School on 26.9.87. While the applicant was undergoing treatment as indoor patient in Northern Railway Hospital, Kharipani, she was placed under suspension by order dated 25.5.90. She was also served with a charge-sheet in which it was alleged that while she was working as Assistant Mistress Oak Grove Junior School from July 1989 to May 1990 she exhibited obscene, unchaste and seductive attitude and behaviour towards some of the boy students of her class and succeeded in establishing physical relationship with one of the boys. The second charge was that she entered boys dormitory at 8.30 p.m. on 19.5.90 and stayed over night in the premises within the dormitory with intention to allure one of the boys to agree to her perverse plan. The applicant has claimed that after she was declared fit by Doctor she resume duty on 29.6.90 and denied charges against her by letter dated

2.7.90, she applied for leave to come to her home town but fell ill on 18.07.90 and remained under treatment till 11.10.90. She received intimation to attend the inquiry on 15.10.90 but could not proceed as she fell ill and was taken to Railway Hospital on 12.10.90 and remained under treatment upto 5.11.90. After obtaining fitness certificate she proceeded to Jharipani on 8.11.90. She had informed about her inability to attend inquiry on 15.10.90 but ex parte proceedings were drawn against her and enquiry proceedings were sent to the applicant on 24.10.90. She submitted her explanation on 25.10.90. She received another show cause notice on 31.10.90 served on 30.11.90 and she sent her reply on 10.12.90. The respondent No.3 thereupon passed the order of major penalty removing the applicant from service by order dated 5.1.91. The applicant has alleged malice on the part of respondent No.3. The applicant has mentioned that she had been a student of Oak Grove School from Class I to Class 12. She has also mentioned that Master Vikas Raja was not a student of her class.

3. The case of the respondents is that the applicant remained absent without justification tried to delay and did not cooperate in the disciplinary proceedings and did not make request of postponement of the proceedings and, therefore, appropriate orders have been passed and the appellate and the revision orders are ~~xxx~~ also fully justified. It has also been alleged that the conduct, behaviour and the performance of the applicant was unsatisfactory and she was given adverse entries in the A.C.R. written warning and punishment of withholding of increments dated 26.5.90, 13.7.90 and 13.10.90.



4. The arguments of Sri S.N.Singh for the applicant and Sri A.K. Gaur for the respondents have been heard and the pleadings on record have been perused. The respondents were asked to furnish the inquiry file which was produced and has been perused. The written arguments submitted by both the parties have also been considered.

5. The inquiry file contains Sl.No. 15/1 to 15/3, a letter of Senior Division Medical Officer, Northern Railway, Sub Divl. Jharipani, Dehradun. It is necessary to extract the letter here as it shows the background under which charge-sheet was issued and the inquiry was conducted

" In your letter No. Nil dated 28.5.90 you along with the approval of the principal have posed four queries regarding illness and admission of Miss V. Lyall Asstt. Mistress, Jr. Section O.G.School Jharipani. In addition you have also shown your ignorance regarding the whereabouts of Miss. V.Lyall. It is surprising that the whereabouts of the staff working order you are not known to you specially the whereabouts of Miss Lyall which appears to be far from the truth, otherwise how could it be possible for the Principal O.G. School to have served some official papers on Miss. V. Lyall in the indoor hospital on 25.5.90. Anyhow the information asked by you with the approval of the Principal are being given as under:-

Miss. V. Lyall was admitted in the indoor hospital on 24.5.90 afternoon and has not been discharged till now. As regards the details of the entries made in her hospital case sheet and the diagnosis in respect to the illness of Miss. V. Lyall, I may educate you and the Principal that as per the medical ethics these information can not be revealed Here I would like to further educate you that even the Chief Justice of India or the President of India can not compel a doctor to reveal these informations except his medical superiors. Regarding your query of

further medical treatment contemplated in respect to the illness of Miss. V. Lyall, I shall have to take the advice of a lady ~~doctor~~ doctor when it deems fit to me. As regards allowing Miss. V. Lyall to go to J. School to hand over the charge of her post, I refuse this request of yours at present. As the stress and strain during the handing over the charge of her post may be detrimental to her health. However, I shall consider this request at a later stage. Lastly, but not the least, I would have appreciated if this letter would have come to me from the Principal himself, instead of coming through you. "

The Senior Medical Officer referred the applicant to Sub hospital at Moradabad as the applicant had some Gynacological symptoms on 4.6.90. The Senior Medical Officer also recommended the issuance of G 92 in favour of the applicant which was issued after exchange of letters between the Senior Div. Medical Officer and the Principal on 14.6.90. The correspondence also shows that the applicant's request for permission for her father to stay with her till she was granted permission to leave the station was refused by the Principal. The application for leave from 3.7.90 to 16.7.90 was also refused. There is another letter from Principal addressed to the applicant of 13.7.90 mentioning that the applicant was placed under suspension w.e.f. 25.5.90 and was required to leave the place only with prior permission. Yet she got treated in Railway Hospital Moradabad from 4.6.90 to 19.6.90. Through another letter the Principal seems to have asked for explanation of the applicant as to why she did not report after being declared fit at Jharipani at 20.6.90. The applicant responded at Sl. No. 33 mentioning that she was not at Jharipani on 20.6.90



but was at Railway Hospital at Moradabad from 4.6.90 to 27.6.90 and 28th and 29th were used for travel and resumption. Sl. No. 31 also shows that the applicant was permitted to leave from 14 to 17 July 1990 to search out a defence helper. The applicant reported on 17.7.90 that she was unable to join on 18.7.90 as she was sick. She prayed for postponement of inquiry. The record also shows that a bearer was sent to the home town of the applicant to make an inquiry as to whether the medical certificates furnished by her were ~~xxx~~ correct or not and a report was obtained from the bearer on 2.8.90. The applicant appears to have been on leave from 18.7.90 to 11.10.90 under medical certificate from private doctor and from 12.10.90 to 5.11.90 under medical certificate from A.D.M.O. Railway Hospital, Allahabad. The applicant informed the Principal that she had reported sick at N.Rly. Allahabad on and from 12.10.90. She has also produced certificate of posting dated 12.10.90 of the same. These documents were annexed to her appeal against punishment of removal from service, addressed to the C.P.O. and Executive Governor Oakgrove School, Baroda House, New Delhi. A perusal of the file makes it clear that the Principal Sri Suneel Mishra, who was the Disciplinary authority, had ^{had} acrimonious correspondence with the applicant. The denial of prayer for documents made by the applicant which is reflected in the letter of the Principal at Sl. No. 31 dated 13.7.90 in which it has been mentioned that three out of 13 documents sought by the applicant were considered relevant and permission to inspect them were granted. The letter of the applicant on Sl. No. 52/1 makes a prayer for making available some other documents. In an

[Handwritten signature]

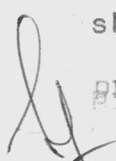
in which the character of the applicant is in issue, the documents including copy of rules of visiting boys dormitory, report from Mrs. Khanna about absconding of 5 boys and copy of punishment given to HM JS in which the applicant was witness can not be treated as irrelevant documents. Thus bias on the part of the Disciplinary Authority is clearly exhibited in file U.G/E-9/D&A/Major/VI-3.

6. An important contention which was made by the learned counsel for the applicant is that the order of termination has been passed by the Disciplinary Authority in violation of principles of natural justice without providing reasonable opportunity of hearing. The learned counsel for the applicant mentioned that ^{it is} contrary to provisions of Rule 9(12) of the Railway Servants (Discipline and Appeal) Rules 1968. The learned counsel for the applicant mentioned that the applicant asked for copies of statements of witnesses and documents mentioned in support of the charge-sheet. In this connection the learned counsel for the applicant has sought to rely upon the ratio of judgment of the Apex Court in State of U.P. Vs. Shtrughan J.T.1998(6) S.C. 55. We find that the applicant had asked for number of documents which were denied as not relevant for purposes of enquiry. The nature of the case is that the character of the applicant is assailed by the charges. The applicant sought copies of some documents to show that the witnesses against her were biased and there was a history to their bias. In such a situation to consider the documents asked for as irrelevant was unreasonable and denial of opportunity to the applicant.

 7. Another important contention made by the

learned counsel for the applicant was that the circumstances in which and the manner in which ex parte enquiry was conducted resulted in denial of reasonable opportunity of hearing. The applicant has shown that she had been ill from before the chargesheet was served on her and remained ill till November 1990. She had sent certificates of illness of medical authorities for most of this period. Yet the respondents have tried to show that there were brief spells in which she was not actually sick. Yet it remains a fact that 15.10.90, the date on which the ex parte enquiry was conducted was a period during which the applicant was sick and it was covered by a certificate of illness granted by A.D.M.O. Rly. Hospital, Allahabad. The learned counsel for the applicant has shown that conducting enquiry on 15.10.90 was against the provisions of Rule 9(12) of Railway Servants (Discipline and Appeal) Rules 1965. This contention of the learned counsel for the applicant is correct. The applicant was intimated on 9.10.90 about the date of enquiry which was to be held on 15.10.90. Thus she was not granted ten days and the enquiry was not postponed to give her sufficient time. Under the circumstances the ex parte enquiry conducted on 15.10.90 clearly led to a denial of opportunity to the applicant to defend herself and the enquiry report and order of punishment can not be held to be given after conducting an enquiry according to principles of natural justice and deserves to be set aside.

8. The record of disciplinary proceedings produced before us does not contain any daily order sheet and since the original record of disciplinary proceedings has been produced, it is clear that the




disciplinary authority had not maintained a daily order sheet. The manner in which certain witnesses produced on behalf of the respondents were examined during enquiry together also violates the canon of examination of witnesses. Thus the enquiry conducted by the Enquiry Officer leaves a lot to be desired.

9. The appellate authority is charged with the following responsibility as per rule of the Railway Servants (Discipline and Appeal) Rules 1968.

22. Consideration of Appeal:-

- (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-
- (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice.
 - (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
 - (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-
 - (i) Confirming enhancing reducing or setting aside the penalty; or
 - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case."

The order of the appellate authority reads as follows:-

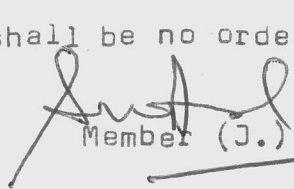
 " I have gone through the appeal. Miss Veronica Lyall has been given adequate chance to appear but she seems to have chosen to stay away. The

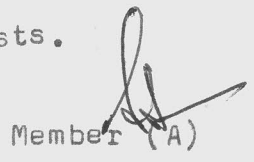
incidents involved are very grave and can not be allowed to spoil the discipline of the school. I, therefore, do not see any reason to modify the punishment imposed in any way."

The order is non speaking and subjective and can not be sustained.

10. We, therefore, set aside impugned orders dated 5.1.91 of the Disciplinary Authority, 22.7.91 of the Appellate Authority and 25.1.93 of the authority in revision. The respondents may initiate disciplinary inquiry against the applicant from the stage of appointment of inquiry officer onwards. In case such an enquiry is ordered, Sri Suneel Mishra the then Principal of Oak Grove School as an active party to the Disciplinary proceedings against the applicant, should not be assigned any role as a Disciplinary Authority except if his presence is required as a witness. The applicant shall stand reinstated in service from the date of removal and shall be entitled to consequential benefits.

There shall be no order as to costs.


Member (J.)


Member (A)

Nafees.