

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 5th day of January 2007

Original Application No. 905 of 1999

Hon'ble Mr. Justice Khem Karan, Vice Chairman  
Hon'ble Mr. P.K. Chatterji, Member (A)

Satish Chandra Yadav, S/o late Aterup Singh Yadav,  
Post Graduate Teacher (Biology) Kendriya Vidyalaya,  
ITI, Naini, Allahabad.

. . . Applicant

By Adv: Sri B.B. Paul and Sri R. Verma

V E R S U S

1. Union of India thoroughly Secretary, Ministry of Human Resources, Govt. of India, New Delhi.
- 1A. Chairman, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheedjeet Singh Marg, New Delhi.
2. Commissioner Kendriya Vidyalaya, 18, Institutional Area, Saheedjeet Singh Marg, New Delhi.
3. Assistant Commissioner (Admn.) Kendriya Vidyalaya Sangathan, Headquarter, New Delhi.
4. Superintendent (PNI) Kendriya Vidyalaya Sangathan, Headquarter, New Delhi.
5. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lucknow.
6. Principal Kendriya Vidyalaya ITI, Naini, Allahabad.

. . . Respondents

By Adv: Sri N.P. Singh

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The dispute involved in this OA is whether the service of the applicant as Post Graduate Teacher

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(PGT) in Biology in Kendriya Vidyalaya (KV) ITI Naini could be dispensed with by only three months' notice without having full-fledged enquiry as provided in CCS (CCA) Rules 1965. On the basis of alleged complaint of Km. Akansha Gupta a student of KVS and her father the respondents terminated the service of the applicant vide impugned order dated 24.12.1998 (Annexure 1). In the said order it was stated by the respondents that the service of the applicant was being terminated by invoking Article 81 (b) of the Education Code of KV which provides that under certain circumstances the reasons of which have to be recorded in writing, regular enquiry can be dispensed with. Rule 81 (b) is reproduced below:

*"81(b) Termination of services of an Employee Found Guilty of Immoral Behavior towards students.*

*Wherever 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 behavior towards any student, he can terminate the services of that employee by giving him one month's or 3 month's pay and allowances according 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 reasonable practicable to hold such enquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of service."*

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2. Aggrieved by the exparte order of dismissal the applicant filed an appeal to the Appellate Authority KVS New Delhi. It has been alleged by the applicant that the appellate order dated 07.05.1999 was issued by respondent No. 3 who is subordinate to respondent No. 2 who had earlier issued the order of termination.

3. The applicant has requested the Tribunal to quash the impugned orders of termination of service dated 24.12.1998 and the appellate order dated 07.05.1999. The grounds on which the relief has been sought are:

- a. Both the orders are erroneous in law, arbitrary, malafide and perverse and violative of Article 14, 15, 21 and 311 of the Constitution of India.
- b. It is violative of natural justice as no show cause notice was issued and no opportunity of being heard in the matter was given to the applicant.
- c. Article 81 (b) of the Education Code of KV empowers the authority to dispense with the enquiry under certain circumstances. However, it does not authorize them to terminate the service without issuing any charge sheet spelling out the specific charges.
- d. The punishment inflicted being a major penalty, statutory provisions of holding an enquiry were mandatory.

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- e. In issuing the summery termination order the respondents ignored the appreciation letters secured by the applicant and letters of other students praising his conduct.
- f. The respondent No. 3 being subordinate to respondent No. 2 has exceeded his authority by disposing the appeal of the applicant.
- g. The respondent No. 2 in his order has merely reproduced Rule 81 (b) of Education Code without giving the reasons. These showed that there was no application of mind.

4. In the counter affidavit the respondents denied the allegations made by applicant. In interpreting rule 81 (b) of the Education Code the learned counsel for the respondents said that no where did the respondents exceed their authority. It was categorically stated in Rule 81 (b) that the Commissioner has the authority to dispense with a regular enquiry if he is satisfied that any member of the Vidyalaya was prima-facie guilty of moral turpitude involving sexual offence. The decision can be taken on the basis of a summery<sup>4</sup> enquiry as would be considered proper and practicable in the circumstances. He was also categorical in his view that it was not necessary to frame specific charges against the applicant and issue a formal charge sheet.

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5. The learned counsel for the respondents cited the judgment of the Apex Court in case of **1997 (2) SCC 534 Avinash Nagra Vs. Navodaya Vidyayala Samiti and others**, stating that this was a case dealing with similar matter and the Hon'ble Supreme Court had upheld the provision of summary termination without holding a formal enquiry in similar circumstances. The relevant portion of the judgment is reproduced below:

"....Under those circumstances, 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 salary and allowances in lieu of notice as he was 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 shifter the timings from 10 p.m. to 8 p.m. which was not found acceptable and that he took the torch from the room, do indicate that he went to the room. The misleading statement sent through 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 these 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 principles of natural justice."

6. The learned counsel for the respondents also cited from the decision of this Tribunal dated 06.08.2001 in **OA No. 1328 of 2000 [Ashok Kumar Yadav Vs. Principal Kendriya Vidyalaya & Ors]**. The operative part of the judgment is as below:

"Article 81 (b) requires that Commissioner should hold a summary enquiry, record his satisfaction about the prima facie guilt and record his opinion that is not expedient to hold regular enquiry on account of serious embarrassment to the students or the guardian. Perusal of the impugned order of

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Commissioner KV Sangathan dated 16.10.2000 Annexure A-1) reveals that all these conditions have been fulfilled. Hence, the impugned order is valid and legal. The Chennai Bench of the Tribunal in AS Nathan Vs. Commissioner Kendriya Vidyalaya Sangathan and others (OA 760 of 1999) in identical matter to the present one hold that the respondents were justified in not holding a regular enquiry and the principles of natural justice were not violated. The observation of the Hon'ble Supreme Court in Union of India Vs. Tulsiram Patel (supra) relied upon by the learned counsel for the applicant in view of the peculiar fact and circumstances of the case. A careful reading of the Supreme Court decision, in our view, does not warrant for any interference in the present case as in the impugned order the Commissioner KV Sangathan has fully in mind the law laid down by various Courts. He has given the reasons why the detailed enquiry was dispensed with. The last question for consideration before us is the quantum of punishment. We will have to remain within scope of judicial review and can interfere into quantum of punishment only when it is so disproportionate which shocks the judicial conscience. Which is not the position in the present case.

In view of the above observation the impugned order dated 16.10.2000 terminating the services of the applicant does not suffer from any error of law. The OA is dismissed.

After citing the judgment of the Tribunal the learned counsel for the respondents emphatically stated that this was fully applicable to the present case and, therefore, this case deserves to be decided on the same lines.

7. We have carefully gone through the pleadings and assessed the arguments. In our view what is important in this matter is whether the applicant was at all given any opportunity to know what the charges against him were. If no opportunity was given to him at all to know the reasons for termination of his service, it would obviously be unfair and unacceptable. However, we find that the applicant was informed of the allegations against

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him. A perusal of para 11 of the counter affidavit would make it obvious that the applicant was aware of the charges. A statement was also given by the applicant in which he made certain allegations against the girl student and her father. But these allegations were found to be absurd and unbelievable by the respondents. Therefore, it cannot be sustained as an allegation that the termination order was issued completely behind the back of the applicant and without hearing him at all.

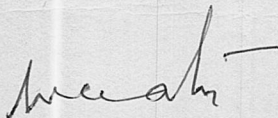
8. Regarding the legality and applicability of Rule 81 (b) of the Education Code, we are of the view that the matter is settled as per the two judgments referred to above. This Tribunal in OA No. 1328 of 2000 had dealt extensively with the matter and, therefore, there is no question regarding the legality and validity of the same rule. A reading of the rule will make it clear that where enquiry itself is dispensed with framing of the charge sheet with specific article of charge was not mandatory. What is necessary is a prima-facie establishment of the charges through a preliminary enquiry and an opportunity to the official to know what was the basis of the action against him. In this case we are satisfied that this requirement has been met.

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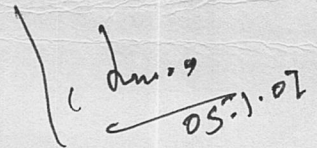


9. Regarding the charge that the respondent No. 3 had no authority to decide the appeal, it would appear from the appellate order that respondent No. 3 was merely communicating the order of the appropriate Appellate Authority. We did not consider it necessary to probe it further.

10. On balance it would thus appear that the rules have not been violated. The applicant has been dealt<sup>4</sup> with under a special clause of the Education Code in special circumstances. He may feel aggrieved that a full-fledged enquiry was not conducted. However, he should also have been aware of the special provisions of the rules and has to accept the same. We are also of the view that the judgments referred to above are applicable to this case. For these reasons we are unable to allow this OA which is, therefore, dismissed. No cost.



Member (A)



Vice-Chairman

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