

RESERVED

CENTRAL ADMINISTRATIVE TRIBBNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 6th day of August 2001

Original Application no. 1328 of 2000.

Hon'ble Mr. Justice RRK Trivedi Vice-Chairman
Hon'ble Maj Gen KK Srivastava, Administrative Member

Ashok Kumar Yadav,
S/o Late Shri Khem Karan Yadav,
R/o 81-B Darbanga Colony,
ALLAHABAD.

... Applicant

c/A Shri R. Bahadur

Versus

1. The Principal Kendriya Vidyalaya, NTPC,
Shaktinagar, Distt. Sonbhadra.
2. Assistant Commissioner, Kendriya Vidyalaya,
Sangathan, Vijay Nagar, Rukunpura, Bailey Road,
P.O. B.V. College,
Patna.
3. Commissioner, Kendriya Vidyalaya Sangathan,
(Vigilence Section) 18 Institutional Area,
Shahid Jeet Singh Marg, New Delhi.
4. Union of India through Secretary Human
Resources Development,
New Delhi.

... Respondents

c/As Shri V.K. Singh

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ORDER

Hon'ble Maj Gen KK Srivastava, Member-A

In the present OA the applicant Shri AK Yadav has challenged the order of Commissioner, Kendriya Vidyalaya Sangathan (in short KV Sangathan), New Delhi dated 16.10.2000 terminating the services of the applicant and has prayed that the order dated 16.10.2000 be set aside with all consequential benefits.

2. The facts as per applicant in brief are that the applicant has been working in Kendriya Vidyalaya (NTPC) Shaktinagar Distt. Sonbhadra as primary teacher since 30.7.1979. He was selected as Trained graduate Teacher (in short TGT) in August 1984 and has been working as TGT in the same school since September 1984. On 6.5.2000, the last working day before summer vacation he detained 5 girl students whose copies could not be checked so that he could do so, after school hours. Out of 5 students 3 lodged complaint against him which he came to know about on 29.5.2000 at Allahabad during vacation, when he received a show cause notice from the Principal dated 10.5.2000 as to why disciplinary action be not initiated against him. He was asked to submit his reply by 20.5.2000. Since he got the letter on 29.5.2000 he sent his reply on 30.5.2000 day stating that the complaint by them was false and concocted. Shri C. Neelap. Education Officer, KV Sangathan Regional Office, Patna conducted the preliminary enquiry. According to him, asked by the inquiry officer to write as he was told otherwise his services would be terminated. He was transferred from KV Shaktinagar

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to KV no. 2 Itanagar in Arunachal Pradesh on 7.9.2000 where he joined on 15.9.2000. The applicant fell ill and was on medical leave w.e.f. 16.10.2000 at Allahabad. Respondent no. 3, Commissioner KV Sangathan arbitrarily terminated the services of the applicant vide his order dated 16.10.2000 ^{in which he has been challenged}. The respondents in counter affidavit have controverted the grounds of the applicant and have asserted that in the interest of institution it was necessary for Commissioner, KV Sangathan to invoke the powers under article 81 (B) of the Education Code and terminate the services of the petitioner.

3. Heard Shri Rakesh Bahadur learned counsel for the applicant and Shri VK Singh learned counsel for the respondents.

4. The learned counsel for the applicant made the following submissions :-

i. The first submission is that the applicant was terminated vide order of the Commissioner under KV Sangathan dated 16.10.2000 after dispensing with regular enquiry under CCS (CCA) Rules 1965 under article 81 (b) of the Education Code. In the order dated 16.10.2000 the Commissioner KV Sangathan has neither given any reason for recording his prima facie satisfaction that the applicant was guilty of moral turpitude. There is no suggestion of immoral sexual behaviour towards students nor any reason to show as to why it was not practicable to hold a

regular enquiry. ~~There~~ is in violation of proviso (b) to article 311 (2) of the Constitution of India. Commissioner KV Sangathan has not applied his mind. He has simply repeated the provisions of article 81 (b) of the Education Code in the impugned order dated 16.10.2000. The learned counsel has relied upon the decision of Supreme Court reported in AIR 1985 SC 1416, Union of India Vs. Tulsiram Patel that the reasons for dispensing with the enquiry need not contain detailed particulars, ^{but} the reasons must not be vague or ^{but} just repetition of the language of clause (b) of second proviso to Article 311 (2) of the Constitution of India. Hence the impugned order dated 16.10.2000 is bad in law, void and unconstitutional.

ii. The second submission of the learned counsel for the applicant is that there is violation of principle of natural justice as the applicant was neither supplied with the copy of the preliminary enquiry report nor afforded the opportunity of hearing to rebut the charges against him.

iii. Thirdly there are inconsistencies and contradictions in the case of the respondents. For example the enquiry report alleges improper conduct with 3 girls and also mentions touching private parts of the applicant but neither girl students or their guardians have given any such action by the applicant. Miss Pushpa Kumar in her statement recorded on

6.5.2000 mentions slapping the applicant on the hand whereas before the enquiry officer she has mentioned slapping the applicant on face.

iv. The last submission of the learned counsel for the applicant is that the quantum of punishment is excessive. The applicant has 21 years of unblemished service and the Principal KV Shaktinagar in his letter dated 25.7.2000 (Appendix B of counter affidavit) recommended for the applicant's transfer only and therefore he was transferred from Shaktinagar to Itanagar.

5. The learned counsel for the respondents made the following submissions :-

i. The learned counsel for the respondents raised preliminary objection about the maintainability of OA before this bench of the Tribunal on the ground that when the order dated 16.10.2000 of Commissioner KV Sangathan was passed the petitioner was already borne on the strength of KV No. 2 Itanagar where he joined on 19.9.2000 (FN) as per letter of 28.9.2000 of Principal addressed to the Asstt. Commissioner KV Sangathan Guwahati (Annexure CA-1). The cause of action, if any, therefore, arose at KV no. 2 Itanagar or at New Delhi where the order was passed. The OA is, therefore, maintainable either before CAT Central Administrative Tribunal at New Delhi or at Arunachal Pradesh.

ii. The learned counsel for the respondents

submitted that on receipt of complaint against the petitioner from 3 girls students (Km. Sweta Pandey, Km. Pushpa and Km. Sangeeta Verma) of KV NTPCC Shatkinagar on 6.5.2000 Mr C Neelup Education Officer KV Sangathan Regional Office was deputed to conduct summary inquiry in the matter. He collected copies of complaint against the applicant from Principal, girl students and parents. He recorded statement of the applicant also and submitted the same in summary enquiry. It has been proved beyond doubt that the petitioner detained the girl students of class VIII and exhibited immoral sexual behaviour towards the students. Even the petitioner has admitted in his statement that he caught hold of the girls and kissed them. In such circumstances ⁱⁿ ~~Commissioner KV Sangathan~~ invoked the provisions contained in Article 81 (b) of the Education Code and passed the termination order of the petitioner.

iii. The learned counsel for the respondents further submitted that the relationship between teacher and taught is very sacred and pious which should not be flouted. The petitioner paid scant respect and behaved in a manner unbecoming of a teacher. The penalty of termination is justified and valid. The learned counsel for the respondents placed reliance on decisions of Delhi High Court in case no. 2818 of 1989 (delivered on 11.11.1991); of Patna High Court in case no. 394 of 1992 (Mahendra Prasad ~~Kushari~~ vs Kendriya Vidyalaya Sangathan and others and of Gauhati High Court in Civil Appeal no. 533 of 1985 (Sri Munim Choudhary vs The Chairman

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Kendriya Vidyalaya Sangathan New Delhi & Others) upholding the order of termination in similar cases.

6. We have given careful consideration to the submissions made by learned counsel for the parties and have perused records. The learned counsel for the respondents raised preliminary objection in regard to the question of jurisdiction of this bench in this case, on the ground that the applicant was in service at Itanagar and the order dated 16.10.2000 was passed by the Commissioner KV Sangathan New Delhi and the mere fact that the applicant was at Allahabad where the impugned order was served would not confer jurisdiction to the Tribunal here. We do not accept this argument. The applicant ordinarily resides in Allahabad and the respondents dispatched the impugned order of termination dated 16.10.2000 at applicant's known address. The order of termination was served on the applicant at Allahabad and, therefore, this Tribunal has jurisdiction to adjudicate in this case.

7. We have no doubt in our mind that the grounds adduced by the applicant detaining 5 girls students of class VIII after school hours are flimsy. No one will accept the reason put forth by the applicant that it was necessary to detain the girl students after college hours whose copies were to be examined. Therefore, it was not correct on the part of the applicant to detain the girl students after school hours. The applicant has challenged the impugned order of Commissioner dated 16.10.2000 terminating his services by invoking provisions contained

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in article 81 (b) of the Education code on the ground that the Commissioner KV Sangathan did not record the reasons for his prima facie satisfaction that the applicant was guilty of moral turpitude and also any reason to show as to why it was not practicable to hold a regular enquiry. This ground is not tenable as Commissioner KV Sangathan has recorded in clear terms about his satisfaction that the applicant is prima facie guilty of moral turpitude and also the reasons for not holding a regular inquiry in Para 2 and 3 of the impugned order dated 16.10.2000 (Annexure 1). We also do not accept the argument of learned counsel for the applicant that respondent no. 3 has quoted verbatim Article 81 (b) of the Education Code in his impugned order dated 16.10.2000 because nothing more could be recorded in Para 3 of the impugned order in such cases.

8. We have perused the enquiry report of Shri C. Neelap, Education Officer (Annexure CA-2) and we are convinced that applicant has loose habits and has exhibited immoral behaviour towards girl students, which has been corroborated by the girl students of higher classes of the school. During enquiry by Sri C. Neelap Education Officer, Smt KB Tiwari Principal KV NTPC Shaktinagar has confirmed about similar incidents of misconduct by the applicant on other occasions too. Even the applicant in his reply dated 24.7.2000 before the enquiry officer (Appendix F 2 to Annexure A-2) has admitted that he kissed and caught hold the girl students which cannot be overlooked. The inconsistencies in the statement of a girl student

that on 6.5.2000 she mentions slapping the applicant on the hand whereas in her statement before the Inquiry Officer she has mentioned that she slapped the applicant on face is not very significant in the context of facts and circumstances. Moreover we are not expected to go deep and assess the evidentiary value of the evidence which came up during summary enquiry. The report covers all the angles and the enquiry report has no ambiguity. After going through the enquiry report there was hardly anything for Commissioner KV Sangathan to think otherwise. Hence, he is justified in invoking the provisions contained in Article 81 (b) of Education Code. For convenience sake article 81 (b) of the Education Code is reproduced below :-

"Article 81 (b) - Termination of services of an Employee Found Guilty of Immoral Behaviour 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 behaviour 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 reasonably practicable to hold such enquiry and he shall keep the Chairman of the Sangathan informed of the circumstances leading to such termination of service."

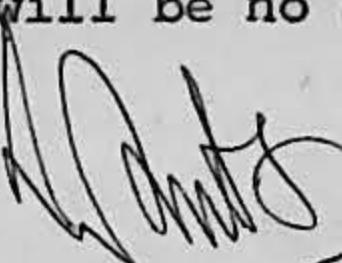
Article 81 (b) requires that Commissioner should hold a summary enquiry, record his satisfaction about the *prima facie* guilt and record his opinion that is is not expedient to hold regular enquiry on account of serious embarrassment to the students or the guardian. Perusal of the impugned order of 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 ^{an} identical matter to the present one ^{held} that the respondents were justified in not holding a regular enquiry and the principles of natural justice were not violated. ⁱⁿ ^{an} ^{the} ^{view} ^{of} ^{the} ~~case~~ ⁱⁿ ^{the} Hon'ble Supreme Court in Union of India Vs. Tulsi Ram Patel (Supra) relied upon by the learned counsel for the applicant does not in any way help 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

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the Commissioner KV Sangathan has fully in mind the law laid down by various Courtsⁱⁿ. 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} ⁱⁿ ~~where~~ it is so disproportionate which shocks the judicial ^{Conscience} ~~conscious~~. Which is not the position in the present case.

9. 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.

10. There will be no order as to costs.



Member-A



Vice-Chairman

/ pc/