

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the 11 th day of October, 2002.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. A.K. BHATNAGAR, J.M.

O.A. No.876 of 2000 along with O.A. No.1036 of 2001

Neelam Sandil, aged about 51 years,
Wife of Colonel M.K. Sandil, R/o 3/1
Mc Pherson Lines, Akbar Road, New Cantorment,
Allahabad.
Ex Principal, Kendriya Vidyalaya NEPA, Barapani,
P.O. UMSAW - 793123, Umiam, Meghalaya.

..... Applicant.

Counsel for applicant : Sri R.A. Pandey.

Versus

1. Union of India, through Secretary,
Ministry of Human Resource Development,
New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Marg,
New Delhi - 110016.
3. The Assistant Commissioner, Kendriya Vidyalaya
Sangathan (Guwahati Region), 2nd Floor,
Chayyaram Building, Maligaon Chariali,
Guwahati - 781012.
4. Shri KK Jha, Director, North Eastern Police
Academy (NEPA)/Chairman, Vidyalaya Management
Committee (VMC), Kendriya Vidyalaya, NEPA,
Barapani, P.O. UMSAW - 793123, Umiam, Meghalaya.

.... Respondents.

Counsel for the respondents : Sri N.P. Singh & Sri V. Swaroop.

and

O.A. No.1036 of 2001

Neelum Sandil, A/a 52 years, wife of Colonel (Retd),
M.K. Sandil, R/o 3/1 Mc Pherson Lines, Akbar Road,
New Cantorment, Allahabad. Ex principal, K.V. NEPA,
Barapani, P.O. UMSAW - 793123, Umiam, Meghalaya.

..... Applicant

Counsel for the applicant : Sri R.A. Pandey.



Versus

1. Union of India, through Secretary,
Human Resource Development, New Delhi.
2. Commissioner, K.V. Sangathan,
18, Institutional Area, Shaheed Jeet Singh
Marg, New Delhi - 110016.
3. Assistant Commissioner, K.V. Sangathan
(Guwahati Region), 2nd Floor,
Chayaram Bhawan, Maligaon Chariali,
Guwahati - 781012.

..... Respondents.

Counsel for the respondents : Sri N. P. Singh & Sri V. Swaroop.

O R D E R

BY HON. MR. S. DAYAL, A.M.

These two OAs were clubbed together for hearing but could not be heard together because one of the counsel for respondent was not available, hence it has been heard later. A common judgement is being ^{given} ~~made~~ since the issues pertain to the same applicant and are inter-related.


2. O.A. No.876/00 has been filed for setting aside order dated 5.7.2000 by which the services of the applicant were terminated during probation and her services in the Sangthan were also dispensed with. A direction was given on 18.8.2000 to the effect that the applicant be allowed to work as PGT (English) where ever vacancy was available at Allahabad.

3. The facts of the case as narrated by the applicant are that the applicant was working as PGT (English) and was promoted to the post of Principal K.V., NEPA, Barapani, PO Umsaw vide offer of appointment dated 6/8.10.98. The applicant has stated that she assumed the charge on 26.10.98 after training for a week at Headquarters at K.V. Sangthan at New Delhi. The applicant was appointed on probation for

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a period of two years which could be extended from time to time. While working as Principal, the applicant found that the Chairman, Vidyalaya Management, Committee had adopted an obstructionist approach in the work of Kendriya Vidyalaya because the applicant did not select the candidate as a teacher in which the chairman was interested. The applicant was shifted from Officers' Mess to Sargents' Mess. The applicant had to arrange her own accommodation at Umroi Cantt which was around 10 kms. from NEPA. The applicant sought transfer to some other Kendriya Vidyalaya in a letter dated 29.3.99 addressed to Assistant Commissioner, Guwahati Region. The applicant's application for her own illness, later for illness of her daughter and still later for her son's confirmation ceremony was not sanctioned by the Chairman/Assistant Commissioner. The applicant claims that she fell seriously ill on 21.5.99 and thereafter extended leave from 24.6.99 to 12.7.99 which was sanctioned by the Assistant Commissioner but her pay bill was not countersigned by Chairman, Vidyalaya Management Committee. The applicant was shifted by her husband to Allahabad on account of her serious condition and she applied for EOL from time to time. She complained about the behaviour of the Chairman, Vidyalaya Management Committee, to the Chairman, Kendriya Vidyalaya Sangathan, a number of times but received no reply. Her services were terminated by order dated 5.7.2000 giving rise to this application.

4. The arguments of Sri R.A. Pandey for applicant and Sri L.M. Singh, B.H. of Sri V. Swaroop and Sri N.P. Singh for respondents were heard.




5. We have considered the submissions of Counsels for the parties. We find that the applicant was appointed as Principal on probation for initially two years on 6/8.10.98 and she took over as Principal on 26.10.98. Her appointment as Principal was subject to the conditions contained in para 3(i) that she would be on probation for a period of two years which could be extended from time to time till orders were issued confirming successful completion of her probation. During probation, her services would be terminable by one month notice on either side with the right to the appointing authority to terminate the appointment by payment to the appointee of a sum equivalent to the pay and allowances for the period of notice or unexpired portion of that period.

6. We find from the pleadings that the applicant was granted certain extra privileges like stay in Officers Hostel, leaving headquarters during holidays without asking for leave. These privileges were granted by the first Chairman of Kendriya Vidyalaya, NEPA, Barapani. The first Chairman, however, remained till December 98 and thereafter his successor withdrew the privileges due to which the applicant made complaint of harassment. The applicant fell ill in June 99 and thereafter continued sending medical certificates. However, the impugned order dated 5.7.2000, her services were terminated. The impugned order reads as follows :-

"In terms of Para 3(I) & (ii) of the offer of appointment dated 6/8.10.1998, Smt. Neelan Sandil was appointed as Principal on probation for a period of two years with the specific provisions that her services are terminable by one month's notice during probation without any reasons being assigned therefor.

In pursuance of the aforesaid provisions, as contained in the offer of appointment, Smt. Neelan Sandil is hereby discharged from the services of the Sangathan with immediate effect. In lieu of one month's notice, she will be paid separately a sum equivalent to the pay and allowances for the period of notice or unexpired portion thereof."

6. The applicant has challenged the order of termination on the ground that her services from Kendriya Vidyalaya Sangathan



were terminated without holding enquiry under Rule 14 of CCS (CCA) Rules 1965. It is claimed that the reason for discharge of the applicant was her making representations for seeking redressal of grievances of harassment by Respondent No.4, who was Chairman Vidyalaya Management Committee. Counsel for the applicant has placed reliance on the judgment of Apex Court in Smt. Menka Gandhi Vs. Union of India & others AIR 1978 SC 597 and termed the action of the respondents in cancelling the appointment as arbitrary. Counsel for the applicant has also relied on the case of Prabhu Dayal Bihari Vs. Rajya Nagrik Apurti Nigam Ltd. 2000(4) ESC 2465(SC). It has been held in this case that where the order of termination of the services of the applicant was made without giving one month's notice or one month's salary, it was struck down as it did not fulfill the conditions contained in the order of appointment.

7. Counsel for the respondents, on the other hand, stated that the applicant remained at Kendriya Vidyalaya in NEPA for a short period after joining as Principal. She left the Kendriya Vidyalaya in June 99 and did not join even the next place of posting at Kendriya Vidyalaya, Jorhat, which was given to her in pursuance of interim order of the Division Bench of this tribunal dated 18.8.2000 till 1.3.2001 even though she was posted on 14.12.2000. She thus, deserted a position of Principal to join her spouse who is working in Defence service at Allahabad. Counsel for the respondents has relied on Union of India and others Vs. Arun Kumar Roy (1986) 1 SCC 675. In this case, a probationer has been distinguished from a temporary hand. It has also been laid down that the payment of notice salary was not a pre-requisite for termination. The payment could be made after the order of termination was served on the employee. He has also relied on the judgment of Apex Court in Kutumb Chand Khundia Vs. Chandigarh Administration and another SLP(C) No.6503 of 1986 decided on 9.10.95 holding that in case where service

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record of a probationer is unsatisfactory, the termination order cannot be held to be arbitrary and capricious. He has also relied upon the judgment of Apex Court in M. Venugopal Vs. Divisional Manager, LIC Machilée Patnam A.P. and another. It has been held in this case that even under general law, the service of a probationer can be terminated after making an over all assessment of his performance during the period of probation and no notice is required to be given before termination of such service. The Apex Court in State of Orissa Vs. Jyoti Ranjan Kar 1995 Supp.(4) SCC 651 has upheld the termination of service during the period of probation on the ground of unsuitability. It held that the termination was in accordance with rules and the action was not arbitrary. A similar view has been taken in (1997) 2 SCC 217 in Director Ministry of Coal & others Vs. Bimlendu Kumar. Counsel for the applicant has also relied on Brij Mohan Singh Vs. Union of India and others JT 2001(4) SC 436 in which it has been held that in a situation where the notice pay along with dearness allowance has not been paid along with the order of termination, the order of termination will not get vitiated on that account.

8. We have considered the rival submissions. As far as termination of service as Principal during probation is concerned, the applicant effectively worked as a Principal for about 8 months and remained on leave for nearly thirteen months on the ground of ill health before order of termination was passed. The applicant's ability to perform onerous responsibility of Principal has not been manifested and the respondents action in terminating probation of the applicant as Principal of Kendriya Vidyalaya cannot be faultive.

9. We, however, do not find that the contention of the counsel for respondents that the order did not affect the service of the applicant in the Sangathan as PGT(English). The language of the order does not convey any such impression.

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The applicant was not given any posting as PGT when the order of termination of services in the Sangathan was passed. The subsequent order giving her posting as PGT by the respondents was passed only after interim order had been given by the Division Bench of this Tribunal.

10. While this application was under consideration, the respondents gave a notice to the applicant under Article 81-D of the Education Code and terminated the services of the applicant after giving her notice. The order of termination has led to filing of another O.A. No.1036/01 by the applicant, which is being considered in the subsequent paragraphs.

11. Application No.1036 of 2001 has been filed for setting aside the order dated 1.5.01 passed by the respondent No.3 arbitrarily terminating the applicant's lien on the post of PGT (English) and also her service of Kendriya Vidyalaya Sangathan retrospectively from 20.1.01. A direction to the respondent No.2 is also sought to reinstate the applicant in service of Kendriya Vidyalaya Sangathan and to post her as PGT (English) in a Kendriya Vidyalaya at any Army Cantonment near to her place of residence to facilitate her treatment for the sickness from which she is at present suffering with retrospective effect and consequential benefits. The applicant, in this case, has stated that pending consideration of order dated 18.8.2000 passed by the Tribunal in O.A. No.876/00, the respondent No.2 posted the applicant to Kendriya Vidyalaya, Kokrajhar (~~Assam~~) and then to Kendriya Vidyalaya, ONGC, Jorhat. It is stated that while a representation against her posting to Kendriya Vidyalaya, ONGC, Jorhat was pending, the respondent No.3 terminated her lien appointment on the post of PGT(English) in K.V.S. vide O.M. dated 1.5.01.

12. The arguments of Sri R.A. Pandey, counsel for the applicant and Sri N.P. Singh, counsel for respondents were heard.

13. The applicant has sought on the ground that her

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order of posting as PGT(Eng.) to an area afflicted by insurgency would not amount to compliance of interim order dated 18.8.2000. This Tribunal, vide interim order dated 18.8.00 in O.A. 876/00 has ordered as follows :-

"..We have heard learned counsel for the applicant in respect of interim order. The learned counsel for the applicant has prayed that operation of the impugned order dated 5.7.00 may be stayed and respondents may be directed to reinstate the applicant as more than a month back, we do not find any justification to direct the respondents for reinstatement of the applicant. However, as the applicant was not confirmed on the post of Principal, her lien against her previous post of PGT (Eng) continued in the circumstances without prejudice to the parties in this case as she may be continued and allowed to work as PGT (Eng)..."

After this order was passed, the present applicant communicated it by covering letter dated 22.8.00 and made representations dated 29.9.00, 27.12.00, 27.1.01, 26.2.01; 28.3.01 and 26.5.01. In covering letter number of place of posting was mentioned. In representation dated 29.9.00, however the applicant had represented against her posting to Kendriya Vidyalaya Kokrajhar and sought posting to Kendriya Vidyalaya in Military cantonment including a military cantonment in Assam. It has been further stated that she was suffering from bronchial asthma and diabetes mellitus and requested to give her preferred place of posting as PGT (Eng) in K.V.S. New Cantonment/old cantonment Allahabad, Ranchi, Patna, Jorhat, Kolkata, Guwahati, Tejpur, Danapur, Bairakpur, so that military hospital facility shall be available to the applicant. She also made a request for her sanction of extra ordinary leave on medical ground till her posting was considered. The applicant by letter dated 27.12.00 addressed to Commissioner, K.V.S New Delhi stated that she was suffering from Frozen shoulder and diabetes and was required to attend military

hospital daily for physiotherapy, she sought further 30 days of leave. By representation dated 27.1.01 she sought her posting at Kendriya Vidyalaya in Army Cantonment where hospital facility shall be available and also sought a change in posting on the ground of insurgency in Assam.

14. By yet, another representation dated 26.2.01 she again stated that because of her medical condition, she was not in a position to join her duties and repeated her request for her posting to an insurgency free area. The Assistant Commissioner, K.V.S. Guwahati replied to her stating that there is a military hospital at Jorhat which is a big town, many Air Force, Army and other Armed Force officers and their family members are staying there. It was mentioned that the ONGC campus is fully protected by the Security personnel and, therefore, the grounds for not joining ONGC, Jorhat on security reasons and on medical ground was rejected and she was directed to join her duties immediately before 31.3.01, failing which necessary action would be initiated as per Article 81-D of Education Code. The applicant again made a representation dated 28.3.01 stating that her physical health did not permit her to join at a place like Jorhat and requested for posting to her previous station which was Ranchi in Jharkhand and stated that she may have to tender resignation if her request was not considered. The Assistant Commissioner K.V.S., New Delhi informed the applicant that her request for change of place of posting had been considered and it was not acceded to and directed her to report for duty at Kendriya Vidyalaya, ONGC, Jorhat. The applicant made finally a representation dated 26.5.01 stating that the Central Administrative Tribunal, Allahabad Bench had given

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an interim order dated 18.8.00 for posting of the applicant near Allahabad where her husband Col. M.K. Sandil was posted as a Doctor in Army Medical Corps. The applicant stated in this representation that she had received a letter dated 15.5.01 on 18.5.01 but before that she had received an Office Memorandum dated 1.5.01 from Assistant Commissioner, K.V.S., Guwahati informing her that her services were already terminated earlier on the post of PGT(Eng.) for remaining absent from duties from 20.10.01. She sought information whether her lien appointment has also been terminated. She stated that she was shown as PGT(Eng.) in letter dated 1.5.01, her date of absence has been shown from 20.10.01. She also stated that the Assistant Commissioner had directed that if she did not join her duties before 31.3.01, her lien as PGT(Eng.) will be terminated from 20.1.01. The Assistant Commissioner's letter dated 19-20.3.01 requiring the applicant to join duty at Kendriya Vidyalaya, ONGC, Jorhat before 30.3.01 was received by her at Allahabad on 27.3.01 not allowing even adequate travelling time upto destination. The applicant also mentioned that she was on extra ordinary leave on medical ground prior to termination of her probationary appointment at K.V.S., NEPA, Barapani and she was entitled for leave upto five years. She made a request for grant of fresh posting as PGT(Eng.) at Cantorment near Ranchi and out of Guwahati region. She also requested that her extra ordinary leave may be granted on medical ground for the entire duration of five years.

14. The above correspondence shows that the applicant had some apprehensions in joining at Kendriya Vidyalaya, ONGC, Jorhat and expected a sympathetic consideration of her request for an alternative place of posting. The applicant has challenged the impugned order dated 1.5.01 on the ground that the letter dated 20.3.01 of Assistant Commissioner only required her to join at Kendriya Vidyalaya, ONGC, Jorhat

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before 31.3.01 and mentioned that if she did not join, necessary action would be initiated against her under Article 81-D of the Education Code. The applicant was not aware of the contents of Article 81-D of the Code of Education and i.e. why by her representation dated 26.5.01 she has sought a copy of the Education Code on payment. Yet the respondents have stated in memorandum dated 1.5.01 that the factum of voluntary abandonment of service has been communicated to the applicant by letter dated 20.3.01 was not in fact, a show cause notice but merely a rejection of representation of the applicant dated 9.3.01. The above contention of the applicant is correct. The letter dated 20.3.01 did not speak about voluntary abandonment of service but merely stated that necessary action would be initiated as per Article 81-D of the Education Code. The initiation of such action required issuance of show cause notice which was not done before passing the order dated 1.5.01.

15. The learned counsel for the respondents has referred to letter dated 2.3.01 as a notice issued to the applicant under Article 81-D(ii) of Education Code. By this letter, the applicant was informed that she had remain absent for a period of 18 days or more from 28.1.01 till date without sanctioned leave or beyond the period of leave originally granted or subsequently extended, The applicant was required to reply to this notice. It was also stated that she has lost her original lien which would be confirmed if written representation is not made within ten days and that the applicant shall be deemed to have been removed from the service of K.V.S. as per provisions of Article 81-D. The applicant had earlier sent her representation dated 26.2.01 enclosing copies of medical documents which she had sent to Commissioner K.V.S. to the Assistant Commissioner, K.V.S., Guwahati. She has mentioned that she was enclosing another copy of application along with medical documents in case the said application had not been received. She has sought her posting at a station where she

could serve in an environment of physical security and where she could get medical facility in a military hospital. The respondents have stated that she was sent another show cause notice dated 2.4.01. The applicant in her supplementary RA has denied the receipt of the said show cause notice.

16. The learned counsel for the applicant has referred to letter dated 15.5.01 which was in response to the representation of the applicant dated 28.3.01 whereby the applicant was informed that her request for posting has been considered but was not acceded to and directed that she would join her duty at Kendriya Vidyalaya, ONGC, Jorhat immediately. It is stated that this letter was issued after 15 days of passing of order of termination and was received by the applicant after 18 days to the passage of order of termination.

17. Learned counsel for the respondents has mentioned that the applicant had an alternative remedy available under Rule 81(d)(a)(vii&viii) of the Education Code. He has also mentioned that the applicant would also have filed an appeal under Rule 23(iv) of CCS(CCA) Rules.

18. Lastly, the learned counsel for the respondents has referred to order passed in OA.2351/01 on 13.5.02 by Principal Bench, New Delhi in which Art.81(d) of Education Code has been held to be not violative of Article 14 & 16 of the Constitution. The question as to whether Article 81(d) of Education Code was contrary to the provisions of CCS(CCA) Rules has also been considered and relying on the judgment of Apex Court in 'Aligarh Muslim University and others Vs. Mansoor Ali Khan' 2000(6) Scale 125, it has been held that Rule 81(d) is analogous to Rule 5(8)(i) and is not violative of Articles 14 and 16 of the Constitution.

19. Counsel for the applicant made a further submission that Article 81-D is not applicable in the case of the applicant. The article is applicable to cases of unauthorised absence when an employee is absent without sanctioned leave and beyond

the period of leave originally granted or subsequently extended. The applicant was engaged in the correspondence with the respondents regarding leave due to sickness and change of the place of posting. Even in response to the letter dated 20.3.01, she had expressed her difficulties and sought posting in a nearby place. Although the respondents have claimed in their counter reply that the applicant had been issued show-cause notices on 2.3.01 and 2.4.01 besides notice dated 19.3.01, the only notice mentioned in the memorandum dated 1.5.01 is letter dated 20.3.01. The notice dated 2.3.01 had been replied to by the applicant mentioning that she had applied for leave on medical ground and was sending copies of her applications as they seem to have not been received in the office of the respondent No.3. The respondent No.2, by letter dated 15.5.01, asked the applicant to join immediately but this letter was received on 18.5.01 while the order dated 1.5.01 removing her from service on account of abandonment of post of PGT(English) had been received by her due to which she could not join at Jorhat. There is substance in the contention of the applicant.

20. The counsels have raised another side issue. They have alleged forgery on part of each other in issuing letter dated 1.5.01. Counsel for the applicant shows the original letter of 1.5.01 which is signed in ball point pen by Sri D.K. Saini and, therefore, the copy of the letter annexed in the O.A. is not forged. As far as the letters produced by the respondents, which were sent to the two addresses of the applicant, there is no material difference from the letter annexed by the applicant to the O.A., These two letters can also not be considered to be doctored. Therefore, as far as this aspect of pleadings is concerned, we do not consider it appropriate to take any action.

21. Lastly, the counsel for the respondents contended that letter dated 15.5.01 had been sent by the respondents because of the stay order dated 18.8.2000 in O.A.No.876/2000

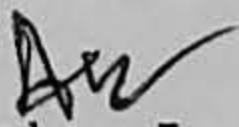
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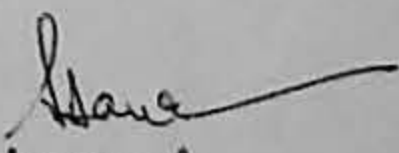
We find that after the impunged order in OA 876 of 2000 was passed, the applicant was given posting in pursuance of the stay order. She was given no posting as PGT immediately after the impunged order in OA 876 of 2000 dated 5.7.2000 was passed.

22. As far as the impunged order dated 5-7-2000 in O.A 876 of 2000 is concerned, the termination of services of the applicant as Principal can not be taken exception to because the applicant was on probation. But termination of her services from Sangathan itself cannot be sustained because after her termination of services as Principal, the applicant was entitled to be posted as PGT(English). Therefore, we direct the respondents to issue corrigendum to that effect within a month.

23. As far as impunged order dated 1.5.2001 in O.A 1036 of 2001 is concerned, the order cannot be sustained because it was passed during the pendency of O.A 876 of 2002 while the issues raised in the said O.A were to be decided. We therefore, set aside the letter dated 1-5-2001 and direct the respondents to indicate within a period of two months a place of posting to the applicant for joining-on which post the counsel for the applicant assures us that the applicant would join. Since the applicant has remained absent on the ground of sickness, the period of absence shall be treated as leave, which may be due to the applicant.

There shall be no order as to costs.


Member-J


Member -A

Asthana/