

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 865 OF 2002

ALLAHABAD THIS THE 6th DAY OF May 2005

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN
HON'BLE MR. S. C. CHAUBE, MEMBER (A)

Dr. V. K. Saraswat, PGT (Physics),
Kendriya Vidyalaya, Mathura Cantt.,
Mathura, R/o 1556, Barhpura, Sadar Road,
Mathura.

.....Applicant

(By Advocate : Satish Mandhyan)

V E R S U S

1. Union of India through Commissioner, Kendriya Vidyalaya Sangathan, Institutional Area, 18, Shaheed Jeet Singh Marg, New Delhi.
2. Joint Commissioner (Admn.), Kendriya Vidyalaya Sangathan, Institutional Area, 18, Shaheed Jeet Singh Marg, New Delhi
3. Assistant Commissioner, Lucknow Region, Sector 'J', Aliganj, Lucknow.
4. Principal, Kendriya Vidyalaya, Mathura Cantt., Mathura.
5. Smt. Santosh Punia, Principal Kendriya Vidyalaya, Mathura Cantt., Mathura.
6. Shri A.K. Varshney, Inquiry Officer, 206, South West Block, Alwar-301 001 (Raj).

.....Respondents

(By Advocate: Shri N.P. Singh & Shri D.P. Singh)

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O R D E R

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

The applicant has impugned the order dated 19.10.2001 imposing the penalty of his removal from service and appellate order dated 12/14-06.2002 confirming the penalty of removal imposed by the disciplinary authority. Earlier he was tried departmentally under Rule 14 of Central Civil Services (Classification Control and Appeal) Rules 1965.

2. The facts, as per the applicant, are that he was issued charge-sheet under Rule 14 of Central Civil Service (Classification control and Appeal) Rule 1965 on 06.02.2001 by Assistant Commissioner, KVS Lucknow Region Lucknow. The allegations were that while functioning as PGT (Physics) in Matura Cantt. he entered the office Room of the Principal on 08.12.2000 without permission of the Principal and threatened her that he will see that how the principal will reside in Mathura and also declared that he will not do any work. Despite repeated request from one of his colleagues, the applicant spoke very loudly and threatened the Principal and left the Chamber. Secondly, he used unparliamentary language against the principal outside the Principal's Chamber that due to his clout him the Assistant Commissioner will come and roll up the Principal's Bed. He also declared that the Commissioner Cairae will not stay in his front and

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he will bring Shri Atal Behari in this Chamber. Thirdly, the applicant has allegedly played politics along with other teachers of Kendriya Vidyalaya of Mathura Cantt and declare that either the principal will work as per his wishes or leave the Vidyalaya. Besides the applicant one day with his team left the dias and stood up near the students queue thereby indulging in petty politics and groupism, besides, polluting the academic atmosphere of the Kendriya Vidyalaya.

3. It is stated by the applicant that on 08.12.2000 respondent No.5 Principal Kendriya Vidyalaya Mathura Cantt. Mathura sent a complaint to the then Assistant Commissioner who passed the order of the suspension of the applicant. Further suspension order has been passed without any preliminary enquiry into the alleged complaint of respondent No.5. Apart from this, the respondents conducted the preliminary enquiry behind the back of the applicant and were able to record statement of those from whom the Principal could elicit whatever she wanted to and the said statements were made part of the memorandum of charges. He has also alleged prejudice and bias against the Principal Kendriya Vidyalaya Mathura Cantt. Mathura and respondent No.6 the enquiry officer. During the course of the enquiry, the applicant submitted application before the Enquiry Officer to recommend the transfer of respondent No.5 Principal from Kendriya Vidyalaya Mathura Cantt. Mathura to facilitate proper conduct

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of enquiry without any pressure since the principal was directly involved and was likely to exert pressure on defense witnesses. Respondent No.6 vide letter dated 09.05.2001 informed the applicant that his request for shifting of the Principal cannot be acceded to and without giving full opportunity closed the doors for producing any defense witnesses. Out of 13 listed defense documents, the presenting officer supplied some of them and refused some of them as the same were not allowed by the enquiry officer as not available with the principal. The document No.2 has been disallowed by the enquiry officer whereas it was important to prove the presence of Prosecution Witnesses in the school on the relevant date. Similarly document No.12 was also important as the teachers Diary was amongst the articles recovered from the Physics Laboratory. The documents No. 4 to 6 and 13 were not allowed as the same were not available with the principal.

4. The applicant has further stated that without any reasons the presenting officer did not present the prosecution witness Shri T.P. Tiwari even though he was present during the proceedings. The reason being Shri Tiwari did not accede to depose in a particular manner and further is said to have stated that he would depose exactly as per his personal knowledge. According to the applicant Annexure A-23/A amply suggests that due to administrative reasons presenting officer is not able to present Shri T.P. Tiwari as prosecution witness. Further the

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application of the defence assistant to summon respondent No.6 to tender evidence was kept in abeyance without any orders by the enquiry officer, whereas it is settled preposition of law that in case there is some motive behind in non production of prosecution witness and the charged official or the defence assistant can on their own required the enquiry officer to call such employee to be present for cross examination by the defence assistant without any question being posted by the Presenting Officer. Besides, the prosecution witnesses have given their statement during preliminary enquiry on hear say only. The applicant has further stated that two prosecution witnesses Shri R. A. Saraswat and Shri R. P. Singh are actually interested witnesses who have deposed on the dictates of the respondent No.5. On the other hand, Shri Kali Charan a prosecution witness in his statement has mentioned that when the alleged incident took place only he and Shri T. P. Tiwari were present. Thus, the statements of prosecution witnesses suffer from inherent contradiction. It is further contended by the applicant that all the 3 witnesses have stated that they have not heard anything on their own but have heard it through one Group 'D' employee who has not been disclosed when a request was made before the enquiry officer to bring that Group 'D' employee for cross examination. The request was rejected by the enquiry officer.

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5. Inspite of the fact that there was hardly any prosecution evidence, the enquiry officer submitted the enquiry report sustaining all the 3 charges against the applicant. The applicant has given a detailed reply to the letter dated 27.09.2001 explaining inherent contradictions and the circumstances suggesting his complete innocence in respect of the charges framed against him. Due to the influence of the respondent No.5, the disciplinary authority imposed harsh punishment of removal from service. The respondent No.3, with a view to harassing the applicant, has treated the period of his suspension as non duty thereby denying the arrears of salary of that period after preferring his appeal to the appellate authority. The applicant requested respondent No.2 to afford an opportunity of personal hearing though on paper request was acceded to and an opportunity was granted on 30.05.2001. The applicant was entertained by only a cup of tea without asking anything or allowing time to the applicant to state his version thereby violating the principles of natural justice.

6. Finally, it has been contended by the applicant that preliminary enquiry was conducted behind his back; that enquiry officer is interested in the management side for getting such frequent assignments after retirement; that all the 4 prosecution witnesses were not presented; that Shri T.P. Tiwari, a prosecution witness though present during the proceeding, was not presented as a prosecution

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witness by the presenting officer inspite of the request of the defense assistant to present him as witness; that the request of the applicant to shift respondent No.5 from KVS mathura was not granted in the interest of justice and fair enquiry; that the defence evidence was closed on flimsy ground; that the charges of politicking by the applicant in the school has been categorically denied by the prosecution witnesses; that the evidence of the prosecution is based on hear say; and that the name of the Group 'D' employee who forms the basis of the version of the prosecution witnesses has not been disclosed nor he has been produced during the enquiry.

7. In view of the aforesaid reasons, according to the applicant, the two charges against the applicant have not been sustained due to inherent contradiction in the version of prosecution witnesses. The order of his removal from service as well as rejection of appeal by the appellate authority are therefore, totally arbitrary malafide and in violation of principles of natural justice. In support of his contentions learned counsel for the applicant has referred to the following cases:

- (A) Dayal Kushwaha Vs. State of U.P. and Ors.
Allahabad High Court in CMWP No.37210/01
decided on 18.02.2003.
- (B) Khem Chand Vs. U.O.I. & Ors.
AIR 1958 SC 300
- (C) Rama Kant Mishra Vs. State of U.P. and Ors.
AIR 1982 SC 1552

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(D) Ved Prakash Gupta Vs. M/s Delton Cable India
(P) Ltd. AIR 1984 SC 914.

(E) Pritam Singh Vs. U.O.I. & Ors.
JT 2004(7)SC 576

8. The respondents on the other hand have admitted that Smt. Santosh Poonia Principal Kendriya Vidyalaya Mathura Cantt. issued a memo dated 07.12.2000 to the applicant for improving his work and behavior. However, on 08.12.2000 the applicant came in the principal's chamber and misbehaved with her, used unparliamentary language and threatened the principal that she would not be able to live in Mathura. The Principal submitted full report along with the signature of the Vice-Principal and one P.G.T. to the regional office and narrated whole facts to the Assistant Commissioner. The Assistant Commissioner after enquiring into the matter suspended the applicant and attached him to Kendriya Vidyalaya Azamgarh.

9. It is stated that a preliminary enquiry was conducted by Shri A.K. Gautam Principal, Kendriya Vidyalaya Mathura Refinery on 13.12.2000 who along with enquiry report submitted the statement of the witnesses on the basis of which following three charges were framed against he applicant:

i) Misbehaviour with the Principal, Kendriya Vidyalaya, Mathura Cantt. and threatening the Principal on 08.12.2000.

ii) Used unparliamentarily language against the higher authorities.

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iii) Indulged himself in the petty politics and groupism which polluted the academic atmosphere of the vidyalaya.

10. The disciplinary authority issued a charge-sheet to the applicant vide letter dated 06.02.2001. As reply of the charge-sheet was not submitted by 20th February, 2001 inquiry officer and presenting officer were appointed. The enquiry officer completed the enquiry by providing full opportunity to the applicant to defend his case. The applicant was given opportunity of submission of brief by enquiry officer who after receipt of the brief submitted the enquiry report on 10.09.2001. A copy of the enquiry report was provided to the applicant for submission of the defense and applicant submitted his defense vide letter dated 01.10.2001. After taking into consideration various relevant factors, the disciplinary authority imposed the penalty of removal from service vide letter dated 19.10.2001. Thereafter applicant preferred an appeal before the appellate authority who rejected the appeal of the applicant vide order dated 12/14.06.2002. Thereafter the applicant filed present original application challenging the said order.

11. The respondents have contended that the suspension order of the applicant was issued on the basis of preliminary enquiry ; that the attachment of the applicant in to Kendriya Vidyalaya Azamgarh was necessary for smooth functioning of the Vidyalaya;

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that lady principal Smt. Santosh Pooni intimated on phone the whole episode happening in her chamber to the Assistant Commissioner followed by a report of the Principal by Fax ; that a preliminary enquiry was conducted by Principal KV Mathura Refinery, prima-facie establishing the alleged misbehavior of the applicant with the lady principal; that the charge sheet was issued to the applicant for misbehavior with and threatening the Principal besides use of unparliamentary language and indulgence in petty politics and groupism; that the enquiry was neither biased nor the intention of the authorities was malafide; that reasonable opportunity was given to the applicant to defend his case; that the principal has not pressurized the defense witnesses; that the presenting officer produced those witnesses who were concrete; that the application of the presenting officer not to produce Shri T.P. Tiwari as prosecution witness was accepted by the Enquiry Officer who was never under the influence of Principal; that the then Assistant Commissioner after going through the representation of the applicant on the enquiry report applied his mind and imposed punishment of removal from service; that the appellate authority after giving personal hearing to the applicant and after considering all the facts and circumstances as well as after perusal of records concluded that the punishment imposed by the disciplinary authority was commensurate with his misconduct etc. Accordingly, the applicant was found guilty of gross misconduct with the lady principal;

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and was therefore, not entitled for any relief from this Tribunal. Counsel for the respondents has relied upon the judgments delivered by the Hon'ble Supreme Court in the cases of Sanchalakshri and another Vs. Vijayakumer Raghuvirprasad Mehta and another reported in AIR 1999 SC 578 and Lalit Popli Vs. Canara Bank and Ors. reported in 2003 (2) UPLBEC 1673. They have also referred to the judgment in the case of S. S. Rathore Vs. State of Madhya Pradesh AIR 1990 SC 10 and R. S. Soni Vs. State of Punjab & Ors. J.T. 1999 (6) SC 507 in support of his contentions.

12. In his rejoinder affidavit the applicant has contended that the order of his suspension was without even verifying the contents of the complaint and waiting for the preliminary enquiry report. Secondly, most of the additional documents sought by the defense assistant were neither given nor even shown to the applicant. Thirdly, even though present the fourth prosecution witness before the enquiry officer who accepted the request of the presenting officer to drop him inspite of protest by the applicant. The aforesaid facts amply established gross bias and malafide on the part of all the respondents specially the enquiry officer. Finally it is stated that such a big incident occurring in the premises of the school could have been reported in the media but no such thing has happened as no incident of the sort has occurred. It is further contended that the enquiry officer has been evading

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service of the notices of this O. A. for some reason or the other and lastly it has been pleaded that the reasons for dropping PW-4 Shri T.P. Tiwari by the presenting officer from the enquiry have not been satisfactorily explained by the respondents in the counter affidavit.

13. We have heard counsel for the parties and perused the pleadings.

14. The learned counsel for the applicant has primarily contended that the statements of prosecution witnesses suffer from inherent contradiction and are essentially based on hearsay evidence of a Group 'D' employee who was not allowed by the enquiry officer for deposition and cross examination by the defence assistant of the applicant. Secondly, proper personal hearing was not afforded by respondent No.2 to the applicant. Thirdly, Shri T.P. Tiwari, a prosecution witness, though present during the departmental proceedings was not presented by the presenting officer inspite of the request of the defence assistant to present him as witness and finally the punishment imposed is grossly disproportionate to the misconduct committed by the applicant. On the other hand, the respondents have maintained that the applicant has been given proper and reasonable opportunity to the to put forth his defence before finalizing the enquiry and passing the order of punishment. They have also denied that the principal has pressurised the defence witnesses.

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The analysis of evidence by the enquiry officer, according to the respondents is impartial and objective. We have also not come across any evidence to suggest that the enquiry officer was either biased or prejudiced against the applicant nor have we come across any irregularity or illegality or violation of principles of natural justice during the departmental proceedings right up to the appellate stage.

15. Learned counsel for the applicant has cited the case of Dayal Kushwaha Vs. State of U.P. and Ors. in support of his contention in which the punishment of termination of service was found to be disproportionate to the charge of abusing a deputy Jailor by a warder in District Jail Jhansi. In our considered view the environment of district jail is totally different from the environment of an educational institution wherein the teachers are expected to display exemplary conduct before the formative minds of the students. Similarly the case of Ramakant Mishra Vs. State of U.P. and Ors. AIR 1982 SC (Supra) would not appear to be relevant in the present case as the appellant was a workman who cannot be in any way compared with a well educated person like the applicant in the present case. The same also applies to the case of Ved Prakash Gupta Vs. Ms. Delton Cable India Pvt. Ltd. AIR 1984 SC (Supra) where once again the appellant was workman charged with use of abusive language.

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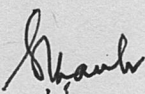
16. On the other hand, as decided by the Apex Court in R.S. Saini Vs. State of Punjab and Ors. the court or the Tribunal is not expected to reverse the findings of the enquiry authority on the ground that the evidence adduced before it is in-sufficient because the enquiring authority is the sole judge of the fact so long as there is some evidence to substantiate the findings. The Hon'ble Apex Court has also observed in B.C. Chaturvedi Vs. U.O.I & Ors. (Supra) that judicial review is limited to correction of errors of law or procedure leading to manifest in justice or violation of principles of natural justice. Similarly, it is not akin to the adjudication of the case on merits as an appellate authority and in any case, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding. A similar view was also formed by the Hon'ble Supreme Court in Lalit Popli Vs. Canara Bank and Ors. Finally in the case of Sanchalakshri and another Vs. Vijay Kumar Raghuveer Prasad Mehta and ors. AIR 1999 Supreme Court it was observed by the Hon'ble Supreme Court that a teacher is expected to maintain exemplary conduct. and higher standard of honesty and integrity in view of the position he holds.

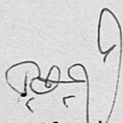
17. We are of the considered view that in case of disciplinary enquiry the quantum of proof ~~is~~ based on the principle of "proof beyond doubt" has no application. On the other hand, the charges would be deemed to have been proved in a departmental enquiry

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on the basis of preponderance of probabilities and some material on record necessary to arrive at the conclusion whether or not the delinquent has committed misconduct. Even otherwise the enquiring authority is the sole judge of the fact so long as there is some evidence to substantiate findings. As observed by the Apex Court adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court.

18. From the peculiar facts and circumstances of the case occurring in the premises of an educational institution and involving the lady principal and a male teacher, we find no reason to differ from the decisions of the disciplinary as well as appellate authority.
19. For aforesaid reasons and the case law cited above, the O.A. which is without merits deserves to be dismissed. Accordingly, the O.A. is dismissed without any order as to costs.


Member (A)


Vice-Chairman

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