

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1374 of 2003

Allahabad: This the 17th day of November, 2004

HON'BLE MR. JUSTICE S.R.SINGH, V.C.
HON'BLE MR. D.R. TIWARI, A.M.

Smt. Sushma Rani, aged about 31 years,
Wife of Shri Om Prakash, presently
residing at Type II, Quarter No. 252,
CRPF Campus, Rampur.

....Applicant.

By Adv. : Shri R. Verma

Versus

1. Union of India through the Secretary,
Ministry of Human Resource and Development,
New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed
Jeet Singh Marg, New Delhi.
3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Salawala,
Hathi Barkala, District - Dehradun.
4. The Principal,
Kendriya Vidyalaya, Situated
within the CRPF Campus,
Rampur.
5. Shri Ravindra Singh,
SUPW Teacher/Officiating
Principal Kendriya
Vidyalaya, CRPF, Rampur.

...Respondents.

By Adv. : Shri N P Singh

O R D E R

By Hon. Mr. Justice S.R.Singh, V.C.

Heard Sri R.Verma assisted by Sri N.K.Singh, learned
counsel for the applicant and Sri NP Singh, learned counsel
for the respondents.

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2. The applicant was placed under suspension vide order dated 28.4.2003 while the applicant was on maternity leave. The statement of Articles of charge framed against the applicant reads as under:

That, Smt. Sushma Rani, Drawing Teacher(under suspension), Kendriya Vidyalaya, CRPF Rampur, while functioning as Drawing Teacher at KV CRPF Rampur during the session 2002-2003, failed to appear before the Inquiry Committee on 26.11.2002 and 10.12.2002 in connection with preliminary inquiry on the complaint filed by Shri Ravindra Singh, WET, KV CRPF Rampur against Smt. Sushma Rani, Drawing Teacher by the Chairman, Preliminary Inquiry Committee, and also she has not submitted any justification for the absence. While residing in the campus of CRPF Rampur, Smt. Sushma Rani was not maintaining cordial relation with his neighbours.

The said act of Smt Sushma Rani, Drawing Teacher, exhibits the conduct of wilful insubordination and disobedience to any lawful and reasonable order of a superior, disturbs the peace at the place of her employment, unbecoming of a government servant and failed to show the respect to her superiors in violation of GOI decision No. 23 (1) &(4) acts and omissions below Rules 3 and Rules 3(1)(iii) of CCS (Conduct) Rules 1964, and Article 61-A(22) of Education Code of Kendriya Vidyalayas, as extended for the employees of Kendriya Vidyalayas.

Article - II

That, Smt. Sushma Rani, Drawing Teacher(under suspension), Kendriya Vidyalaya, CRPF Rampur, while functioning as Drawing Teacher at KV CRPF Rampur during the session 2002-2003, failed to comply with the directions of her superiors for attending the preliminary inquiry which was conducted on 25.3.2003 and also failed to submit her written statement against the questionnaire provided to her which was received by her on 25.3.2003 which amounts to insubordination and disobedience to the reasonable orders of her superiors and unbecoming of a government servant.

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The said act of Smt. Sushma Rani, Drawing Teacher, exhibits the conduct of insubordination and disobedience unbecoming of a government servant and failed to show due respect to her superiors in violation of GOI decision No.23(1) acts and omissions below Rules 3 and Rules 3(1) (iii) of CCS(Conduct) Rules 1964, and Article 61-A(22) of Education Code of Kendriya Vidyalayas, as extended for the employees of Kendriya Vidyalayas."

The relief claimed by the applicant is that the impugned charge memo be quashed and the respondent no.3 be directed to take the applicant back on duty with full pay and allowances for the period from 28.4.2003 and onwards after declaring the applicant's suspension as unjustified.

3. Principle, well settled is that normally the Tribunal does not interfere with the disciplinary enquiry at the very thresh-hold of issuance of chargememo. But it is equally well settled that in case the facts stated in the chargememo do not constitute a misconduct warranting action under Rule 14 read with rule 15 of the CCS(CCA) Rules, 1965, the Tribunal would be justified to quash the disciplinary proceedings at the thresh-hold of it, for continuance of disciplinary proceeding in such situation amount to abuse of the power and harassment of the Govt. servant. We, therefore, proceed to examine whether the facts stated in the charge memo taking in its entirity constitute any misconduct warranting action under Rule 14 of CCS(CCA) Rules 1965.

4. The learned counsel for the applicant submits that the statement of imputation of misconduct/misbehavior in support of Article of charge framed against the applicant taken in their internity do not constitute misconduct warranting disciplinary proceedings in major punishment under Rule 14 of CCS(CCA) Rules 1965.

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5. Learned counsel for the respondents on the other hand submitted that statement of impugnation of misconduct/misbehaviour, as stated in annexure 2 to the charge memo constitute grave misconduct warranting action under Rule 14 of the CCS (CCA) Rules 1965 and, therefore, the Tribunal would not be justified in interfering with the disciplinary proceedings at the very thresh-hold of issuance of charge memo.

6. We have given our anxious considerations to the submissions made by learned counsel for the parties. The charge no.1 against the applicant is that she failed to appear before the Inquiry Committee on 26.11.2002 and 10.12.02 in connection with preliminary inquiry on the complaint filed by Sri Ravindra Singh, WET, KV CRPF Rampur and also failed to submit any justification for her absence and further that while residing in the campus of CRPF, she was not maintaining cordial relations with her neighbours. This conduct of the applicant, according to the chargememo was unbecoming of a Govt. Servant in view of GOI decision no.23(1)(4) read with Rule 3(1)(iii) of CCS(Conduct)Rules 1964 and article 61-A(22) of the Education Code of Kendriya Vidyalayas. The decision no. 23(1) of the GOI provides that if act or conduct of a government servant is prejudiced or likely to be prejudiced to the interest of the matter or to the reputation of the master, it would amount to misconduct, GOI decision(23)(4) provides that if the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted then such an act or conduct of a servant may amount to misconduct. We are of the considered view that the conduct of complained of does not come within the mischief of GOI decision 23(1) nor does it come under the mischief of Rule 23(4) of the CCS(Conduct) Rules, 1964. It cannot be gainsaid that if the applicant failed to appear before the Enquiry Committee on the date in connection with the complaint filed

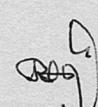
by Sri Ravindra Singh, WET, KV, CRPF it was open to the Committee to proceed with the ~~quar~~ enquiry and submit its preliminary report on the basis of which the authorities could proceed further. For the self same reason the charge no. II framed against the applicant do not warrant disciplinary proceedings against her under Rule 14 of the CCS(CCA)Rules, 1964 Article 61-A(22), it may be pertinent to observe, of the Education Code of Kendriya Vidyalayas, simply adopts what is contained in GOI decision no.23(1)&(4). We are of the considered opinion that the impugned disciplinary proceedings is nothing but a malafide exercise of power amounting to harassment of the applicant. The suspension and also the disciplinary proceedings are liable to be quashed.

7. It may be observed that though the applicant had an alternative remedy of appeal against the suspension order, we are not inclined to dismiss this O.A. on the ground of alternative remedy for the reason that the charges levelled against the applicant taken in their ~~entir~~ity do not warrant an action under Rule 14 of CCS(CCA)Rules, 1965. It cannot be gainsaid that the alternative remedy is not an absolute bar for what is provided in Section 20 of the A.T.Act, 1985 is that the Tribunal should 'normally' not entertain an O.A. unless the applicant has exhausted all the remedy open to him.

8. Accordingly the O.A. succeeds and allowed. The charge memo and the suspension order are quashed. The applicant is entitled to all consequential benefits of re-instatement etc. which shall be given to her within one month from the date of communication of this order.

9. There shall be no order as to costs.


Member-(A)


Vice-Chairman