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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A.NO.176 OF 2003

Cuttack, this the 29th day of April, 2005

Sri Bishwanath Paul

.....

Applicant

Vrs.

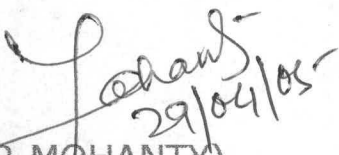
The Vice-Chairman, Kendriya Vidyalaya Sangathan and
Others

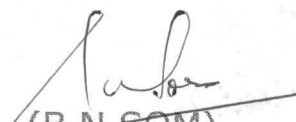
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Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? 72
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 72


(M.R. MOHANTY)
JUDICIAL MEMBER


(B.N. SOM)
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH**

O.A.NO.176 OF 2003

Cuttack, this the 29th day of April, 2005

CORAM:

**HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND**

HON'BLE SHRI M.R.MOHANTY, JUDICIAL MEMBER

.....

Shri Bishwanath Paul, aged about 44 years, son of late Ajoy Chandra Paul, Ex-PGT (Maths) of Kendriya Vidyalaya, Old DVS Building, Dhanbad, Jharkhand, at present C/o Biswamber Paul, Village Sakra, P.O.Baharagora, Dist. East Singhbhum, Jharkhand

..... Applicant

Advocates for the applicant- M/s.B.Baug,
N.N.Mohapatra, B.R.Das,
O.N.Ghosh, S.S.Ghosh

Versus

1. The Vice-Chairman, Kendriya Vidyalaya Sangathan, Sastri Bhawan, 1st Floor, C-Wing, New Delhi 110 001.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi 110 016.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Laxmi Sagar, Bhubaneswar -6, Disst.Khurda (Orissa).

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4. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Silchar Region, Silchar, At/PO Silchar, Dist.Kochar, Assam.
5. Principal, Kendriya Vidyalaya, Lekhapani 786180
6. Principal, Kendriya Vidyalaya, Old D.V.S.Building, Dhanbad, At/PO Dhanbad, Dist.Dhanbad (Jharkhand)

..... Respondents

Advocates for the Respondents- M/s. Ashok Mohanty &
S.P.Nayak

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri B.N.Paul, formerly PGT (Mathematics) of Kendriya Vidyalaya, Dhanbad, has filed this Original Application being aggrieved by the order of termination of service passed by Respondent No.2 under the provisions of Article 81(b) of the Education Code for Kendriya Vidyalayas (hereinafter called 'Code for K.V.') which was communicated to him by order dated 02/03.05.2002 (Annexure 4). He has approached this tribunal praying for quashing the said impugned order of the Disciplinary Authority ('D.A.' for short) and also the appellate order dated 15.1.2003 (Annexure 6). He has also prayed for issue of a direction for his reinstatement of the applicant in service with all consequential service benefits.

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2. The applicant has assailed the order of termination under Article 81(b) of the Code for K.V. being shockingly disproportionate to the alleged offence and also on the ground that the order was a perverse one being based on no evidence and also on the ground that he was denied the benefit of natural justice from end to end.

3. The case of the applicant, to put in a nutshell, is as follows. While he was working as PGT (Maths) at Kendriya Vidyalaya (hereinafter referred to as 'K.V.'), Lekhapani, with distinction, on 27.2.2002 he was served with a memo by the Principal (Respondent No.5), on the one hand, informing him that a written complaint has been received by him "from few girl students of Classes VII, VIII and IX and their parents in respect of misbehaviour with those girl students by him" for which he was called upon to submit a written reply before 1.40 P.M. on 28.2.2002 stating why disciplinary action should not be initiated against him under Article 81(b) of the Code for K.V. and on the other hand, he was also warned for "exhibiting a doubtful character/guilty of immoral

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behaviour towards girl students while discharging his routine duties in the Vidyalaya". He denied the allegation by filing his reply on 28.2.2002 (Annexure 2) stating that such an allegation was wild and incorrect as his own daughter was studying in Class VII and that during his 17 years of service he had been respected as a teacher of high moral character. Nonetheless, the Principal conducted an ex parte enquiry setting up a Committee of three lady teachers of the school. In the said committee one of the teachers was Mrs. Gunjan Kumar, a contractual teacher, who had earlier approached the applicant when he was officiating as Principal for a job, but he had spurned the request for the reason that she did not possess the requisite qualification. However, the report of this Committee was signed by the two lady teacher members of the Committee, namely, Smt. J.B.Gogoi and Smt. S.G.Sood who submitted the respective report separately stating that the girl students had deposed before them that the applicant was behaving with them as their father though at times he used to slap them at their back, but that was

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only to encourage them in the class. The report of the other member (Smt. Gunjan Kumar), though submitted, was later withdrawn and not made available for consideration. Smt. J.B.Gogoi in her report observed that she was surprised and shocked to hear such an allegation all of a sudden and that "if they (girl students) had any problem they should have reported to the Principal immediately". The other member, Smt. Sood, had observed in her report that it was not possible to do "anything immoral among 22 students inside the class room". The Principal ordered another enquiry on 28.2.2002 with three members of the teaching staff; the earlier one being dated 27.2.2002. Another Committee, called, Court of Enquiry was set up with one Maj. Rohatas Kumar, the husband of the contractual teacher (Smt. Gunjan Kumar) and two other teachers by the Chairman, Vidyalaya Managing Committee ('VMC, in short). The applicant was forced to attend the Court of Enquiry where the signature of the applicant was forcibly obtained on some blank papers and no statement of any aggrieved girl student was recorded

in presence of the applicant. Thereafter, another enquiry was conducted on 16th and 17th March 2002 at the instance of the Assistant Commissioner, Regional Office, Silchar, by a Committee consisting of three members headed by the Education Officer and two other lady members. That enquiry was also conducted in the presence of Maj. Rohatas Kumar. On 17.3.2002 when the enquiry was in progress, some girl students and their parents had submitted representation to the Principal that they had no allegation to make against the applicant who was a Mathematics teacher of merit and who dealt with the girl students as his own daughters. It is the grievance of the applicant the Principal did not take these representations into account nor were those brought to the notice of the enquiry committee. The applicant was also not allowed to participate in the enquiry nor was he given an opportunity to go through the statements of the so called victims who said to have leveled allegations against him. He, therefore, submitted that the local authorities had taken undue advantage of the

procedure for holding summary enquiry and had foisted baseless charges against him and in the end had thrown him out of service. He, without any show cause, was transferred out of K.V., Lekhapani, to K.V., Dhanbad on 17.4.2002. Soon thereafter on 2/3.5.2002, the order of termination was passed by the Commissioner, KVS, which was communicated to him by Respondent No.6 to him on 8.5.2002. He preferred an appeal against the order of termination before the appellate authority, but the same was dismissed by that authority without application of mind.

4. Per contra the Respondents have opposed the Original Application stating that a written complaint was received by the Commissioner, KVS, regarding misbehaviour of the applicant with some girl students, in pursuance of which the Education Officer, R.O., Silchar, was asked by the Joint Commissioner (Hqrs), New Delhi on 27.2.2002 to direct the Principal to institute an enquiry. Accordingly, the Principal, K.V., Lekhapani, carried out an ex parte enquiry by a Committee of three lady teachers at Vidyalaya level to find

out the facts, simultaneously informing the Chairman, V.M.C. Thereafter, the R.O., Silchar, also constituted a three-member Committee to hold a summary enquiry into the matter. The enquiry committee obtained statements of 15 girl students and of two parents, and obtained the reports of the Vidyalaya Level Enquiry Committee and that of the Committee constituted by the V.M.C. After considering all the reports, they found the applicant guilty of the allegation made by the students and found the charges proved. Thereafter the Commissioner, KVS, having perused all the reports and other related documents, came to the conclusion that the applicant was guilty of moral turpitude and that it was not expedient to hold regular enquiry in this case as the same might have caused serious embarrassment to the said students and parents. The service of the applicant was then terminated in terms of the provision of Article 81(b) of the Code for K.V. They have also refuted the allegation that either Smt. Gunjan Kumar or her husband Maj. Rohatas Kumar had conspired against his interest. They

have also disclosed in their counter that they had brought to the notice of the applicant the gist of his misbehaviour as stated by the 'victim girls' and he was asked to offer his explanation. They have also disclosed that while probing into the matter it came to the knowledge of the enquiry committee that the applicant had earlier too misbehaved with a girl student, namely, Kumar Priya Jha although the said allegation could not be enquired into as that girl had taken transfer from that Vidyalaya. It is also submitted by them that the applicant had not only tried to mislead the enquiry committee as well as the students, he had threatened the students to the effect that if they would tender evidence against him, they would face dire consequences.

5. There is no doubt that prima facie the allegation brought against the applicant is very serious as that involves sexual offence and immoral behaviour. Nothing could be more abhorrent, repugnant and undesirable behaviour in a teacher than the allegation of sexual harassment, for it is the teacher who builds the character of

the students. A good teacher is one who knows his subject, is enthusiastic about it and one who never ceases to learn. In the words of Dr.Radhakrishnan, a good teacher is always objective, , just, humble and is open to correction. In the words of Shri Aurobindo, a teacher holds aloft the torch of learning. In the words of Dr.Radhakrishnan, an Acharya is one whose achar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. In the words of Swamy Vivekananda, the teacher has been elevated very high as "Guru Brahma, Gurur Vishnu Guru Devo Maheswaraha".

6. The applicant in his O.A. has given account of his clean and outstanding service as a Mathematics Teacher, has called himself an asset for the school which got reflected in the performance of the students of the school in various examinations. The Principal in his deposition before the R.O.Level Enquiry Committee has also confirmed that the applicant was a teacher of distinction and the school was

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very much beholden to him. The boy students, one and all, have stood by this opinion, as also the colleagues of the applicant before the Enquiry Committee. The Respondents, on the other hand, in the counter reply have stated that the enquiry committee had found him guilty of misconduct, as alleged though they have admitted that he was successful as a teacher. During oral arguments, the learned counsel for the rival parties have stoutly defended their respective positions as taken in their pleadings. To find out the truth, we had, therefore, perused the office file dealing with the disciplinary case initiated against the applicant.

7. The applicant has alleged that he was not given reasonable opportunity to defend his case and that the proceedings of the enquiry committees were either conducted in a manner prejudicial to his interest or the conclusions of those committees were based on no evidence. We have carefully examined the procedure of enquiry laid down in this regard by the K.V.S. to assess the veracity of the allegations made by the applicant. K.V.S. by their letter

dated 24.1.2002 have laid down the steps to be taken while referring the cases for initiating actions under the provisions of Article 81(b) of the Code for K.V. It provides for two levels of enquiries, (i) Vidyalaya Level, and (ii) R.O. Level. It is laid down that at Vidyalaya Level, the enquiry shall be initiated when a complaint is received from either the student or the parents. A memorandum is also to be issued to the teacher concerned giving the gist of the complaint and that the committee will obtain statements of the victim girl/her parents as well as other students who witnessed the incident or to whom the victim girl narrated the incident, the statement of the teacher(s) to whom the victim girl might have put up the complaint. It is also laid down there that the committee may enquire about the behaviour of the accused teacher towards other girl students from other teachers and their statements to be recorded. It has also been laid down that the views of the Principal about the accused teacher is to be obtained.

8. On our perusal of the records including the concerned disciplinary file as well as on our enquiry with the learned senior counsel for the respondents, we find that the genesis of the entire enquiry into the matter lies in purported receipt of an anonymous complaint said to have been written by one "Ahmed Ki-Ma". However, the contents of this anonymous letter were not known to anyone, neither to the Assistant Commissioner, nor to the Education Officer, or the Principal. It has, in fact, been recorded in the file that the Joint Commissioner, KVS, New Delhi, had telephonically directed the Regional Office and through him the Principal to enquire into the allegation. No copy of that letter written by the so called 'Ahmed Ki-Ma' is available in the disciplinary file produced before us. The Regional Level Enquiry Committee in their report have clearly noted as follows:

"Since the complaint written by one "Ahmed Ki-ma" and referred by Sh.Puran Chand JC (Acad) was not made available to the Regional level enquiry team, the enquiry team sought and obtained the copies of the statements given by the girl students and the statements given by the

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parents to the school level enquiry committee on 27th February 2002 and 3rd March 2002.....These documents were taken as base documents by the Regional Level Enquiry Committee for conducting the enquiry. In the course of enquiry Principal, KV, Lekhapani, made available the typed statements obtained by the enquiry committee constituted by the Chairman."

Thus, the process of enquiry had started on no hard basis, but merely on verbal telephonic direction and therefore, the question of finding out the ownership of the complaint did not arise. To that extent, the allegation leveled by the applicant that he was a victim of some machination gains ground. It is necessary to note here that the Principal was given verbal direction not only to enquire into the alleged misbehaviour of the applicant but also against three other officials, namely, Shri V.K.Yadav, PET; S.S.Baidya, Group D; and Shri Sugreev, Group D for their alleged misbehaviour towards the girl students who had gone on Sports Meet at Silchar during September 2001, i.e., about six months before. It is also to be noted that the students who actually

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gave statements about his alleged act of misbehaviour before the committees were common for both the cases.

9. Not only the enquiry was instituted against the applicant in an arbitrary manner, our finding is that it did not follow the procedure of enquiry as laid down in this regard in the KVS Hqrs's letter dated 24.1.2002 referred to earlier. Firstly, that neither the Principal nor the Regional Office Level Enquiry Committee was in possession of any written complaint filed either by a student or by any parents to initiate the proceeding. Secondly, the memo dated 27.2.2002 issued by the Principal to the applicant on receipt of telephonic instruction, did not constitute a memo of charges as laid down for Vidyalaya Level Enquiry. We agree with the submission of the applicant that a plain perusal of the memorandum reveals that the Principal before obtaining show cause reply from the applicant or before making any enquiry into the matter had come to the conclusion that the applicant had exhibited 'a doubtful character/guilty of immoral behaviour towards girl students while discharging

his routine duties in the Vidyalaya'. The whole process started with the strong belief that the applicant was guilty of misbehaviour with the girl students and the enquiry was conducted to uphold that conclusion. That being the mind set, there is no doubt that the proceeding was vitiated ab initio. Further, the Principal instituted two enquires in a span of two days; the first one consisting of three lady teachers, namely, Smt. J.B.Gogoi, Smt. S.G.Sood and Smt. Gunjan Kumar who enquired into the matter on 27.2.2002. The report of Smt. Gunjan Kumar is not available. However, Smt. Gogoi and Smt. Sood in their report had found the allegation not proved. This Committee had examined 15 students belonging to Classes VII, VIII and IX. This was followed by another Vidyalaya Level Enquiry conducted on 27.2.2002 and 2.3.2002. Simultaneously, on 28.2.2002, the Chairman, VMC appointed a court of enquiry consisting of Maj. Rohatas and two teachers of the Vidyalaya. After that the R.O. Level Enquiry was held. Nowhere explanation is available as to why the authorities had to convene two more

enquiry committees over and above the prescribed Committee at Vidyalaya Level and R.O. Level. It is also not clear why an Army officer was inducted to enquire into the disciplinary matter concerning Vidyalaya teachers/officials. That was clearly without jurisdiction. It is also not clarified why the report submitted by Smt. Gunjan Kumar was allowed to be withdrawn at the request of Maj. Rohatas Kumar. Some of the teachers have also gone on record to say how the army authorities had tried to put pressure on the teachers and other staff of the Vidyalaya with firm preconceived notion that some act of misbehaviour had taken place. No clear cut answer is available as to why Major Rohatas Kumar was so actively visible in the enquiries. Neither the Regional Level Enquiry Committee has clarified this point nor this has been explained in the office file.

10. We find from the records that both the Vidyalaya Level Enquiry Committee and R.O. Level Enquiry Committee collected statements from the said girl students and two of the parents without reference to any allegation. There is

also selectivity in calling the parents as witnesses. Only two parents/guardians were examined by the Vidyalaya Level Enquiry Committee . Those were the parents of the two of the girls out of 7 who in their statements had disclosed that the applicant was in the habit of putting his hand on their back. This picking and choosing witness at will vitiates the proceedings. Further, it is also noticed that when 15 students were examined on 27.2.2002, all that came out during enquiry was that the applicant had either slapped or put his hand on their back although no motive was ascribed. Then during the Vidyalaya Level Enquiry, some of these girls varied their statements to say that the applicant's hand would move 'here and there'. Then during the court of enquiry some of them varied their statements further to the extent of saying that some times the applicant's hand would touch their private parts from the side and this stand they maintained before the Regional Level Enquiry Committee. It is, however, admitted by the complaining girl students that they had not lodged any complaint even with their

parents against the applicant and that such type of behaviour on his part was of recent origin. . On the other hand, none of the boy students who were examined by the Regional Level Enquiry Committee had any complaint against the applicant about his behaviour nor anyone had noticed any immoral behaviour on the part of the applicant with their female colleagues in the class. We must note here that such an answer came out during the Court of Inquiry and Regional Level Enquiry proceedings when two girls were asked to demonstrate as to how the applicant used to keep his hand on their back. This type of enquiry process is surely not rational. We need hardly emphasize the need for taking great care and in using evidence of children as witnesses. And S/Shri N.Tirupathi Rao, Ranvir Singh, Suraj Phukan, Chandan Das, Home Bahadur Gurun, Sham Sher Singh, Ragul Phukan, Lochan Pandit and Jaikumar have gone to the extent of stating that the allegation is the handiwork of some girl students who were unhappy with the applicant as he was a hard task master and spanked them at

times. The boy students in their statements have also disclosed that they were apprehensive that the so called enquiry was being held only to throw out the applicant from service in which case it would not be not only be an act of grave injustice, but also would jeopardize their future. One of the teachers during his deposition before the R.O.Level Enquiry Committee did say that the allegation that the applicant had earlier also misbehaved with one Priya Jha was false. In the face of such deposition made before the Regional Level Enquiry Committee, the averment made by the Respondents in the counter at paragraph 9 is unreasonable and hence unacceptable. On the other hand, the grievance of the applicant that he was being victimized by some powerful group out of animosity gets credence.

11. To understand the background in which the complaint against the applicant and some other teachers/officials of the K.V., Lekhapani, was enquired into, the report submitted by Smt..Sood and Smt. Gogoi to the Principal as well as their depositions before the Enquiry

Committee would be relevant. Smt. Sood in her statement before the Enquiry Committee, had stated that her son also was a student of Class IX and that she had never heard anything adverse about the behaviour of the applicant from her son. She also stated that the girl students of Classes VII, VIII and IX being of growing age, they did not relish any physical contact with any male person however innocent that could be. She further stated that had those girls ever confided their discomfiture in any lady teacher, the misunderstanding could have been avoided and the applicant also could have been made aware of the feeling/sensitivity of those girl students. Smt. Gogoi in her deposition before the Enquiry Committee on 17.3.2002 stated that she not only stood by her report as a member of the Enquiry Committee dated 5.3.2002/2.3.2002 she being a teacher who had taken the children to Sports Meet to Silchar expressed her surprise and shock that the same girls had made the allegation against Shri Yadav and two other Group D staff although they had never reported any problem

of theirs to her on the spot and making such allegation after six months was not understandable. She further stated as follows:

"Throughout my duty I was with them and neither such thing has happened nor it has been reported to me by any girl student till now or by their parents till 27.2.2002so I would say that to my knowledge no such incident has happened during my escorting duty."

The Regional Level Enquiry Committee has not bothered to evaluate the evidence of Smt. Gogoi, but completed their duty by confirming that the allegation of misbehaviour is proved. The authorities have also failed to appreciate the facts in proper perspective.

12. From the findings of the Vidyalaya Level Enquiry Committee and the R.O.Level Enquiry Committee it appears that the observations of Smt. Sood, Hindi Teacher in her report dated 27.2.2002 and her deposition before the Regional Level Enquiry Committee that the so called allegation reflects the problem in true colour. Such a conclusion appears to be reasonable when one goes through

the statements made by the other girl students, the boy students of those classes, the statements made by the parents and other teachers of the School about the work and conduct of the applicant. The Principal had also admitted in his deposition before the Regional Level Enquiry Committee that he had never received any complaint against the applicant from any parents in the parent-teacher meeting or in the Managing Committee meetings and that the applicant was a sincere and hardworking teacher and nothing adverse had come to his knowledge ever before. It is also to be noted that the daughter of the Principal was also studying in that Vidyalaya in Class IX and was one of the students who had deposed that she had no problem with any teacher. From the above facts of the case, it appears, the applicant's habit of slapping the girl students in class who were weak in Mathematics was not liked by them, and he had not taken note of this sensitivity of the girl students earlier. This may be the reason why the Principal while forwarding the enquiry report to the higher authorities with his recommendation for

3/ initiating disciplinary action against the erring officials by his letter dated 3.3.2002 (Annexure F of the file) had in respect of the applicant recommended "for imposition of suitable punishment under Article 81(b)" whereas against Shri V.K.Yadav, PET recommended "imposition of highest order of punishment under Article 81(b).

13. In the whole process of enquiry, the role of the Principal was crucial. He being the head of the institution was saddled with the responsibility to take cognizance of the formal complaint about sexual misbehaviour and to follow a set procedure for fact finding and then deciding whether the matter requires further enquiry by the Regional authority. From the start to finish in this case the Principal appears to have worked under pressure. He swung into action on receipt of a telephonic instruction and the memorandum dated 27.2.2002 that he issued to the applicant clearly points out that his mind was already made up because in the memorandum, first he issued warning to the applicant that he is guilty of immoral behaviour towards

girl students while discharging his duties in the Vidyalaya and then he asked him to submit his reply. Thereafter, it appears that he was put under pressure by the army officials. Some senior army officers attended staff meeting in which, according to one staff member, namely, Shri C.Agarwal, the army officer had threatened stern action against the teachers and staff members. After the meeting was over, he lodged protest with the Principal. Finally, the Principal although he had in the memorandum dated 27.2.2002 warned the applicant that he was guilty of immoral behaviour, in his statement before the Regional Level Enquiry Committee did commend the work and conduct of the applicant and was frank enough to admit that he had never received any complaint from any parents/student against the applicant. He was rent asunder between his conscience and his pragmatic consideration to remain on the right side of the authorities.

14. The applicant had taken the plea that no regular enquiry was conducted which rendered the proceedings

arbitrary and discriminatory. However, this plea is not sustainable as the procedure of summary enquiry in the matter of enquiring into sexual misbehaviour against girl students has been upheld in the case of *Avinash Nagra v. Navodaya Vidyalaya Samiti and others*, 1997(2) SCC 534.

However, following the ratio of that decision, the Sangathan has laid down that while dispensing with right to cross-examining the witnesses, the Vidyalaya should follow the procedure of show-cause notice before awarding punishment, to allow the benefit of minimum requirement of principle of natural justice. The show-cause notice shall consist of the following:

- (i) Charge
- (ii) Facts in support of the charge
- (iii) Statement recorded in the preliminary inquiry.
- (iv) Report of the preliminary inquiry.

The charged official will also be given opportunity to submit representation to the said show cause notice and only after considering his written submission, order can be passed in

the matter. However, it is clear from the present case that the procedure as laid down above with regard to initiation of action under Article 81(b) was not followed either in letter or in spirit. As has been submitted by the applicant he was transferred out of K.V., Lekhapani, on 17.4.2002 to K.V., Dhanbad, where he got the order of termination of service on 9.5.2002. Such a procedure for termination of service is not conceived under Article 81(b) or in the order of the Sangathan referred to above, nor such sanction has been given in the procedure prescribed for the purpose. As the applicant was removed from service without providing him with the charge (s), facts in support of the charge, the statements recorded in the preliminary enquiry, etc., the punishment inflicted on him was ab initio illegal being in violation of the minimum requirement of principles of natural justice. We also notice that the Regional Level Enquiry Committee's report was prepared without application of mind. Out of seventeen individual statements, initially seven had alleged misbehaviour on the part of the applicant. Later



only five stood by their earlier statements. The Committee did not examine the complaining girl students as to why they had varied their statements before every successive Enquiry Committee. They also have not taken into account the fact that the allegation has been made by some of the girl students and not all the girl students and the reason thereof. They have also not taken into account the fact that excepting five girl students, the other girl students including the daughters/sons of the Principal /other teachers who were also students of Class VII, or VIII, or Class IX had not only no complaint against the applicant, but were of praise about him as a teacher. They have also not considered the frank and forthright report as well as the statements of Smt. Sood and Smt. Gogoi, both as members of the Enquiry Committee and as witnesses before the Regional Level Enquiry Committee to get into the truth of the matter. From the file, we find no evidence that either the Joint Commissioner or Commissioner had applied their mind to the facts or circumstances of the case. They were

influenced by the recommendation of the Enquiry Committee as put up before them in the office note. This is surely a case of total negation of justice.

15. Another grievance of the applicant is that the appellate authority had disposed of his appeal without application of mind. We have perused the order of the appellate authority. The procedure for consideration of appeal has been laid down under Rule 27(2) of CCS (CCA) Rules. Three conditions have been laid down for the appellate authority to consider the appeal. These are:

- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;"

From a perusal of the appellate order and from the discussion we have made above, we have no doubt that the appellant authority did not look into fundamental question whether the procedure laid down in Sangathan's letter dated 24.1.2002 or the procedure as commanded by the decision of Avinash Nagra's case has been complied with and, if not, whether such non-compliance has resulted in violation of any provisions of the Constitution of India and thus resulted in the failure of justice. On the other hand, from a perusal of the appellate order, we are of the opinion that the issues raised by the applicant in his appeal had not been gone into with reasons and disposed of summarily. The appellate authority had also not examined carefully either the report of the Committee set up by the Principal on 27.2.2002, Vidyalaya Committee dated 28.2.2002, the Regional Level Enquiry Committee on 16.3.2002, and the statements made by the girl students, the boy students, the

members of the staff, and the Principal. We are also surprised to find that he had not questioned how an enquiry could be ordered to be instituted without any valid basis and also why, even if any anonymous letter was received, a copy of that anonymous letter was not given to the Enquiry Committee. If we sum up our findings as discussed above in the preceding paragraphs, it would appear that the whole enquiry was set up with a preconceived notion and serious pressure was generated on the Principal as well as on the Regional authority who succumbed to the pressure and never tried to put things in proper perspective, even though enough materials were available before them to find out the truth of the matter. It is an accepted principle of law that complaint lodged after long passage of time loses its evidentiary value and degenerates into an afterthought having no cognizance in the eye of law. The truth of the matter lies in what Smt. Sood had stated in her deposition before the Regional Level Enquiry Committee that some of the girls of Classes VII, VIII and IX who were of growing age

did not like the teacher touching their body and that they treated as an intrusion into their privacy. There is no doubt that the applicant had failed to keep in mind the basic principles of handling girl child that once a girl becomes of age, she expects to be respected as a lady. A teacher can scold her but never beat her. However, as the applicant himself had realized this mistake of his, the Enquiry Committee as well as the appellate authority should have judged the standard of his behaviour with reference to his overall reputation, and how the others of the Vidyalaya had judged his behaviour. In other words, the appellate authority should have looked into every aspect of the case and evaluated the facts in proper perspective before taking the drastic decision of his removal from service.

16. In this view of the matter, as the disciplinary proceeding, from the start to finish, has been based on no complaint and without following any of the procedure either prescribed by KVS's letter dated 24.1.2002 or the procedure as laid down in Avinash Nagra's case (supra), this O.A.



succeeds on ground of illegality of the action initiated against him, its irrationality and above all, procedural impropriety. It thus passes all the three conditions of Wednesbury test. We accordingly set aside the impugned order dated 2/3.5.2002 (Annexure 4) as also the appellate order at Annexure-6 and direct the Respondents to reinstate the applicant in service from the date he was removed with all consequential service benefits. Liberty is, however, granted to the Respondents to take such action as deemed necessary to correct the pattern of behaviour of the applicant in dealing with the students as a whole and the girl students in particular in the interest of harmonious student teacher relationship. No costs.


(M.R. MOHANTY)
JUDICIAL MEMBER


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