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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

O.A. NO.432 OF 2003
Cuttack, this the 30th day of August, 2005.

SMT. KALPANA MITRA APPLICANT

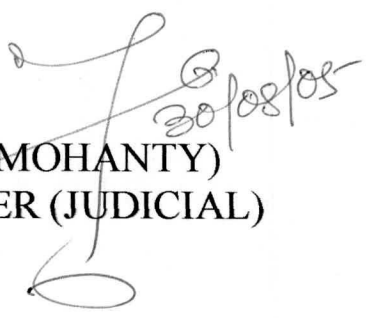
VERSUS

UNION OF INDIA & ORS. RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? 7/2
4. Whether it be circulated to all the Benches of CAT? 7/2


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No. 432 of 2003.
Cuttack, this the 30th day of August, 2005.

C O R A M:-

**THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)**

KALPANA MITRA, aged about 50 years, W/o. Sri Samir Roy,
Resident of 2RB- 25/4, Unit-VIII, Gopabandhu Nagar,
Bhubaneswar, District- Khurda.

..... **APPLICANT.**

For the Applicant: M/s. S.K. Sarangi, M.R.Pattnaik, Advocates.

VERSUS

1. Kendriya Vidyalaya Sangathan, 18, Institutional Area,
Saheedjit Singh Marg, New Delhi-110 001, being
Represented by its Commissioner.
2. Assistant Commissioner, KVS, Regional Office,
HP-7, BDA Locality, Laxmisagar, Bhubaneswar-6.
3. Joint Commissioner, Administration & Appellate Authority
KVS, 18 Institutional Area, Sheedjit Singh Marg, New Delhi.
4. Principal, KV No.2, Kalaikunda Airforce Station, Kharagpur,
District-Midnapur, West Bengal.

..... **RESPONDENTS**

For the Respondents: Mr. Ashok Mohanty, Sr. Counsel &
Mr.S.P.Nayak, Advocate.

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ORDER

MR. M. R. MOHANTY, MEMBER(JUDICIAL):-

Applicant joined as a Primary Teacher (PRT) in Kendriya Vidyalaya Sangathan (KVS) on 08-11-1982 and, subsequently, joined as a Trained Graduate Teacher (TGT) on 31.08.1984. After having worked in different KVs in the country, she joined as TGT in KV at Bhubaneswar. Having been relieved from Bhubaneswar, on 02-07-2001, she reported to duty on 14-07-2001, in KV at Kaleikunda. Thereafter, in order to shift her belongings and her widow mother, the Applicant got one day sanctioned casual leave, on 26.07.2001, and proceeded to Bhubaneswar. By placing materials on record, it has been disclosed by the Applicant that as illness overpowers her movement to Kaleikunda, she applied extension of leave by sending a telegram and by writing a letter on 16.07. 2001. In turn, the Principal of the KV at Kalaikunda, in his letter dated 19-07-2001, refused to grant leave and advised her to report to duty immediately. She was warned that on her failure to report to duty immediately, action as deemed fit and proper would be taken against her. It is the further case of the Applicant that as she was unable to

move due to her illness and illness of her mother, she went on making leave applications (supported by medical certificates) but despite of her periodical written requests (for grant of leave due to illness, supported by medical certificates) she was issued with a letter (dated 19.10.2001) stating therein that the Applicant neither reported to duty within the aforesaid period of 15 calendar days nor satisfactorily explained the reasons for her absence and that, therefore, in terms of Sub clause (1) of Clause (d) of Article 81 of the Education Code of Kendriya Vidyalayas, she is deemed to have voluntarily abandoned her service and thereby provisionally loss lien on her post. Thereafter, on the reply submitted by the Applicant under Annexure-7 dated 19.10.2001 she was allowed personal hearing by the Assistant Commissioner on 18.12.2001 and finally, under Annexure 9 dated 17.10.2002, her lien from the post was terminated; for which she preferred an appeal and the said appeal of the Applicant having been rejected (under Annexure 10 dated 7/8-08-2002) she filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:-

- (i) to issue notices to the Respondents to show cause and after hearing the parties may be pleased to declare the amendment of articles 81 (d)(3) as illegal, against the spirit, void

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and not applicable to the applicant and to quash the order vide Annexures-9 and 10;

- (ii) And be further pleased to direct the Respondents to reinstate the Applicant with all her back wages”.

2. The above noted factual position of this case are not in controversy . However, the Respondents have stated (in their counter) that the Applicant was granted leave for 16.7.2001 but instead of reporting back on she went on sending medical certificates showing her illness and that her such absence disrupted the education of the students at KV at Kaleikunda, and, in the said premises it was felt just and proper (by the competent authority) to treat her absence as “voluntary abandonment of service” and that, accordingly, after following due procedures (as laid down in Article 81 (d) of KVS Education Code), she was terminated from the service of the Kendriya Vidyalaya Sangathan and that said termination order has also been confirmed by the Appellate Authority.

3. We have heard Mr.S.K.Sarangi, Learned Counsel appearing for the Applicant and Mr. Ashok Mohanty, Learned Senior Counsel appearing for the K.V.S. and perused the materials placed on record.



4. In support of their stands, the Learned counsel for the parties have reiterated their grounds taken in the pleadings but we are not inclined to place those arguments as that would be a futile exercise in view of the decision already taken by this Bench of the Tribunal rendered in Original Application No. 143 of 2001 between **(MS. GAYATRI MISHRA – vrs.- UNION OF INDIA AND OTHERS)** disposed of on 04-11-2004. In the said case , the Applicant was also removed from service by applying 81 (d) of the Education Code framed by the K.V.S. and while deciding that case, this Tribunal has held that dismissal/removal from service on account of absence/overstayal of leave is too harsh and is uncalled for in view of the decisions of the Hon'ble Supreme Court of India rendered in the case of **UNION OF INDIA & ORS. –vrs. GIRIRAJ SHARMA** (Reported in AIR 1994 SC 215); in the case of **MANAGEMENT OF NILPUR TEA ESTATE – vrs. – STATE OF ASSAM AND OTHERS** (reported in AIR 1996 SC 737), in the case of **STATE OF PUNJAB AND OTHERS vrs. BAKSHISH SINGH** (reported in AIR 1997 SC 2696); in the case of **SHRI BHAGWANLAL ARYA – Vrs. COMMISSIONER OF POLICE DELHI AND OTHERS** (reported in (2004) SCC (L&S) 661) and in the case of **RAM AUTAR**

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SINGH vs. STATE PUBLIC SERVICE TRIBUNAL AND OTHERS (reported in AIR 1999 SC 1542).

5. The admitted fact of the parties are that Applicant proceeded on leave for one day (to go to Bhubaneswar) to bring her belongings and her old mother and remained about for about 86 days (by making application) for the reason of her illness, supported by Medical Certificates. If there was any doubt about the genuineness of such certificate, under the Rules, the authorities could have referred the matter to the medical Board. There are no materials placed on record (from the side of the Respondents) to show that they have ever asked the Applicant to face the medical Board, either during her leave or thereafter. That apart, the Applicant had also a right to apply for leave; which she exercised. It is the specific plea of the Applicant that her absence from duty was due to illness; which was also duly intimated by her to the authorities time and again. We, therefore, feel that the punishment of removal for absence for a period of less than three months (which was due to illness) is certainly harsh and shocking. We also feel that the punishment of removal from service is like imposing a death sentence on an employee of the KVS; whose source of income generates from job of a teacher. Article 21 of

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the Constitution of India guarantees right of life and livelihood to every citizen of this country and, therefore, an order by which the life line is cut has to be adjudicated in a manner which must be fair to both the parties. We also took support of a decision of the Hon'ble High Court of Orissa rendered in the case of PARESWAR TRIPATHY vs. UNION OF INDIA (reported in 89 (2000) C.L.T. 274); wherein a constable in CRPF faced an order of removal due to unauthorized absence of 207 days (on the ground of illness) and the Hon'ble High Court of Orissa (by taking support of the decisions of the Hon'ble Apex Court of India rendered in the case of EX.NAIK SARDAR SINGH vs. UNION OF INDIA AND OTHERS reported in AIR 1992 SC 417), held that "*the Court's conscience is shocked to see that a bona fide constable loses the job for his absence from duty on medical ground. It is true that regarding the quantum of punishment this court may not substitute by passing the order of punishment as the case deserves, but this Court can hold that the ultimate punishment of removal from service is not warranted. As life includes livelihood, the matter should be considered by the disciplinary authority once again and any other penalty may be inflicted except the punishment of removal*"

from service". We also see, in the present case, that the order of punishment of removal from service and/or lose of lien for just 86 days of absence (for which she produced Medical Certificate) is highly disproportionate/shocking which deserves to be interfered with.

6. We have also gone through the provisions of Article 81 (d) of the Education Code framed by the K.V.S, in which Sub clause 1(b) of Article 81 (d) provides as under:-

"1. If an employee has been absent/remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall provisionally lose his lien on his post unless:-

- (b)
- (c) satisfies the appointing authority that his absence or his inability to return on the expiry of the leave as the case may be was for reasons beyond his control. The employee not reporting her duty within fifteen calendar days and satisfactory explaining the reason for such absence as aforesaid shall be deemed to have voluntarily abandoned his service and would thereby provisionally lose lien on his post."

Reading the aforesaid clause, it prima facie gives an impression that while passing the impugned order of punishment by applying Article 81 (d), the authorities had not applied their mind properly/judiciously. It is an admitted fact that the Applicant's absence from her duty was due to her illness; for which she had intimated in writing and by sending telegram; supported by medical

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certificates. All along right from making representation till giving explanation(both oral and writing), she had brought to the notice of her authorities that her absence was not willful or deliberate but because of her illness and yet she was removed from service by utilizing the democle's sword available in the hand of the authorities. Though we do not want to comment upon on the validity of the provisions of Article 81(d); yet we would like to impress the authorities that due care and caution should be taken while utilizing the powers under Article 81(d) against an employee of KVS; as casual application of that clause is not only harmful to the employee concerned, but also it takes away the right to life as enshrined under Article 21 of the Constitution of India.

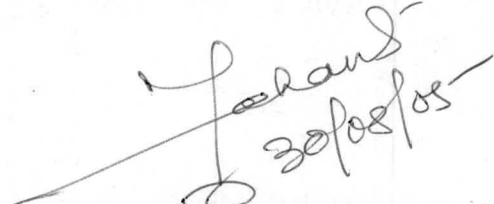
7. In view of the discussions made above, we find that, apart from the finding that the punishment imposed on the Applicant was grossly disproportionate, the application of Article 81 (d) in the present case was also unwarranted/uncalled for because adequate explanation was available for the absence. We, therefore, quash the order of punishment imposed on the Applicant under Annexure-6 dated 10.10.2001, Annexure 9 dated 17.10.2002 and the order of the Appellate Authority under Annexure 10 dated 07/08-08-2002 . The

Respondents as a consequence, are hereby directed to reinstate the Applicant and allow her to join her duty.

8. As the Applicant had to remain absent due to her illness and submitted leave application supported by Medical Certificates, the period of her absence from duty shall be regularized by grant of leave, as due and admissible under the Rules.

9. In the result, this Original Application is allowed. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)