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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

O.A.NO. 1464 OF 2003

Cuttack, this the 27th day of January, 2005

Ram Prasad Agarwal

.....

Applicant

Vrs.

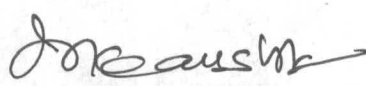
Commissioner of Kendriya


Vidyalaya Sangathan and others.....

Respondents

For Instructions

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


(J.K.KAUSHIK)
JUDICIAL MEMBER


(B.N.SOM)
VICE-CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

**HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI J.K.KAUSHIK, JUDICIAL MEMBER**

Ram Prasad Agarwal, aged about 57 years, son of late M.R.Agarwal, Ex-clerk, in Kendriya Vidyalaya, residing at 2nd Lane, Gandhinagar, P.O.Berhampur, Dist. Ganjam

..... Applicant.

Advocates for the applicant - M/s.J.M.Mohanty
M.Pani, D.Mohanty,
K.C.Mishra &
D.P.Mohanty

Vrs.

1. Commissioner of Kendriya Vidyalaya Sangathan, New Delhi, 18th Institutional Area, Sahid Jeet Singh Marg, New Delhi 110 016.
2. Joint Commissioner, Administration and Appellate Authority, Kendriya Vidyalaya Sangathan, 18th Institutional Area, Sahid Jeet Singh Marg, New Delhi 110 016.
3. Asst. Commissioner, Kendriya Vidyalaya Sangathan, Opp. To Municipal High School, Regional Office, Laxmisagar, Bhubaneswar

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4. The Principal, Kendriya Vidyalaya No.2, Lakipalli,
At/PO/Dist. Bolangir

.....Respondents

Advocates for Respondents - M/s Ashok Mohanty,
S.P.Nayak & M.K.Rout

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Ram Prasad Agarwal, formerly Upper Division Clerk ('UDC' in short), Kendriya Vidyalaya No.2, Balangir, has filed this Original Application, being aggrieved by the order, dated 20.3.2003 (Annexure A/15) passed by the Joint Commissioner(Administration), Kendriya Vidyalaya Sangathan ('K.V.S.' in short) confirming the order dated 17.01.2002 (Annexure A/14) passed by the Disciplinary Authority who, in exercise of his power under Article 81(d) of the Education Code, confirmed the loss of lien on the post of UDC held by the applicant and ordered his removal from service of K.V.S. with immediate effect, i.e., from 17.1.2002.


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2. The applicant has prayed for a declaration that the insertion of Article 81(d) in Education Case is redundant and liable to be rejected and for quashing the orders passed by the Disciplinary Authority and the Appellate Authority at Annexures A/14 and A/15.

3. Shorn of details, the grievance of the applicant is that while working as UDC at Kendriya Vidyalaya No.2, Balangir, he applied for grant of leave for five days from 18.9.2001 to 22.9.2001. However, instead of granting the leave applied for, the Principal of the said Vidyalaya (Respondent No.4), by issuing memorandum dated 25.9.2001, called upon the applicant to show cause why action should not be taken against him under Article 81 (d) of the Education Code. Without proceeding further with regard to the disciplinary action taken against him and without acceding to the request of the applicant to grant him time to file show-cause to the memorandum sent to him on

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25.9.2001 (Annexure A/6), Respondent No.3 by memorandum dated 26.11.2001 (Annexure A/9) directed the applicant to appear before the Medical Board constituted for the employees of Kendriya Vidyalaya, Berhampur, by 3.12.2001 for second medical opinion so as to enable the said authority to consider his request for grant of extension of time limit for filing the show cause. Thereafter on 20.12.2001 a memorandum (Annexure A/10) was issued by Respondent No.3 initiating disciplinary action against him under Rule 14 of the CCS (CCA) Rules, 1965 and also appointing a Presenting Officer in that regard. By memorandum dated 28.12.2001 issued by Respondent No.3, the applicant was directed to resume his duties at the Kendriya Vidyalaya NO.2, Balangir, within 10 days of receipt of that memo, failing which he was informed that it would be presumed that he was no more interested to serve the Sangathan and loss of lien on the post of UDC held by him as per Article 81(d) of the Education Code would be taken. This was followed by passing of the order dated 17.1.2002



by Respondent No.3 (Annexure A/14) removing him from service.

4. The Respondents have opposed the Original Application by filing a detailed counter. They have justified the action taken by them on the ground that the applicant, contrary to the averments made in the O.A., on his own accord, had proceeded on leave without obtaining permission and therefore, from 17.9.2001 he was notified to be absent unauthorizedly. Referring to the stipulation contained in Article 81(d) of the Education Code, they have submitted that the Board of Governors of the Kendriya Vidyalaya Sangathan had enacted Article 81(d) of the Education Code to check the instances of unauthorized actions of teachers/employees which caused indiscipline and break down in academic standards in Vidyalayas. They have, therefore, by enacting the new Article, as referred to above, laid down that if an employee remains absent without sanctioned leave or beyond the period of leave originally

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granted or subsequently extended, he shall provisionally lose his lien on his post unless he returns within fifteen calendar days of the commencement of the absence or the expiry of leave and satisfies the appointing authority that his absence or his inability to return on the expiry of the leave was for reasons beyond his control. The employees not reporting for duty within fifteen calendar days and satisfactorily explain the reasons for such absence, as aforesaid, shall be deemed to have voluntarily abandoned his service and would thereby provisionally lose lien on his post. They have also laid down the procedure for taking action under the said Article regarding voluntary abandonment of service. The contention of the Respondents is that the applicant remained unauthorizedly absent with effect from 18.9.2001 for which show-cause was issued vide Annexure R/2 on 5.11.2001 asking him to show cause. They have further contended that the applicant did not apply for leave on health ground as would be evident from his leave application dated 17.9.2001 and as the applicant was in the

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habit of taking leave time and again on personal grounds, the same was refused by the competent authority. They have also referred to the application as submitted by the applicant in this regard at Annexure A/5 in proof of their statement. However, after refusal of the leave, the applicant remained absent and left the headquarters without permission and therefore, action was initiated under Article 81(d) of the Education Code. Further, to assess his health condition, they directed him to appear before the Medical Board at Berhampur by 3.12.2001 and when he expressed his inability to appear before that Board, the Respondents required the Medical Board comprising an Assistant Surgeon and an Assistant Professor of Medicine, M.K.C.G. Medical College & Hospital, Berhampur, to visit his residence. The Board accordingly visited the residence of the applicant on 1.12.2001 when he was absent and again 2.12.2001 when they examined the applicant and found him fit to resume duty. In spite of this medical report, the applicant having not joined duty, action under Article 81(d) of the Education Code

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was taken and he was removed from service. Regarding the disciplinary action taken against him by their memo dated 16.10.2001, they clarified that he was being proceeded separately under the provisions of Conduct Rules for other acts of his omissions and commissions amounting to misconduct and that charge memorandum had nothing to do with regard to his unauthorized absence from duty.

5. We have heard the learned counsel for both the sides and have perused the records placed before us.

6. At the outset, it needs to be pointed out that the applicant has not made out a cogent and focused case seeking judicial intervention to quash the order of the disciplinary authority at Annexure A/14 and the order of the appellate authority at Annexure A/15. His grievances are meshed up in several unrelated incidents of his service career. We have, therefore, very carefully gleaned through the various documents he has submitted to satisfy that he

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had good reasons to be away from duty on health grounds. We see lot of logic in the counter-averments made by the Respondents that while in this O.A. the applicant has harped on the point that health-wise he was badly suffering for which he had to proceed on leave without waiting for formal approval of leave, but in fact in his leave application submitted on 17.9.2001 the ground on which he sought for leave has been stated as follows:

"personal work to meet the family members
at BAM who are in financial problem without salary.
Also, I don't have money to remain here at present."

We have no doubt that the ground for leave given in the application form did not talk about his health problem but talk about his utter financial distress. Be that as it may, in the interest of fairness and justice, we would like to go beyond this application and scan through the various medical reports that he had submitted to see whether he could have genuine health problems to be on leave. At Annexure A/16 he had submitted medical certificates issued

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by Authorized Medical Attendant, Dr.Dilip Kumar Mishra, Assistant Surgeon, City Hospital Berhampur recommending medical leave from 18.9.2001 to 17.10.2001, from 18.10.2001 to 16.11.2001, from 17.11.2001 to 15.12.2001 and from 15.12.2001 to 14.1.2002 for restoration of his health. He has also produced OPD tickets and diagnostic reports from the Post Graduate Department of Microbiology, MKCG Medical College & Hospital, Berhampur, wherefrom it reveals that he was being treated for his cardiac problem and he had problem of kidney. From one of the reports, it appears that while his right kidney was functioning well, the left kidney was perhaps not functioning. From a perusal of these medical reports, the case is quite clear that the applicant had serious problems of kidney and also other related complications including cardiac problem. The Respondents could not have omitted to see the significance of these medical reports/certificates issued by the physicians, be it Assistant Surgeon, or Cardiologist, or Professor & HOD, Urology. Everything was not right with his

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health and he had a serious kidney problem. In fact Dr. P.B.Sivaraman, Professor &HOD of Urology, Madras Medical College & Govt. General Hospital, Chennai, by issuing a certificate dated 7.2.2002 has stated that the applicant has a poorly functioning of the left kidney and he requires exploration of the left kidney. It also appears that the applicant had undergone renal scanning at Malar Hospitals Ltd., Adayar, Chennai in the Department of Nuclear Medicine, as a result of which it was diagnosed that his left kidney may not be functioning. The Respondents have submitted both in their counter and also during the oral enquiry that the Medical Board was constituted to examine the health condition of the applicant and that the said Board had certified him fit for resuming duty. A copy of the report of the Medical Board has been enclosed at Annexure R/5. We have perused the said medical opinion regarding the health condition of the applicant on 2.12.2001 at his residence.

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7. By filing medical reports/prescriptions/medical certificates, the applicant has stated that it was on 16.9.2001 that one Dr.Balaram Panigrahi, M.D., Medicine Specialist, Balangir, had asked him for carrying out ultrasound test of abdomen as well as renal, followed by the advice of Dr.Paremeswar Rath who referred him to V.S.S.Medical College & Hospital, Burla, for further advice. Then on 5.10.2001 one Dr.Subash Chandra Bisoi advised him to undergo surgery for removal of renal multiple stone. He has also produced an Outdoor Ticket of MKCG Medical College & Hospital, Berhampur, wherein it is recorded that he was suffering from renal colic from June 2001 and was, therefore, to carry out thorough check up of kidney and Dr.K.K.Panigrahi on 2.1.2002 advised testing of K.U.B. and I.V.P. The report of left renal check revealed multiple radiopaque shadows (2 in numbers over the left renal region) and the case was recommended for USG, i.e., renal scan. The applicant carried out renal scanning at Molar Hospitals Ltd.. Chennai, on 29.1.2002 , being referred by

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Prof. P.B.Sivaraman, HOD of Urology, Madras Medical College & Government General Hospital, Chennai. On renal scan it revealed that his left kidney was not functioning and therefore, removal of left side kidney was recommended.

8. That being the medical history in respect of the applicant, we are of the view that the Medical Board which visited the applicant at his residence was not properly equipped to go into these aspects of his health. We are not aware whether the Respondents had put the medical documents in respect of the applicant before the Medical Board to obtain their opinion when the other attending doctors had found out that the applicant was having kidney problem and he had been advised to carry out various tests in that regard. The report regarding stone in his kidney was available as early as in October 2001. In the circumstances, these vital informations about his health could not have eluded the notice of the specialists in the Medical Board, had they been apprised properly. On the

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other hand, we are not impressed with the way the Medical Board was convened. A patient with history of renal as well as cardiac related problems should have been examined by the Medical Board with proper equipments and if so desired, they could have carried out necessary tests to find out the true state of his health. None of that sort was done. The case of the applicant was treated in a routine manner.

9. We are also surprised to see that the Medical Board, which reported to have visited the residence of the applicant, prepared the report without obtaining either the signature of the applicant or taking signature of any independent witness. Further, by visiting a patient's house a Doctor can only check his blood pressure, pulse and general condition of the chest and abdomen and surely cannot say whether the patient is suffering from any organic defect. In the circumstances, the so called opinion of the Medical Board submitted by the Respondents at Annexure R/5 does not instill confidence and hence we do not think it was

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advisable on the part of the Respondents to depend on such a report to take the most drastic action of removing a person from service.

10. From the facts of the case, it is apparent that the Respondents have treated the whole case with certain predetermined ideas, that the applicant was deliberately avoiding duty. There was surely lack of proper appreciation of the problems affecting the applicant as also lack of empathy in listening to his sorrows. It is clear to us that the applicant has already been suffering from kidney problem when he reported to the OPD of M.K.C.G. Medical College & Hospital, Berhampur, in June 2001. The way he had filled up his leave application dated 17.9.2001 gives us enough hints to understand that he was suffering from serious financial constraint coupled with serious health problem, as a result of which he was unable to put proper things in proper place. As the days passed, his health problems only accentuated resulting in the advice given by

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Dr.P.B.Sivaraman of Madras Medical College & Government General Hospital, Chennai that his left side kidney required removal. It would be an act of unkindness of highest kind and injustice of Himalayan height if a person afflicted with such health problems is made to suffer under the vires of Article 81(d) of the Education Code. Surely, the KVS did not introduce Article 81(d) to remorselessly erase out its employees, but it was done with the purpose of controlling indiscipline, to deal with those who do not have proper devotion to duty to keep up the high standard of education available at the Kendriya Vidyalayas. But unfortunately, in this case the Respondents have treated the applicant with preconceived notion and the way the Medical Board had carried out its task leads one to believe as if it was not a Medical Board but a mere pretext to throw out someone not acceptable to the authorities in charge. Surely, this could not have been the intention of codifying Article 81(d) by the rule-makers and therefore, to keep up the sanctity of Article 81(d) it is high time that the KVS properly trains up its

functionaries to use this weapon with extreme care, caution and understanding of the situation with total objectivity. As the objectivity was altogether missing in dealing with the problems of the applicant, we have no hesitation to quash Annexures A/14 and A/15 and order that the applicant should be taken on rolls with immediate effect with all back wages. The Respondent No.3 should also find out, as a measure of welfare, the cost of medical expenses incurred by the applicant who had to travel all the way from Berhampur to Chennai and give him all comfort which may lessen the agony that he is suffering due to malfunctioning of one of the kidneys. Humanism should never be allowed to desert us however formidable a situation we may face. Having regard to this philosophy of life, which should also permeate a good administration, we order as above.

11. We, however, do not see merit in the other prayer made by the applicant that Article 81(d) of the Education Code is redundant. We have already upheld the efficacy of

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Article 81(d), but what we have found here is that its application was neither judicious nor humane for which we have decided to intervene.

12. Accordingly, this Original Application is allowed to the extent indicated in paragraph 10 above. No costs.


(J.K.KAUSHIK)
JUDICIAL MEMBER


(B.N.SOM)
VICE-CHAIRMAN

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