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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.
CUTTACK BENCH, CUTTACK

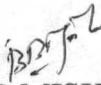
O.A.NO. 877 OF 2004

Cuttack, this the 22nd day of June 2007

Shri Aditya Kumar Mund	Applicant
Vrs.		
Union of India and others	Respondents

FOR INSTRUCTIONS

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


(B.B.MISHRA)
ADMINISTRATIVE MEMBER


(N.D.RAGHAVAN) 22-6-07
VICE-CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.
CUTTACK BENCH, CUTTACK

O.A.NO. 877 OF 2004
Cuttack, this the 22nd day of May, 2007
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CORAM:

HONOURABLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN
AND
HONOURABLE SHRI B.B.MISHRA, ADMINISTRATIVE MEMBER

.....
Shri Aditya Kumar Mund, aged about 44 years, son of Padmanav Mund,
At/PO-Totraguda, P.S.Jaipatna, District Kalahandi
.....
Applicant

Advocates for the applicant - M/s Sameer K. Das
R.N.Mishra

Vrs.

1. Union of India, represented through its secretary, Ministry of Human Resources Department, Sastri Bhawan, New Delhi.
2. Chairman, Navodaya Vidyalaya Samiti, Indira Gandhi Stadium, I.P.Estate, New Delhi 2.
3. Commissioner, Navodaya Vidyalaya Samiti, I.S.I.P.Estate, New Delhi 02.
4. Deputy Director, Regional Office, Navodaya Samiti, At/PO-Zone II, M.P.Nagar, Bhopal 462011.
5. Collector & District Magistrate-cum-Chairman, Jawahar Navodaya Vidyalaya, Navrangpur.
6. Principal, Jawahar Navodaya Vidyalaya, Khatiguda, District Navrangpur

..... Respondents

Advocate for the Respondents - Mr.A.K.Bose

.....
ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant, formerly working as Vice Principal and remaining in charge of Principal, Jawahar Navodaya

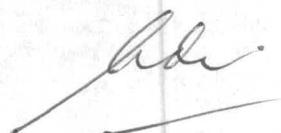
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Vidyalaya, Nabarangapur, has prayed for quashing (Annexure-9) the order dated 13.6.2003 passed by the Commissioner, Navodaya Vidyalaya Samiti, terminating the services of the applicant with immediate effect, and (Annexure-12) the order dated 31.10.2003 passed by the Appellate Authority upholding the termination of the services of the applicant and rejecting his appeal.

2. The case of the applicant, to put in a nutshell, is as follows:

2.1 He joined as a Trained Graduate Teacher (TGT) on 1.7.1999 in Jawahar Navodaya Vidyalaya (hereinafter referred to as 'Vidyalaya') and posted as Post Graduate Teacher (PGT) on 2.7.1990 in consideration of his better academic record. He got promotion to the post of Vice-Principal on 16.8.2002. Due to his outstanding service records and excellent academic achievements, he was issued with letters of appreciation and congratulations and certificate of excellence by the authorities of the Navodaya Vidyalaya Samiti (hereinafter referred to as 'Samiti'). He was transferred to the Vidyalaya at Khatiguda in the district of Nabarangpur on 14.9.1992 and remained in charge of the Principal. When he found that there were only four teachers and one L.D.Clerk, that the teachers were not taking classes as per the time table, and that the staff were not staying in the school campus, the applicant took necessary steps and issued necessary instructions and strictly adhered to the rules for smooth functioning of the Vidyalaya. It is his case that just after three months of his joining there, the Collector & District



Magistrate, Nabarangpur, who was the Chairman of the Navodaya Vidyalaya Management Committee (hereinafter referred to as the 'Management Committee'), by order No.4012 dated 21.12.2002, placed him under suspension pending drawal of proceeding and in anticipation of the approval of the disciplinary authority, without any rhyme or reason ~~and~~ he was relieved of his duties on 22.12.2002 by the Regional Office, vide office order dated 22.12.2002, with his headquarters fixed at the Vidyalaya, Langiguda. Subsequently, by orders dated 21.1.2003 and 13.2.2003, the headquarters of the applicant was changed to the Regional Office of the Samiti at Hyderabad.

2.2 The applicant has stated that there was a preliminary enquiry with regard to some allegations and he submitted his explanation dated 2.1.2003 to Shri M.V.V.Prasad Rao and another representation to the Commissioner on 15.1.2003. It is stated by the applicant that though neither the copy of the definite charge nor that of the report of the preliminary enquiry, or document, or complaint was supplied to him, yet he was told by Shri M.V.V.Prasad Rao that there was some allegation of sexual harassment to the girl students of Class VI and VII made against him. The applicant has stated that though in his representations dated 2.1.2003 and 15.1.2003 he categorically denied the allegations levelled against him and pointed out that due to his strictly adhering to the rules for smooth functioning of the Vidyalaya and preventing the errant staff members from committing breach of the rules, such staff members

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turned hostile towards him, created a false story, and instigated some girl students to make false complaint of sexual harassment against him. Without giving him opportunity of cross-examining the staff members, who were named by the applicant in his representations and examined as witnesses in the preliminary enquiry, and without considering his explanations in proper perspective, Shri M.S.Khan, Deputy Director (Law) was appointed Inquiry Officer to enquire into the complaint of sexual harassment made against the applicant. As per the direction of the said Inquiry Officer, the applicant appeared during the enquiry on 1.3.2003 when he was neither supplied with the documents, nor was he given opportunity to peruse the documents for preparation of his defence statement. Some questions were put to the applicant and thereafter the enquiry was closed. Without serving a copy of the enquiry report, the applicant was asked by the Inquiry Officer to submit a representation to the Commissioner of the Samiti and accordingly, he submitted his representation on 2.6.2003(Annexure 8). Thereafter the applicant was served with the order dated 13.6.2003 (Annexure 9) terminating his services with immediate effect. The applicant has submitted that the order of termination of his services is illegal and violative of the principles of natural justice. It has also been submitted that the reasons for which the disciplinary authority felt that it was not expedient and practicable to hold a regular inquiry have not been communicated to the applicant and copies of the complaint, statements of the witnesses recorded during the

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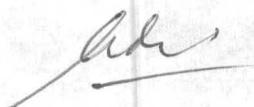
preliminary enquiry and the enquiry report have also not been supplied to him prior to passing of the order of punishment. Being aggrieved, the applicant preferred an appeal on 15.7.2003 (Annexure 11) to the Chairman of the Samiti. His appeal having been rejected and the order of termination of service having been upheld by the Appellate Authority, which was communicated to him by order dated 31.10.2003 (Annexure 12), the applicant has approached this Tribunal for the relief stated above.

3. Per contra, the Respondents have filed their counter opposing the Original Application. They have stated that while the applicant was working as Vice-Principal and Principal-in-charge of the Vidyalaya at Nabarangapur, one complaint was received against him relating to advancement and attempt to sexually exploit the innocent minor girl students of Class VI and VII. As per the orders of the Collector and District Magistrate, Nabarangapur, who was the Chairman of the Management Committee of the Vidyalaya, the Sub-Divisional Magistrate, Nabarangapur, enquired into the complaint. As the matter was sensitive, Respondent No.4 also conducted an enquiry through the Assistant Director. Both the preliminary enquiries revealed that the approach of the applicant towards girl students was very much objectionable and undesirable and he tried to outrage the modesty of girls of Class VI and VII and that the applicant was also found guilty of sexually harassing the female staff of the Vidyalaya. After receipt of the preliminary

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investigation reports as stated above, the Commissioner ordered to conduct the summary trial to inquire into the allegations by constituting an Inquiry Committee. The summary inquiry was conducted on 1.3.2003 in presence of the applicant and the applicant was given all opportunity for defending himself. On the basis of the complaints and the depositions of the witnesses and of the applicant, the Inquiry Committee concluded that the charges against the applicant were proved.

3.1 The Respondents have stated that the appropriate authority felt that there would be serious embarrassments and harassment to the victims if a regular inquiry was conducted as provided under the CCS (CCA) Rules, 1965 and that since the charges were established beyond reasonable doubt and as it was not expedient and practicable to hold a regular inquiry under the provisions of CCS (CCA) Rules, 1965, the procedure of summary trial was undertaken. On the basis of the findings in the summary trial the applicant's services were terminated vide Annexure 9, and the Appellate Authority duly considered the applicant's appeal and rejected the same, vide Annexure 12. The Respondents have stated that the Samiti's notification dated 20.12.1993 (Annexure R/1) authorizes the Commissioner of the Samiti to terminate the services of an employee who is found prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, after such summary enquiry as he deems proper and practicable in the circumstances of the case subject to fulfillment of conditions



specified therein. In their counter, the Respondents have submitted that the provisions of summary trial, as contained in Samiti's notification dated 20.12.1993 (Annexure R/1) have been considered and upheld by the Hon'ble Supreme Court of India in *Avinash Nagra Vs. NVS and others*, 1997(2) SCC 534, and in *Director, NVS vs. Babban Prasad Uadav*, 2004(2) SCALE 400 and by the Principal Bench of the Central Administrative Tribunal in *Dharmvir Singh Vs. NVS and others* (TA No.13 of 2000) and in *H.P.Sharma vs. Chairman, NVS and others*, OA No.88 of 2004. The Respondents have denied the allegation of the applicant that he was not supplied with the copies of the definite charges and the report of the preliminary enquiry, document and complaint. They have stated that all the complaints and allegations against the applicant were shown to him during the summary trial which was conducted by a team of officers of the Samiti. The applicant was informed of all the charges against him and given adequate opportunity to present his defence at all stages. The Respondents have enclosed the summary enquiry report as Annexure R/3 to the counter.

3.2 It has been submitted by the Respondents that the summary enquiry was conducted in accordance with rules, that the principles of natural justice were strictly followed, that due opportunity was given to the applicant to defend his case, that the disciplinary authority, in consideration of all the materials available on record, passed the order of termination of service of the applicant, and that the appellate authority,



while considering the applicant's appeal, took into consideration all the materials and rejected the appeal and upheld the said order of punishment of termination of service which cannot be said to be disproportionate to the charge levelled and proved against the applicant during the summary inquiry.

4. We have heard the learned counsels appearing for the applicant and for the Respondents, besides going through the written note of submissions filed on record.

5. In the Original Application as well as in course of the hearing, the following grounds have been urged by the applicant and the learned counsel appearing for him:

(a) The applicant had outstanding service record and excellent academic achievements for which Certificate of Excellence was awarded to him. He had an unblemished service record. Some of the staff members became hostile towards the applicant because of his strictly adhering to the rules of the Samiti and admonishing them for their violation of the rules. Due to this hostility, such staff members had instigated some girl students to make false complaint and statements against him. Though he had brought this fact to the notice of the authorities, the enquiry as contemplated under the CCS (CCA)



Rules, 1965 was not held and instead a summary inquiry, in terms of the Notification of the Samiti, dated 20.12.1993, was conducted, whereby the applicant was deprived of reasonable opportunity to effectively defend him. The order of punishment (Annexure 9) is, therefore, bad and illegal.

- (b) The order of punishment (Annexure 9) has been passed by the Commissioner in the capacity of Director of the Samiti. The Director being an authority higher than the Commissioner of the Samiti, the order of punishment (Annexure 9) has been passed by an incompetent authority and is thus vitiated and liable to be quashed,
- (c) The competent authority having failed to record in writing the reasons under which the procedure prescribed for holding enquiry for imposing major penalty in accordance with Central Civil Services (Classification, Control & Appeal) Rules, 1965, as applicable to the employees of the Samiti, was dispensed with in the case of the applicant, the order of punishment (Anenxure 9) is not sustainable in the eye of law.

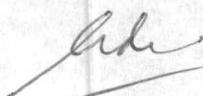
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- (d) The applicant was not supplied with copies of the charge, preliminary enquiry report and documents used against him in the summary trial conducted by the Inquiry Committee. He was not allowed to cross-examine the witnesses whose statements were recorded during the preliminary enquiry and summary inquiry. The Inquiry Committee only recorded his statement on the fixed set of questionnaires and did not allow him to fully explain the facts and circumstances leading to the complaint lodged against him. A full-fledged enquiry was conducted in the guise of summary inquiry, but the applicant was not given any opportunity to cross-examine all the witnesses. Because of all the above, the principle of natural justice has been violated and the punishment order is not sustainable in the eye of law.
- (e) The appellate authority has failed to consider the grounds taken by the applicant in his appeal and has rejected the appeal without application of mind and upheld the punishment order in a very cryptic manner. Therefore, the appellate order (Annexure 12) is not sustainable in the eye of law.

Editor

7. It is the settled position of law that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence and the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion, and which must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the

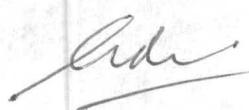


conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with such conclusion or finding, and mould the relief so as to make it appropriate to the facts of each case. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

9. It is the admitted case of the parties that the provisions of the Central Civil Services (Classification, Control &Appeal) Rules, 1965, as amended from time to time, are applicable to the employees of the Samiti and that by virtue of the notification dated 20.12.1993 the provisions CCS (CCA) Rules, 1965, mutatis mutandis, stood amended to provide for special procedure in the following types of cases:

- “A. (i) In cases of purely temporary employee is known to be of doubtful integrity or conduct but where it is difficult to bring forth sufficient documentary or other evidence to establish the charges, and whose retention in the Vidyalaya, etc. will be prejudicial to the interest of the Institution; and
- (ii) In the case of a temporary employee suspected of grave misconduct, where the initiation of regular proceedings against him in accordance with the provisions of CCS (CCA)Rules, 1965 is likely to result in embarrassment to a class of employees and/or is likely to endanger the reputation of the Institution,

The appointing authority may record the reasons for termination of the services of the employee in its own



record and thereafter terminate the services of the employee under the terms of appointment without assigning any reason. Where the appointing authority is the Principal, action to terminate the services of an employee under the terms of appointment, shall be taken only after obtaining the prior approval of the Deputy Director.

B. Whenever the Director is satisfied, after such summary enquiry as he deems proper and practicable in the circumstances of the case, that any member of the Navodaya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month's or three months' pay and allowances depending upon whether the guilty employee is temporary or permanent in the services of the Samiti. In such cases, procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965, as applicable to the employees of Navodaya Vidyalaya Samiti, shall be dispensed with, provided, that the Director is of the opinion that it is not expedient to hold regular enquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Director shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman of the Samiti informed of the circumstances leading to such termination of services."

9. As has been contended by the Respondents and not disputed by the applicant, the Hon'ble Supreme Court, in a similar situation, upheld the exercise of the power by the Director, in terms of the notification dated 20.12.1993, in the case of Avinash Nagra vs. Navodaya Vidyalaya Samiti and others, reported in 1997(2) SCC 534.

10. In the case of *Director, NVS vs. Babban Prasad Yada*, 2004(2) SCALE 400, the services of the respondent Teacher were terminated on account of his being prima facie found guilty of moral

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turpitude because he had indulged in immoral conduct with one of the girl students of the school by writing undesirable letters/remarks to her. The order of termination recorded that the Director, while issuing the order of termination, was satisfied that the procedure of holding a regular departmental enquiry under the CCS (CCA) Rules, 1965 was not expedient, as the same might cause serious embarrassment to the girl students and her parents and therefore, a full enquiry was dispensed with. It was also recorded that the evidence on record established the respondent's guilt and that his continuation in a residential institution would be prejudicial to the interest of the girl students and the institution itself. Aggrieved by the order of termination the respondent teacher approached the Central Administrative Tribunal which dismissed his case. The High Court, however, reversed the decision of the Tribunal and set aside the order of termination on a writ application filed by the respondent. The High Court, however, gave opportunity to the Samiti to hold a regular enquiry into the charges leveled against the respondent Teacher. In the appeal preferred by the Samiti, the Hon'ble Supreme Court set aside the order of the High Court and granted an opportunity to the respondent Teacher to tender his unconditional resignation from the institution with effect from the date of the order of termination. The Hon'ble Supreme Court, while considering the legality and validity of the order of the High Court, in paragraph 5 of the judgment held as follows:



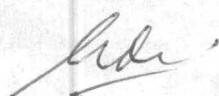
“.....All that is required for the Court is to be satisfied that the pre-conditions to the exercise of power under the said rule are fulfilled. These preconditions are (1) holding of summary inquiry; (2) a finding in such summary inquiry that the charged employee was guilty of moral turpitude; (3) the satisfaction of the Director on the basis of such summary inquiry that the charged officer was *prima facie* guilty; and (4) that the satisfaction of the Director that it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the students or his guardians or such other practical difficulties; and finally (5) the recording of reasons in writing in support of the aforesaid.”

11. Keeping in view the settled position of law with regard to power of judicial review in disciplinary matters and the provisions contained in the Notification dated 20.12.1993 issued by the Samiti, which has been upheld by the Hon'ble Supreme Court in *Avinash Nagra's case (supra)* and the principle laid down by Their Lordships in the case of *Director, NVS vs. Babban Prasad Yadav (supra)*, we have to examine the contentions raised by the rival parties.

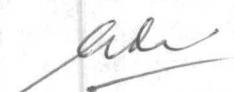
12. The first contention of the applicant is that he had an outstanding service record and because of his strictly adhering to the rules of the Samiti, some of the errant staff members of the Vidyalaya turned hostile towards him and instigated the girl students to make false complaint and statements against him. Though he had brought the above fact to the notice of the authorities, no regular enquiry as contemplated under the CCS (CCA) Rules, 1965 was held and instead a summary inquiry was conducted in which he was deprived of reasonable opportunity to effectively defend himself. In the course of hearing, the learned counsel appearing for him drew our attention to the applicant's

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letter dated 2,1,2003 (Annexure 5) addressed to Shri M.V.V.Prasad Rao, Assistant Director,SRO, Bhubaneswar and letter dated 15.1.2003 (Annexure 6) addressed to the Commissioner of the Samiti, and submitted that had the grievances of the applicant been taken into consideration, a regular inquiry as contemplated in the CCS (CCA)Rules, 1965 would have been held instead of summary inquiry. We have perused both these letters of the applicant. The incident forming the subject-matter of summary inquiry held against the applicant took place on 20.12.2002. The Collector and District Magistrate, Nabarangpur, on receipt of the complaint about the alleged misbehaviour of the applicant with the 6th standard student of the school Miss Jamuna Munda, made a preliminary enquiry and came to know that the said student was having extreme level of psychological trauma. The Collector then ordered an immediate inquiry by the Sub Divisional Magistrate and the Additional District Medical Officer, Nabarangpur. The Sub Divisional Magistrate and the Additional District Medical Officer conducted enquiry. During the inquiry 17 girl students of the school and Miss Pramita Das (TGT) and Staff Nurse Itismita Jena were examined. The inquiry report along with the depositions of the girl students, Miss Pramita Das and Staff Nurse Itismita Jena, was submitted by them to the Collector on 21.12.2002 Thereafter the Collector by his letter dated 22.12.2002 moved the Deputy Director of the Samiti, Hyderabad Region, to place the applicant under suspension and initiate disciplinary proceedings against



the applicant. By order dated 21.12.2002 (Annexure 2), pending drawal of proceedings and in anticipation of the approval of the disciplinary authority, the applicant was placed under suspension with immediate effect. After he was placed under suspension with effect from 21.12.2002, the applicant appears to have addressed a letter dated 2.1.2003 (Annexure 5) to the Assistant Director and another letter dated 15.1.2003 to the Commissioner alleging hostile attitude of the staff members, namely, Miss Pramita Das (TGT) and Ms. Itismita Jena, Staff Nurse, towards him and their instigation to the girl students to lodge false complaint and make false statements against him. The applicant perhaps after coming to know that inquiries were conducted by the Collector, the Sub Divisional Magistrate, and the Additional District Magistrate against him and that those staff members and the girl students might have deposed against him during the enquiries, addressed the letters under Annexures 5 and 6 to the authorities, on the basis of which he has claimed that had these letters been taken into consideration, the competent authority would have directed holding of regular inquiry instead of summary inquiry. The applicant has sent these letters directly presumably by post in as much as these have not been sent through proper channel. The applicant has not produced the postal acknowledgements showing receipt of these letters by the concerned authorities. In the facts and circumstances of the case and in the absence of production of any proof by the applicant in support of receipt of the



said letters by the concerned authorities, we hold that the applicant's plea, besides being an afterthought and counterblast to the statements of the said staff members and the girl students recorded during the aforesaid inquiries, is incredible and liable to be rejected.

13. The second contention of the applicant is that the Director being an authority higher than the Commissioner of the Samiti, the order of punishment (Annexure 9) having been passed by the Commissioner of the Samiti, is bad and liable to be quashed. We have carefully considered this contention of the applicant. The notification dated 20.12.1993 confers power on the Director of the Samiti. The order of punishment dated 13.6.2003 (Annexure 9) clearly shows that the post of 'Director' of the Samiti has been redesignated as 'Commissioner'. This is clear from the last paragraph of the order dated 13.6.2007 which is quoted below;

"NOW THEREFORE the undersigned in the capacity of Director (now Commissioner), Navodaya Vidyalaya Samiti in exercise of the powers conferred under the provisions of the notification no.F.14-2/93-NVS(Vig.) dated 20.12.1993 of Navodaya Vidyalaya Samiti, hereby terminates the services of the said Shri Aditya Kumar Mund, Vice Principall with immediate effect. Shri A.K.Mund will be paid pay and allowances for three months as admissible under the rules in lieu of the notice period."

(emphasis supplied)

That apart, the applicant in his appeal dated 15.7.2003 (Annexure 11) to the Chairman of the Samiti, while assailing the order of punishment (Annexure 9) has not raised this point. Therefore, the applicant cannot be permitted to raise the said point for the first time before the Tribunal. In this view of the matter, the second contention of the applicant is rejected.



14. In order to consider the third contention of the applicant, we extract here-in-below the relevant portion of the order dated 13.6.2003:

ORDER

WHEREAS a complaint of moral turpitude involving exhibition of immoral sexual behaviour towards girl students was received against Shri Aditya Kumar Mund, Vice-Principal while he was posted at JNV Navrangpur (Orissa) as Incharge Principal.

AND WHEREAS an inquiry conducted regarding these charges has established that the said Shri A.K.Mund is prima facie guilty of moral turpitude involving exhibition of immoral sexual behaviour towards girl students of Class VI and VII of JNV Navrangpur (Orissa).

AND WHEREAS it is felt that it is not expedient and practicable to hold a regular inquiry under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 in the matter on account of serious embarrassment it will cause to the concerned students and their guardians.

NOW THEREFORE the undersigned in the capacity of Director (now Commissioner), Navodaya Vidyalaya Samiti in exercise of the powers conferred under the provisions of the notification no.F.14-2/93-NVS(Vig.) dated 20.12.1993 of Navodaya Vidyalaya Samiti, hereby terminates the services of the said Shri Aditya Kumar Mund, Vice Principal with immediate effect. Shri A.K.Mund will be paid pay and allowances for three months as admissible under the rules in lieu of the notice period.”

In view of the clear recordings by the Commissioner, the competent authority, in the order of punishment dated 13.6.2006 that the complaint of moral turpitude involving exhibition of immoral sexual behaviour towards girl students was received against the applicant, that the inquiry conducted into the complaint established that the applicant was prima facie guilty of the charge, and that it was felt that it was not expedient and practicable to hold a regular inquiry under the provisions of the CCS (CCA) Rules, 1965 in the matter on account of serious embarrassment that would be caused to the concerned girl students and their guardians,



we are not inclined to accept the contention of the applicant that no reasons were recorded by the competent authority in writing. We are also not inclined to accept the contention of the applicant because this point was not raised in his appeal to the Chairman and was raised for the first time in this O.A.

15. So far as the fourth contention is concerned, we have perused the materials available on record. It is found from the enquiry report submitted by the Inquiry Committee that copies of the written depositions dated 21.12.2002 made by the girl students and female staff members in the presence of the Sub Divisional Magistrate as also the statements of other staff members recorded by the Assistant Director during his preliminary inquiry on 2.1.2003 were given to the applicant to enable him to know the evidence against him and to clearly understand the charges. The applicant was given opportunity for cross-examining the staff members with reference to the statements made by them with regard to sexual harassment of girl students and in particular about the incidents that took place in the Vidyalaya on 20.12.2002. The applicant preferred to cross-examine the lady staff members and male staff members separately in the presence of the Inquiry Committee. The statements of the girl students were also shown to the applicant. The Inquiry Committee also recorded that as further interface between the girl students and the applicant was likely to put the girls through a fresh psychological trauma and thus would be replete with secondary



victimization, keeping in view that the girls were students of Classes VI and VII in the age group of 11 and 12 years, it was not considered appropriate to subject them to any cross-examination by the applicant. The Inquiry Committee in paragraph 10 of its report observed that the proceedings of the summary inquiry held on 1.3.2003 were duly recorded in brief on the spot and signed by all who were present during the inquiry, but the applicant left without signing the proceedings. It is thus found that the applicant was supplied with copies of all the relevant documents and depositions. He was allowed to cross-examine all witnesses save and except the girl students for the reasons indicated by the Inquiry Committee in its report. We, therefore, find that the principles of natural justice have been duly complied with. On analysis of the evidence collected during the summary inquiry, the Inquiry Committee submitted its report finding the applicant guilty of moral turpitude involving exhibition of immoral sexual behaviour towards girl students. As regards the applicant's complaint that the Inquiry Committee only recorded his statement on the fixed set of questionnaires and did not allow him to fully explain the facts and circumstances leading to the complaint lodged against him, he has not stated before us as to how he has, in any manner, been prejudiced thereby. In consideration of all this, we reject the contention no.4 of the applicant.

16. The last contention of the applicant relates to the appellate order. A perusal of the appellate order dated 31.10.2003 discloses that



the appellate authority has duly gone through the report of the inquiry, the statements of the concerned girl students and staff members, the inquiry report, and the order of the disciplinary authority and has upheld the order of punishment. As the appellate authority has not specifically considered all the points raised by the applicant in his appeal, we have carefully considered the points taken by the applicant in his appeal. The applicant has stated about his academic achievements and outstanding performance, which we have already dealt with in the preceding paragraphs and found the same having no bearing on the incident. His point regarding hostile attitude of the staff members has been held by us ~~as the~~ not believable being an afterthought and counterblast to the complaint and the statements made by those staff members. He has also taken the ground of non-compliance of the principles of natural justice in the appeal, but this ground has been turned down as held by us when we found that principles of natural justice were duly complied with by the Inquiry Committee by supplying the documents and affording opportunity to the applicant to cross-examine the witnesses except the girl students for the reasons recorded by the Inquiry Committee. The grounds taken by the applicant in his appeal to the appellate authority are more or less the same and the same have been rejected by us in this order. Even if the appellate order appears to be a cryptic one, the same, in our considered view, has not caused any prejudice to the applicant.

Order

17. Here we would like to observe that the allegation brought against the applicant is very serious as that involves sexual offence and immoral behaviour towards the girl students. 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 teacher is one whose conduct and character must be exemplary and must set an example thereof for others to follow him. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. The position of a teacher in a residential school system like Jawahar Navodaya Vidyalaya is like that of a loco parentis and he is supposed to take care of the children as parent does for his own child. In view of this, we are not inclined to consider the submission of the applicant on the quantum of punishment.

18. In consideration of all the above, we find that the applicant has not been able to make out a case for the relief claimed by him.

19. In the result, the O.A. is dismissed. No costs.

[Signature]
(B.B.MISHRA)
ADMINISTRATIVE MEMBER

[Signature]
(N.D.RAGHAVAN)
VICE-CHAIRMAN