

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

ORIGINAL APPLICATION NO. 249 OF 2002.
Cuttack, this the 07th day of July, 2005.

KRUSHNA CHANDRA MAJHI.

APPLICANT.

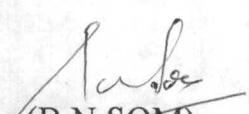
VERSUS

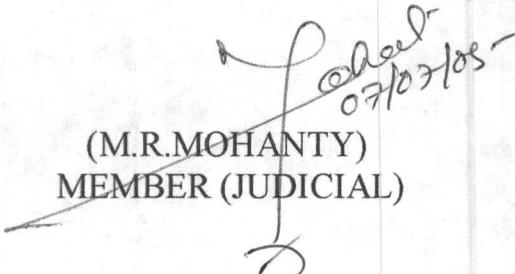
UNION OF INDIA AND OTHERS.

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 CAT? Yes.


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.249 OF 2002.
Cuttack, this the 07th day of July ,2005.

CORAM:-

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

KRUSHNA CHANDRA MAJHI,
Aged about 33 years,
S/o.Late Sashikanta Majhi,
AT- Salapur,PO-BARASARA,
DIST. – BHADRAK, working as
A Primary Teacher,KVS,Baripada. Applicant.

VERSUS

1. COMMISSIONER,
Kendriya Vidyalaya Sangathan,
18 Institutional Area,
Saheed Jeet Singh Marg,
New Delhi-110 016.
2. Assistant Commissioner,Kendriya Vidyalaya Sangathan,
Regional Office, Bhubaneswar.
3. Principal,Kendriya Vidyalaya,Baripada,
PO- Laxmiposi,Dist.Mayurbhanja,Orissa. ... Respondents.

For the Applicant :- M/s. A.K.Mishra,J.Sengupta,
D.K.Panda,P.R.J.Dash,
G. Sinha,Advocates.

For the Respondents:- Mr. Ashok Mohanty,Sr. Counsel.

O R D E R**MR.MANORANJAN MOHANTY, MEMBER(JUDICIAL)**

Applicant Krushna Chandra Majhi, a member of Schedule Caste Community, joined in Kendriya Vidyalaya Sangathan as Primary Teacher on 07-02-1994. While working as Primary Teacher in K.V., at Baripada, on the basis of a complaint dated 11-01-2002 made by father of a pupil alleging immoral behaviour towards his daughter (pupil reading in Class II) he was called upon by the Principal of the said Vidyalaya on 15.1.2002, to explain about his alleged misconduct. On 16.01.2002, the Applicant was asked by the Principal to put up his explanation by 11.00 a.m. of that day/ 16.1.2002. On 17.01.2002, the Applicant sought for extension of time for submitting his explanation. He was, however, placed under suspension 18.01.2002. The Assistant Commissioner, K.V.S Bhubaneswar issued an order, on 21.01.2002, by constituting a Committee to cause an enquiry into the complaint made against the Applicant under Article 81 (b) of the Education Code of the Kendriya Vidyalaya Sangathan and to submit their findings (along with the statements) positively by 31.01.2002. Accordingly, the Applicant was intimated to remain present in the Vidyalaya on 23.01.2002 at 9.00 a.m. to participate in the enquiry. On 22.1.2002, the

Applicant made a request to adjourn the enquiry for fifteen days and to take the help of a defence assistant and/or to allow him to be defended through a legal practitioner. Thereafter, by an order dated 12.04.2004, the Commissioner, at KVS, (New Delhi,) terminated the services of the Applicant with immediate effect(by ordering payment of pay and allowances, to the Applicant, for one or three months, as the case may be, as admissible under the Rules); which order was communicated to the Applicant(by the Principal, K.V. ,Baripada) in a letter dated 15.4.2002. By filing the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, the Applicant has challenged the said impugned order dated 15-04-2002 (by branding the same to be illegal, arbitrary and unjust), and has also prayed for declaring Article 81 (b) of the K.V. Education Code to be unconstitutional. He has also prayed for directing the Respondents to grant him all consequential benefits.

2. The Respondents, while making a passive resistance to the above facts, have stated that though the Applicant did not submit any explanation to the notice given by the Principal on 16.01.2002, but appeared before the Committee (constituted on 21-01-2002,for the purpose of conducting enquiry into the matter) on 23.1.2002 and on the basis of the report submitted by the said committee, the services of the Applicant were

terminated by the Commissioner, of KVS(New Delhi) in exercise of the powers conferred on him under Article 81 (b) of the K.V. Education Code. As regards the plea of the Applicant that he was not given reasonable opportunity to defend his case through a defence assistant, it has been submitted by the Respondents that since it was a summary enquiry under Art. 81(b) of the K.V. Edn. Code, the question of giving opportunity as per CCS (CCA) Rules, did not arise. By stating so, the Respondents have opposed the prayers that has been made by the Applicant in this Original Application.

3. We have heard Mr. Jayadev Sengupta, Learned Counsel appearing for the Applicant and Mr. Ashok Mohanty, Learned Senior Counsel appearing for the Respondents- KVS and perused the materials placed on record.

4. In support of the prayers for quashing of the impugned order of termination under Annexure-9 dated 15.04.2002 and for declaring Article 81(b) of the Education Code of KVS as ultra vires of the Constitution of India, the learned counsel for the Applicant has submitted that in a major penalty proceedings provisions of CCS(CCA) Rules(AS APPLICABLE TO Government of India employees) are mutatis and mutandis applicable to the employees of the KVS and that since the impugned order has been passed

without resorting to the procedure prescribed in the said Rules (and without making regular enquiry/without giving reasonable opportunity to the Applicant) the termination of services of the Applicant (on the basis of mere complaint and so called ex parte enquiry) is bad in law.

On the other hand, the learned counsel appearing for the KVS has submitted that since Article 81(b) of KVS Education Code empowers the competent authority for taking action against an employee only by resorting to a summary enquiry and that since the action was taken against the Applicant, after being satisfied with the report of the Committee constituted for the purpose; his (that before imposition of punishment, no regular enquiry was held as per the CCS(CCA) Rules) does not hold any water. It was emphatically submitted by him that at the time of summary enquiry, the Applicant was asked to appear and he in fact did appear and deposed before the Committee; where after, in consideration of the materials available on records, the Commissioner of KVS (New Delhi) terminated the services of the Applicant and that, in the circumstances, there is hardly any scope for the Tribunal to interfere in the matter. He has pointed out that Rule 81(b) of K.V. Education Code being an exception to elaborate procedure prescribed under the CCS (CCA) Rules, non-compliance of the said elaborate

procedure, as available under the said CCS(CCA) Rules, cannot be held to be bad in the present case.

5. We have heard the rival submissions advanced at the Bar and have given our anxious thoughts to the arguments made by the Counsel appearing for the Parties and have also gone through the materials placed on record. Article 81(b) confers powers on the Commissioner of KVS to terminate the service of an employee found guilty of immoral behaviour towards the students. In the fitness of things, the full text of the said Article 81(b) is quoted herein below:-

“Wherever the Commissioner is satisfied after such a summary enquiry as he deems proper and practicable in the circumstances of the case that any member of the Kendriya 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 3 month's pay and allowances accordingly as the guilty employee is temporary or permanent in the service of the Sangathan. 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 the Kendriya Vidyalaya Sangathan, shall be dispensed with, provided that the Commissioner 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 Commissioner 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 Sangathan informed of the circumstances leading to such termination of services”.

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The above noted Article 81(b) of KVS Education Code has been upheld by the Hon'ble Apex Court of India in the case of **AVINASH NAGRA v. NAVODAYA VIDYALAYA SAMITI AND OTHERS reported in 1997 (2) SCC 534.**

Following the ratio of the above noted decision, of the Hon'ble Apex Court of India, the Kendriya Vidyalaya Sangathan has laid down (in its order dated 24-01-2002) a procedure (while dispensing with the right to cross examining the witnesses) to be followed while resorting to the powers to be exercised under Article 81(b) of KVS Education Code. The order dated 24.01.2002 being supplementary to Rule 81(b) of KVS Education Code is also equally binding on the parties. It requires a show cause notice before awarding punishment and to allow the benefit of minimum requirement of principles; of natural justice. The said show cause notice (as per KVS Order dated 24.01.2002) is required; to 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.

Under the said order dated 24.01.2002, the charged official is bound to be given an opportunity to submit his representation to the said show cause notice and, only after considering his reply/written submission, a

final order can be passed in the matter. Thus, while resorting to exceptional clause under Article 81(b) of K.V. Education Code, minimum requirement of natural justice have been asked to be given.

6. But as revealed from the records of this case , the procedure as laid down under order dated 24.01. 2002 of KVS (with regard to initiation of actions under Article 81 (b) of KVS Education Code) was not followed in letter and spirit by the Respondents-KVS. On perusal of the records, it is seen that the authority neither followed the procedure laid down in Sangathan's order dated 24.1.2002 nor the procedure as commanded by the decision of Avinash Nagra's case.

7. As the Applicant was removed from service (a) without providing him with the charge(s) and (b) without providing him the facts corroborating such charge, the punishment inflicted on him, based on the statements recorded in the preliminary/summary inquiry, is ab initio void and illegal being in violation of the minimum requirement of the principles of natural justice. This Bench of the Tribunal, while /dealing with a same and similar matter filed by one **Bishwanath Paul** (in O.A.No.l76 of 2003, decided on 29th April,2005) have also declared such an order of termination to be bad due to noncompliance of the Rules/orders/ratio of the decisions made in the case of AVINASH NAGRA(Supra).While resorting to the

powers vested in Article 81(b) of KVS Education Code, the authorities ought to have followed each and every procedure prescribed under KVS Order dated 24.01.2002.

Moreover, on perusal of the disciplinary proceedings file(produced before us), it is seen that neither the pupil nor the parents were examined. It is also seen from the report of the Inquiry Committee that despite the fact that the Applicant denied to have confessed the allegations leveled against him several contradictory findings were recorded by it without measuring and analyzing the materials brought on record during enquiry and that the said Committee surreptitiously, without any evidence, held the Applicant guilty. Further more, the Assistant Commissioner, while seeking further instructions in the matter, in his letter dated 05.02.,2002 has recorded as under:-

"The team has also observed that the victim girl was not asked by any one regarding the matter from the day of happening till the date of inquiry on 23-02-2002 and no statement of self confession was obtained either by the Principal or by the Internal Inquiry Committee. Now the teacher is not accepting his misconduct. The accused official also denied of having confessed anything before the inquiry committee. Mrs. S. Satpathy wife of Shri P.K. Satpathy and mother of victim girl submitted an application to Principal on 17-01-2002 for the withdrawal of complaint and Shri P.K. Satpathy also requested the inquiry committee on 23-01-2002 not to pursue the matter any more as he and his family have already decided to withdraw the complaint.

After carefully examining the statements made by all concerned , records as well as the evidences, the team deputed by this office has concluded that Shri K.C .Majhi, PRT, KV, Baripada confessed the immoral behaviour towards Kum. S.Satpathy of Class-II before the Principal, Parent and other members of the Internal Inquiry Committee constituted by the Principal.

In view of the findings of team, I am of the opinion that the complaint is **prima facie established** on the basis of evidence on records. It is relevant to state here that the victim girl was not produced before the inquiry committee due to the psychological trauma of 11.01.2002 as is evidence from the statement of the parent (Annexure-III) and the parent did not want to put her again in that situation. It is also added that the complaint has been withdrawn by the parent when said Sh. K.C.Majhi contacted them with some of their well wishers. This is evident from the letter dated 17.01-2002 of Smt. S. Satpathy, mother of the victim girl, though this has been denied by Shri K.C.Majhi.”

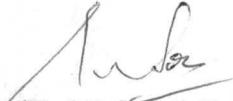
Had the procedure, as prescribed by the KVS, been followed in both letter and spirit, by the Respondents, then the Applicant would have got an opportunity to explain his conduct.

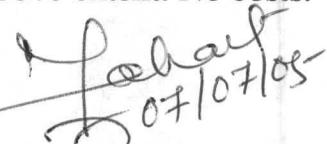
Having gone through the records produced before us, we are of the firm opinion that there was no concrete evidence available against the Applicant to impose on him the punishment of dismissal from service pursuant to Article 81 (d) of the KVS Education Code.

8. In view of the discussions made above, we find considerable force in the submissions of the learned counsel for the Applicant that the

Applicant was denied even the minimum benefit of the principles of natural justice and the decision to dismiss him from service was based on no evidence as would reveal from the contents of the letter of the Assistant Commissioner dated 05-02-2002, quoted earlier and that the order of the Disciplinary Authority was an act of total non-application of mind. Accordingly, we quash the impugned order of punishment passed against the Applicant under Annexure-9 dated 12/15/04-2002 and hold that the Applicant would be entitled to all consequential benefits.

9. In the result, this O.A. is allowed to the above extent. No costs.


(B.N.SOM)
VICE-CHAIRMAN


07/07/05
(M.R.MOHANTY)
MEMBER (JUDICIAL)