

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 363 of 2007
Cuttack, this the 09th day of March, 2009

Md. Iqubal Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 363 of 2007
Cuttack, this the 09th day of March, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Md. Iqbal, S/o. Md.Israel, At-Khalasi Mahel, PO-Balasore Town, PS-Balasore Town, Dist. Balasore, Orissa, Ex-TGT(SST), Command Hospital, Kendriya Vidyalaya, Alipore, Kolkata, West Bengal.

.....Applicant

By Advocate : Mr.Niranjan Sahoo
- Versus -

1. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeetsingh Marg, New Delhi-110 016.
2. Dr.B.R.Pal, Principal, Kendriya Vidyalaya, Command Hospital, Alipore, Kolkata-700027, West Bengal.
3. Mrs.Bipasa Dev, PRT, Kendriya Vidyalaya, Command Hospital, Alipore, Kolkata-7000027, West Bengal.
4. Mrs.S.Mukhapadhyay, VEC, Member, C/o. Principal, Kendriya Vidyalaya, Command Hospital, Alipore, Kolkata-700027, West Bengal.
5. Mr. Sushil Ku. Bharat, Head Master, C/o. Principal, Kendriya Vidyalaya, Command Hospital, Alipore, Kolkata-700027, West Bengal.
6. Mr. P.Devkumar, Education Officer, Kendriya Vidyalaya Sangathan, Kolkata Region, E.B.Block, Salt Lake, Kolkata-64, West Bengal.
7. Mrs.Rachita Choudhury, Complainant, C/o. Principal, Kendriya Vidyalaya, Command Hospital, Alipore, Kolkata-700027, West Bengal.
8. Mr.C.P.Bhatia, TGT (SST), C/o. Principal, Kendriya Vidyalaya, Command Hospital, Alipore, Kolkata-700027, West Bengal.
9. Koyeli Mazoomdar, Primary Teacher, Kendriya Vidyalaya, Santragachhi, PO-Santragachhi, Dist. Howrah, West Bengal.

10. Shri Biswajeet Biswas, TGT (Hindi), Kendriya Vidyalaya, Binagudi, Po. Binagudi, Dist. New Jalpaigudi, West Bengal.
 11. Aprakash Chakrabarty, Yoga Teacher, Kendriya Vidyalaya, Khaprail, PO-Sukna, Dist. Darjeeling, West Bengal.

....Respondents

By Advocate :M/s. Ashok Mohanty, H.K.Tripathy,
 P.K.Mohanty, B.Panigrahi, P.K.Sahoo.

O R D E R

Per- MR. C.R.MOHAPATRA, MEMBER (A):-

The Applicant is a permanent resident of the District of Balasore in the State of Orissa. He was working as TGT (SST) in Command Hospital Kendriya Vidyalaya situated at Alipore, Kolkata in the State of West Bengal. On the allegation of moral turpitude and sexual harassment of a Class II girl student of the School he was placed under suspension. As a result of the summery enquiry conducted into the allegation, the Applicant having been inflicted with the punishment of removal from service vide order No. F.10-07/2006-KVS (Vig.), dated 07.02.2007, approached this Tribunal in the present Original Application filed u/s 19 of the Administrative Tribunals Act, 1985 seeking the following relief(s):

- “(a) To be kind and gracious enough to admit this petition for consideration;
- “(b) To be kind and gracious enough to squash out the impugned order No. F.10-07/2006-KVS (Vig.), dated 07.02.2007 passed illegally by the Commissioner, KVS, New Delhi to terminate the services of the appellant and



to kindly reinstate him till finalization of this case;

- (c) To be kind and gracious enough to treat the period of suspension illegally imposed by the KVS authority upon the appellant as regular duty period and pass orders to release the pay for the same said period;
- (d) To be kind and gracious enough to pass orders for a regular inquiry over the issue keeping in view of natural justice as per the provision of article 14 and 311 of the Constitution of India and Supreme Court guideline on natural justice as per Annexure-E&F."

2. The main thrust of the challenge of the impugned order of termination dated 07.02.2007 is that the Respondent No.1 curtailed the right to life, (by the aforesaid order of punishment), without following due procedure of Rules/Laws, without affording adequate opportunity to examine and cross examine the complainant (based on whose allegation he has been inflicted with the harsh punishment of removal) and thereby violating the right and protection available to every citizen in Clause (1) of Article 311 – envisaging that no person who is a member of a civil service of the Union or an All India Service or a Civil Service of a State or holds a Civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed and sub clause (2) of Article 311 –providing that no such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry

in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The provision of Article 81(B) of the KVS Education code is not enforceable; especially to do away the constitutional mandate (of right to life is a fundamental right as provided in Article 21 of the Constitution), in absence of any enactment on the floor of the Parliament. Supply of documents after long lapse of time with much persuasion thereby imposition of punishment of termination smacks of *mala fide* exercise of power to victimize the applicant intentionally and deliberately though there was no substance on the allegation levelled against the applicant in a pre-planned manner. The Commissioner, KVS, New Delhi (Respondent No.1) imposed the order of punishment of termination on the Applicant without considering the true merit of the matter. The applicant has never admitted to have committed the incident in the answer to the questionnaire dated 13.2.2006 whereas the members of the inquiry committee have taken the view in jaundiced eyes since the applicant belongs to minority community. His contention is that even in the case of murder, the murderer is given opportunity to defend his case as per law whereas the applicant has been inflicted with the harsh punishment of termination without giving him



17

- 5 -

opportunity/without holding regular hearing as per rules which is against the provisions enshrined under Articles 21 and 22 of the Constitution of India. His next contention is that the order of termination is liable to be quashed as the same is based on conjecture, surmises, prejudice, and bias. The order of termination is also not free from malice. He further contended that in case of denial of principles of natural justice in a statute the same is ultra vires to Article 14 of the Constitution. Since Article 81(B) of the KVS Education Code does not speculate for providing principles of natural justice, the order of termination by application of the provision of Article 81(B) is liable to be quashed. Besides the above, it has been pointed out that the order of termination is based on the *ex parte* report of the enquiry without giving adequate opportunity to meet the charge levelled against him. In support of the above contention, Learned Counsel for the Applicant also relied on the decision of the Hon'ble Apex Court in the case of Rajesh Kumar & Others -v- DCIT & Others, 2006 (9) Supreme 566, V.C.Banaras Hindu University -v- Shrikant 2006 (5) Supreme 336, Scooter India Ltd -v- M.Mahammad Yaqub (2001) Sec. 61 and D.K.Yadav -v- JMA Industries Ltd, 1993 (3) Sec.259.

3. On the other hand, it is the stand of the Respondents that while the applicant was working as PGT (SST) in KV, Allipur, Calcutta one Smt. Rachita Choudhury, mother of Kumari Torsha Choudhury, a student of Class II (C) made a written complaint on 20.01.2006 to the Principal, Command Hospital alleging that on 17.01.2006 while her daughter was returning from the morning Assembly of the School, **the Applicant pressed her left breast in a very hard way creating a scar around her left breast.** On receipt of the complaint, preliminary enquiry was conducted by a constituted committee consisting of 2-lady teacher, 2-gents teacher and 2-executive member of the Vidyalaya. The Committee conducted the preliminary enquiry by examining the victim girl student, her mother, some girl students of class VIII-B, the Applicant and the Principal of the KV and submitted its report finding fault with the Applicant. On the basis of the said report a summery enquiry was conducted by a Committee consisting of three members. The team conducted the summery enquiry on 13.02.2006. During the course of enquiry the committee interacted with the victim girl student, her mother, Smt. B.Dev, Class Teacher of Class II and randomly selected girl/boys students, some teachers the applicant and the Principal, KV, Command Hospital and submitted its report



establishing the allegation of molestation against the Applicant. Thereafter, the matter was referred to the Commissioner, KVS, New Delhi who in turn after going through all the reports/all relevant records was of the opinion that it was not expedient to hold a regular enquiry provided in the CCS (CC&A) Rules, 1965 as it would cause serious embarrassment to the victim girl and her parents and that holding of regular enquiry is not expedient because of the tender age of the girl student as her safety and security have to be ensured by preventing her exposure to the tardy process of cross examination in the inquiry in relation to the conduct of a Sangathan employee resulting in sexual harassment of the girl student and accordingly dispensed with holding of regular enquiry and in exercise of powers conferred on him under the provisions of Article 81(B) of the Education Code of KVS terminated the service of the Applicant vide order dated 07.02.2007. The applicant preferred appeal against the impugned order of termination and the Appellate Authority after going through all the records as also the points raised by the Applicant rejected the appeal of the applicant vide order dated 20.12.2007. The Respondents have also denied the allegation of the applicant that he was not afforded adequate opportunity in the matter and there was no enquiry before the order of termination was passed.



In view of the above, the Respondents have averred that as there was no wrong in the decision making process of the matter, this Original Application is liable to be dismissed; especially in the interest of the institution where several minor girl students are prosecuting their studies.

4. Besides, reiterating the stand taken in the pleadings as extracted above, Learned Counsel for the Applicant relied on decisions of the Hon'ble Apex Court in the context that termination without holding enquiry or on enquiry without giving opportunity to delinquent is liable to be quashed. Having given in-depth consideration to the rival submissions of the parties, we have perused the materials placed on record including the records called for and produced by the Respondents.

5. Before proceeding to deal with the contentions advanced by the parties it would be profitable to note the provisions of Article 81(B) of the Education Code of KVS. It provides as under:-

"81(B) - Termination of services of an employee found guilty of immoral behaviour towards students:

Where 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 three 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 embarrassment to 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."

6. In regard to the merit of the matter, it is significant to note that interference in the matter of disciplinary proceedings thereby imposition of punishment by the Tribunal is no more *res integra*. It is well established principle that the Tribunal can interfere in the disciplinary proceedings and/or in the order of punishment imposed thereby on a delinquent if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the materials before him and within the frame work of the law, have arrived at. The Tribunal would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide.

7. The provision of Article 81 (B) is not under challenge in this OA seeking declaring of the said provision to be bad in law or

utra vires to the Constitution of India. Therefore, as long as the provision of Article 81(B) stands the competence of the authority in dispensing with the enquiry in a contingency like the present one cannot be said to be an exercise of power without jurisdiction or to say contrary to any provision. From the record it is seen that the Commissioner passed the order of termination after holding that it is not reasonable and practicable to hold any regular departmental enquiry. In a case of termination of a teacher on the allegation of moral turpitude without holding regular departmental enquiry had come up for consideration before the Punjab and Harayana High Court in the case of *Madan Lal v Central Administrative Tribunal, Chandigarh and others*, 2005 (3) ATJ 141. The Hon'ble High Court of P&H upheld the order of termination in the case of *Madan Lal* (supra) by relying on the decision of the Hon'ble Apex Court rendered in the case of *Avinash Nagra v Navodaya Vidyalaya Samiti*, 1997 (2) SCC 534. The case of *Avinash Nagra*(supra) was also a case of moral turpitude in which it was held by the Apex Court that the conduct of the appellant is unbecoming of a teacher much less a *loco parentis* and, therefore, dispensing with regular enquiry under the rules and denial of cross-examination were legal and not vitiated by violation of the principles of natural justice. As



such, non-holding the regular departmental proceedings in the present case by the Respondents in accordance with the provisions of CCS (CC&A) Rules, 1965 and passing the order of termination in exercise of the power conferred under Article 81(B) cannot be faulted in any manner especially because the provisions contained in Article 81(B) are salutary. This view also gains support from the decision of the Principal Bench of the Tribunal in OA No. 1376/2002 disposed of on 28.05.2002 (Krishna Murari Sharma v UOI and others) and Ernakulam Bench of the Tribunal in OA No. 5929 of 1995 disposed of on 11th October, 1995 (V.Arookia Samy vs UOI and others).

8. On perusal of the concerned records it is seen that in fact there was a full-fledged enquiry conducted by a duly constituted Committee. It is seen that the statements recorded by the committee in the preliminary enquiry got confirmed by the examinees in the summery enquiry. It is also seen that the members of the committee constituted for summery enquiry are different than the members of the committee entrusted for conducting the preliminary enquiry. Further on perusal of records it reveals that the victim unequivocally confessed the incident which took place and the same was supported by her parents made the complaint. We also see that the statement

11

adduced by the victim is free from any defect and is fairly impressive and can safely be regarded as true disclosure of facts. The statement was also corroborated by her parents and surrounding circumstances revealed during the enquiry. The allegation of the Applicant that he was not given opportunity to cross examine the victim thereby the order of punishment is to be nullified is of no consequence particularly in the present nature of case of moral turpitude in the case of a teenaged girl reading in Class II by a teacher; as this would expose a girl student and her class mates to the cross examination and further publicity would be hazardous. This was also the view expressed by the Hon'ble Apex Court in the case of Avinash Nagra (supra). In view of this, we are not impressed on the above submission of the Applicant so as to nullify the action taken against the applicant in the present case.

9. Similarly, people are prone to make unnecessary allegation when they become unsuccessful in their attempt to achieve something. In the instant case the applicant has unnecessarily made several assertions against the members of the committee without any substance. It is inconceivable that all the members of the Committee suddenly became prejudiced against the applicant. Therefore, we are constrained to hold that



this is a futile effort on the part of the applicant to nullify the order of punishment imposed on him in accordance with the provisions enshrined in Article 81 (B) of the Education Code of KVS.

10. Besides the above, it is noticed that in the meantime the appeal preferred by the Applicant has been rejected as reported by the Respondents under Annexure-R/3. The said order of the appellate authority has not been challenged and brought within the purview of challenge in this OA by way of any amendment. Although he submitted appeal to the Vice-Chairman, KVS, the applicant has failed to make him a party in this OA.

11. As to how the applicant has been prejudiced by not holding the regular departmental enquiry has not been forthcoming from the pleadings of this case. Law is well settled unless prejudice is specifically shown, non-adherence of any provision straightaway cannot be a ground for interference in the order of punishment imposed by the competent authority.

12. Last but not the least we may record that the role of teachers is central to all processes of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. Invocation of the provision of Article 81

(B) of KVS education code cannot be faulted in a case impinging on the discipline of the institution. Similarly for the offence of moral turpitude due to sexual harassment that too of a child of class II, the order of termination cannot be said to be in any way illogical or does ~~it~~ in any manner shocks the judicial conscience so as to take a lenient view in the matter. The issues involved in the cases relied on by the Applicant being quite different and distinct the same have no application to the present case.

13 In view of the discussions made above, we find no merit in this OA. This OA is accordingly dismissed by leaving the parties to bear their own costs.

K. Thankappan
(JUSTICE K. THANKAPPAN)

MEMBER (JUDICIAL)

C.R. Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)