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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.212 of 2011

Cuttack this the 27th day of April, 2016

Krushna .Ch.Majhi...Applicant

-VERSUS-

Kenidriya Vidyalaya Sangathan & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? *Yes*


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Krushna .Ch.Majhi
Aged about 43 years
S/o. late Sasikanta Majhi
Ex-Primary Teacher
K.V.Surda
Ghatsila
Jharkhanda
At-Salapur
PO-Narasar
PS-Pirhat Bazar
Dist-Bhadrak
Orissa
PIN-756 131

...Applicant

By the Advocate(s)-M/s.G.Rath
D.K.Mohanty

-VERSUS-

Kenidriya Vidyalaya Sangathan represented through:

1. The Vice-Chairman
Human Resource Development
Sashtri Bhawan
New Delhi-110 001
2. The Commissioner
Kendriya Vidyalaya Sangathan
18, Industrial area
Shaheed Jit Singh Marg
New Delhi-110 602
3. The deputy Commissioner(Person.)
Kendriya Vidyalaya Sangathan
18, Industrial area
Shaheed Jit Singh Marg
New Delhi-110 602
4. The Assistant Commissioner(I/c.)



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Kendriya Vidyalaya Sangathan
Regional Office
Pragati Vihar
Mancheswar
Bhubaneswar
Dist-Khurda

5. The Principal
K.V.Surda
Ghatsila
Dist-Singhbhum

...Respondents

By the Advocate(s)-Mr.H.K.Tripathy

ORDER

R.C.MISRA, MEMBER(A):

Applicant in this Original Application has challenged the legality and validity of the order dated 15.7.2010(A/14) whereby his service as Primary Teacher, Kendriya Vidyalaya, Surda has been terminated by the Commissioner, Kendriya Vidyalaya Sangathan(Hq.) (res.no.2) and the orders of the Vice-Chairman, Kendriya Vidyalaya Sangathan (res.no.1) dated 30.31.03.2011(A/19) upholding punishment of termination and in the circumstances, he has sought for the following relief.

- i) To declare the summary enquiry conducted by the order of the Assistant Commissioner void ab initio being de hors the Rules.
- ii) To quash the Memorandum dated 24.5.2010 under Annexure-A/12.
- iii) To quash the order of termination under Annexure-A14 dated 15.7.2010.
- iv) To quash the order of the appellate authority under Annexure-A/19 dated 30/31.3.2011.



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- v) To direct the respondents to reinstate the applicant forthwith.
 - vi) To direct the respondents to pay the applicant all his service and financial benefits retrospectively.
 - vii) To pass any other order/orders as deemed fit and proper.

2. Unveiled facts of the matter are thus: While working as PRT, Kendriya Vidyalaya, Surda in the State of Jharkhand, on a complaint received from one Shivbachan Singh, Grand Father of Miss.Komal Singh, reading in Class-III A and some other parents to the effect that applicant had misbehaved to their girl wards, a Memorandum dated 19.09.2009(A/1) was issued to him by the Principal, asking him to submit his explanation on or before 22.09.2009, inter alia, prohibiting him from taking class till the decision was taken. On 22.09.2009, Principal, Kendriya Vidyalaya, Surda constituted a Committee comprising of seven members including himself to inquire into the allegations, apparently, having not received any response from the applicant to the Memorandum dated 19.09.2009, fixing the date of first sitting to 23.09.2009 at 11.00 AM, with an instruction to applicant to be present and cooperate with the inquiry. Applicant attended the inquiry on the scheduled date wherein, he had denied the allegations. While the matter stood as such, vide order dated 10.11.2009(A/4), Assistant Commissioner, KVS, Regional Office, Bhubaneswar in exercise of powers conferred under sub-rule(1) of Rule-10 of CCS(CCA) Rules,



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1965, placed the applicant under suspension and simultaneously, vide office order dated 10/11.11.2009 (A/7), the said Assistant Commissioner constituted a Committee consisting of three members for conducting summary inquiry on the complaint lodged against the applicant and to submit the report within 15 days. Thereafter, applicant submitted a representation dated 17.11.2009(A/5) to the Principal to supply him copy of allegations leveled against him by Mr. Shivbachan Singh regarding misbehavior to her granddaughter, Miss. Komal Singh. In response to this, applicant was intimated vide communication dated 23.11.2009(A/6) that since all the original documents concerning this matter had been sent to the Regional Office, Bhubaneswar, his request letter dated 17.11.2009 for supply of document was being forwarded to the RO, Bhubaneswar for further processing. While the matter stood thus, summary inquiry was conducted on 17.12.2009 and the Committee submitted its report holding that applicant was guilty of immoral sexual behavior towards the girl students. On receipt of this, the Commissioner, KVS(HQ.), New Delhi opined to proceed against the applicant under Article-81(b) of Education Code for Kendriya Vidyalayas as holding a regular inquiry under CCS(CCA) Rules, 1965 would cause serious embarrassment to the girl students and consequently, he dispensed with the proceedings under CCS(CCA) Rules, 1965. In the above backdrop, applicant was

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issued with a Memorandum dated 24.5.2010(A/12) requiring him to show cause as to why his services should not be terminated under Article-81(b) of Education Code for KVs. Responding to this, applicant submitted a representation dated 11.6.2010(A/13) by raising various points so as to neutralize the proceedings. However, in consideration of the materials available on record and the representation so submitted, Commissioner, KVS(Hq.), New Delhi, by virtue of order dated 15.7.2010(A/14) imposed punishment by terminating the services of the applicant. Being dissatisfied and aggrieved, applicant submitted an appeal dated 31.7.2010(A/15) to the Vice-Chairman, Human Resources Development(res.no.1). Since, res.no.1 did not consider and dispose of the appeal so preferred, applicant moved this Tribunal in O.A.No.651 of 2010 seeking redressal of his grievance. This Tribunal, vide order dated 21.10.2010 disposed of the said O.A. at the stage of admission with direction to res.no.1 to consider and dispose of the appeal by meeting all the points raised therein and communicate the decision to the applicant in a well reasoned order. Thereafter, res.no.1 after giving an opportunity to the applicant disposed of the appeal vide order dated 30/31.03.2010(A/13) by stating that there was no need to interfere with the orders of the Disciplinary Authority. Decision of the respondents-KVS being not palatable, applicant has



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invoked the jurisdiction of this Tribunal in the instant seeking relief as already mentioned above.

3. In support of his case, applicant has raised the following points.

- i) Proceedings initiated against him under CCS(CCA) Rules, 1965, should not have been culminated in imposition of major punishment in adherence of Article-81(b) of Education Code for KVs and therefore, entire proceedings is void ab initio.
- ii) Allegations leveled against him are totally false and baseless and this has been plotted by some teachers in order to victimize him with whom applicant was not pulling on well.
- iii) The Committee constituted for the purpose of inquiry was inconsistent with the rules and that before such a Committee could be constituted, no intimation was given to the applicant.
- iv) Some of the girl students alleged to have been misbehaved were not personally present during the course of inquiry.
- iv) Parents of some girl students had intimated the concerned authorities stating that the allegations as leveled against the applicant were false and baseless and to that effect, a newspaper clipping was also brought to their notice which were not at all taken into account.
- v) Since the allegations leveled are serious in nature, a detailed fact finding inquiry should have been conducted under CCS(CCA) Rules, 1965, to bring home the charge.
- vi) Statement of allegations and the list of witnesses were not supplied before the inquiry was conducted and therefore, there has been an abridgement of the

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principles of natural justice in defending his case.

vii) Applicant was not allowed to cross-examine the girl students.

4. Respondent-KVS have filed a detailed counter resisting the relief sought by the applicant. The main thrust of the counter is that order of termination of service issued by the Commissioner, KVS(Hq.) by adhering ^{to} ^{the} provisions of Article-81(b) of Education Code for KVs is just and proper. According to them, the preconditions required for termination of services under Article-81(b) of Education Code having been complied with in letter and spirit, it cannot be said that the action of the authorities are arbitrary and unreasonable. However, it is submitted that since the Commissioner, KVS(Hq.) is the authority competent to take a view, after he being satisfied on the report of summary inquiry that the charge^d official is prima ^{facie} guilty, whether to proceed under CCS(CCA) Rules, 1965 or under Article-81(b) of Education Code for KVs, as the case may be. However, in such eventualities, Commissioner has to record the reasons for dispensing with the proceedings under CCS(CCA) Rules, 1965, against the charged official and this reasoning he has recorded while issuing Memorandum dated 24.5.2010(A/12). Therefore, according to respondents, action taken by them being in conformity with the rules of law, the O.A. as laid being devoid of merit is liable to be dismissed.

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5. We have perused the pleadings and heard the learned counsel for both the sides at considerable length. Applicant has not filed any rejoinder to the counter. We have gone through the written notes of submissions filed by them as well as the relevant records concerning the disciplinary proceedings against the applicant as produced by the respondent-KVS.

6. In the written notes of submission applicant has questioned competency of the Assistant Commissioner, KVS, RO, Bhubaneswar in the matter of constitution of the Committee to conduct summary inquiry. Besides, it has been pleaded that without adhering to the provisions of CCS(CCA) Rules, 1965 and without conducting a fact finding inquiry, imposition of punishment of termination of service of the applicant is bad in law and therefore, the action taken under Article-91(b) of Education Code for KVs is void ab initio.

7. From the pleadings of the parties the points emerge for consideration are as under.

- i) Whether action taken from Vidyalaya level to Regional level is in consonance with the rules.
- ii) Whether the proceedings should have been conducted under CCS(CCA) Rules, 1965 for imposition of major penalty or conversely, dispensation of CCS(CCA) Rules, 1965 by the Commissioner, KVS was just and proper.
- iii) Whether it is a case of violation of the principle of natural justice or a case of no opportunity, no hearing, no inquiry to the prejudice of the applicant.



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- iv) Whether the punishment imposed by the Commissioner, KVS is in countenance with the provisions of Article-81(b) of Education Code.
- v) Whether non-interference by the Vice Chairman/Appellate Authority in the order of punishment of the Commissioner/Disciplinary Authority is valid and legal.

8. Admittedly, Article-81(b) of Education Code for KVs lays down that in case of any complaint regarding immoral sexual behavior towards the girls students is received by the Principal, action has to be taken to inquire into the matter by a Committee to be constituted by the Principal at the Vidyalaya level in order to conduct a preliminary inquiry. Therefore, by constituting the said Committee at the Vidyalaya level, Principal, KV, Surda has not transgressed any rules or instructions nor acted beyond his authority.

9. Upon submission of preliminary inquiry report by the Principal and on receipt of the same, the Regional Office has to weigh with the matter with a view to constituting a Committee at the Regional Level for conducting a summary inquiry. This being the instructions, Assistant Commissioner, RO, Bhubaneswar, constituted the Committee within the following members to conduct a summary inquiry.

- a) Mr.A.P.Pravakar Rao, Education Officer(Convener), KVS/RO/BBSR.
- b) Mrs.Monica Soy, Principal, KV, chakradharpur - Member

c) Mrs.M.Soren, PRT, KV, Surda - Member

10. Constitution of this Committee by the Assistant Commissioner, KVS, RO, Bhubaneswar to conduct preliminary inquiry has been called in question by the applicant on the ground that Assistant Commissioner was not competent to constitute the said Committee to conduct the preliminary inquiry. To fortify his view point, applicant has not, however, cited any authority or rule. Rather, Annexure-R/2 to counter-reply filed by the respondent-KVS makes it clear that after receiving the preliminary enquiry report from the School, Assistant commissioner may send a team comprising Education Officer, a lady Principal and a senior lady Teacher of the Vidyalaya to conduct summary inquiry. This being the position, we do not see any law or logic on the point advanced by the applicant that Assistant Commissioner was not competent to constitute the Committee to conduct summary inquiry. Plea of the applicant, in our considered view, does not stand to reason and the point in issue is thus answered.

11. The next point to be considered is whether the proceedings should have been conducted under CCS(CCA) Rules, 1965 for imposition of major penalty or conversely, dispensation^{ing with} of CCS(CCA) Rules, 1965 by the Commissioner, KVS was just and proper. It would be worthy of being mentioned herein that the action taken from the Vidyalaya level to Regional office level gets converged with the decision to be

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taken thereon by the Commissioner, KVS(Hq.), who is the authority competent to take a decision whether or not to proceed under the provisions of CCS(CCA) Rules or to proceed further as per Article-81(B) of the Education Code and in such eventuality, he has to be satisfied with the following conditions, in the first instance.

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 competent authority on the basis of such summary inquiry that the charged officer was prima facie guilty.
4. Satisfaction of the competent authority that it was not expedient to hold an enquiry on account of serious embarrassment to be caused to the student or her guardians or such other practical difficulties.

12. On perusal of Memorandum dated 24.5.2010(A/12) whereby applicant had been asked to show cause as to why his service should not be terminated, the Commissioner, KVS (Hq.), had indicated as under.

“Whereas after going through the said report, I am of the considered opinion that Shri K.C.Majhi, PRT(U/S) has indulged in immoral practices towards the girl students of class-III-A, IV-B and V-B of the Vidyalaya and is prima facie guilty of moral turpitude. Therefore, I have decided to proceed against Shri K.C.Majhi under Article-81(B) of the Education Code for Kendriya Vidyalayas. I am of the opinion that it is not expedient to hold a regular inquiry under the CCS(CCA) Rules,

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1965, as it would cause serious embarrassment to the girl students and could also cause a trauma for them because of their tender age. Accordingly, holding a regular inquiry for imposing major penalty in accordance with the CCS(CCA) Rules, 1965 as applicable to employees of KVS, is dispensed with".

13. It is to be noted that no doubt there are provisions for conducting a regular inquiry under the CCS(CCA) Rules, 1965 which are mutatis mutandis applicable to the employees of KVS. But concomitantly, a special provision has been made to deal with the cases of sexual abuse by a teacher towards the girls students under Article-81(B) of Education Code for KVs, ostensibly, to save the girls students from further exposure of being examined and cross-examined during the course of regular inquiry and at the same time to obviate apparent slur and disgrace on the educational institution. However, the entire authority is invested with the Commissioner, KVS(Hq.) who is competent to take a decision, for the reasons to be recorded in writing by him, whether to proceed for a regular inquiry under CCS(CCA) Rules, 1965 or dispense with the same. And as we see, this discretion, the Commissioner has exercised judiciously having taken into consideration the totality of the facts and circumstances, particularly, the seriousness of the case. Judged from this angle, applicant has no indefeasible right to claim for a regular inquiry under CCS(CCA) Rules, 1965. On the contrary, decision of the Commissioner, KVS(Hq.) for taking action under Article-81(B) of Education Code thereby dispensing with the

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CCS(CCA) Rules, 1965, is in accordance with the rules and we have no ground for interfering with the same.

Thus the point in issue No.(ii) is answered in favour of KVS and against the applicant.

14. Further point crops up for consideration is whether it is a case of violation of the principle of natural justice or a case of 'no opportunity,' no hearing', 'no inquiry' whereby applicant has been prejudiced.

15. In this connection, it is to be noted that the respondent-KVS have in Paragraph-12 of their counter-reply stated that the law laid down by the Hon'ble supreme court in Avinash Nagra vs. Navodaya Vidyalaya Samiti & Ors. (1997-Vol.(2)SCC 534-543) to the effect that the procedure to be adopted in such cases would require that a show cause notice containing the charge and the facts in support of the charge together with the statements recorded in the preliminary inquiry along with a copy of the report of the preliminary inquiry would be given to the charged person and such charged person would be given an opportunity to submit his explanation which will be considered along with all other records before a final order under Article-81(B) of the Education Code for KVS is passed.

16. On perusal of Memorandum dated 24.5.2010(A/12), the Commissioner, KVS(Hq.) while asking the applicant to submit



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his explanation and/or show cause, had endorsed the following documents thereto.

- i) Charges
- ii) Facts in support of the charges
- iii) Copies of statements recorded in the summary inquiry
- iv) Copy of common inquiry

17. Viewed from this, it cannot be said that there has been violation of the principles of natural justice by the Commissioner, KV(Hq.) while taking recourse to the provisions of Article-81(B) of the Education Code. However, it is the case of the applicant that the statement of allegations and the list of witnesses were not provided to him before the inquiry was conducted. This apart, although the girls students were examined, he was not given an opportunity to cross-examine them.

18. We have closely examined this submission of the applicant in the light of the provisions of Article-81(B) of Education Code. It is to be noted that applicant could have availed of those opportunities and in that behalf respondent-KVS must have conceded to his requests, had there been a regular inquiry conducted in accordance with the provisions of CCS(CCA) Rules, 1965. As already mentioned above, the entire endeavour from the Vidyalaya level to Regional level converges with the decision to be taken by the Commissioner, KVS(Hq.) in that behalf either to proceed for a regular inquiry under



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CCS(CCA) Rules or otherwise. Therefore, supply of copies of allegations and list of witness before the inquiry could be conducted was impliedly impermissible until a decision is taken by the Commissioner. If at all the Commissioner, KVS(Hq.) would have directed for a regular inquiry under the CCS(CCA) Rules, 1965, by ^{every} ~~no~~ stretch of imagination, applicant would have been provided with all the required documents to defend his case. But the fact remains that the Commissioner, KVS(Hq.) for the reasons as recorded in writing, did not feel inclined to proceed for a regular inquiry and accordingly, dispensed with the provisions of CCS(CCA) Rules, 1965, keeping in view the embarrassment to be caused to the girls students during the course of inquiry, to that effect, his decision is supported by the Rules.

19. We may add that proceedings under the provisions of CCS(CCA) Rules, 1965 and in dispensation of the same, proceedings under the provisions of Article-81(B) of Education Code for KVs are quite distinct and different from each other. As per the provisions of Article-81(B) of the Education Code, a summary inquiry is initiated against the employees under the KVS, in order to ensure safety and security to the girl students, to protect their modesty and prevent their unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girls students involving misconduct or moral turpitude. Article-81(B) of Education Code

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is a special provision. Charges of moral turpitude against a teacher who is alleged to have shown sexual misconduct are admittedly of a very serious nature. These constitute offence of a very heinous nature and need to be dealt under a special provision. Principles of natural justice in the present case have, however, been followed, and the competent authority has recorded his satisfaction about the ground for taking recourse to the special provision of Article-81(B) of the Education Code.

20. Keeping in view the gravity of offence committed as well as the reasons adduced by the Commissioner, KVS(Hq.) while dispensing with the regular inquiry under CCS(CCA) Rules, 1965 and having regard to the compliance of guidelines framed for the purpose of adhering to Article-81(B) of Education Code for KVs, we are not at all persuaded that the present case comes within the category of 'no opportunity', 'no hearing' and 'no inquiry'. Accordingly, the point in issue No.(iii) is answered.

21. The next point to be considered is whether the Commissioner, KVS has dealt with the representation submitted by the applicant in response to Memorandum dated 24.5.2010(A/12) with all reasonableness.

22. Upon perusal of representation dated 11.06.2010(A/13), a very striking point applicant has brought out in Paragraph-3 thereof, which reads as under.

"Even though the proceeding was initiated as per the 14 of the CCS(CCA) Rules, which is the procedure for imposition of major penalty but finally my authority thought it proper to



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conclude it as per the Education code meant for Kendriya Vidyalayas. It is worthwhile to mention here that if initiation of the Departmental Proceeding has been made as per CCS(CCA) Rules, the said Departmental Proceeding could not have been finalized as per Education Code meant for Kendriya Vidyalayas”.

23. This point though has been noted by the Commissioner, KVS(Hq.) at Page-5 of his order dated 15.7.2010(A/14), he has not drawn any inference in this respect. This point, presumably, applicant has urged owing to the order of suspension issued by the Assistant Commissioner, RO, Bhubaneswar vide A/4 dated 10.11.2009 which has been so issued in exercise of powers conferred upon him under sub-rule(1) of Rule-10 of CCS(CCA) Rules, 1965. Of course, Clause-10 of the Circular issued by the KVS (R/2) empowers the Assistant Commissioner, having to regard to the seriousness of the case and the situation prevailing in the school due to the incident, to decide whether the concerned teacher could be placed under suspension or not.

24. Applicant has also not challenged competency of the Assistant Commissioner, RO, Bhubaneswar to place him under suspension. At the cost of repetition, we would say that the decision of the Commissioner, KVS(Hq.) either to proceed for a regular inquiry under CCS(CCA) Rules, 1965, or otherwise, is suzerain and this decision, he has already taken while issuing Memorandum dated 24.5.2010(A/12) and this being the situation, order dated 10.11.2009(A/4) placing the applicant under suspension merged with the decision taken by the

Commissioner, KVS(Hq.) vide Memorandum at A/12. Therefore, we do not find any infirmity in the order dated 15.7.2010(A/14) issued by the Commissioner, KVS(Hq.) by dint of which applicant's service has been terminated.

25. As regards the point regarding non-interference by the Vice Chairman/Appellate Authority in the order of punishment of the Commissioner/Disciplinary Authority, ⁱⁿ ~~in~~ ^B the appeal, applicant has basically urged the point regarding regular inquiry under the provisions of CCS(CCA) Rules. But he has not stated anywhere as to how the decision of the Commissioner, KVS(Hq.) vide A/14 is bad in law. The Vice-Chairman being the Appellate Authority had given an opportunity to the applicant of being heard and in a very detailed and exhaustive order dated 30/3.3.2011(A/19), he has declined to interfere with the orders of the Disciplinary Authority, i.e., Commissioner, KVS(Hq.). We do not find any flaw or infirmity with this order warranting our interference. Accordingly, we answer the point in issue No.(iv) against the applicant and in favour of KVS.

26. Some further discussion on the submissions of the parties in the written notes is called for.

27. In the written notes of submission, learned counsel for the applicant has raised the grounds of denial of natural justice, as also the fact that although the statute provides that the Commissioner has to be satisfied that a regular inquiry under CCS(CCA) Rules is not practicable ~~whereas~~, in the present case,



such satisfaction has not been recorded. Article-81(B) lays down that where the Commissioner is satisfied after such summary inquiry as he deems proper and practicable that any member of KVS is prima facie guilty of moral turpitude, involving sexual offence or exhibition of immoral sexual behaviour towards a student, he can terminate the services of that employee by giving him one months' or three months' pay and allowances accordingly as the employee is temporary and 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 employees of KVS 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 ^{her} his guardians or such other practical difficulties. The reasons for the same are to be recorded in writing by the Commissioner.


28. Records in the present case reveal that the summary inquiry report was submitted on 24.2.2010. The Commissioner has issued Memorandum dated 24.5.2010 to the delinquent serving the charges and supporting documents upon him, calling for his explanation. He has recorded in the said Memorandum that after the perusal of the summary inquiry report, he has arrived at the opinion that it is not expedient to hold a regular inquiry under the CCS(CCA) Rules, 1965, as it would cause serious embarrassment to the girl students and

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could also cause trauma for them, because of their tender age. In view of the clear recording by the Commissioner while forming opinion about dispensing with the regular process of inquiry, it appears that the action of the Commissioner is in conformity with the statutory principles.

29. The learned counsel for the applicant has repeatedly harped upon the point that the principle of *audi alteram partem* was violated in the case as the applicant was denied adequate opportunity to put forth his case. The constitution of summary inquiry Committee was without authority, and members of the Committee were biased against the applicant. The respondents on the other hand, have submitted that all procedures were followed. In this regard, respondents have pointed out letter dated 24.1.2008 issued by the Hqrs. of KVS to Assistant Commissioner of Regional Offices in which steps to be taken in the event of receipt of complaint of immoral sexual behaviour to girl students have been outlined. We certainly have to see whether principle of natural justice was obstructed, and delinquent was not given opportunity to defend his case. On careful examination, we do not see any point that would convince us that the applicant was so prejudiced. Applicant was provided all opportunities, and he has also availed of the same. The Appellate Authority in his order dated 30/31.3.2011 has specifically stated as below.

 "The applicant Sri K.C.Majhi was given an opportunity to explain his case during the personal

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hearing on 30.3.2011. Sri K.C.Majhi attended the personal hearing and submitted his case which has been considered by the undersigned”.

30. The learned counsel for the applicant has cited some case law to strengthen his submission that adequate opportunity has to be provided in order to ensure a fair trial. However, we do not see any lacunae in this regard as far as the facts of this case are concerned. The fact that the Commissioner has not himself nominated members of the Committee to conduct summary inquiry cannot be accepted as a substantial point for holding that the inquiry was biased or vitiated. We are of the opinion that the inquiry was conducted in conformity with the Rules.

31. The learned counsel for respondents has reiterated in his written note of submissions that the orders of the disciplinary authority, i.e., Commissioner, KVS have been passed in due conformity with Article-81(B) of the Education Code. The appellate authority has disposed of the appeal after perusal of records, and also a personal hearing was given to the applicant. Natural justice has not been compromised at any stage of the proceedings. The learned counsel for the respondents cited a number of judgments rendered in similar matters, a few of which are mentioned hereunder.

32. In the matter of *Avinash Nagra vs. Navodaya Vidyalaya Samity & Ors. (1997) Vol. 2-SCC 534*, the Hon'ble Supreme Court held that ***“with a view to ensure safety and security to the girl students, to protect their modesty and prevent their***

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unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girl student, etc., involving misconduct or moral turpitude, resolution prescribing special summary procedure was proposed and published by notification dated 23.12.1993, after due approval of the Executives of the respondent-Samiti. In the circumstances, it is very hazardous to expose the young girls to tardy process of cross-examination when a teacher is disgraceful ^{with} ~~to~~ a depraved character and views his girl-students not in similar manner as treating his own daughter"

33. In the matter of Commissioner, KVS vs. Rathin Pal decided on 16.8.2010 (SLP©No.4627/2008), the Hon'ble Apex Court held as under:

"In the facts and circumstances of the case and going through the departmental file, we agree with the finding of Commissioner to dispense with the regular enquiry as in that event, the minor girls who have not seen the complexities of life as yet, would be placed in an embarrassing and hazardous situation having been exposed to tardy process of cross-examination"

34. In the landmark case of Vishakha vs. State of Rajasthan, the Hon'ble Apex Court has come down heavily on sexual harassment and behaviour which include physical contact and advances and also sexually coloured remarks.

33. In an educational institution, young boys and girls are placed in the custody of a teacher. In a primary school, the

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students are at a very tender age. The teacher is not merely in charge of giving them educational instruction, but, he/she is also entrusted with their moral and ethical development. When that very same teacher is alleged to have betrayed that deep trust by making abnormal sexual advances to very young girls, everyone's ethical conscience is stirred and disturbed. Such perverted behaviour militates against both individual and collective morality. We would not say that ^every ^esuch allegation would be true. But whenever such allegation is brought to ~~the~~ ^enotice by such young, innocent students who would certainly be going through mental trauma while speaking about such "**unspeakable**" matters against a school teacher, ~~The~~ ^e authorities are duty bound to probe the allegation and take appropriate disciplinary action. To plead that the special provision made under Article-81(B) of the Education Code should not have been invoked to deal with the matter, and the regular proceeding under CCS(CCA) Rules, should have been taken resort to would certainly be an unacceptable argument. Incidents like this leave a deep scar on young minds. The Institution has a responsibility to protect them while inquiring into the matter, and in the process ensure natural justice for the delinquent, before deciding upon a punishment. Natural justice for one person cannot be at the cost of the fundamental rights of the young girl students to have a dignified life. We many times forget that young and helpless people who are kept in



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the custody of guardians and teachers have every right to their dignity, even though they may not be able to express and assert their voice. The Special Provision under Article-81(B) of the Education Code is formulated to take care of these situations, and vests right^l on the competent authority to proceed in a manner that is least injurious to the parties. A consideration of all the facts of this case viewed in totality convinces us that the satisfaction of the Commissioner to dispense with the regular inquiry and go for the summary inquiry procedure enshrined in the Education Code is based upon objective facts. In our opinion, there is no failure in ensuring natural justice to the applicant, and opportunity has been provided to him to put forth his defence.

35. For the reasons as discussed above, we do not find any merit in this Original Application, which is accordingly dismissed, with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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