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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 1019 of 2012
Cuttack, this the 19th day of ~~September~~, 2016

Ananta Chandra Das Applicant
Versus
Kendriya Vidyalaya Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?

R.C.Misra
(R.C.MISRA)
Member (Admn.)

A.K.Patnaik
(A.K.PATNAIK)
Member (Judl.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 1019 of 2012
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CORAM:

**THE HON'BLE MR.A.K.PATNAIK, JUDICIAL MEMBER
THE HON'BLE MR. R.C.MISRA, ADMN. MEMBER**

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Shri Ananta Chandra Das, Aged about 49 years, S/o. Late Chandramani Das, Village- Sitaleswar, Jajpur Town, Post/Dist. Jajpur, Ex-TGT (WET), Kendriya Vidyalaya, Aviation Research Centre, Charbatia, Dist.Cuttack, Odisha.

..... Applicant

By the Applicant : M/s. K.C.Kanungo,
A.K.Mohanty,
P.K.Kar,
D.K.Mohanty,
Counsel

-Versus-

1. Union of India represented by Secretary, Ministry of Human Resource Development (Block-C), Sashtri Bhawan, New Delhi-110 001.
2. KENDRIYA VIDYALAYA SANGATHAN through its Vice Chairman, Kendriya Vidyalaya Sangathan, Ministry of Human Resource Development (Block-C), Sashtri Bhawan, New Delhi-110 001.
3. The Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110 602.
4. The Assistant Commissioner (I/c), Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar, Mancheswar, Bhubaneswar, Dist. Khurda.
5. The Principal, Kendriya Vidyalaya, Charbatia, Cuttack, Odisha, Pin: 754028.

..... Respondents

By the Respondents :Mr. H.Tripathy, Counsel

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ORDER

MR.A.K.PATNAIK, JUDICIAL MEMBER

The order/letter No.F.15061/iv/02-2011-KVS (vig) dated 09.03.2012 of the Disciplinary Authority i.e. the Commissioner, KVS, New Delhi /Respondent No.2 imposing the punishment of termination and the order/letter No.F.15061/iv/02-2011-KVS (vig) dated 04.10.2012 of the Appellate Authority i.e. Vice-Chairman, KVS, New Delhi/Respondent No.1 upholding the order of the Disciplinary Authority have been challenged by the Applicant in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:

- (i) To quash order dated 09-03-2012 (Annexure-A/11) pursuant to which order passed on 20-03-2012 (Annexure-A/12) and the order of the Appellate Authority dated 04-10-2012 (Annexure-A/14);
- (ii) To direct the Respondents to reinstate the Applicant to service forthwith and grant him all service and financial benefits retrospectively;
- (iii) To pass any other order/orders as deemed fit and proper;
- (iv) To allow this OA with costs.
- (v) To declare the committee formed and enquiry conducted by the order of the Assistant Commissioner is *ab initio* void being de hors the Rules.

2. The facts set forth by the applicant in the Original Application, succinctly and precisely, are that he was as a Work Experience Teacher (in short 'WET') of Kendriya Vidyalaya Sangathan.

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After putting 18 years of dedicated service as a Teacher at various places such as Cuttack, Ahamad Nagar (Maharastra), Koraput he was lastly posted at KV, Charbatia. During his service career, being a HOWB holder, he had successfully conducted scout and guide camps in the Schools on several occasions. But he became a victim due to the conspiracy among his colleagues namely Smt Aparna Mohapatra a lady teacher of K.V, Charbatia and finally visited with the punishment of removal from service on false and frivolous allegation that he misbehaved a minor girl of about 11 to 12 years of age. It has been stated that the Asst Commissioner Kendriya Vidyalaya Sangathan Bhubaneswar Region, also joined his hands in the said conspiracy without due application of mind and in exercise of power under Rule-10(1)(a) of the CCS (CCA) Rules, 1965, he was placed under suspension in contemplation of a disciplinary proceedings. It has been stated that as he was placed under suspension in contemplation of a disciplinary proceedings he should have been served with a charge sheet under Rule 14 or 16 of CCS (CC&A) Rules, 1965 thereby giving him an opportunity to defend his case in a free and fair manner, instead, the Respondents adopted a novel procedure inasmuch as the Education Officer, Kendriya Vidyalaya Sangathan Bhubaneswar Region, Bhubaneswar issued letter No. F.15062/1-2/2010-KVS (BBS)/41822-41825 dated 26-10-2010 intimating him to remain present before the Inquiry Committee constituted by the Respondent No.4 [Asst. Commissioner, KVS, Bhubaneswar) vide his letter No. 15061/1-2/2010-KVS (BBS)/40783-40785 dated 21-10-2010] on 16-11-2010. By making representation he has prayed for copies of the preliminary inquiry report, if

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any, and order of the Assistant Commissioner, KVS, Bhubaneswar with further prayer to allow him to be defended by a defence assistance. The Education Officer, KVS, Bhubaneswar, though not the DA, dealt with his representation and in letter dated 02/03-11-2010 refused to grant the copies of the required documents and to be defended by defence assistance. He was also denied to have the access of the allegation, statements obtained during the preliminary enquiry conducted behind his back and on the report of the preliminary inquiry. However, he attended the enquiry on the date and time fixed. On the instruction of the members of the Committee he had also submitted his written statement of defence denying any such events at all took place. It has been stated that during the enquiry, neither the complainant nor the victim girl alleged to have been misbehaved by him were present before the enquiry committee. It has been alleged that he was not made known when the statements of the complainant and the girl were recorded by the Committee. It has been stated that there was no iota of truth on the allegation and the entire allegation was at the behest of another lady teacher who was not pulling on well with him could have been proved had the authorities taken into consideration the letter written by the Staff Members of the KV, ARC, Charbatia on 9.2.2011 & 11.02.2011 but the same were not taken into consideration. It is the case of the Applicant that based on the report of the inquiry, the Assistant Commissioner, KVS, Regional Office, Bhubaneswar in his letter dated 16.03.2011 recommended the matter to the Commissioner, KVS, New Delhi to take action against the applicant under Article 81 (b) of KVS Code. Based on the recommendation of the Assistant Commissioner, the



Commissioner issued show cause notice dated 05.08.2011 to him stating therein as to why his services shall not be terminated under Article 81 (B) of the Education Code of KVS. The applicant submitted his reply on 23rd August, 2011 in which he, while denying the allegation to be concocted, false, fabricated, afterthought and out of deep rooted conspiracy, has sincerely prayed to exonerate him from the allegations. He has also pointed out not to take cognizance on the report of the committee based on which recommendation made by the Assistant Commissioner for the same having been prepared behind his back without giving him any opportunity. But without paying any heed to such request, the Commissioner, KVS, New Delhi issued order dated 09.03.2012 for terminating him from service by paying him the pay and allowances as admissible under rules in lieu of notice period. It has been stated that based on such order, the Principal, KV Charbatia terminated the service of the applicant by giving him three months pay in lieu of three months notice. According to the Applicant, the Commissioner, KVS, New Delhi is the competent authority to terminate the service of a teacher as per the provision under Article 81(B) of the KVS Code for Kendriya Vidyalaya. Therefore, the order dated 9.3.2012 should have been followed by another order of none other than the Commissioner, KVS, New Delhi that the service of the applicant stands terminated with immediate effect. Further based on such order of the Commissioner, KVS, New Delhi the in charge Principal ought not to have terminated his service especially when he was continuing under suspension by the order of the Assistant Commissioner, KVS, Bhubaneswar Region, Bhubaneswar. It has been stated that at the time of termination the applicant was under

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suspension and was only getting Subsistence Allowance. Therefore, without reinstating him to service, terminating him from service by paying three months full salary amounts to regularizing his period of suspension but without paying him full salary for the entire period of suspension. Therefore, the order imposing him the capital punishment of termination is a nullity in the eyes of law. It has been stated that he was hopeful that the injustice caused to him in the decision making process of the matter would have been removed by the Appellate authority if the matter is brought to his notice, and, therefore, by making appeal he invoked the jurisdiction of the appellate authority but to his misfortune, the appellate authority without giving due consideration to the grievance raised by him rejected the appeal vide order dated 04.10.2012. In substance, it is the case of the applicant that the order of punishment passed by the Disciplinary Authority is based on the fact finding summary enquiry conducted by an authority who is not competent and has no jurisdiction to do so that too behind his back. There is no iota of truth on the allegation and/or the report is based on no evidence or the evidence is thoroughly useless based on which a reasonable and prudent man could not have come to such conclusion. There was gross violation of the Rules and principles of natural justice. There was no regular enquiry or there is no order as to why regular hearing could not be resorted to. The Disciplinary Authority issued order for punishment without verifying the compliance of Rules and principles of natural justice as required under the Rules. In appeal, the Appellate Authority upheld the order of punishment without verifying compliance of the rules and natural justice and whether exercise of power was in

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accordance with rules and the prejudice stated to have really been caused, to the Applicant. It has been stated that both the authorities passed the order without meeting/answering the points raised by the applicant and therefore, both the orders are nonetheless non speaking orders and cannot pass the test of reasonableness enshrined in Articles 14 and 16 of the Constitution of India.

3. The **grounds for relief with legal provisions** set out by the Applicant are as under:

5.1. That the provisions made in K.V.S. Code & CCS (CC&A) Rules, 1965 *mutatis mutandis* apply to the Disciplinary Proceedings initiated against employees of the Kendriya Vidyalaya Snagathan. The order of termination/removal is one the major punishments available in the CCS (CC&A) Rules, 1965. Therefore, the punishments more so when it is capital punishment, it can only be imposed after following the rigors provided under Rule 14 of the CCS (CC&A) Rules, 1965/Article 311 of the Constitution of India by way of complying with the principles of natural justice. However, power has been vested with the Respondent No.2 (Commissioner, KVS, New Delhi), under Article 80 & 81(B) of the K.V.Code to dispense with the requirement of the provision of Rule 14 of the CCS (CC&A) Rules, 1965 which is akin to the provision made in Rule 19 of the CCS (CC&A) Rules, 1965. The provision under **Article 80 and Article 81(B)** of K.V. Education Code is as under:

“Article 80- Extension of the application of Central Civil Services (Classification, Control and Appeal) Rules, 1965:

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(a) All employees of Kendriya Vidyalayas, Regional Offices and the Headquarters of the Sangathan shall be subject to the disciplinary control of the Sangathan and the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as amended from time to time, will apply ***mutatis mutandis*** to all Members of the staff of the Sangathan except when otherwise decided. (In the above Rules, for the words "Government Servant", wherever they occur, the words "Employee of Kendriya Vidyalaya Kendriya Vidyalaya Sangathan" shall be substituted}.

Article 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 months 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."**

5-2. The power to terminate by dispensing with the provision of the CCS (CC&A) Rules, under the

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statute, is no doubt vested only with the '**Commissioner**' provided where the '**Commissioner**' is satisfied after such a summary enquiry as '**he**' deems proper and practicable in the circumstances of the case and that the "**Commissioner**" "**shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry...**" But in the instant case the summary enquiry was conducted by the **Assistant Commissioner** behind his back and used the materials collected without giving him opportunity. On recommendation of the Assistant Commissioner, the Commissioner issued show cause notice to terminate which is not sustainable being de hors the rules. Hence, the order terminating the services is liable to be set aside.

5-3. The Applicant was placed under suspension by the Assistant Commissioner, Regional Office, Bhubaneswar in exercise of the power conferred by sub rule (1) of Rule 10 of the CCS (CC&A) Rules, 1965 in contemplation of Disciplinary Proceedings against him. Suspension of an employee is only in contemplation or during the pendency of Disciplinary Proceedings under Rule 14 of Rules of CCS (CC&A) Rules, 1965, as was done in the present case. But without any reason or intimation, the provision of Article 81(B) was invoked by an authority who is incompetent to do so (i.e. Assistant Commissioner, KVS, Bhubaneswar) for the reasons best known to him. The said summary enquiry was also conducted in a novel manner without giving adequate opportunity to the Applicant to have his say or even without making the presence of the author of the complaint for examination and cross examination in the said summary enquiry.

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5-4. By not providing copies of the complaint prior to the show cause notice of 'termination', in compliance of the *audi alterum partem*, the Applicant was highly prejudiced either to claim for examination/cross examination the author of the complainant/episode. No opportunity was allowed to the Applicant to confront or examine the author of the complainant or to whom it was tendered or even who has produced it before the Committee although it was a vital component in service jurisprudence. As such the right of the applicant was infringed seriously; because every citizen has a right to get and demand proves of the allegation to the hilt.

5-5. The order of punishment is not sustainable as the said punishment was imposed without giving a personal hearing especially when the punishment was in exercise of power under Article 81(B) in dispensing with the regular enquiry as provided in Rule 14 of the CCS (CC&A) Rules, 1965 by the DA. Hence, the order of termination being the outcome of malice and is an outcome of injustice in the decision making process of the matter the order of termination is liable to be set aside;

5-6. It is trite law that the scope of the legislation or the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless, it is plainly necessary to do so to prevent a provision from being unintelligible absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. Also it is trite law that sub

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delegation is void. When statute itself provides where the 'Commissioner' is satisfied after such a summary enquiry as 'he' deems proper and practicable in the circumstances of a matter, summary enquiry conducted by the Assistant Commissioner and Principal is void *ab initio* and based on the said report the Commissioner could not have terminated the service of the applicant without due application of mind and without considering the representation submitted by the applicant to the memorandum. Hence as injustice was caused to the applicant in the decision making process of the matter, the order of termination is liable to be set aside;

5-7. The summary enquiry conducted is also not sustainable for another reason. Law is well settled in a catena of judicial pronouncements of the Hon'ble Apex Court as also of various other courts that 'no one should be the judge of his own action.' Principal of the School received the alleged complaint and became a member of the Committee. As such, the summary enquiry report cannot be said to be free from bias. **The Government of India, MHA OM No. F.6/26/60-Ests (A) dated 16th February, 1961** clearly provides that "Only disinterested officers should be appointed as IO. The authorities concerned should bear this in mind before an Inquiry Officer is appointed in a disciplinary case." As stated above, since Principal received the complaint conducted the preliminary enquiry at first instance subsequently he should not have been nominated as one of the members of the summary enquiry committee by the Assistant Commissioner. By this the Applicant was highly deprived of getting the justice. As such, the report as submitted based on which the Commissioner terminated



the service of the Applicant in dispensing with the enquiry is liable to be set aside.

5-8. Had there been summary enquiry either by the Commissioner or by a Committee formulated by him other than the members associated with the enquiry the applicant could not have been held guilty as has been done in present report. Further the Commissioner, KVS, New Delhi being the appointing authority of the Applicant; summary enquiry could have only been made by his order with nomination of Members to be the Committee and certainly not by the order of the Assistant Commissioner as has been done in the present case. As such report collected and submitted behind the back of the applicant being perfunctory one having no legal sanctity, based on which without due application of mind the applicant could not have been thrown to the street to move with begging bowls after rendering dedicated service of of 18 years. Hence, the order of termination being contrary to rules and principles of natural justice is liable to be set aside;

5-9. Equally law is well settled in a canon of decisions that failure to give reasons amounts to denial of justice as reasons are live links between the minds of the decision taker to the controversy in question and the decision or conclusion arrived at. Further it is settled law that once a defence has been raised as an explanation, the same requires an examination and answer. From the order of rejection, it would be evident that the points raised by the applicant in his explanation/show cause reply, had not all been considered and without meeting the points in seriatim order of punishment was passed by recording the verbatim or being biased by the summary

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enquiry report prepared and submitted by an incompetent authority based on the statements obtained behind the back of applicant.

5.10. The Applicant was placed under suspension in contemplation of disciplinary action under CCS (CC&A) Rules, 1965. No reason has been assigned for change of the proceedings or as to why regular enquiry was not necessary. No charge sheet was served on him as required under rules although it is settled law that the first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Hence suddenly changing the strategy with a view to impose the punishment of termination is in violation of Article 14 and 16 of the constitution of India and, as such, the order of termination is liable to be set aside.

5.11. The expression natural justice and legal justice do not present a water tight classification. It is the substance of justice which is to be secured by both and whenever legal justice fails to achieve this solemn purpose natural justice is called in aid of legal justice. Therefore, adherence to principles of natural justice as recognized by all civilized States/organization is of supreme importance when a quasi judicial body embarks on determining disputes between the parties or any administrative action involving civil consequences is in issue. It is after all an approved rule of fair play. Even God did not pass a sentence upon Adam, before he was called upon to make his defence. Whereas, the applicant has been visited with the harsh punishment of



termination complying with the principles of natural justice and in a novel and model manner of conducting summary enquiry by an authority incompetent to do so and by the members who are associated with the fact of the matter. Hence, the order of termination being bad in law is liable to be set aside.

5.12. In a catena of decisions it has been held by the Hon'ble Apex Court that Authority is not a mere Post Office to take a decision at the behest of the prosecution but has to exercise his judicial mind to fact of case in order to determine whether a case has been made out or whether the procedure has properly followed and whether statements recorded meet the ends of justice/principle of natural justice. For this purpose, the authority competent has to enter into the pros and cons of the matter or into a weighing and balancing the evidence so as to reach a conclusion whether with the evidence there remains anything. It is, therefore, obvious that the deciding authority has to take a view whether there is sufficient ground for imposing termination and he must weigh the material on record as well as the documents relied on by the subordinate authority. It is necessary to find out whether the sufficiency of ground would take within its fold the nature of the evidence recorded during summary enquiry or the documents produced before it ex facie discloses that there are against the delinquent requiring harsh punishment of termination. No such finding has also been recorded in the order of termination and with the repetition of the language; the Respondent No.2 imposed the order of punishment which is bad in law;



5.12. It is trite law that a real likelihood of bias means at least substantial possibility of bias. Answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. The test of bias is whether a reasonable intelligent man, fully apprised of all whether in fact a bias has affected of doing the matter in an orderly manner; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to the authorities might have operated against him in the final decision of the matter. It is in this sense that it is often said that justice must not only be done but must also appear to be done. The surrounding circumstances enumerated above would not be contrary to the inevitable conclusion that the entire gamut is not free from bias. As such the order of termination being contrary to the rules, *audi alterum partem* and various judge made laws is liable to be set aside;

5.13. The employee on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. Further it is well settled law that discretion cannot be used discriminatorily if it is so then it is bad in law and such exercise of discretion amounts to colourable exercise of power and is liable to be set aside as in the present case.

5.14. It is trite law that a delegatee must exercise its powers within the four corners of the statute. The power of a sub-delegatee cannot exercise any power which is not meant to be conferred upon him by reason of statutory provisions. It must conform not only to the provisions of the regulations and the Act but also other

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parliamentary Acts-Life Insurance Corporation of India and others v Retired LIC Officers Association and others, (2008) 1 SCC (L&S) 622.

5.15. Surrendering the discretion, the proceedings is not sustainable in the eyes of law [Ref: **Hari Prakash Mishra v. Union of India and others**, 2000 (2) SLJ (CAT) 89].

5.16. It is well settled law that where a power is given to do certain thing in certain manner/way the thing must be done in that way/manner or not at all. Other methods of performance are necessarily forbidden- **Nazir Ahmed vs. Emperor** –AIR 1936 Privy Council 253 (2). This has also been reiterated in the case of **Ramchandra Keshav Adke (Dead) by Lrs. V. Govind Joti Chavare and others** –AIR 1975 SC 915.

5.17. After all the Government which is a model employer cannot be permitted to approbate and reprobate, blow hot and cold together and cannot be permitted to play with the fundamental rights of the individual and that too in such an un-ceremonial manner in other words starting the proceedings under one Rule and suddenly confronting it to another rule for implosion of harsh punishment is bad in law;

5.18. The removal from service without any enquiry held is not sustainable-**M.D.Univesity Rohtak V Ajit Singh Nandal and another**, (2009) 1 SCC (L&S) 471.

5.19. The fair hearing calls for a right to rebut any evidence that necessarily involves essentially two factors namely cross examination and legal representation. In absence of which the proceeding and

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punishment is liable to be set aside- **State of J&K v Bakshi Gulam Mohammad**, AIR 1967 SC 122.

5.20. The preparation of report based on enquiry behind the back of the employee without cross examination and imposition of punishment based on such report being violative of principles of natural justice is not sustainable - **S.C.Girotra v United Commercial Bank**, 1995 SCC (L&S) 1140.

5.21. The non-examination of the complainant, non production of those witnesses and documents relevant vitiated the enquiry-**Pazawna and etc. v State bank of India and others**, 2009(6) SLR 200.

5.22. The members of the enquiry committee having not confronted with the applicant with examination of evidence brought against him is contrary to the law laid down in the cases of **R.Robert v Union of India and others**, reported in 1991 (2) AISLJ 138 and **Moni Shankar v Union of India**, reported in 2008 (3) SCALE 455. Hence imposition of punishment on the basis of such report is bad in law;

5.23. Non-examination of a material witness and deprivation of a reasonable opportunity in allowing the delinquent to cross examine the witness is a serious infirmity on both substantive and procedural sides. EO having not confronted with the applicant with examination of evidence brought against him is contrary to Rule & Law -**Samar Singh v UOI and others**, 2009 (3) AISLJ (CAT) 384.

5.24. The Assistant Commissioner is not authorized to conduct the summary enquiry; is not authorized to nominate members. As such the entire



action taken by the Assistant Commissioner was without jurisdiction, competence. Hence, the action of the Respondents is highly illegal, arbitrary and hit by articles 14, 16 and 21 of the Constitution of India as also against all canons of justice, equity and fair play. For that the appellate authority order also is liable to be set aside being unreasoned and without meeting/answering the points raised by the applicant in his appeal.

5.25. A summary enquiry is an exception accomplished through simplified procedure without the formalities attached to an elaborate and regular enquiry. It does not however mean receiving and considering a report against an employee guilty of grave charge without informing the employee what the charges are and without giving an opportunity to him to deny the charge. The law is well settled that "*No process of collecting evidence and assessing its effect can be called an" enquiry" – either regular or summary - unless the person against whom it is held is permitted to participate in it or at least given an opportunity to deny the charge or show cause against the material proposed to be used against him. Use of the words 'summary enquiry as he deems proper and practicable ' does not entitle the authority empowered to dismiss or remove an employee to dispense with the need to give an opportunity to deny the charge or have his say in regard to evidence ."*

The Hon'ble High Court also further observed in the same case that "*Merely collecting statements from the students or parents or witnesses does not amount to a summary enquiry, but only amounts to*



a preliminary investigation. Unless the charge is made known to the employee and the statements recorded or an extract thereof is made available to the employee and is given an opportunity to deny the charge or how cause as to why such material or report should not be acted upon, the action will remain a preliminary investigation and not a summary enquiry." In the instant case admittedly the charge against me was not made known to me with an opportunity to deny it. None of the complaints/ statements of the students or their parents which led to the conclusion that the respondent is guilty of an act of moral turpitude involving sexual offences or exhibition of immoral sexual behavior were furnished to me and I was not allowed to produce any defense witness . Therefore as per the afore said decision of the Hon'ble High Court of Karnataka the summary inquiry under section 81(b) has not been completed . Thus the term summary enquiry occurring in Rule 81(b) can not be interpreted as denying any kind of opportunity to show cause to an employee for which the so called summary enquiry has been vitiated due to denial of principle of natural justice. Hence, the order of punishment is liable to be set aside;

5.26. The allegations were enquired into by the order of the Assistant Commissioner. Therefore, the enquiry conducted cannot be said to be an enquiry under the provision of Article 81 (B) of the Code. Hence, the procedure prescribed under the CCS Rules could not have been ignored by the Assistant Commissioner or the Committee formulated for enquiry. The charges were not framed nor was any memorandum prepared in support



of each article of charge. The applicant was not given list of witnesses to be examined in the inquiry conducted by the Committee. Nor were the witnesses offered for cross-examination of the applicant and there was no occasion for the applicant to decline any such offer for cross examination of witnesses. Thus, the entire procedure provided in the rules has been given a complete go by and as such the Commissioner could not have taken action on the said report or the recommendation made by Assistant Commissioner based on such report. Hence, the order of punishment is liable to be set aside.

5.27. The Committee as also authority have totally ignored the provision of the Rules. Even when the Departmental Complaint Committee was asked to inquire into the matter it was perhaps not contemplated to be an inquiry under Article 81 (B). Nor was it being looked upon as an inquiry contemplated under the Rules by the applicant or by the Respondents. No one thought it necessary to ask the applicant to submit a written reply to the allegations or to cross examine the witnesses of the department or to present his own witness. Hence the order imposing major penalty de hors the rules is not sustainable in the eyes of law.

5.28. Be that as it may, it is the Committee's report which was brought about the impugned order of punishment. Clearly the applicant was not called upon to defend himself as if the proceedings of the committee were going to be disciplinary proceedings. Therefore the report of the Committee by no argument can be equated with the report of the Committee by an Inquiry Authority under the CCS Rules or under the provision of



Article 81 (B). Hence based on which imposition of punishment is a nullity and being a nullity the same is liable to be set aside. For that at the cost of repetition it is submitted that there has been complete violation of the principles of natural justice by failure to allow the assistance to the applicant to take evidence in his defence and to provide an opportunity to cross examine witnesses of the complainant or of the department. The punishment of termination is too harsh and is liable to be set aside.

4. Hence, the exercise of power cannot be said to be bona fide and as the action of the Respondents is highly illegal, arbitrary, without application of mind and hit by Articles 14, 16 of the Constitution of India, the impugned orders are liable to be set aside.

5. The Respondents have filed their counter in which it has been stated that the Deputy Director (A), ARC, Charibatia and the Chairman Vidyalaya Management Committee, KV, Charibatia received a written complaint dated 22.09.2010 from Shri Bhagban Mallick father of a student of Class VII (B) KV, Charibatia alleging showing sexual indications to his minor daughter by the applicant during SUPW classes. Hence, on 23.09.2010 explanation of the applicant was called for by the principal, KV, Charbatia. The Principal KV, Charbatia vide order dated 24.09.2010 constituted a Preliminary inquiry Committee of three members to enquire into the allegation who conducted the enquiry and submitted report on 25.09.2010 which was forwarded by the Principal, KV, Charbaita to Assistant Commissioner. On receipt of such letter, the Assistant Commissioner constituted a Committee to conduct the summary inquiry



who after conducting enquiry submitted report on 04.01.2011. The Assistant Commissioner, KVS Regional Office, Bhubaneswar forwarded the report of the Committee to the Commissioner, KVS, New Delhi with recommendation to take action against the applicant under Article 81 (B) vide letter dated 16.03.2011 in terms of KVS (HQ) New Delhi letter dated 24.01.2002. The Commissioner, KVS, New Delhi after going through the report and in adherence to the norms and the law laid down by the Hon'ble Apex Court in the cases of **Avinash Nagra v Navodaya Vidyalaya Samiti & Ors**, 1997 Vol. 2 SCC 534-543 and **Director, Navodaya Vidyalaya Samiti & Ors v Babban Prasad Yadav** (2004) Vol. 13 SCC PAGE 568 issued show cause notice on 05.08.2011 to the applicant with details of charges framed against him together with the copies of statement recorded in the preliminary summary enquiries giving an opportunity to the applicant to represent. The applicant submitted his reply on 23.8.2011 denying the allegations made against him. After going through the report and the reply submitted by the applicant, the Commissioner, KVS, New Delhi in exercise of the power conferred under Article 81 (B) of the Education Code terminated the service of the applicant with immediate effect. It has been stated that after considering all materials/record the Commissioner, KVS dispensed with the regular inquiry as per CCS (CCA) Rules, 1965 as it would have been caused embarrassment to the victim girls and their parent and in support of the stand of dispensing with the enquiry in such circumstances, the Respondents have placed reliance on several decisions of the Hon'ble Apex Court also. Accordingly, the Respondents have stated that as all reasonable opportunities were allowed to the applicant during



the course of enquiry to adduce his defence, in compliance with the principles of natural justice and action was taken strictly as per the Rules, there is hardly any scope for this Tribunal to interfere in the matter. Accordingly, the Respondents have prayed for the dismissal of this OA.

6. The Applicant has also filed rejoinder in which it has been stated that the applicant was innocent and he became victim to the situation as a result of deep rooted conspiracy hatched by one Smt. Aparna Mohapatra, a Lady Teacher of KV Charbatia as could be evident from the complaint dated 22.9.2010 made by the father of the girl wherein it has been stated that Mrs. Aparna Mohapatra informed him over phone that the applicant was repeating the same action with his daughter. Further it has been stated by the father of the girl that he came to know from reliable sources and from the staff that the applicant is in the habit of indulging in such activities with girl students. Mrs. Aparna Mohapatra in her letter dated 24.9.2010 has stated that Ms. Prativa Mallick talked to her on 8.9.2010 about the incident of molestation by the applicant in the school premises but she did not state the same to the applicant or the Principal but informed the parent to protect the girl. It has been stated that there has been mismatched in both the reports inasmuch as in the preliminary enquiry report it has been stated that some of the students expressed that the applicant misbehaved with them whereas during summary inquiry conducted on 16.11.2010 it has been stated that the applicant had never misbehaved with them. The Principal, KV, Charbatia had also not given any adverse opinion regarding the conduct and behaviour of the applicant



with the lady students. Again the applicant questioned the exercise of the power by the Assistant Commissioner in nominating the members to conduct the summary enquiry on the ground that sub delegation of power is ab initio void.

7. We have heard Mr.K.C.Kanungo the learned counsel for the applicant and Mr.H.Tripathy, the learned counsel appearing for the KVS and perused the records including the notes of arguments submitted by respective parties. This is a case where the applicant has been visited with the capital punishment of termination in dispensation of the regular enquiry as provided in the CCS (CCA) Rules, 1965. No doubt the allegation is sensitive in nature yet none can be punished based on such allegation unless the allegation is proved as per the procedure provided in the rules and in compliance with natural justice. Law is well settled in a plethora of judicial pronouncements that however suspicious grave may be that cannot be proved in a domestic enquiry. In the instant case invoking the provision of 81 (B) the applicant has been visited with the punishment of termination on the basis of the summery enquiry report but how far the report has been examined by the competent authority is a matter to be examined. In this connection we have gone through the memorandum dated 05.08.2011 wherein the applicant was given an opportunity to have his say on the allegation made against him. The applicant submitted his defence on 23rd August, 2011 (A/10) denying the allegation. Thereafter, the Commissioner, KVS, New Delhi issued order dated 09.03.2012 (A/11) for terminating the service of the applicant with immediate effect by paying him the pay and



allowances as admissible under rules in lieu of the notice period. We have gone through the defence submitted by the applicant dated 23.08.2011 vis-a-vis the order of the Commissioner, KVS, New Delhi dated 09.03.2012. We find that none of the points raised by the applicant in his defence has been taken note of by the Commissioner, KVS, New Delhi while passing the impugned order dated 09.03.2012. The order dated 09.03.2012 shows that it is a general nature order though the applicant has been visited with civil consequence of capital punishment of termination. Thereafter, the applicant submitted appeal under Annexure-A/13 dated 13th April, 2012 questioning the very exercise of the power by the Assistant Commissioner in setting up the committee to make summery enquiry de hors the provision of Article 81 (B) as in which it has specifically provided that 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 months pay and allowances accordingly as the guilty employee is temporary or permanent in the service of the Sangathan and in reply the appellate authority stated as under:

Vii	No orders was issued by esteemed Commissioner KVS, New Delhi for holding any such summary inquiry or sub delegating the	The Summary Inquiry Committee issued an order dated 25/10/2010 to the Principal KV, Charbatia to inform all the
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	<p>powers conferred upon him under Article 81(B) of the Education Code for Kendriya Vidyalayas.</p>	<p>concerned to be present before the inquiry committee for submission of their statement so that the matter may be investigated about the alleged immoral behaviour against Shri A.C.Das, TGT (WE).</p>
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Further it appears that with regard to the allegation of the applicant that the members of the Committee who conducted the summary inquiry conducted the enquiry in closed and biased mind, the appellate authority's reply is as under:

Xxi	<p>All the Members of the Committee who conducted the summary inquiry were closed and biased mind and did not allow other teachers and students to depose before the Summary Inquiry Committee since they selected the teachers and students as per choice of Smt. Aparna Mohapatra.</p>	<p>The Summary Inquiry Committee conducted the inquiry in a very fair and transparent manner and based on the evidence produced before the Committee, arrived at its conclusion that Shri A.C.Das, TGT (WET) was found guilty of immoral behaviour.</p>
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It was the specific stand of the applicant before the appellate authority that the report was used by the authority behind his back. He was not even allowed to remain present in the room where the summary inquiry was conducted to which the answer of the appellate authority was as under:

Xvi	<p>The report was used by the authority behind his back. He was not even allowed to remain present in the room where the summary inquiry was conducted.</p>	<p>Shri ACDAs was provided all reasonable opportunity to produce his defence before the Preliminary and Summary Inquiry Committees. He was provided all the materials on record included the copies of the Preliminary and Summary Inquiry Reports along with their enclosures to submit his defence.</p>
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The reply furnished by the appellate authority to the specific stand taken by the him, does not appeal to the common sense or judicial conscience so as to pass the test of reasonableness as enshrined in Article 14 and 16 of the Constitution of India. We also do appreciate that the girls cannot be exposed during enquiry but certainly that principle cannot be applied in so far as collecting evidence in presence of the parents or the members of the Teaching and non teaching staff of the School. Hence, we are of the considered view that there are infirmities in both the orders leading to interference by this Tribunal. Be that as it may, the orders of the

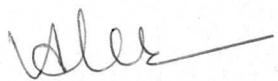
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Disciplinary Authority dated 09.03.2012 and the Appellate Authority dated 04.10.2012, in view of the discussions made above, do not stand to the judicial scrutiny. Hence, the order dated 09.03.2012 and 04.10.2012 are hereby quashed and set aside and the matter is remitted back to the Disciplinary Authority to re consider the matter de novo, after giving the applicant an opportunity of being heard. As the matter is remitted back to the Disciplinary Authority, we make it clear that the status/position of the applicant shall be as he was before the order of the Disciplinary Authority dated 09.03.2012 and if he was under suspension he shall be deemed to have been under suspension from the date of the order dated 09.03.2012 until further orders to be passed by the Disciplinary Authority and would be entitled to suspension allowance, which he would have been entitled to had he not been terminated from service; which shall be calculated and paid to the applicant within a period of 30 (thirty) days from the date of receipt of a copy of this order.

8. In the result, this OA stands disposed of. There shall be no order as to costs.


(R.C.Misra)
Admn. Member


(A.K.Patnaik)
Judicial Member