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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 254/2003

Date of decision: 01.10.2004.

Hon'ble Mr. Kuldip Singh, Vice Chairman

Hon'ble Mr. M K Misra, Administrative Member.

Brijesh Kumar Charan, s/o Shri B D Charan, aged about 40 years, resident of H No. 28 Polo Ist, Paota, Jodhpur, last employed on the post of T.G.T. (Social Studies) in Kendriya Vidyalaya, Samana, Jamnagar, Gujarat.

: Applicant.

Rep. By Mr. S.K. Malik,: Counsel for the applicant.

Versus

1. Union of India through the Secretary, Government of India, Ministry of Human Resource Development, Department of Education, Shastri Bhawan, New Delhi.
2. The Joint Commissioner (Admn), Kendriya Vidyalaya Sangathan 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi. 110 016.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan (Ahmedabad Region) Gyan deep Sector 30 Gandhi Nagar, Gujarat.
4. The Principal, Kendriya Vidyalaya Samana, Jamnagar (Gujarat)



: Respondents.

Rep. By Mr. K K Shah: Counsel for the respondents.

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

The applicant in this O.A challenges the impugned order dated 03.10.2000 (Annex A/1) vide which, the respondents Kendriya Vidyalaya Sangathan under Clause 81 (d) (3) made an

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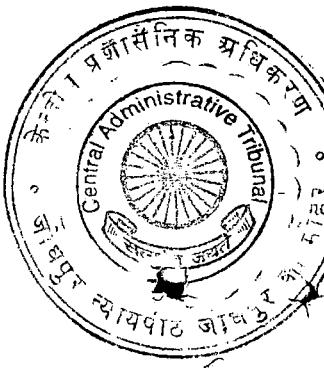
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order recording the factum of voluntary abandonment of service by the applicant and provisional loss of lien on the post of T.G.T(Social Studies). The applicant was further given an opportunity to show cause as to why the aforesaid order provisional loss of lien should not be confirmed. The applicant was given 10 days time to make representation to the Commissioner. The representation made by the applicant in response to the said notice was not accepted and the respondents have confirmed the order regarding the voluntary abandonment of service and provisional loss of lien on the post of TGT and he was removed from the services of KVS vide order dated 06.11.2000 (Annex.A/2). The applicant has also challenged the same. Similarly, the applicant has also challenged the order dated 13.11.2000(Annex.A/3) vide which he had been relieved from service. The applicant has also challenged the order dated 21.04.2003 (Annex. A/4) passed by the Joint Commissioner/Appellate Authority. The applicant has prayed for quashing of the all these four orders.



2. The facts, as alleged by the applicant in brief, are that the applicant was initially appointed to the post of TGT (Social Studies) on 23.08.1993 and he was put on probation for a period of two years. He joined his duty at Kendriya Vidyalaya, Air Force Station at Bhuj on 25.08.1993. It is further stated that while working at Bhuj, the applicant had faced some physical problems and he remained under constant treatment from 08.03.95. But his services were terminated vide order dated 23.08.95 and he

was relieved on 12.10.97. Thereafter the applicant filed O.A. No. 231/99 before this Bench of the Tribunal, which was allowed vide order dated 25.05.2000, vide which the respondents were directed to reinstate the applicant and the period from 08.03.95 to till the date of reinstatement were not to be counted for seniority, promotion and pensionary benefits. However, the respondents were given liberty to initiate departmental proceedings against the applicant for the alleged unauthorised absence from duties. The applicant submits that after the OA was allowed, he reported for duty on 07.06.2000. He was asked to meet the Administrative Officer, who told him that since he approached the Court, he would have to suffer. It is further submitted that on 24.07.2000 he was served with a letter dated 21.07.2000 asking him to join at Kendriya Vidyalaya, Air Force Station, Samana, Jamnagar, latest by 25.07.2000. Since the said station was 600 K.Ms away, he tried to send a fax message asking for some more time to join, but he could not send the fax and thereafter he again contacted the Administrative Officer on the same date and again he was told that as he had approached the Court, he would have to suffer. The applicant was given 10 days time and therefore he joined duty on 02.08.2000. Again on 08.08.2000, the applicant had fallen sick and he submitted a leave application on 09.08.2000 with a request to permit him to leave the headquarters for medical checkup and treatment from the same hospital, where he took treatment earlier. The authorities told him that he would get instructions from respondent No. 3. The applicant after having been cured on



20.08.2000 again reported for duty on 21.08.2000, along with requisite medical certificate. He was informed that all his records were sent to respondent No. 3. He requested to permit him to meet respondent No. 3. The applicant was informed that he was absent from 09.08.2000. On 22.08.2000 when the applicant went to see the respondent No. 3 he was not permitted to meet the 3rd respondent and a message was communicated to him that he would get further orders at his home address. It is further pleaded that on 16.09.2000, the applicant was served with another letter dated 12.09.2000 asking to join by 15.09.2000. Along with the letter dated 12.09.2000, the applicant was served with a copy of letter dated 04.09.2000 containing copy of Art. 81 (d) (Annex. A/15). Thereafter the applicant was issued the letter dated 03.10.2000(Annex. A/1), which was a show cause notice; vide which a decision has already been taken. The applicant submitted his explanation on 11.10.2000. (Annex. A/16). However, vide order dated 06.11.2000, (Annex. A/2) it was informed that the applicant had been removed from service with effect from 03.08.2000. It is contended by the applicant that he had been removed from service from a back date. It is further stated by the applicant that he is challenging the impugned orders as well as Art. 81 (d) and also the terms and conditions.

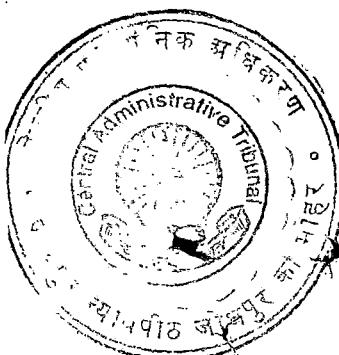
3. It is further submitted by the applicant that he has filed another O.A. No. 39/2001 challenging the show cause notice dated 03.10.2000, the order of termination dated 06.11.2000



and the relieving order dated 13.11.2000, which are Annex. A/1, A/2 and A/3 of this O.A. In that O.A the respondents, after receipt of notice, have also issued a corrigendum dated 19.04.2001, vide which certain dates have been changed and this fact came to the knowledge of the applicant only through the reply filed by the respondents to the above O.A No.39/2001.

The learned counsel for the applicant submitted before the Tribunal that his client wants to file an appeal and does not want to press that O.A. This Tribunal vide order dated 05.09.2002, allowed the applicant to file an appeal before the competent authority within a period of one month from 05.09.2002 and the respondents shall decide the same without raising any objection regarding limitation, within reasonable time and the said OA was dismissed as withdrawn. Thereafter the applicant preferred an appeal along with certain documents regarding the illness and treatment of his aged father and himself. Despite that the order dated 21.04.2003 (Annex.A/4) rejecting his appeal was communicated to him.

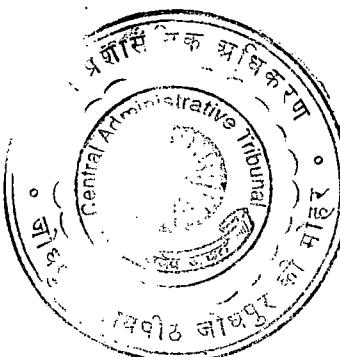
4. In the grounds to challenge the impugned orders, the applicant has alleged that Art. 81 (d) i.e. voluntary abandonment of service in Education Code is contrary to the procedure established by law for imposing penalties for misconduct and the same is against Art. 14 and 311 of the Constitution of India and the provisions of CCS(CCA) Rules, 1965. It is also stated that lien cannot be suspended on the ground of absence and lien also cannot be terminated even with



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the consent of the employee except for the reasons mentioned in FR 14 (A) and those conditions are not there in the cases covered by Art. 81 (d). It is further averred that since the applicant was sick it was beyond his control to join his duties. His termination is unwarranted and the impugned orders are ex-facie illegal, arbitrary and without jurisdiction and the same deserve to be quashed being violative of Art. 14 and 16 of the Constitution of India. It is further stated that since Art. 81 (d) were promulgated only on 04.09.2000 the same cannot be applied to the earlier cases. Thus Art. 81 (d) have no application to the facts of this case and the impugned order of termination and relieving orders are wrong. It is further submitted that the applicant's case should be treated as per CCS(CCA) Rules, 1965.



5. The respondents have contested the O.A. They have filed their reply, wherein they have pleaded that Kendriya Vidyalaya Sangathan is an autonomous body wholly financed by the Human Resources Development (HRD for short) Ministry, Government of India, and therefore the Secretary, HRD Ministry is only a proforma party. The Board of Governors approved the policies of the Kendriya Vidyalaya Sangathan. The respondents further submitted that the orders under challenge in this O.A are Annex. A/1 to A/4. The applicant had already challenged Annex. A/1 to A/3 in O.A. No. 39/01, which came to be decided on 05.09.2002. The said O.A was dismissed as withdrawn and liberty was granted to the applicant to file an appeal to the concerned authority. Thus the applicant cannot challenge these

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orders again which have already been challenged in the earlier O.A. It is further stated that the challenge to orders Annex. A/1 to A/3 is time barred. It is further submitted that the applicant cannot challenge the vires of Art. 81(d) when once he has not pressed this challenge in the earlier O.A and the applicant has not taken such a ground in his appeal. It is further averred that O.A No. 231/99, filed by the applicant was partly allowed and the applicant was directed to be reinstated vide order dated 25.05.2000 and in pursuance to that the applicant was asked to join. But the applicant never reported for duty on 07.06.2000 and he wanted to be informed at his home address in Jodhpur. It is stated that in fact after receipt of order of this Tribunal the respondent No. 3 for the first time informed the applicant to join the Vidyalaya by 25.07.2000. The applicant had not been willing to join duty and dilly-dallying the same. The plea that the applicant had given his application on 09.08.2000 morning is misconceived since he cannot reach Jodhpur on the same day for treatment since Samana (Jamnagar) is 600 K.Ms away from Jodhpur and there is no direct conveyance by land, water or Air and any person leaving Jamnagar cannot reach Jodhpur on the same day and in fact the applicant was on duty upto 08.08.2000 and left thereafter without any intimation to anyone. It is further stated that the pleas taken by the applicant are after thought and the present O.A is without any merit and the same deserves to be dismissed.



6. The respondents have also submitted that as regards the vires of Art. 81 (d) are concerned, the same have been upheld by various Benches of this Tribunal as well as by the Hon'ble High Court of Delhi in **Smt. Prem Juneja vs. UOI and ors.** [2003 IAD Delhi 57]. The said provisions have been introduced to overcome the problems being faced in the procedures under CCS(CCA) Rules, 1965 since they were cumbersome and not sufficient to address the magnitude of the problems being faced in Kendriya Vidyalaya Sangathan.

7. We have heard the learned counsel for the parties and have gone through the records. As regards the allegation that the applicant's case should be treated as per the procedures under CCS (CCA) Rules, 1965 is concerned, we may mention that after introduction of Art. 81 (d), the provisions of CCS (CCA) Rules, 1965 did not apply to the employees of Kendriya Vidyalaya Sangathan, particularly to the alleged misconduct of unauthorised absence from duty.

8. The notification issued by the Kendriya Vidyalaya Sangathan on 04.09.2000 goes to show, that this has been issued for the particular purpose for dealing with the problems of unauthorized absence of employees and consequential loss of teaching in the Kendriya Vidyalaya Sangathan for quite some time. We may also mention that Art. 81 (d) is procedural in nature and not a substantive piece of legislation. Had it been the substantive piece of legislation, then it could have been



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applicable to the alleged misconduct of the applicant, which had taken place on 07.08.2000 onwards. In the notification dated 04.09.2000, it has been clearly mentioned as under:

" In terms of the decision of the Board of Governors, the provisions of the aforesaid Article are applicable to those teachers and employees also whose absence might have commenced prior to notification of these provisions provided their cases are otherwise covered under the aforesaid Article.

(**emphasis supplied.**)

Even Cl. (1) of Art. 81 (d) reads as under:

" If an employee has been absent/remain absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall provisionally lose his lien on his post"

(**emphasis supplied.**)

9. As regards the vires of Art. 81 (d) are concerned, we may mention that provisions of Art. 81 (d) have been upheld by various Benches of this Tribunal as well as by the Hon'ble High Court of Delhi in **Smt. Prem Juneja's case (supra)**. Besides, when the applicant had earlier approached this Tribunal earlier vide O.A. No. 39/2001, which was decided on 05.09.2002, the learned counsel for the applicant had stated before this Tribunal as under:



" that he does not want to press this contention that the aforesaid provision is ultra vires of the Constitution or any other provision of law. "

Thus the applicant had already given up his plea of challenging the vires of Art. 81 (d) of the Education Code. Therefore the applicant cannot now turn round and challenge the vires of Art. 81 (d).

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10. The learned counsel for the applicant had also pointed out that the respondents have committed various mistakes in the dates with regard to absence of the applicant. But the respondents have rectified the mistakes by issuing corrigendum and this has been done when the earlier O.A was pending.

Therefore we do not find any merit in the said submission.

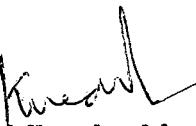
11. As regards the filing of appeal is concerned, a perusal of the order Annex. A/4 shows that the applicant has been given liberty to file appeal for the first time as per order dated 05.09.2002. The Joint Commissioner on 27.01.2003 also gave him opportunity of hearing. In the personal hearing he stated that he reported to the Vidyalaya for joining his duty on 21.08.2000 along with medical certificate but as per the records he did not reported to the Principal or the Assistant Commissioner for joining after issuing him the show cause notice. Thus the applicant was unable to satisfy the Appellate Authority that after the show cause notice, the applicant had gone to join duty and hence the Appellate Authority confirmed the order of loss of lien on the post passed by the competent authority. With this background of facts we are satisfied that the applicant was given an appropriate opportunity to defend his case. He was also given opportunity of personal hearing, which can focus, to the principle of natural justice. Before us the applicant has also failed to show any procedural lapse on the part of Disciplinary Authority or the Appellate Authority, which



may enjoin upon to exercise the power of judicial review to set aside the impugned orders.

12. In view of the above discussion, the O.A has no merit and the same stands dismissed. No order as to costs.


 (M K Misra)
 Administrative Member.


 (Kuldip Singh)
 Vice Chairman

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