

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 256 of 2007

Thursday, this the 3rd day of April, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

L. Kousalya Ammal,
W/o. Sugunan,
Post Graduate Teacher (Hindi),
Kendriya Vidyalaya, CRPF,
Pallipuram, Thiruvananthapuram : 695 316,
Residing at "Reshma Bhavan",
TC 8/290, Thirumala P.O.,
Thiruvananthapuram : 690 006.

... Applicant.

(By Advocate Mr. Millu Dandapani)

v e r s u s

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi : 110 016
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,
Regional Office, IIT Campus,
Chennai : 600 036
4. The Principal,
Kendriya Vidyalaya, CRPF,
Pallipuram, Thiruvananthapuram : 695 316
5. Jayabal, Principal,
Kendriya Vidyalaya, Ottappalam ...

Respondents.

(By Advocate Mr. Thomas Mathew Nellimootttil)

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O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant is aggrieved by the imposition of penalty of compulsory retirement as a result of disciplinary proceedings taken against her, just three months prior to her normal date of retirement.

Brief facts:

2. The applicant had been serving as a PGT (Hindi) at Kendriya Vidyalaya, Coimbatore, when she was issued with Annexure A-12 charge sheet containing the following articles of charge:-

ARTICLE - I

That Smt. L Kausalya Ammal while functioning as PGT (Hindi) at Kendriya Vidyalaya, Ottapalam during the year 2004 showed lack of devotion to duty by not going to Class VIII B on 12.01.2004 during the allotted third period until specifically directed by the Principal upon noticing her absence in the class. Thus she committed a misconduct under Rule 3 (1) (ii) & Rule 3 A (b) of CCS (Conduct) Rules, 1964 as applicable to the employees of Kendriya Vidyalaya Sangathan.

ARTICLE - II

That the said Smt. L Kausalya Ammal, PGT (Hindi) while functioning at Kendriya Vidyalaya, Ottapalam during the year 2004 behaved in a manner unbecoming of a Sangathan employee by tampering with the staff attendance register on 16.02.2004 thus committing misconduct under Rule 3 (1) (ii) of CCS (Conduct) Rules, 1964 as applicable to the employees of Kendriya Vidyalaya Sangathan.

ARTICLE - III

That the said Smt. L Kausalya Ammal, PGT (Hindi) while functioning at Kendriya Vidyalaya, Ottapalam during the year 2004 burst into the Chamber of the Principal, Kendriya Vidyalaya, Ottapalam on 18.02.2004 and disturbed the Executive Committee meeting in progress. Thus she committed misconduct under Rule

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3 (1) (iii) and 3 A (a) of CCS (Conduct) Rules, 1964 as applicable to the employees of Kendriya Vidyalaya Sangathan.

3. The applicant having denied the charges, regular inquiry was conducted and the Inquiry Officer had rendered his report, in which he had held that the three charges stood proved vide Annexure A-22. Copy of the said report was made available to the applicant and the applicant had furnished her representation, vide Annexure A-23. The disciplinary authority had, vide his penalty order dated 03-01-2007 (Annexure A-24) imposed the penalty of compulsory retirement, holding as under:-

3. " The undersigned is fully satisfied with the procedure adopted as per rules by the Inquiry Authority, who gave full opportunity to the delinquent to defend herself and was not biased. In a matter like this, where subordinate officials indulge in indiscipline and go to the extent of denigrating the superior officer, by shouting indiscriminately without heeding to the counsel given, naturally it has to be viewed seriously because if these kind things are not checked in time, it can only lead to further deterioration of discipline in an organisation like Kendriya Vidyalaya Sangathan. This kind of indiscipline cannot be tolerated in any organisation otherwise it would become difficult for the administrative officers to run the administration smoothly.

4. The Inquiry Officer has rightly proved the charge, I agree with his findings in this regard.

5. Now, therefore, after considering the record of Inquiry and the facts and circumstances of the case, the undersigned has come to the conclusion that justice require that the penalty of COMPULSORY RETIREMENT FROM KVS SERVICE, with immediate effect is imposed upon Mrs.Kausalya Ammal. It is ordered accordingly."

4. The applicant was thereafter relieved of her duties w.e.f. 04-01-2007, vide Annexure A-25.

5. The applicant had preferred an appeal, vide Annexure A-26, raising the following grounds:-

(a) The applicant was not allowed to cross examine the witnesses in respect of Art. I and thus, the finding relating to Art. I were illegal.

(b) The inquiry officer had not considered the fact that the scoring of the word AB in the attendance register and addition of the remarks "applied for C.L" had been done with the consent of the Principal, under whose custody the attendance register had been kept. Thus, charge vide Art. II also cannot be said to be proved.

(c) None of the witnesses were examined in respect of Art. III. The applicant did not know who was the author of the complaint in this regard. Thus, charge under Art. III also cannot be held to be proved.

(d) The punishment imposed was disproportionate to the gravity of the alleged misconduct.

(e) There is an infraction of the principles of natural justice in the entire procedure adopted by the respondents.

6. The appellate authority had considered the appeal but rejected the same and his observations, vide Annexure A-28 are as under:-

" WHEREAS, the undersigned considered the appeal of Smt. Ammal and after considering all the facts and circumstances of the case on record available, the submission made by the Appellant and observed that :-

1. The Inquiry Officer has proved the charge stating that the Charged Officer confessed to have gone late top the class and also she denied the charge. Out of the two witness; one witness had stated that she was not aware of as to whether she had gone to the class or not. She herself had stated that she explained the reason before the Inquiry Officer for reaching class late. The Inquiry Officer concluded that she was not on the class when the Principal visited VIII-B. Thus he proved the charge.

2. Regarding tampering with the attendance register, the Charged Officer had agreed to the charge and said she had apologized. Her contention in the appeal that the Presenting Officer had not countered her statement of tendering apology to

the Principal. If a teacher is absent, Principal has every right & it is his duty to make a remark in the attendance register against the name of the teacher. Attendance register is an important document that the Charged Officer cannot meddle with. She had clearly accepted the charge.

3. The Charged Officer has denied the charge under Article III on the ground that she was not issued a memo by the Principal about the said incident, there was no such VMC meeting at all and she had not gone to the Principal's chamber on 18.12.04. The Inquiry Officer had relied upon the letter dated 27.02.04 submitted by the VMC member. Besides, minutes of the VMC held on 18.02.04 are very much available to disprove the statement of the Charged Officer. It is proved beyond doubt that she disturbed the VMC meet when it was in progress in the Principal's chamber. The Charged Officer had come with pre-determined mind and humiliated the Principal on the presence of the members of the VMC. The members of the VMC were taken in a raised voice. She did not have the patience to listen to the Principal's counsel that she could talk about her grievance after the meeting was over. In spite of the Principal's counsel to her, she remained undeterred.

4. In a matter like this, where subordinate officials indulge in indiscipline and go to the extent of denigrating the superior officer, by shouting indiscriminately without heeding to the counsel, naturally it has to be viewed seriously, because if these kind of things are not checked in time, it can lead to further deterioration of discipline in an organisation like KVS. For this reason he has decided to impose upon her the penalty of Compulsory Retirement from KVS service. The Disciplinary Authority fully aware about the superannuation of the Charged Officer on 30.04.2007. Therefore, he decided to impose such penalty just four months ahead of her superannuation. Therefore, I feel that the decision of Disciplinary Authority is judicious and commensurate with the gravity of misconduct.

NOW THEREFORE, the undersigned being the Appellate Authority based on consideration of facts & circumstances of the case, contents in appeal dated 11.01.2007, has come to the conclusion that there is no merit in the appeal of Smt. Ammal and thus the appeal stands rejected."

7. The applicant has preferred this OA challenging the aforesaid order of penalty and rejection of his appeal. The grounds adduced are as under:-

(a) The Inquiry was not conducted in accordance with the procedure prescribed in Rule 14 of the CCS(CC&A) Rules, 1965. The Inquiry Officer had taken into account certain aspects "which

were personally known to the enquiry officer". This is beyond the scope of the prescribed procedure.

(b) The charge vide Art. I is inconsistent when compared with the earlier memos issued.

(c) The entire proceedings were accentuated by act of malice by the Principal, whose immoral intentions and advancements made were spelt out in Complaint before the Grievances Cell vide Annexure A-9.

(d) Charges were frivolous and vague and hence cannot stand legal scrutiny.

(e) The entire enquiry report is pervers.

(f) The Appellate authority had not applied his mind while rejecting the appeal of the applicant.

(g) Penalty is shockingly disproportionate.

8. Respondents have contested the O.A. According to them, there is no inconsistency in Art. I; As regards Art. II, the applicant herself had confessed the fact of her having tampered the attendance register and apologized for the same; as regards Art. III, with a predetermined idea to humiliate the principal in the presence of the Members of the Vidyalaya Management Committee she had entered the Meeting room and shouted at the Principal. It has also been stated in the reply that the procedure as per the rules had been following in this case.

9. The applicant has filed rejoinder, reiterating her contentions in the OA and had added certain documents(letter to the Principal relating to her casual leave application, medical certificates)

10. Counsel for the applicant submitted that the fact that the applicant is due

for retirement in April, 2007, while the penalty of compulsory retirement was imposed in January, 2007 goes to show that the respondents have acted with malafide. The contentions as contained in the OA have also been adverted to in the course of arguments.

11. Counsel for the respondents justified the penalty, by referring to the reply filed by them. Records were directed to be produced. Accordingly, the records were produced.

12. Arguments were heard and pleadings and records perused. Certain sequence of events would be required to ascertain as to whether the act on the part of the Principal is one of an unbiased officer. The alleged incident relating to non-attending of the class by the applicant took place on 12-01-2004. According to the Principal, till 9.25 a.m. the class was without a teacher and on enquiry he could ascertain that the period was allotted to the applicant, but the applicant denied that it was allotted to her and on verification as it was found that it was allotted to her, she was asked to go and take the class, which the applicant did. The Principal chose to issue a memo to the applicant, vide Annexure A-1 which refers to the denial by the applicant of the class being allotted to her. Time granted for offering explanation is just 24 hours! It was on the very same day that the deputy class leader had furnished her letter stating that the applicant took the class only at 9.35 hrs and the same formed part of the list of documents relied upon by the respondents. The Principal could have cancelled the earlier memo or modified the same but he did not do so. Explanation to the memo dated 12-01-2004 was offered on 19th January, 2004 and it was on the very next day that the Principal had issued another Memo (Annexure A-2) about dereliction of duty and not attending the class for the

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whole period and purposeful disobedience of the authority. As regards tampering of the documents, it is seen that on 12-02-2004, the applicant submitted an application for casual leave. This seems to have been rejected vide Annexure A-4 order. However, vide yet another application, vide Annexure A-28, the applicant specifically spelt out the reason (medical treatment) and confirmed in the said letter about her having completed the syllabus and requested for leave. This was not received by the Principal and the applicant had to send the same through postal certificate, vide her statement in reply to memo dated 17-02-04. The applicant replied to the memo stating that the attendance register is under the custody of the Principal and there was no tampering and the change made was only with the consent of the Principal.

13. Letter from another staff member, Leena Mukundan goes to show that there was a genuine doubt in the mind of the applicant that it was not her class period, as, according to the old time table, it was a free period for her. However, on getting confirmed that it was her class, the applicant took up the class and taught the students Buddha Charita (vide letter from a student Revati, one of the relied upon documents). Again, another student had stated in a letter (again, one of the relied upon documents) that the applicant asked the class whether it was her class and on their not knowing the same, the applicant said that she would confirm and come back to the class. Thus, a genuine doubt was there in the mind of the applicant. These have not been considered by the inquiry authority. The issue has been magnified beyond proportion. Much ado about nothing.

14. Likewise, as regards the second charge, the fact is that the applicant had applied for casual leave. It was this fact that was reflected in the attendance

register. Before the Inquiry authority, the applicant had stated that the same was written under compulsion by the Principal. Daily Order Sheet dated 15-02-2006 refers. This aspect was not considered, but the I.O. has reflected that the applicant apologized for the unintentional act and thus the charge stands proved. However, when daily order sheet dated 16-07-2005 is scanned, it reveals that the charged officer denied the charge that she tampered with the staff attendance register on 16-02-2004 by striking off the word "Ab" and writing "applied for CL" She claimed that the Principal directed her to write "applied for C.L." by herself and she did it accordingly, just above the "Ab" mark. The Inquiry Authority had not considered this aspect but has arrived at the conclusion that there is tampering of documents. This conclusion is thus without due application of mind.

15. In so far as the barging in of the chamber of Principal, it would be worthwhile to reproduce the entire findings of the I.O. which would speak for itself:-

"III: Charges – (Article -3)

That the said Smt. L. Kausalya Ammal, PGT (Hindi) while functioning at Kendriya Vidyalaya, Ottapalam during the year 2004 burst into the chamber of the Principal, Kendriya Vidyalaya, Ottapalam on 18-02-2004 and disturbed the Executive Committee Meeting in progress. Thus, she committed the misconduct under Rule 339(1)(iii) and 3-A(a) of CCS Conduct Rules 1964 as applicable to the employees of Kendriya Vidyalaya Sangathan.

Witnesses: Executive Members of VMC were not summoned, but stating on this charge, there is a letter from Executive Members of VMC that the Charged Officer entered the room of the Principal on 18-02-2004 while the meeting was in progress.

Charged Office: The accused submits that she never barged into the Principal's chambers while Executive Meeting was going on, as accused, she cites the fact that, no Memo had been issued to her on this account, even though Memos had been issued in regard to Articles 1 & 2.

Presenting Officer: With regard to the charge under article (3) the

Presenting Officer suggests the probability that the Charged Officer entered the chamber of the Principal, KV, Ottapalam on 18-02-2004 without permission and she disturbed the tive Committee Meeting.

Presenting Officer cited the statement by the Executive Committee Member of VMC. She also states that the witness produced by Charged Officer on 04-08-2005. Shri Chandrasekhar, Group D did not remember calling Charged Officer to the room.

Enquiry Officer's Conclusion: The Executive Committee of VMC had been conducted on 18-02-2004 at Principal's Chamber. Minutes are very much available. The Charged Officer has entered the Principal's room for which evidence is there. As the member of the VMC has mentioned in his letter that she entered the Principal's room and disturbed the meeting. Hence charges proved.

16. The above findings would go to show that there is absolutely no discussion about the contents of the alleged complaint by the Members of the VMC, much less any examination/cross examination. Unless the documents relied upon by the prosecution are clearly admitted, both in respect of its existence as well of the contents thereof, it is the duty of the prosecution to first prove the same. This obviously had not been done. None of the author of the said complaint had been examined much less cross examined. As such, reliance placed upon by the Inquiry Authority is thoroughly illegal.

17. It is surprising that the Inquiry Officer at more than one place used the term, "the accused" to the applicant, as if the applicant had been involved in a criminal offence.

18. The inquiry report thus, suffers from serious infirmities. It is to clarify here that the Tribunal had not appreciated evidence afresh but only pointed out the serious lacuna in conduction the inquiry by the I.O. It is apt to quote the observation of the Apex Court in the case of *Lakshmi Ram Bhuyan vs Hari Prasad Bhuyan* (2003) 1 SCC 197 wherein the Apex Court has held, "An

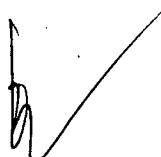


inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine."

19. While the above is the status of conducting the inquiry, going through the records, the following remarks rendered by the Disciplinary Authority on 21-04-2004, wherein decision was taken to suspend the applicant were found recorded:-

"The report of enquiry reveals the behaviour of the teacher having reached intolerable levels. She does not seem to care for the constituted authority. A teacher should be first amenable to discipline to discipline the children left at her control. Her aggressiveness, insubordination and arrogant nature has caused enough harm to the academic atmosphere prevailing there. The charges of dereliction of duties, disobedience of authority, impertinent behaviour, aggressiveness, arrogance and above all insubordination have little option to continue her on the rolls. I find her continued presence in KV Ottapalam to be detrimental to the interests of the students and the general academic atmosphere. Therefore, let her be placed under suspension with immediate effect."

20. It is the very same authority which had passed the penalty order. The aspect to be considered in this case is that the above remarks were made by the disciplinary authority at the time of ordering suspension. Suspension is resorted to for a specific purpose of the delinquent individual might tamper with the evidences etc., Here, an entirely different reason has been given. If such is the attitude, abuse of process of power cannot be ruled out. When the applicant was to superannuate in April, 2007, awarding the punishment of compulsory retirement just three months in advance of superannuation has a lot many tale to tell. Dispassionately analyzed, the charges, especially, when they have not been properly inquired into are liable to be quashed and set aside. The pre-

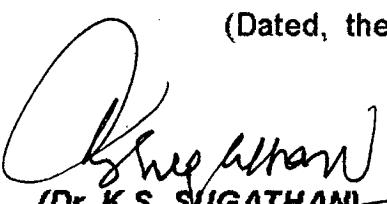


determined notion of the Disciplinary Authority is also evident as discussed above.

21. The appellate authority had endorsed the views of the disciplinary authority vide Annexure A-28. Had the inquiry been conducted in the fashion as expected under the Rules and had the charges been duly proved, the decision by the Appellate Authority that if these kind of things are not checked in time, it can lead to further deterioration of discipline in an organization like KVS would have been clearly upheld. But what is lacking here is the proper conduct of the inquiry. As such, when the inquiry report is held vitiated and when the order of the Disciplinary Authority is also vitiated by pre-determined conclusion, the order of the appellate authority shall also meet the same Waterloo!

22. In view of the above discussions, the OA is allowed. The impugned orders at Annexure A-22, A-24 and A-28 are hereby quashed and set aside. The applicant is deemed to have continued in service till the date of superannuation. The applicant, consequently is also entitled to the pay and allowances for the period she was kept out of job on account of the impugned orders. She is also entitled to have the period counted as of duty for the purpose of working out pension, if so admissible. Respondents are directed to work out the amount due to the applicant and disburse the same to her within a period of six months from the date of communication of this order. No costs.

(Dated, the 3rd April, 2008)



(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER