

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No.191 of 2007

This, the 19th day of September, 2013

**HON'BLE SRI D.C. LAKHA, MEMBER (A)
HON'BLE SRI NAVNEET KUMAR, MEMBER (J)**

Kavita Srivastava,
aged about 40 years
W/o Ajit Kumar,
R/o 5/131,
Vikas Khand,
Gomti Nagar, Lucknow.

Applicant

By Advocate Sri R. C. Saxena.

Versus

1. Kendriya Vidyalaya Sangathan through its
Commissioner, 18-Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-16.
2. Assistant Commissioner,
KVS, Kankar Bagh,
Post Lohia Nagar,
Patna.
3. Principal,
KV, Chopan,
District Sonbhadra.

Respondents

By Advocate: Sri Surnedran P.

(RESERVED ON 22.8.2013)

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

Present O.A. is preferred under Section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8. The Hon'ble Tribunal may graciously be pleased to quash the impugned removal order dated 21.01.2004 passed by Respondent No. 2, contained in Annexure No.1, and issue further directions to treat the applicant still in service and pay the applicant entire arrears of pay, allowances and increments etc. as a consequence of quashing the removal order. Any other relief which may be deemed fit and proper may also be issued in favour of the applicant.”


2. Said original application was heard finally and disposed of by means of an order dated 25.05.2009 wherein the Tribunal dismissed the original application.

The applicant feeling aggrieved by the said order preferred the writ petition before

3. In cases falling under sub-clause (1) of this Article, an order recording the factum of voluntary abandonment of service by the employee and provisional loss of his lien on the post, shall be made and communicated to the employee concerned at the address recorded in his service book and/ or his last known address, to show cause why the provisional order above mentioned may not be confirmed (**Appendix – XIII**).”

Not only this ld. counsel for the applicant has pointed out that he categorically mentioned this fact in para 4.5 of the original application that when she was transferred she fell ill and remained on extraordinary leave from 20.04.2002 to 03.05.2002 on medical grounds and no refusal order what so ever was issued. It was further pointed out that the respondents while passing the orders on 21.01.2004 passed an order with retrospective effect from 23.09.2002, as such, the present order is illegal and is liable to be quashed.

4. Ld. counsel appearing on behalf of the respondents filed their reply and in the reply it is pointed out that Article 80 and 81 of the Education Code which deals with the Discipline of the employees of Kendriya Vidyalaya Sangathan wherein it is mentioned that if an employee remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall provisionally lose his lien on his post until he returns within 15 calendar days from commencement of the absence or expiry of leave originally granted or subsequently extended as the case may be. Ld. counsel for the respondents also pointed out that as per Clause 7 of Article 81(d) of Education Code, an employee who is aggrieved by an order passed under sub clause 6 of Article 81(d), may prefer an appeal to the Appellate Authority as notified by Kendriya Vidyalaya Sangathan from time to time. It is also pointed out that the removal order against the applicant was issued with the approval of the competent authority. It is also pointed out on behalf of the respondents that the show cause notice was issued by the competent authority under the relevant provisions and instead of giving reply the applicant sought time and the applicant did not prefer appeal also against the removal order under Article 81(d)(6) and as per provisions of clause 7 of Article 81(d) alternative remedy of filing the appeal lies. While narrating the facts of the case it was also pointed out by ld. counsel for the respondents that after joining the respondents' organization and also after completing five years of



service the applicant was transferred to Kendriya Vidyalaya, Chowpan where the applicant joined on 04.05.2002 and worked only for two days. Thereafter the Vidyalaya was closed w.e.f. 06.05.2002 to 23.06.2002 and then the applicant joined on 24.06.2002 and worked till 25.06.2002. She applied for one day's Casual Leave with permission to leave headquarters on 26.06.2002 and thereafter the applicant did not report for duty and remained absent for one reason or the other till 20.09.2002. The applicant has also submitted leave applications for different spells and subsequently joined Kendriya Vidyalaya on 20.09.2002 and worked there only for two days. Since the applicant never reported for duty nor submitted any application for further leave and remained absent, therefore, show cause notice under Article 81(d) of Education Code was issued to her vide memorandum dated 30.12.2003 but the applicant has not submitted any representation whereas an application dated 11.01.2004 was submitted for allowing her four weeks time for submission of reply to the show cause notice. The respondents thought it proper not to give time to applicant for submitting reply and pass order of removal. Ld. counsel for the respondents has also relied upon certain decisions rendered by coordinate benches of the Tribunal as well as of the Hon'ble High Court annexed along with counter reply filed by the respondents. According to the respondents' counsel since Article 81(d) applies in this case, nothing survives to be adjudicated in the present case and the O.A. is liable to be dismissed.

5. Ld. counsel appearing on behalf of the applicant filed their rejoinder and in the rejoinder the averments made in the O.A. are reiterated and it was once again pointed out by the ld. counsel for the applicant that Article 81(d) is not applicable in the case of the applicant whereas, without following the due process as provided in Article 80 of Education Code the services of the applicant got removed. Ld. counsel for the applicant has also relied upon the decision rendered by the Hon'ble Apex Court in case of **Krushnakant B. Parma vs. Union of India, 2012(30)LCD-519** and the case of **D.K. Yadav v. J.M.A. Industries Ltd.** reported in **1993 SCC(L&S)-723**. In these two cases the Hon'ble Supreme Court has been pleased to observe that the principles of natural

justice is required to be followed in just , fair and reasonable manner which is an essential action required. Apart from this, ld. counsel for the applicant has also submitted that Article 80 of the Educational Code will apply in the case of the applicant and as per the said article all employees of Kendriya Vidyalaya shall be subjected to the disciplinary control of the Sangathan and the CCS(CCA) Rules, 1965 will apply to all the employees of the staff. In absence of any enquiry and also in the absence of an opportunity given to the applicant, the impugned removal order is bad in law and is liable to be quashed.

6. Heard ld. counsel for the applicant and perused the records carefully.

7. There are certain facts which are undisputed that the applicant was initially appointed in the respondents' organization as PGT, English. After serving for some time the applicant was transferred to Sitapur and thereafter to Patna. After being transferred to Patna the dispute arises and as pointed out by the respondents that the applicant took leave in different spell and finally remained absent for a long period. As such, a show cause notice was given to the applicant under Article 81(d) of the Education Code. The applicant was also given time to give a reply and when no reply was given by the applicant , the order of removal dated 21.01.2004 was passed treating her absence with effect from 23.09.2002 as unauthorized.

8. The question which requires to be determined here is whether Article 81(d)(3) or Article 80 of the Education Code are applicable to the present case.

For ready reference Article 81(d)(3) reads as under:-

“Article 81 (A) TERMINATION OF SERVICES IN CERTAIN CASES-SPECIAL PROCEDURE

**(B)XX
XXXXXX**

**(C)XX
XXXXXX**

(D) VOLUNTARY ABANDONMENT OF SERVICE

3. In case falling under sub-clause (1) of this Article, an order recording the factum of voluntary abandonment of service by the employee and provisional loss of his lien on the post, shall be made and communicated to the employee concerned at the address recorded in his service book and/ or his last known address, to



show cause why the provisional order above mentioned may not be confirmed (**Appendix – XIII**).”

Article 80 of said Education Code reads as under:-

“Article 80, EXTENSION OF THE APPLICATION OF CENTRAL CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1965

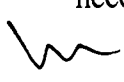
- (a) All employees of Kendriya Vidyalayas, Regional Offices, ZIETs and the Headquarters of the Sangathan shall be subject to the disciplinary control of the Sangathan and the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as amended from time to time, will apply mutatis mutandis 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).
- (b) The posts under the Sangathan and Kendriya Vidyalaya have been classified as Group A,B,C & D posts in the context of Rule 6 of CCS(CCA) Rules, 1965.
- (c) The Appointing, Disciplinary, Appellate and Reviewing Authorities for various posts in the KVS (HQ) office, Regional offices, ZIETs and Kendriya Vidyalayas shall be as specified in the KVS (Appointment, Promotion, Seniority etc.) Rules, 1971.”

The duty of giving reasonable opportunity to be heard will be implied from the nature or the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only be done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice. Not only this, application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person. No decision be taken which will affect the right of any person without his/her first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice.

- 9. Bare perusal of Article 80 of Education Code provides that all employees of Kendriya Vidyalaya shall be subject to the disciplinary control of the

Sangathan and the CCS(CCA) Rules , 1965 will apply mutatis mutandis of all members of the Staff of the Sangathan except when otherwise decided. Bare perusal of the same also clearly says that once CCS(CCA) Rule is applicable mutatis mutandis, the fair opportunity of disciplinary proceeding are required to be conducted. The procedure prescribed for depriving a person of livelihood would be liable to be tested on the anvil of Article 14 and the principles of natural justice are part of Article 14, so, the procedure prescribed by law must be fair and reasonable. Not only this, the order of termination/removal of service of an employee visits with civil consequences of jeopardizing not only his/her livelihood but also career and livelihood of the dependants. Therefore, before taking any action of putting an end to the tenure of an employee fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry should be conducted complying with the principles of natural justice. Apart from this it is also pointed out by ld. counsel for the applicant that Article 81(d) of the Education Code is violative of Article 14 and 16 of the Constitution . It is also urged that Article 81(d) of the Education Code and the action taken against the applicant are contrary to Article 311 of the Constitution of India. As such, action taken against the applicant is violative of the principles of natural justice.

10. As submitted by ld. counsel for the respondents, para 81(d) of Education Code clearly provides that if an employee does not report for duty within 15 calendar days and does not satisfactorily explain the reasons for such absence he/she is deemed to have voluntarily abandoned her service thereby provisionally losing lien on her post. In contrary to that the averment of the ld. counsel for the respondents it also cannot be disbelieved in regard to Article 80 of the Education Code which provides for extension of application of CCS(CCA) Rules, 1965 in respect of all employees of Kendriya Vidyalaya of the regional offices, ZIETS and the headquarters of the Sangathan shall be subject to disciplinary control of the Sangathan to all members of the staff of the Sangathan except when otherwise decided. As per CCS(CCA) Rule, there is a procedure provided for imposing minor/major penalties which provides under Rule 14 of the said rules. It is necessary to mention that penalty is provided under Clause (v) to (ix) to Rule 11 it



cannot be imposed except after an enquiry is held. This provision is provided under Rule 14(1) of the CCS(CCA) Rules which reads as under:-

“14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in Clauses(v) to (ix) of Rule 11 shall be made except after inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850(37 of 1850), where such inquiry is held under that Act.”

A bare perusal of the clauses (v) to (ix) provided in Rule 11 of the CCS(CCA) Rules, removal from service is provided under Clause 8 of Rule 11 of CCS(CCA) Rule.

11. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. In other words, application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In case of **State of Orissa v. (Miss) Binapani Dei** reported in **1967(2)SCR-625**. Hon'ble Apex Court held that :-


“.....even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken.”

In another case of **State of West Bengal v. Anwar Ali Sarkar** reported in **AIR 1952 SC 75**, a seven Judge Bench of Hon'ble Apex Court held that

“the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law.”

12. In the case of **Maneka Gandhi v. Union of India** reported in **1978(1) SCC-248**, another seven Judges Bench held that

“the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The test has to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though



there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual.”

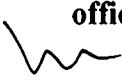
13. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal's existence.

14. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

15. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by Hon'ble Apex Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

16. Thus, the soul of natural justice is 'fair-play in action' and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that 'fair-play in action' demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard.

17. The rule was stated by Lord Denning, M. R. in these terms in **Schmidt v. Secretary of State for Home Affairs (1969)**³ All ER-275 – “where a public officer has power to deprive a person of his liberty or his property, the



general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf". It is the quintessence of the process of justice inspired and guided by 'fair-play in action'.

18. There was, however, a time in the early stages of the development of the doctrine of natural justice when the view prevailed that the rules of natural justice have application only to a quasi-judicial proceeding as distinguished from an administrative proceeding and the distinguishing feature of a quasi-judicial proceeding is that the authority concerned is required by the law under which it is functioning to act judicially.

19. In the case of **Associated Cement Companies Ltd. v. P.N. Sharma, AIR 1965 SC 1595** where Hon'ble Supreme Court approvingly referred to the decision in **Ridge v. Baldwin 1964 AC 40** and, later in **State of Orissa v. Dr. Binapani Dei (Supra)** observed that : **"If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power."** Hon'ble Apex Court also pointed out in **A.K. Kraipak v. Union of India, 1969(2) SCC 262** another historic decision of the law, that in recent years the concept of quasi-judicial power has been undergoing radical change and said:

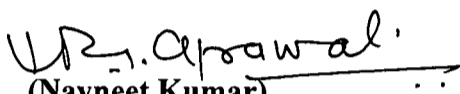
"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised.

The net effect of these and other decisions was that the duty to act judicially need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted."

20. In the instant case, a bare reading of Article 81(d) and Article 80 of the Education Code clearly shows that CCS(CCA) Rules are applicable to all members of the staff of the Sangathan except when otherwise decided. Ld.

counsel for the respondents failed to demonstrate that the said Article is not applicable and in absence of such demonstration it is clear that Rule 14(1) of the CCS(CCA) Rules is applicable in case of the applicant. As such, the order of removal dated 21.01.2004 is liable to be quashed.

21. Accordingly the O.A. is allowed. The order dated 21.01.2004 is quashed. The applicant is entitled for reinstatement. However, since the applicant has not been worked during this period, as such, the applicant is not entitled for the back wages. No order as to cost.


(Navneet Kumar)
Member (J)


(D. C. Lakha)
Member (A)