

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW

BENCH LUCKNOW

Original Application No.119/2008

Order Reserved on 12.01.2015

Order Pronounced 20-01-2015

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Tara Chand Sharma, aged about 53 years son of Sri Mohan Lal Sharma TGT (Terminated from Kendriya Vidyalaya, RCF, Husainpur, Punjan formerly resident of 409/106, Dargi Ki Begia, Chowk, Lucknow-226003.

Applicant

By Advocate: Sri R.N. Mishra

Versus

1. Union of India through Secretary, Ministry of Human Resource & Development, Govt. of India, New Delhi.
2. Kendriya Vidyalaya Sangathan, through its Chairman, Shaheed Jeet Singh Marg, 18- Institutional Area, New Delhi-16.
3. Vice Chairman, Kendriya Vidyalaya Sangathan/ Appellate Authority, Shastri Bhawan, New Delhi.
4. Commissioner . Kendriya Vidyalaya Sangathan, through its Chairman, Shaheed Jeet Singh Marg, 18- Institutional Area, New Delhi-16.
5. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Sector 31-A, SCO-72-73, Chandigarh, Hariyana.
6. Principal Kendriya Vidyalaya No. II (AFS), Ambala Cantt., Hariyana, Pin-133001.
7. Sri Rajveer Singh Shishodia, Retired Principal, Kendriya Vidyalaya-2, Ambala Cantt. Hariyana c/o Principal Kendriya Vidyalaya No. II (AFS), Ambala Cantt., Hariyana.

Respondents

By Advocate : Sri Surendran P

ORDER

By Hon'ble Mr.Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- i) That the order of termination of services dated 5.10.2007 passed against the applicant and being confirmed by the appellate authority vide judgment and order dated 20.12.2007 by the appellate authority (Annexures 1 and 2 of the original application)

be quashed and the necessary orders may be passed making in

reinstatement of the applicant with all consequential benefits and back wages.

ii) That any other orders which this Hon'ble Court deems fit and proper in the circumstances in the case be passed in favour of the applicant treating the applicant to remain in service without any break.

iii) Any other relief which is fit to be granted to the applicant in the ends of justice.

iv) Awarded the cost of the petition in favour of the applicant.

2. The brief facts of the case are that the applicant joined the respondents organization as PRT and thereafter promoted to the post of TGT w.e.f.26.8.1985. The applicant was thereafter, transferred from Kendriya Vidyalaya School Along (Arunachal Pradesh) to Kendriya Vidyalaya, Ambala Cantt. In the year 2006, one student submitted a complaint and on the basis of that complaint, a preliminary enquiry committee was constituted and the committee also asked the applicant to submit the reply. The applicant submitted the reply and after due opportunity of hearing to the applicant, the services of the applicant are terminated after invoking Article 81(b) of the Education Code. Feeling aggrieved by the said order, the applicant preferred an appeal and the appeal so preferred by the applicant also stands rejected by the Appellate Authority. Feeling aggrieved by these orders, the applicant preferred the present O.A.

3. During the course of arguments, the learned counsel for applicant raised certain grounds such as the committee which was constituted is not as per the provisions of Article 81 (b) of the Education Code. He has also argued that as per the said Article, the Commissioner is authorized to conduct the preliminary enquiry whereas in the present case, he has not done so. Apart from this, it is also argued by the learned counsel for the applicant that as per the

provisions of said Article, three months pay and allowances in lieu of the notice period has also not been provided to the applicant and also argued that no copies of the statement are given to the applicant, as such the entire proceedings are against the provisions of Principle of Natural Justice. Not only this, it is also vehemently argued by the learned counsel for applicant that no enquiry report is given to the applicant and he was also not allowed to remain present in the preliminary enquiry committee. The learned counsel for the applicant has also relied upon a decision of the Hon'ble Apex Court in the case of **Chandrama Tiwari Vs. Union of India** and has indicated that the Hon'ble Apex Court has been pleased to observe that copies of the relevant material documents including the statement of witnesses recorded in the preliminary enquiry are due to supply to the delinquent officer. The learned counsel for the applicant has also indicated that such view is also taken by the Hon'ble High Court while deciding the case of **State of U.P. and others Vs. Dileep Kumar Saini and others in Writ Petition No. 1568(SB)/2007 and others** and other connected matters. The learned counsel for the applicant has also relied upon a decision of the Hon'ble Apex Court in the case of **State of U.P. Vs. Saroj Kumar Sinha** and has also indicated that the Hon'ble Apex Court has observed that employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him. It is vehemently argued by the learned counsel for the applicant that since there is a procedural irregularity in conducting the enquiry, as such, the O.A. is liable to be allowed.

4. On behalf of the respondents, detailed reply is filed and through reply, the respondents have categorically indicated that the applicant was involved in immoral sexual behavior towards girl students, as such the complaint was lodged against the applicant and the Commissioner issued a memorandum to the applicant on

4.5.2007 and the applicant was given an opportunity to submit the representation to show cause as to why his services may not be terminated under Article 81(b) of Education Code of Kendriya Vidyalaya Sangathan. It is also argued by the learned counsel for the respondents that relied upon documents were also given and the applicant has also given reply to the show cause notice, which is reflected in the punishment order dated 5.10.2007. Not only this, it is also submitted by the learned counsel for the applicant that the appeal so submitted by the applicant was also considered and decided by the appellate authority and the appellate authority has also rejected the appeal of the applicant. Sri Surendran P, Learned counsel for respondents relied upon a decision of Hon'ble Apex Court in the case of **Commissioner, K.V. Sangathan and others Vs. Rathin Pal** and has also indicated that the issue involved in regard to Article 81(b) of Education Code is dealt with by the Hon'ble Apex Court. The learned counsel for the respondents has also relied upon a decision of this Tribunal passed in O.A. No. 230/2008 Thakur Prasad Maurya Vs. Union of India and others and has indicated that in the present case, Article 81 (b) of the Education Code is discussed by the Tribunal and the O.A. was dismissed.

5. On the basis of averments advanced by the learned counsel for the respondents, it is vehemently argued that the Article 81(b) is in regard to satisfaction of the Commissioner and the Commissioner being satisfied in the instant case, the impugned order of termination was passed and there is no illegality in passing the order, as the applicant has been given full opportunity of hearing and there is no violation of Principle of Natural Justice.

6. On behalf of the applicant, Rejoinder Reply is filed and through rejoinder reply, mostly the averments made in the O.A. are reiterated and contents of counter reply are denied.

7. Heard the learned counsel for parties and perused the records.

8. The applicant was initially appointed in the respondents organization in 1982 and after putting long period of service, he was promoted to the post of TGT. The applicant was transferred from Kendriya Vidyalaya Arunachal Pradesh to Kendriya Vidyalaya, Ambala Cantt. In the year 2004. While working at Kendriya Vidyalaya, Ambala Cantt., the applicant was served with a show cause notice / memorandum dated 4.5.2007 on the basis of a complaint lodged by parent of some girl students of Class VI B. In the said memorandum, the following immoral sexual behavior is mentioned:-

- i) He harasses the students of class VI-B for whom he happens to be the Class Teacher.
- ii) He used to put his hand in the pocket of the girl students with one or the other pretext and preses their breasts.
- iii) When he finds that the girl is crying and weeping, he kisses them on the pretext of consoling them.
- iv) He threatens the girl students against disclosing the matter to any body.
- v) One day he put his hand into under shirt of Kumari Gurmeet Kaur and pressed her breast on the pretext of checking her copy. When Kumari Kaur started weeping, he consoled her by kissing.
- vi) He also enquired from Kumari Gurmeet Kaur that whether her mother stays alone at home as he wants to meet her there.
- vii) All girt students are terrorized by him.

9. Accordingly, a preliminary enquiry was ordered by the Principal vide office order dated 20th November, 2006 and the preliminary enquiry committee submitted his report wherein the committee concluded that the complaint of the students and parents are found to be genuine and serious. The Principal of Kendriya

Vidyalaya forwarded the above said preliminary enquiry report to the Assistant Commissioner, Regional Office, Chandigarh for further necessary action. It is also indicated in the said memorandum that the Assistant Commissioner constituted a Summary Enquiry Committee, comprising of some officials for further investigation in the matter. The said Summary Enquiry Committee also submitted the report wherein the committee concluded that the applicant was guilty of immoral sexual behavior towards girl students of class VI B as such, the such summary enquiry report was forwarded further. Not only this, it is also to be pointed out that the applicant was also given certain documents such as :-

- i) Charges / facts in support of the charges;
- ii) Copy of statement recorded in the preliminary inquiry;
- iii) Copy of report of the preliminary inquiry;
- iv) Copy of statement recorded in the summary inquiry and;
- v) copy of report of the summary inquiry.

10. The applicant was given opportunity to submit a representation to the show cause as to why he services should not be terminated under Article 81(b) of Education Code of Kendriya Vidyalaya.

11. Not only this, it is also indicated by the learned counsel for respondents and has also placed on Anneuxre 12 to the O.A. the applicant was directed to be remained present on 20.11.2006 before the Enquiry Officer in connection with the complaint of the students of class VI B and applicant has also received the said notice. It is out of place to make a mention here that the Summary Inquiry Committee visited Kendriya Vidyalaya on 20.11.2006 and conducted the inquiry and during the course of inquiry, the committed recorded statements of the following teachers, students and parents such as :-

- i) Km. Gurmeet Kaur, VI B(Main complainant)

- ii) Sri T.C. Sharma, TGT (Hindi) (Accused)
- iii) Sri Asha Sachdeva, Vice Principal, KV -2, Ambala Cantt.
- iv) Sti M.N. Dangwal, PGT (Geo) KV -2, Ambala Cantt.
- v) Smt. Vandana Walia, FGT (History), KV -2, Ambala Cantt.
- vi) Sri S.S. Verma, parent Member of VMC, KV -2, Ambala Cantt.
- vii) Smt. Asha Vata, TGT (Eng.)
- viii) Smt. Deepali Malhan, TGT (Eng.)
- ix) Smt. Mamta Prashar, Spoken English Teacher KV -2, Ambala Cantt.
- x) Joint statement of Mrs. Kulwant Kaur and Sri Joginder Singh parent of Km. Gurmeet Kaur
- xi) Mrs. Harvinder Kaur, m/o Km. Ambineet Kaur of Class VI B
- xii) Mrs. Bimla m/o Arti, Class VI, B.; KV -2, Ambala Cantt.
- xiii) Mm. Arti Student of Class VI B, KV -2, Ambala Cantt.

11. The applicant was given due opportunity for presenting himself. The applicant submitted reply and denied all the charges and pleaded his innocence. Not only this, the disciplinary authority after carefully analyzing the inquiry report came to the conclusion that the applicant was imparted immoral sexual misbehavior with girl students of class -VI B, therefore, it was decided by the disciplinary authority to proceed against the applicant under Article 81(b) of Education Code for Kendriya Vidyalaya. It is also to be pointed out that holding a regular enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to Kendriya Vidyalaya was dispensed with and the Commissioner has also issued a notice to the applicant for providing him an opportunity to represent his case and as indicated above, the applicant was also given the relied upon documents.

12. The applicant submitted his reply through reply dated 24.5.2007, as such it cannot be said that the due opportunity of hearing was not provided to the applicant. After considering the

entire material on record, the disciplinary authority came to the conclusion that the applicant is found guilty, as such, article 81 (b) of Education Code was invoked and the services of the applicant was terminated. For ready reference, Article 81(b) of Education Code is quoted below:-

"81.(B) Termination of Services of an employee found guilty of immoral behaviour towards students.

Whenever 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 3 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 serious embarrassment, to the 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."

13. In the case of **Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others (1997) 2 Supreme Court Cases, 534**, their Lordship had upheld the action of the administration in terminating the services after a preliminary enquiry. In that case also, the moot question involved was indecent behavior with girl students and sexual harassment meted out to them. In the case of Avinash Nagra, their Lordship had made following observations:-

"In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation."

.....In the circumstances, it is very hazardous to expose the young girls to tardy process of cross examination."

14. The relevant decision have been fully discussed in an order of the Principal Bench of the Central Administrative Tribunal, by a Division Bench in T.A. No. 5 of 2003, by order dated 3.10.2003, which has been relied upon by the respondents. That also relates to sexual harassment of a girl student at the hands of the applicant relating to exhibition of immoral behaviour towards her. Since that is a well discussed order, we would hereinafter quote certain portion of that order.

“On the other hand, respondents counsel Sri Rajappa denied the contentions and vehemently opposed the T.A. According to him, as per the decision of the Apex Court in Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others (1997) 2 SCC (L&S) 565, where a similar provision exists for dispensing with the enquiry, it has been held in a case of moral turpitude when embarrassment is to be caused to a girl student, dispensing with the inquiry does not suffer from any legal infirmity. On the same analogy referring to Article 81(b) of Education Code of KVS, it is contended that as per the decision in Babban Prasad Yadav’s (supra), five conditions are to be satisfied which includes holding of summary inquiry, finding against the charged official of being guilty of moral turpitude, satisfaction of the Director on the basis of such inquiry that the charged officer was prima facie guilty, satisfaction of the Director that it is not expedient to hold an inquiry on account of the serious embarrassment to be caused to the student and recording of reasons in writing in support of the aforesaid.”

15. The Principal Bench in that case quoted extensively from the judgment of the Apex Court in the case of **Avinash Nagra(supra)** in para16. The quoted portion , in order to understand the implication of such charges and a preliminary inquiry need to be reproduced:-

“11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as ‘Guru Brahma, Gurur Vishnu Guru Devo Maheswaraha’. As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teachers is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the

pedestal below the parents. The State has taken care of service conditions of the teacher and he owed dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing Constitutional ideals enshrined in Article 51A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the Constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an inquiring mind but not with blind customary beliefs. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant for the efficiency of the education system as pillar of built democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best of education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part, are material factors determining the degree and supervision demanded by a teacher.

12. It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle class people are sendign the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in

disciplined and dedicated pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parent is and such is the duty, responsibility and charge expected of a teacher. The question arises: whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is an iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a pannacea but a nail on the coffin. It is self-inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, a highest authority in the management of the institution to take decision, based on the fact situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely, he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human Resources Department, Government of India in that behalf. It is seen from the record that the appellant was given a warning of his sexual advances towards a girl student but he did not correct himself and mend his conduct. He went to the girl hostel at 10 p.m. in the night and asked the Hostel helper, Bharat Singh to misguide the girl by telling her that Bio-Chemistry Madam was calling her; believing the statement, she came out of the hostel. It is the admitted position that she was an active participant in cultural activities. Taking advantage thereof, he misused his position and adopted sexual advances towards her. When she ran away from his presence, he persued her to the room where she locked herself inside; he banged the door. When he was informed by her room mates that she was asleep, he rebuked them and took the torch from the room and went away. He admitted his going there and admitted his meeting with the girl but he had given a false explanation which was not found acceptable to an Inquiry Officer, namely. Asstt. Director. After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him to be not worthy to be a teacher in the institution. Under those circumstances, the question arises: whether the girl and her room-mates should be exposed to the cross-examination and harassment and further publicity? In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the circumstances, it

is very hazardous to expose the young girls for tortuous process of cross-examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof. In view of his admission that he went to the room in the night, though he shifted the timings from 10 p.m. to 8 p.m. which was found not acceptable to the respondents and that he took the torch from the room, do indicate that he went to the room. The misleading statement sent through Bharat Singh, the hostel peon, was corroborated by the statements of the students; but for the misstatement, obviously the girl would not have gone out from the room. Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less a loco parentis and, therefore, dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice.

16. In that order, certain portion of the order of the Apex Court in the case of *Navodaya Vidyalaya Samiti and others Vs. Babban Prasad Yadav and anr.* Decided on 2.5.2003 in SLP No. 9802 of 2002 were also quoted. Those quoted portion as coming in the order of the Apex Court are reproduced below:-

“We are of the view that the High Court erred in revising the decision of the Tribunal. The rule quoted earlier, explicitly deals with such a situation as obtains in the present case. The rule is not under challenge. All that is required for the court is to be satisfied that the pre-condition to the exercise of power under the said rule are fulfilled. These pre-conditions are:- (1) holding of summary inquiry; (2) a finding in such summary inquiry that the charged employee was guilty of moral turpitude; (3) the satisfaction of the Director on the basis of such summary inquiry that the charged officer was prima facie guilty (4) the satisfaction of the Director that it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the students or his guardians or such other practical difficulties

and finally (5) the recording of reasons in writing in support of the aforesaid.


In this case, all the pre-condition have been fulfilled. An inquiry Committee was duly constituted. It held an inquiry and come to the conclusion that the respondents was guilty of the offence with which he was charged, namely, writing love letters to the students in question. The director has recorded the reasons for dispensing with a regular inquiry, reasons which have been upheld as being valid in the decision in Avinash Nagra (supra)....”

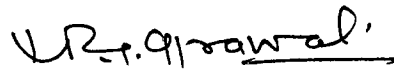
17. The appeal was also submitted by the applicant and the appellate authority has also considered all the grounds taken in the appeal and passed the speaking and reasoned order and rejected the appeal.

18. The bare perusal of the entire record shows that the applicant who is working as a teacher is required to teach and impart education to his disciples instead of involving himself in immoral sexual behavior towards the girl students. The allegations levelled against the applicant as shown in the memorandum dated 4.5.2007 clearly shows that the applicant deserves the strict action to be taken against him and the respondents have rightly taken such a decision.

19. Considering the observations of the Hon'ble Apex Court and act of the applicant as well as on the basis of facts of the case, we do not find any ground to interfere in the present O.A.

20. Accordingly, O.A. is dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-