

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

8

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Disposed date- 31/10/2003

O.A/T.A No. 357/2002

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R.A/C.P No.....

Disposed date- 31/10/03

E.P/M.A No. 45/03

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SECTION OFFICER (Judl.)

Disposed date- 29/11/02

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(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

....

ORDER SHEET

Original Application No : 357/02
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant (s) S. Sankhabaidya

Respondent (s) H. O. T. Tomy

Advocate for the Applicant (s) Mr. S. Dutta

Advocate for the Respondent(s) Cafe. (K.R.S)

Notes of the Registry	Date	Order of the Tribunal
<p>This is application in form C. F. for Rs. 50/- deposited vide IPD/30/2002/575879 Dated 5.11.02 for By, Registrar PA</p> <p>8 steps taken</p> <p>26/11/02</p>	8.11.02	<p>Heard learned counsel for the parties. App Application is admitted. Call for records. Returnable by four weeks. List on 11.12.02 for further orders.</p> <p><u>CC Usha</u> Member <u>Vice-Chairman</u></p>
<p>Notice prepared and sent to the for the respondent No 1 to 6. By. Regd. A.D.</p> <p>3247 to 52/312/02</p>	11.12.02	<p>Heard Mr. M.K.Mazumdar, learned counsel for the respondents who has prayed for time for filing written statement. Prayer is allowed. List on 9.1.2003 to enable the respondents to file written statement.</p> <p><u>CC Usha</u> Member <u>Vice-Chairman</u></p>

9.1.2003

Present:- The Hon'ble Mr. Justice
V.S. Aggarwal, Chairman
The Hon'ble Mr. K.K. Sharma
Administrative Member.

No. written statement
has been filed

Zy
8.1.03

Mr. M.K. Mazumdar, learned counsel
appearing for the respondents stated that
he has got the instruction to state that
the appeal preferred by the applicant has
been disposed of. He further states that
he will be filing written statement and
will also supply the order that has been
passed to the applicant through the learned
counsel for the applicant Mr. S. Dutta.

Allowed as prayed. Written statement
to be filed within four weeks four weeks.

List the case on 7.2.2003 for order.

K K Sharma
Member

Ag
Chairman

No. written statement
has been filed

bb

7.2.2003

Put up the matter again on
6.3.2003 to enable the respondents to
file written statement.

S
Member

Vice-Chairman

No. written statement
has been filed

Zy
6.3.03

6.3.03. Court did not sit today. The
Case is adjourned to 24/3/2003.

M
kr

24.3.03 Present : The Hon'ble Mr Justice D.N.
Chowdhury, Vice-Chairman
The Hon'ble Mr S. Biswas, Admin.
Member.

No. written statement
has been filed

Zy
25.4.03

Heard Mr M. Chanda, learned counsel for
the applicant and Mr M.K. Mazumdar, learned
counsel for the respondents. Further four
weeks time is allowed to file written
statement.

List on 28.4.03 for order.

S. D.
Member

Vice-Chairman

28.4.2003 List the matter on 6.6.2003
for hearing.

29.4.03
MS submitted
by Respondents.

mb

Vice-Chairman

6.6.2003 Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. R.K. Upadhyay
Member (A).

Heard in part. List the case again
on 11.6.2003 for further hearing.

C. B. Nayak

Member

Vice-Chairman

bb

11.6.2003 Adjourned to enable the
respondents to produce the connected
records. List the case for hearing
on 19.6.03.

C. B. Nayak

Member

Vice-Chairman

nkm

19.6.2003 Mr. M. Chanda, learned counsel
appearing on behalf of Mr. M.K. Mazumdar,
learned counsel for the respondents prayed
for adjournement of the case on personal
ground of Mr. Mazumdar. Mr. Chanda, learned
counsel also stated that the learned
counsel for the KVS is yet to get holding
the record. The case is accordingly
adjourned.

Put up again on 16.7.2003 for
hearing.

C. B. Nayak

Member

Vice-Chairman

19.6.2003

Since the Bench is
not continuing, the matter
is released from part heard.

Vice-Chairman

(W)

O.A. 357/2002

16.7.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. N.D. Dayal, Member (A).

Prayer has been made on behalf of the Mr. M.K. Mazumdar, learned counsel for the respondents for adjournment of the case on personal ground. Prayer is allowed.

List again on 28.7.2003 for hearing.

W/S has been filed,

Member

Vice-Chairman

20
19.8.03,

mb

28.7.2003 Prayer has been made by Mr. S. Das, learned counsel on behalf of Mr. M.K. Mazumdar, learned standing counsel for the KVS for adjournement of the case on personal ground. Prayer is allowed. List on 20.8.2003 for hearing.

Member

Vice-Chairman

mb

20/8/03.

Part heard. list on 21/8/03
for further hearing with NLP.
By order.

21/8/03. Hearing Concluded. findings
(several)

21/8/03.

Office Note	Date	Tribunal's Order
<p>As authorised by the Hon'ble Member (A) Mr. Prakладан, Jugement has been delivered by the Hon'ble V.C. (Single Judge)</p> <p><u>bmf</u> 31-10-03</p>	31.10.2003 mb	<p>Judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs.</p> <p>Vice-Chairman</p>
<p>21.11.2003</p> <p>copy of the Judgment has been sent to the Office for issuing the same to the Applicant as well as to the L.A.D. for the Response</p> <p>SL</p>		

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Office Note	Date	Tribunal's Order
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PUC →

The Memo No. H.C. XXI 7892-98 (R.M. 270, 1/12/06)
received from the Asstt. Registrar (Judt), Gauhati
High Court, Gauhati.

N

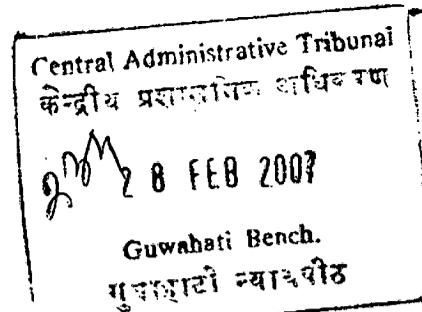
The PUC may kindly be seen.

The Union of India represented by the Secy. to the Govt. of India's Deptt. of Education, New Delhi and others have filed the N.P.(c) No. 749/2004 against the order and order dated 31.10.03 passed in OA No. 357/02 before the Hon'ble Gauhati High Court, Gauhati. But the Hon'ble High Court reverted the Tribunal's order on 10.11.2006 and with a direction that 'consequently the order of termination of services of the respondent dated 23.05.2002 is hereby restored'.
Submitted for favour & kind perusal.

115
19/3

N. W. M. S.
19.3.07
P.C.S.
20/3/07
Hon'ble V.C

DR
19.3.07
Collectro



THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Meghalaya, Manipur,
Tripura, Mizoram & Arunachal Pradesh)

Writ Petition (C) NO. 749 of 2004

1. The Union of India,
Represented by the Secretary to the Govt. of
India, Department of Education, New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
New Delhi.
3. The Vice Chairman,
Kendriya Vidyalaya Sangathan,
New Delhi.
4. Joint Commissioner, (A.D.M.N.),
KVS, New Delhi.
5. The Assistant Commissioner, KVS,
Regional Office, Hospital Road, Silchar.
6. The Principal,
Kendriya Vidyalaya, Lekhapani, Tinsukia.

..... **Petitioners**

-Versus-

1. Sri Sujit Suklabaidya,
Group D. Peon, Kendriya Vidyalaya,
Lekhapani, District- Tinsukia.

..... **Respondent**

BEFORE
THE HON'BLE MR JUSTICE A.H. SAIKIA
THE HON'BLE MR JUSTICE B.D. AGARWAL

For the petitioner : Mr. S.C. Biswas,
Mr. M.K. Majumdar,
Mrs. R. Begum,
Mr. H. Chanda,
Ms. M. Das, Advocates.

For the respondents : Mr. R.K. Dutta, Advocate.

Date of hearing : 02.11.2006

Date of Judgment : 10.11.2006

In Session
N.S.
28.2.07

JUDGEMENT AND ORDER

B.D. AGARWAL, J.

The respondent Sri Sujit Suklabaidya was working as a peon in Kendriya Vidyalaya, Lekhapani, Silchar, Assam. The School was situated in Army Cantonment. In the last week of February 2002, the Joint Commissioner (Acad) received an anonymous telephonic message that few male staff of the School were misbehaving with girl students. Accordingly, the Joint Commissioner directed the principal of the School to make an enquiry. Accordingly the Principal of the school constituted a Committee of 3 (three) teachers to ascertain the truth in the allegation. Accordingly the Committee examined 13 girl students on 27.02.2002 of classes VII, VIII and IX and report was submitted to the School Authority on the same date. On that day few girls were not available in the school. Hence, three more such girl students were interviewed on the next date and another report was submitted to the principal of the School on 02.03.2002. After these two preliminary reports one formal Committee consisting of the Chairman of the School, namely, Major Rohitesh Kumar and School Teachers Mr. N.P. Singh and Mrs. S. G. Sood was constituted. This Committee recorded a statement of as many as 17 persons including the victim girls, the principle and others. After the enquiry the Committee submitted its findings and opinion holding that few students had implicated School teachers Mr. B.N. Paul, Mr. V.K. Yadav and two peons, namely, Mr. Sugreev Kewat and

Mr. Sujit Suklabaidya. The aforesaid findings were accepted by the Chairman, Kendriya Vidyalaya, Lekhapani and recommended disciplinary action against the teachers and employees of the School for indulging and misconduct with girl students vide its order dated 04.03.2002. The enquiry reports dated 02.03.2002, 03.03.2002 and 05.03.2002 (sic) are marked as *Annexure-1 to 3* in the writ petition.

2. Having found the teachers and staff of the School involving misconduct, show cause notices were issued to the indicted persons to show cause as to why disciplinary action should not be taken against them. Notice to the present respondent was issued on 02.03.2002 to which the respondent replied on 04.03.2002. After perusing all the evidence, the Commissioner of Kendriya Vidyalaya Sangathan terminated the services of the respondent Sri Sujit Suklabaidya vide order No. F.10-7/2002/KVS (VIG) dated 23.05.2002. It may be mentioned here that the Commissioner had dispensed with exhaustive procedure for disciplinary proceeding laid down under Central Civil Services (Classification, Control and Appeal) Rules, 1965 in exercise of his powers conferred under Article 81 (b) of the Education Code.

3. On receipt of the termination order dated 23.05.2002 the respondent prayed for review of the said order but this prayer was turned down on 15.05.2002. Thereafter, the respondent preferred an appeal before the learned Central Administrative

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Tribunal, Guwahati Bench, (the 'Tribunal' in brief). This appeal was registered as Original Application No. 357 of 2002. The learned Tribunal, after hearing both the parties and on perusal of records set aside the order of termination dated 23.05.2002 and directed the School authority to reinstate the applicant in service with all consequential benefits. Being aggrieved with this order of re-instatement, the Union of India and Kendriya Vidyalaya Sangathan has preferred this writ petition under Article 246 of the Constitution of India seeking a writ in the nature of certiorari and other appropriate direction.

4. We have heard Mr. S.C. Biswas, learned counsel for the petitioners. Sri R.K. Dutta appeared for the sole respondent. During the hearing, the learned counsel for the appellants also furnished copies of the statements of the girl students for perusal of this Court.

5. As noted earlier the enquiry was held in a summary procedure under Article 81 (b) in Chapter 8 of the Education Code. The relevant provision is extracted below:

✓

"(b) Termination of Services of an Employee Found Guilty of Immoral Behaviour towards Students.

Wherever 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 month's pay and allowances according 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 employee 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."

6. In the aforesaid Article the Commissioner is the appropriate authority to dispense with the procedure of regular enquiry if he is of the opinion that any such open and exhaustive enquiry may cause embarrassment to the students or their guardians or for such other practical difficulties in the case before us. The allegation of sexual mis-behaviour with girl students squarely falls within the sweep of Article 81 (b). We do not see any illegality in adopting the summary procedure for holding the enquiry involving minor girl students in sexual exploitation. Truly speaking the learned Tribunal has also not held that the summary enquiry was without jurisdiction or that it was not warranted in the situation.

7. The learned Tribunal has set aside the termination order drawing on certain adverse presumptions against the school authority as well as holding that the respondent/applicant was entitled to benefit of doubt since the first enquiry report did not

implicate him for any moral turpitude. The relevant finding on the merit of the case rendered by the Tribunal is extracted below for ready reference:

“ We have given our anxious consideration in the matter. The materials on record including the alleged testimony of Alka Chhetri and Namita Rai made before the Court of enquiry headed by Major Rohitesh Kumar and the third enquiry held on 02.03.2002 even did not prima-facie indicate that the applicant was guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards the students. Admittedly, there is no proof of any sexual offence or exhibition of any immoral sexual behaviour.”

8. Before advertiring to the factual correctness of the findings of the learned Tribunal, we would like to mention here that the offence of sexual harassment at work place has been given a new shape and direction by the Hon'ble Supreme Court of India. In the internationally celebrated case of ***Vishaka & Ors. Vs State of Rajasthan & Ors. JT 1997 (7) SC 384; AIR 1997 SC 3011***, the apex court has expanded the definition of sexual harassment, holding that it would also include:

- a) **Physical contact and advances;**
- b) **A demand or request for sexual favours;**
- c) **Sexually coloured remarks;**
- d) **Showing pornography;**
- e) **Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.**

9. It is true that in the aforementioned case the Hon'ble Supreme Court has given elaborate guidelines to take preventive steps and deal with allegations of

sexual harassment at work place against working women. However, the underlying message of the authority is that the entire environment at work places should be free from sexual harassment. After the judgment of the Apex Court in the case of Vishaka (supra) the guilt of moral turpitude need not confine to substantive sexual harassment. To say differently any un-natural behaviour by a male staff with women in the work place connected with sexual activity would bring the offence within the parameters of moral turpitude. Unfortunately this progressive judgment by the Apex Court has gone un-noticed by the Tribunal.

10. Coming through the evidence of sexual harassment, we find that at last two girl students of the School, namely, Alka Chhetri and Namita Rai have explicitly indicted the present respondent in their sexual harassment. The relevant part of these two girl students have been reflected in the impugned judgment which we would also like to reproduce in the present judgment for better appreciation and understanding the gravity of the case. The statements of Alka Chhetri is as follows:

“ I also want to narrate a particular act of mis-behaviour of Mr. S.S. Bidya, a group D employee of our school. Last year when I was in class VIII; in the month of November, we went for a class picnic without informing the school authorities within Lekhapani cantt. This act of ours was reported to the school authorities. Our parents were called to give explanation and apologize to the school, that the incident will not be repeated in future by their words. My mother was sitting in the clerks room adjoining principal office to write the applications. I was

told by Mr. S.S. Baidya to sit outside. As I moved outside, he followed me. As we stopped out of room, he pressed my breasts while stating "don't worry noting will happen" and words to that effect in Hindi. I felt very bad at that particular moment."

Incriminating part of the statement of Namita Rai, a student of class IX is also extracted below:

10.1

" I also have problems with Mr. S.S. Baidya who is a group 'D' employee of our school. He has always been trying to misbehave with me. He passes comments on seeing me. Once when I was coming to school along with my friend Arpana, he said "come, I will treat you with hot samosa" and words to that effect in Hindi. He even tried to hold me with his hand, and at times holds my shoulder. I try and avoid his as and when I see him.

11.

A bare perusal of the above two statements leave no scope for critical analysis to say that it is a clear case of sexual harassment. In our considered opinion the statements clearly makes out a case of moral turpitude and sexual harassment in the context of wider definitions of the said offence given in the case of *Vishaka* (supra). The learned Tribunal has given emphasis for disbelieving the said statements particularly on the ground that these two girl students did not implicate the respondent in their earlier statements for obscure reasons. However, we find from the record that the aforesaid students have satisfactorily given reasons for not disclosing the fact of sexual harassment earlier. We are of the view that even if it was given belatedly on persuasion no doubt about its truthfulness can be drawn.

12. From the set of documents submitted by the learned counsel for the petitioners, we find that the statements of Alka Chhetri and Namita Rai were recorded thrice. On the first occasion statements of about one dozen girl students were recorded. Few of them remained totally silent, whereas few students implicated only two teachers of the school. However, in the second and third statements of Namita Rai and Alka Chhetri they also implicated the respondent Sri Sujit Suklabaidya. We have already mentioned earlier that the entire enquiry in three stages took only one-week time. The principal of the School has clarified that second statement of the girls in the preliminary enquiry had to be recorded to find out the actual truth. Had it been a case of trying an accused for a criminal offence certainly the court would have taken a serious note of the so-called improvement in the statements. However, in the matter of allegation of sexual harassment against teachers and employees with teenaged girl students, the same standard of criminal trial, which requires proof of allegations beyond all reasonable doubt, can not be adopted. The observation of the learned Tribunal that it appears "that the alleged enquiry was made to implicate the applicant" does not appear to be acceptable to us in the facts and circumstances of the case.

13. The learned Tribunal has also taken exception for holding two enquiries and recording the statements of the students repeatedly. On this basis

the Tribunal has held that the authorities, after getting materials against the teachers, also tried to rope in more persons by all means. We respectfully disagree with the aforesaid presumption of the learned Tribunal in as much as there is no material on record to indicate that either the students or their parents had any enmity or grudge against the present respondent. Besides this, the principal of the school had also clarified before the formal enquiry committee that the second statement of few girl students had to be recorded since the first preliminary report dated 27.02.2002 did not give positive findings. In our consider opinion the explanation of the principal for recording additional statements of the victim girls is plausible and does not suffer from any *vice* or *malafide* action. At this stage, we would like to make it clear the preliminary report dated 02.03.2002 does not reflect the name of Namita Rai, although she had given indictable statement. Similarly the allegations made by Alka Chhetri have also not been extracted in extenso in the said report. This may be un-intentional error. However, we are of the opinion that any report cannot supersede the evidence on record. In the present case, we find that Namita Rai had alleged that the respondent Sri Sujit Suklabaidya used to tease her and touch her body under certain pretext, which she did not like. However, this statement was dropped from the preliminary report. Similarly the allegation of Alka Chhetri regarding fondling of her breasts has also been omitted from the report, although the finding has been given that the respondent was involved in sexual

offence and misbehavior with girl students. Be that as it may, the second Committee has given a clear finding of sexual harassment on the basis of the statements of above two students against the present respondent.

14. Educational Institutions are the platform for teaching moral values. These are the places where the future of the society is given a shape. Hence, it is necessary that the entire environment of educational institutions should be free from all kinds of pollution. No authority can be permitted to dilute the standard of moral behaviour of teachers and employees of schools to any extant. Having regard to the gravity and seriousness of the allegations against the respondent, supported by statements of teenaged girls, we are unable to approve the decision taken by the learned Tribunal with due respect.

15. In the result and for the reasons alluded hereinabove the writ petition is accepted the impugned judgment and order dated 31.10.2003 passed by the Central Administrative Tribunal, Guwahati Bench in O.A. No. 357 of 2002 stands set aside. Consequently the order of termination of services of the respondent dated 23.05.2002 is hereby restored.

Sd/- B.D. Agarwal.
JUDGE.

Sd/- A.H. Saikia.
JUDGE.

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- - 20
Memo No. NC. A.M. 3892-98 Date. 1/12/06.

Copy forwarded for information and necessary action to:-

1. The Union of India, represented by the Secretary to the Govt. of India, Department of Education, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, New Delhi.
3. The Vice Chairman, Kendriya Vidyalaya Sangathan, New Delhi.
4. The Joint Commissioner, (A.C.M.O.), KVS, New Delhi.
5. The Assistant Commissioner, KVS, Regional Office, Hospital Road, Silchar.
6. The Principal, Kendriya Vidyalaya, Lakhapani, Tinsukia.
7. The Deputy Registrar, Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Bhengagarh, Guwahati- 781005.

By order

S/
Deka 30.11.06
Asstt. Registrar (Jud.)
Gauhati High Court, Guwahati.

*(Lby
28/11/06)*

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./XXXX No. 1111 357 of 2002

DATE OF DECISION 31.10.2003

Shri S. Suklabaidya

.....APPLICANT(S).

Mr S. Dutta

.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

The Union of India and others

.....RESPONDENT(S)

Mr M.K. Mazumdar

.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.V. PRAHALADAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble ~~XXXXXX~~ Vice-Chairman

Yes

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.357 of 2002

Date of decision: This the 31st day of ^{October} September 2003

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.V. Prahaladan, Administrative Member

Shri Sujitn Suklabaidya
Group D Peon,
Kendriya Vidyalaya, Lekhapani,
District- Tinsukia, Assam.
By Advocate Mr S. Dutta.

.....Applicant

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Department of Education,
New Delhi.

2. The Commissioner
Kendriya Vidyalaya Sangathan,
New Delhi.

3. The Vice Chairman
Kendriya Vidyalaya Sangathan,
New Delhi.

4. The Joint Commissioner (Admn.)
Kendriya Vidyalaya Sangathan,
New Delhi.

5. The Assistant Commissioner
Kendriya Vidyalaya Sangathan,
Regional Office,
Hospital Road, Silchar.

6. The Principal
Kendriya Vidyalaya, Lekhapani,
Tinsukia, Assam.

.....Respondents

By Advocate Mr M.K. Mazumdar.

.....

O R D R R

CHOWDHURY. J. (V.C.)

The O.A. is directed and has arisen against the
order bearing No.F. 10-7/2002-KVS(VIG) dated 23.5.2002
terminating the service of the applicant, a Group 'D'
employee in aid of the powers conferred under Article

81(b) of the Education Code for Kendriya Vidyalaya.

2. Facts: The applicant was appointed as a Group 'D' Peon with effect from 8.3.1990 at Kendriya Vidyalaya (KV for short) at ARC Doom Dooma. He was thereafter transferred to KV, Lekhapani where he joined on 25.11.1991. While he was serving as such he was served with a Notice dated 2.3.2002 asking him to show cause why disciplinary proceeding should not be initiated against him under Article 81(b) of the Education Code for his alleged misbehaviour with a girl student of Class IX. The applicant submitted his reply on 4.3.2002 denying his involvement in the misbehaviour with any girl student as alleged. By the impugned order dated 23.5.2002 the Commissioner, KVS, respondent No.2, terminated the service of the applicant with immediate effect in exercise of powers conferred under Article 81(b) of the Education Code for KV. Aggrieved by the order of the Commissioner, the applicant had preferred an appeal before the Vice Chairperson, KVS, respondent No.3 on 15.5.2002. Failing to get appropriate remedy from the respondents the applicant knocked the door of this Tribunal by way of the present O.A. assailing the legitimacy of the action of the respondents in terminating the service of the applicant in purported use of Article 81(b) of the Education Code for KV.

3. The respondents submitted their written statement refuting the claim of the applicant. In the written statement the respondents contended that in February 2002 a complaint was lodged with the Joint Commissioner on phone regarding misbehaviour of some male staff of KV, Lekhapani with some girl students. The Principal, KV, Lekhapani ordered a preliminary enquiry and the same was

conducted.....

conducted on 27.2.2002 and 2.3.2002 by a committee consisting of three teachers, namely Shri N.P. Singh, PGT (Hindi), Smt J.B. Gogoi, Music Teacher and Smt S.G. Sood, PRT. The committee called several students of classes VII, VIII and IX to enquire as to whether they had any problems with any male staff of the Vidyalaya. In response two students of class IX, named in the written statement, complained against sexual advances of the applicant. The Chairman, Vidyalaya Management Committee (VMC for short), initiated another enquiry into the allegations by constituting a committee consisting of an army officer and two teachers, namely Major Rohitash Kumar, Shri N.P. Singh, PGT (Hindi) and Smt S.G. Sood, PRT. The committee reported that the applicant physically misbehaved with the said two students mentioned earlier and showed keen interest in one of, namely "N" of class IX. The Assistant Commissioner, Regional Office, KVS, Silchar, based on those preliminary findings, constituted a three-member committee consisting of Shri E.T. Arasu, Education Officer, KVS, Smt Radharani Devi, Principal, KVS, Imphal and Smt Subha, Krishnamachar, PGT, KV, Duliajan. The committee reported that the applicant indulged in unwelcome physical and verbal conduct of sexual nature. Based on the materials made available to him and the aforementioned enquiry reports, the Commissioner came to the conclusion that the applicant was guilty of immoral conduct and since it was not expedient to hold a regular enquiry by virtue of power vested under Article 81(b) of the Education Code for KVS, the Commissioner- respondent No.2, terminated the service of the applicant. An appeal was preferred by the applicant to the Vice Chairperson, KVS, New Delhi, who also heard him in person on 6.11.2002

and.....

and dismissed the appeal vide communication dated 15.1.2003. The respondents in the written statement contended that termination of the applicant was lawfully made in aid of Article 81(b) of the Education Code.

4. We have heard Mr S. Dutta, learned counsel for the applicant and also Mr M.K. Mazumdar, learned Standing Counsel for the KVS. Mr S. Dutta contended that the respondent No.2 mechanically misused the power under Article 81(b) without applying his mind at the instance of his subordinate officers, namely respondent Nos.4, 5 and 6 without exercising his independent discretion. Referring to the scheme of Article 81(b), Mr Dutta contended that as per the scheme cited in Chapter 8 of the Code, the power of termination of service of an employee found guilty of immoral behaviour towards students was vested upon the Commissioner and the said power was to be exercised by none else except the Commissioner. Mr M.K. Mazumdar, the learned counsel for the respondents, on the other hand submitted that the power to terminate the services of an employee under Article 81(b), no doubt is reposed on the Commissioner and the Commissioner in fact exercised the power under Article 81(b) on the basis of the enquiry report. Article 81(b) nowhere envisaged that the enquiry was to be conducted by the Commissioner. The satisfaction of the Commissioner is his own satisfaction and for that purpose he is authorised to cause an enquiry and thereafter act on the basis of the enquiry on his *prima facie* satisfaction. The Code also authorised the Commissioner to dispense with the enquiry if in his considered opinion it is/was not expedient to hold a regular enquiry with a view to avoid embarrassment to the

students. The learned counsel contended that the authority in the case in hand acted independently on assessment of the evidence made available before him.

5. Before going into the respective contentions of the parties, it would be convenient to refer to the scheme mentioned in Chapter VIII of the Code. The chapter relates to discipline. The Sangathan decided to extend the provisions of CCS (CCA) Rules, 1965 as amended from time to time in mutatis mutandis to all members of the staff of the Sangathan except when otherwise decided. Article 81 is divided into two parts; Clause (a) of Article 81 pertains to termination of service of an employee under terms of appointment and Clause (b) relates to termination of service of an employee found guilty of immoral behaviour towards students. As per Article 81(b) the power is conferred on the Commissioner to terminate the service of an employee found guilty of immoral behaviour towards students. The full text of the rule is quoted below:

"Wherever 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 month's 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."

6. In the instant case it was the Commissioner who passed the order under Article 81(b) and recorded in writing the reasons under which it was not reasonable or practical to hold the enquiry. As per the reasons cited by the Commissioner he was of the opinin that it was not expedient to hold regular enquiry on account of serious embarrassment to the said students and their parents. To arrive at the conclusion to terminate the service of the applicant by dispensing the enquiry in aid of Article 81(b), the Commissioner referred to the summary enquiry report submitted by the Assistant Commissioner, Regional Office, Silchar. The statement of the victim girl students and the statement of the teachers and Principal of the Vidyalaya involving the applicant guilty of moral turpitude etc.

7. With a view to judge the situation we called for the records which were placed before us by the respondents. From the records it appears that a committee consisting of Gunjan Kumar, Mrs S.G. Sood, PRT, Mrs Jula Borah Gogoi, Music Teacher and Shri N.P. Singh, PGT (Hindi) recorded statements of Smt Alka Chhetri, Class IX, Anju Kanwar, Class IX, , Shanti Bist, Class IX, Namita Rai, Class IX, B.B.S. Lakshmi, Class VIII, Bonita Das, Chadu Beno, Gangamaya Khatri, Class VIII, Moti Gurung, Class VIII, Sangeeta Gogoi, Class VIII, Sheela Singh, Class VIII, Bhuva Gurung, Class VII, Ronika Paul, Class VII, Sangeeta Gogoi, Class VIII and Bhuva Gurung, Class VII. The date of recording the statements were not mentioned as shown in Annexure-D. The statement of Usha Rani dated 27.2.2002, mother of Bhuva Gurung were also recorded and there was the statement of Kumuli Gogoi seemingly recorded on 27.2.2002. The said statements were recorded.....

recorded first in point of time by the teachers evidently at the instance of the Principal who received instructions from the Education Officer. None of the statements implicated the applicant. The statements specifically implicated Shri B.N. Paul, PGT (Maths) as well as Shri V.K. Yadav, PET. The authority accordingly issued notices on Shri B.N. Paul and V.K. Yadav as to why action under Article 81(b) of the Code for alleged misconduct were not to be initiated vide notice dated 27.2.2002. There was no complaint of whatsoever manner against the applicant by any of the persons whose statements were recorded. In the absence of the notesheets indicating what actual steps were taken by the authority it has become difficult for us to know as to why two other enquiries were held which will be discussed at the appropriate time. The records did not indicate as to the submission of any report by Shri N.P. Singh, Smt J.B. Gogoi and Smt S.G. Sood. The record also indicate a communication sent by the Principal dated 27.2.2002 addressed to the Chairman, VMC, KV, Lekhapani, Brig. A.K. Gulati, Commandar, 181 MTN BDE, the full text of which is reproduced below:

"Sir,

I am to bring the following to your kind notice and perusal.

- i) The undersigned has been informed telephonically, to day, by "The EO, KVS (SR), Silchar" to look in to the matter of misbehaviour with girl students done by Sh B.N. Paul, PGT (Maths) of this vidyalaya as it was complained unanimously by some parents to "The Commissioner, KVS, New Delhi".
- ii) A committee, consisting of 1. Mr N.P. Singh, PGT (Hindi), 2. Mrs S.G. Sood, PrT, 3. Mrs J.B. Gogoi, Mu. Tr and 4. Mrs Gunjan Kumar part-time contractual PRT, as members, has been asked to enquire the girls of classes VII/VIII/IX in order to find out, whether the girl students of these classes are under going any such harassment from the male teachers.

iii) Lt Col K.C. Naik, EO, 181 MTN BDE/The Chairman's nominee, VMC, KVL has been informed and the entire proceedings were monitored by him.

iv) The Committee enquired 13 students and written statements were taken from them.

v) The undersigned received the report describing the findings of the committee.

vi) Few parents of these girl students were contacted and their complaints were also received.

vii) It has been concluded in that report stating that the following teachers are found with prima facie guilty of immoral behaviour towards girl students.

- a) Sh B.N. Paul, PGT (Maths)
- b) Sh Vijay Kumar Yadav, PET

viii) Memorandum has been served to the above-mentioned teachers and they have been asked to submit the reply by 1.40 PM, on 28-2-2002.

ix) After receiving the reply from the above teachers, this office shall send the Xerox copy of the entire proceedings to your table for further necessary action.

....."

8. The above communication only mentioned the names of Shri B.N. Paul and V.K. Yadav. The aforementioned enquiry that took place on 27.2.2002 and monitored by Lt Col K.C. Naik, EO, 181 MTN BDE also indicate as to the examination of witnesses Alka Chhetri and Namita Rai on 27.2.2002. Neither of the said two students nor any other witness incriminate or made any hint implicating the applicant, though they specifically and clearly referred to the conduct of Shri B.N. Paul. In the record there is one more report alongwith the report dated 2.3.2002 alongwith the statements of four witnesses, namely Shilpi Dhar, Arpana Chhetri, Namital Rai and Alka Chhetri. The record also indicate that a report was seemingly submitted by the four teachers. The name of Smt Gunjan Kumar, a Part-time contractual teacher of the Vidyalaya was deleted which was also indicated in the note dated 18.3.2002 made by P. Balasubramanian, Principal, Kendriya Vidyalaya, Lekhapani. In the report the Principal indicated at paragraph 8 that Smt Gunjan Kumar, a Part-time contractual teacher was

included.....

included in the preliminary fact finding committee and later on her name was removed from the same as her appointment in the committee was against the norms of the KVS. At para 14 the Principal indicated that he arranged a meeting of Shri E.T. Arasu, EO, KVS (Ro) Silchar with Major Rokitash Kumar, OC 868 AT Coy at 10-10 a.m. on 18.3.2002. Shri E.T. Arasu, EO gave a patient listening, at his chamber, regarding the conduct of court of enquiry in KV, Lekhapani. The Principal at paras 15 and 16 noted as follows:

"15. Maj Rohitash Kumar, over telephone, requested me to get back the statement, submitted by his wife Mrs Gunjan Kumar, a part-time contractual Tr of the Vidyalaya, from the regional level enquiry committee.

16. Accordingly, I requested the Committee in writing and the said statement was received by me and the same was handed over to the respective individual."

9. The records also indicate that another enquiry was conducted by the Chairman, VMC, allegedly on the receipt of oral messages of KV, Lekhapani and a court of enquiry was conducted on 28.2.2002 to 4.3.2002 through Major Rohitash Kumar, Shri N.P. Singh and Smt S.G. Sood. There is no indication in the record as to how the court of enquiry came into existence, a methodology known only to Army Act and Rules. Let us assume that the said enquiry was made as a fact finding enquiry and the same was conducted bonafide to ascertain the facts. The records did not indicate the purposes behind the enquiry and also the point of reference of the enquiry etc. The notesheets did not indicate as to the constitution of such an enquiry, save and except that appears in the report of the summary enquiry conducted by the three-member committee. The court of enquiry as alluded consistsed of Major Rohitash Kumar ^{as} Presiding Officer with Shri N.P. Singh, PGT

(Hindi).....

(Hindi), KV, Lekhapani and Smt S.G. Sood, PRT, KV, Lekhapani. The Inquiry Committee first examined Shri P. Blasubramanian, Principal. Shri Balasubramanian in his statement pointed out that on receipt of the information from the Education Officer he constituted a committee. According to him the committee submitted its findings and the findings were not very positive, which persuaded him to inform the Chairman nominee, VMC. The investigation proceeded further in consultation with the Chairman's nominee. It seems that statements of the girl students were recorded. Statement of the parents of the girl students were also obtained. The views and statements of the teachers were obtained in his presence. The Inquiry Committee asked him as to whether he received any complaint in the past from any girl student. He answered in the negative. When asked as to whether any parent complained to him about any misbehaviour against girl students, he submitted that he did not receive any complaint regarding any misbehaviour from parents and students. In respect of question No.5 asked by the Committee as to whether he could initiate any action on the basis of the preliminary investigations, he said that he initiated action against Shri B.N. Paul, PGT (Maths) and Shri V.K. Yadav, PET.

10. The Committee examined eighteen persons as witnesses including Shri Sujit Sukla Baidya as witness No.17. Mrs J.B. Gogoi, Music Teacher who ^{was a member in} ~~contested~~ the first enquiry in February 2002 in her statement at para 2 stated that she was working in the school with effect from 19.7.2000. On 27.2.2002 she was called by the

Principal.....

B2

Principal of Kendriya Vidyalaya, Lekhapani alongwith three other teachers and informed them that some parent had lodged a complaint against Mr B.N. Paul, PGT (Maths). The complaint had been lodged with the Commissioner, KVS, New Delhi. The Principal advised them to enquire with all girl students of Class VII, VIII and IX, to whom Mr Paul was teaching, about his behaviour towards the girl students. She also stated that she alsongwith the other teachers went ahead with the enquiry and out of the thirteen girls they examined, Mr Paul's behaviour was objectionable to most of them. The statements of these girls were recorded in their own handwriting and she produced them for the perusal of the committee. During the enquiry two of the girl also complained about Mr Yadav, PGT who also had Misbehaved with them. She had further stated at para 5 that after getting the preliminary statements of the girls the teacher enquiry body alongwith the Principal also visited some of the girls' parents and enquired from them about any such complaint against those teachers. Smt Alka Chhetri and Smt Namita Rai of Class IX were examined as witnesses No. 15 and 16 respectively by the Court of Enquiry on 28.2.2002. On that day witnesses No.15 and 16 also stated about the misbehaviour of the applicant towards them. At para 3 she stated about a picnic while she was in class VIII. That picnic seemingly took place in the month of November²⁰⁰¹. She stated that she went to the picnic without any knowledge of the authorities. When their act was reported to the authority their parents were called to explain and apologise to the authority. Her mother was sitting in the clerk's room adjoining the Principal's office to the write the application. Witness No.15 was asked by the applicant to sit outside. When she

moved.....

moved outside the applicant followed her. As they stopped outside the room he pressed her breasts and stated "don't worry nothing will happen". When questioned by the Committee she stated that that was the only incident that took place. She was specifically questioned whether she discussed the same with any of her friends. She answered in the negative. The following answer of witness No.15 against question No.4 is significant:

"Question No.4. How come today you mustered so much of courage?

Ans. It was mainly because, I came to know from friends about the entire chain of incidents that I mustered up courage. Also because I came to know from my friends that Mr SS Baidya tried to misbehave with Namita Rai."

11. The statement of witness No.1, Smt Namita Rai, was recorded. At para 3 she stated as follows:

"I also have problem with Mr S S Baidya who is a group 'D' employee of our school. He has always been trying to misbehave with me. He passes comments on seeing me. Once when I was coming to school alongwith my friend Arpana, he said "Come, I will treat you with hot samosas" and words to that effect in Hindi. He even tried to hold me with his hands and at times holds my shoulder. I try and avoid him as and when I see him."

12. The statements made in para 3 by both the witnesses were shown to be statements of the witnesses. In the findings of the Committee, at para 4 the Committee stated that the preliminary investigations pointed finger not only towards Mr B.N. Paul, but also towards Mr V.K. Yadav, PET and Mr Sugriv Kewat a group D employee (witness No.1 and 10). At para 5 the Committee stated that subsequently during enquiry the girl students came up with allegations against Mr SS Baidya again a group 'D' employee (witness No.15 and 16). The said report is not dated. Brig. A.k. Gulati, Chairman, VMC, KV, Lekhapani, recorded his remarks as Station Commander and Chairman, VMC on proceedings of the enquiry and indicated his concurrence. By the said

remark.....

remark he opined that Shri B.N. Paul, PGT (Maths), Shri V. K. Yadav, PET, Shri Sugriv and Shri S.S. Baidya Group 'D' employees of KV, Lekhapani had indulged in misconduct of serious nature with the girl students, as referred in the enquiry and he strongly recommended institution of expeditious disciplinary proceeding against the erring teachers and Group 'D' employees.

13. Another report dated 2.3.2002 under the signature of Netra Pal Singh, PGT (Hindi), Jula Borah Gogoi, Music Teacher and Sunanda G. Sood, PRT appears at page 170 of the record. The said report indicated that another enquiry was held by these persons on 2.3.2002. As per the said report the members of the committee enquired three girls of Class IX, who were absent on 27.2.2002 in the Principal's room, privately, in respect of any allegations against the male staff of the Vidyalaya. It appears that the alleged enquiry was made to implicate the applicant. Though the report mentioned that those class IX girl students were absent on 27.2.2002, besides, Shilpi Dhar and Arpana Chhetri other two witnesses, namely Namita Rai and Alka Chhetri were examined on 27.2.2002. Shilpi Dhar and Aparna Chhetri did not implicate the applicant. Only Namita Rai and Alka Chhetri implicated the applicant in the light of their statements made before the Court of Enquiry. The said report of the three teachers clearly mentioned that complaint of Alka Chhetri was a stale one. The teachers' report observed that the alleged incident took place in December 2000.

14. The above aspects clearly revealed the settings that prevailed during the relevant time. Admittedly, in the first fact finding enquiry held on 22.2.2002 the applicant was not implicated in any form or any manner. Only two teachers, namely Shri B.N. Paul and Shri V.K. Yadav were implicated. The communication sent by the Principal dated 27.2.2002 also indicated the same fact. As mentioned the report indicated that Alka Chhetri and Namita Rai were also examined by the Committee and there was no whisper about the involvement of the applicant. The applicant was only implicated later in point of time as indicated in the letter dated 2.3.2002. The name of the applicant, however, surfaced when the court of enquiry was held on 28.2.2002 which was headed by Major Rohitesh Kumar. The nature of the statements recorded by the Committee on 28.2.2002 itself indicated some form of pressure put on these persons. Admittedly, the alleged events took place as far back as 2000 and the incriminatory statement was made by Alka Chhetri before the court of enquiry implicating the applicant after about two years, that too on mustering courage when she came to know from her friends about the entire chain of incidents. Apparently, there was some sort of deliberation/discourse and/or consultation among the students/teachers after the Education Officer, KVS, Regional Office, Silchar made the telephonic information as to the complaint made on phone to the Joint Commissioner.

15. The aforementioned facts purportedly relied upon by the authority is to be judged on taking an overall view of the situation. Initially, notices were issued to the teachers who were named in the first fact finding enquiry.

The.....

The authority had further taken up the task to dig the grave and discover more facts. The records clearly revealed that the members of the staff as well as the students were under constant pressure from the Vidyalaya authority to overcome their laxity supervision. The records itself indicated that the authority tried to interpolate the records and in fact sought to obliterate the name of Smt Gunjan Kumar, ad hoc teacher, wife of Major Rohitesh Kumar who conducted the court of enquiry.

16. There is not dispute that the decision making process is required to be just and fair. A right decision can be made only in a right frame of mind - a mind that is free from any form of bias or prejudice. An accurate and lawful decision is to be arrived at by a person who is in fact impartial and disinterested in the outcome of the decision free from preconceived notion. The decision making process also must inspire public confidence. In this context it will be appropriate to refer to the following passages from Judicial Review of Administrative Action -

De Smith, Woolf and Jowell:

"Procedural fairness demands not only that those whose interests may be affected by an act or decision should be given prior notice and an adequate opportunity to be heard. It also requires that the decision-maker should not be biased or prejudiced in a way that precludes fair and genuine consideration being given to the arguments advanced by the parties. Although perfect objectivity may be an unrealisable objective, the rule against bias thus aims at preventing a hearing from being a sham or a ritual or a mere exercise in "symbolic reassurance", due to the fact that the decision-maker was not in practice persuadable. The rule against bias is concerned, however, not only to prevent the distorting influence of actual bias, but also to protect the integrity of the decision-making process by ensuring that, however disinterested the decision-maker is in fact, the circumstances should not give rise to the appearance or risk of bias."

"The interest of individuals in participation in decisions by which they are to be affected is obvious they will wish to influence the outcome of the decision. Fairness requires that, in appropriate circumstances, they should have the opportunity of doing so. Procedural fairness does not however guarantee that the exercise of the opportunity to make representations will automatically result in the representations made being accepted. Nor does the existence of fair procedures guarantee the open mind of the decision maker. There is always room for "symbolic reassurance" and for the cynical manipulation of procedural forms on the part of a decision maker who has no intention of being persuaded and whose mind is closed. In order to overcome this, some procedural rules aim at making the decision-making process meaningful and not merely ritualistic. One such rule prohibits biased decision-maker. Another prohibits the fettering of discretion, thus ensuring that the decision maker keeps an open mind. The duty to give reasons for decisions, where it exists, aims at ensuring the rationality of the decision. It attempts to ensure that the arguments presented to the decision-maker will be taken into account, and be seen to be taken into account."

17. The attitude towards the issue as reflected from the record also clearly indicated that the authorities who are entrusted to make the purported summary enquiry did not act justly and fairly. The authorities after getting the materials against the teachers tried to rope in more persons by all means. The applicant was only a Group 'D' employee. The totality of facts situation prevalent at the relevant time, taking into consideration the factors mentioned above led us to believe that the enquiry conducted against the applicant was merely a ritualistic one. The applicant was not afforded a fair, meaningful enquiry free from bias.

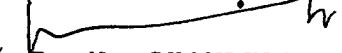
18. We have given our anxious consideration in the matter. The materials on record including the alleged testimony of Alka Chhetri and Namita Rai made before the court of enquiry headed by Major Rohitest Kumar and the third enquiry held on 2.3.2002 even did not prima facie indicate that the applicant was guilty of moral turpitude involving.....

involving sexual offence or exhibition of immoral sexual behaviour towards the students. Admittedly, there is no proof of any sexual offence or exhibition of any immoral sexual behaviour. Rule 81 (b) empowered the Commissioner to terminate a person on being satisfied after summary enquiry that any member of the Vidyalaya is *prima facie* guilty of moral turpitude including sexual offence or exhibition of immoral sexual behaviour. There must be some form of evidence of sexual character, involvement in sexual activity. The Commissioner, the competent authority, merely recited the letters of the law and held that the applicant was guilty of moral turpitude involving sexual offence and exhibition of immoral sexual behaviour, though in fact there was no evidence as such to hold the applicant guilty of the charge. In this context it would also be appropriate to refer to the notice dated 2.3.2002 whereby the Principal asked the applicant to submit his written reply as to why disciplinary action should not be initiated against him under Article 18^{g1(b)} of the Code for his misconduct with the girl atudents. The said notice only mentioned about receipt of a written complaint from a girl student of Class IX in respect of misbehaviour with that girl student by the applicant. The notice did not contain the complaint nor even indicated the nature of the complaint. The complaint only mentioned about his alleged misbehaviour with that girl student of Class IX. The notice did not indicate as to whether the Principal referred to the complaint of Alka Chhetri or Namita Rai. No such complaint or even written complaint was discernible from the records. The applicant also was denied the procedural protection to know the case against him.

19. On consideration of all the aspects of the matter we are of the opinion that the impugned order dated 23.5.2002 holding the applicant guilty of the charge and thereby terminating his service in aid of Article 81 (b) of the Education Code for Kendriya Vidyalayas is not sustainable in law and accordingly the same is set aside. The respondents are directed to reinstate the applicant in service with all consequential benefits.

The application is accordingly allowed. There shall, however, be no order as to costs.


(K. V. PRAHALADAN)
ADMINISTRATIVE MEMBER

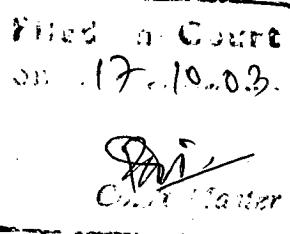

(D. N. CHOWDHURY)
VICE-CHAIRMAN

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I hereby authorize Hon'ble Mr.Justice
D.N.Chowdhury, Vice-Chairman of this Bench to pronounce
the Judgments in O.A. Nos.357 & 359 of 2002.

K.V. Prahladan
(K.V.Prahladan)
Administrative Member



41

Filed by the Respondent

Through M. K. Majumder
Advocate
17.10.03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

O.A. NO. 357/02.

BETWEEN - Sujit Sukt abaidya.

-versus-

Union of India & others.

-AND-

O.A. NO. 358/02.

BETWEEN -- Vizay Kr. Yadav.

-versus-

Union of India & Ors.

In the matter of -

Production of documents relating to
disciplinary proceeding.

-And-

In the matter of -

Recent development against the
non-delinquent employee

SRI B. N. Paul Ex-PG&T (Maths).

-And-

In the matter of -

The Assistant Commissioner,
Kendriya Vidyalaya Regional Office,
Silchar Region.

..... petitioner.

the humble petition of the
petitioner above-named, -

MOST RESPECTFULLY SWEETHE :-

1. that the petitioner/respondent states that this Hon'ble Tribunal have already heard the matter at length made the order CAV and sought for the original records relating to the departmental proceeding against the applicants.
2. that the petitioner/respondent states that while submitting written statement the respondent have elaborately submitted before this Hon'ble Tribunal along with record and sought time to produce rest of records lying with the Respondents.
3. that the petitioner respectfully submits that while proceeding with matter this Hon'ble Tribunal enquired about the other delinquent employee and asked the respondent to submit the present position of the departmental proceeding against Sri B.N.Paul.

In this regard, the respondent on enquiry have confirmed that Sri B.N.Paul, whose service was terminated in the departmental proceeding under Article 81 (b) has filed O.A. No. 176/03 in CAT Cuttack Bench, which is pending for disposal.

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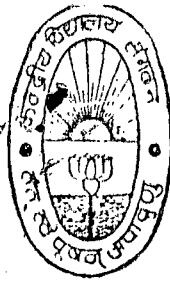
A copy of communication dated 11.9.03 is annexed as Annexure - I.

4. that the petitioner states that the present applicant's case are independent one and not similar to that of Sri B. N Paul.
5. that the petitioner states that the petition is made bona fide in the interest of justice.

In the premises aforesaid it is therefore prayed that Your Honour would be pleased to admit this petition and pass necessary order dismissing the O.A. and/or pass any other or further order as this Hon'ble Tribunal may deem fit and proper.

And the petitioner, as in duty bound, shall ever pray.

VERIFICATION.....



केन्द्रीय विद्यालय संगठन

KENDRIYA VIDYALAYA SANGATHAN

केन्द्रीय विद्यालय

असमाल रोड़

सिलचर - 788 009

34009 (AC) with FAX
दूरभाष 34339 (AC) Resi
Phone - 34154 (AO)
45737 (EO)

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Regional Office

Hospital Road,

Silchar - 788 001

पत्रांक

F No

4-1/2002-KVS(SR) 12065-66

दिनांक

Dated

11.9.2003

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Through Capital Courier Service

Sh. M. K. Muzumdar,
Advocate,
CAT, Guwahati Bench,
Guwahati.
Ph. No. 2472836 (R).

Sub: OA No. 357/2002 and OA No. 358/2002 filed by
Sh. S. Suklabaidya and Sh. V. K. Yadav - reg.

Sir,

Inviting your attention to the subject mentioned above, I am to say that Sh. B. N. Paul, Ex-PGT (Maths.) whose services were also terminated by the Commissioner, KVS vide order dated 3.3.02 under Article 81 (b) of Education Code, has filed OA No. 176/2003 in CAT, Cuttack Bench (the teacher was transferred on request from KV, Lekhapani to KV Old DVS Dhenbad, under Bhubaneshwar Region before issue of termination order dated 3.3.02).

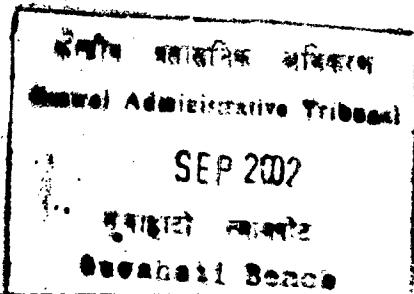
Counter affidavit in the aforesaid OA has been filed on 13.8.03 but the case has not come up for hearing so far. This is for your information and necessary action please.

Yours faithfully,

M. M. JOSHI 12/9/2003
ASSISTANT COMMISSIONER

Copy to: The Asstt. Commissioner, KVS (RO) Guwahati for
Information & necessary action.

ASSISTANT COMMISSIONER



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No 357 /2002

Sri Sujit Suklabaidya : **Applicant**

- Versus -

Union of India & Others : **Respondents.**

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Filed by

Sonika
Advocate

Date 29.07.02

Sujit Suklabaidya

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 357 /2002

BETWEEN

Sri Sujit Suklabaidya
Son of Late Tarani Suklabaidya
Group D Peon, Kendriya Vidyalaya, Lekhapani.
District Tinsukia, Assam. PIN - 786180

...Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the Government of India,
Department of Education, New Delhi.
2. The Commissioner,
Kendriya Vidylaya Sangathan
18 Institutional Area, Shaheed Jeet Singh Marg,
New Delhi-110016
3. The Vice Chairman
Kendriya Vidylaya Sangathan
18 Institutional Area, Shahheed Jeet Singh Marg,
New Delhi-110016
4. The Joint Commissioner (Admn.)
Kendriya Vidylaya Sangathan
18 Institutional Area, Shaheed Jeet Singh Marg,
New Delhi-110016

File by-
Sujit Suklabaidya
Advocate
29.07.02

Sujit Suklabaidya

5. The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office, Hospital Road.
Silchar - 788005

6. The Principal
Kendriya Vidyalaya, Lekhapani
Tinsukia, Assam.

.... Respondents

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the order issued under no. F. 10-7/2002-KVS[VIG] dated 02/03.05.02 by the respondent no. 2 terminating the service of the applicant with immediate effect.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

Sujit Sukla Beirbun

4.2 That the applicant hails from a poor family of Assam. He has read up to Class X. He could not prosecute further studies for financial constraints and had to engage himself in search of a job so that he could pull on the burden of the family. He initially joined under the services of the respondents as Group D Peon with effect from March 8th, 1990 and resumed his duties at Kendriya Vidyalaya (for short, KV), ARC Doom Dooma. However, subsequently he was transferred to KV Lekhapani where he joined on November 25th, 1991.

4.3 That since his appointment under the respondents, the applicant has been rendering his services with all sincerity, devotion, without any blemish and there has been nothing adverse against him.

4.4 That suddenly on 02.03.02, the respondent no. 6, served a memorandum bearing no. F.PF/SSB/KVL/2002-02/1016 dated 01.03.02 upon the applicant alleging an act of exhibiting doubtful character on his part towards a girl student. By the said memorandum, the applicant was strongly warned for his alleged act towards girl students while discharging his routine duties in the Vidyalaya. The applicant was asked by the said memorandum to submit a written reply as to why disciplinary action would not be initiated against him. The said memorandum though mentioned about a complaint from girl student, it did not accompany any copy of the complaint.

Sujit Sukhn Beirdas

A copy of the said memorandum dated 02.03.02 is annexed herewith as **Annexure - 1.**

4.5 That the applicant was surprised to receive the said memorandum. The said memorandum did neither contain any specific allegation nor did it mention the alleged misbehaviour. The said memorandum was vague and it was issued only to harass him. However, immediately on receipt of the same, he submitted a written reply on 04.03.02 to the Respondent no. 6..

A copy of the said reply dated 04.03.02 is annexed herewith as **Annexure - 2.**

4.6 That surprisingly before submission of the reply by him, the Respondent no. 6 summoned the applicant in his chamber in the evening on 02.03.02 and at his instance, one Major Rohtash (O/C 886 AT Coy who is the husband of Mrs. Gunjan Kumar, PRT, a contractual teacher of the Vidyalaya) interrogated the applicant and alleged him to have misbehaved with a girl student. Be stated that on the same day another Group D Peon namely, S Kewat was also summoned and interrogated at the same time and in similar manner. But since the applicant denied of having committed any such act as alleged, the said Major Rohtash forcefully obtained his signatures on some papers and let him go.

4.7 That this was followed by another similar round of interrogation by said Major Rohtash on 16.03.02 in presence of Sri ET Arasu, Education Officer, KVS. RO

Sujit Suhler Beidyn

Silchar, Mrs. L. Radharani, Principal, KV Imphal and Mrs. S. Krishnamachari, PGT (Bio) KV Duliajan and like the earlier occasion, this time too, the applicant was forced to admit the alleged act and he was let off after taking his signatures on some papers. The Army Personnel further threatened me to outrage the modesty of his wife if he would not put signature on a white paper as directed in presence of some teaching staff of our school. As a result, he did not have any other option but to act accordingly.

4.8 That soon thereafter, the respondent no. 2 issued the impugned order of termination on 02/03.05.02 and thereby terminated him from service with immediate effect. Be stated that in the said order, the name of the applicant was wrongly shown as Sh S.S. Yadav and as such the same was withdrawn subsequently and instead another order dated 23.05.02 was issued showing the correct name of the applicant.

A copy of the impugned order of termination dated 23.05.02 is annexed herewith as **Annexure - 3.**

4.9 That applicant states that the impugned order of termination was passed quite arbitrarily disregarding all canons of law. The entire exercise undertaken against him by the respondents was vitiated due to non compliance of the established principles of law. He, therefore, having no alternative submitted a detailed representation to the respondent no. 3 on 15.05.02 and

Sujit Subbarao Beigfa

prayed for re-consideration of the order of termination and for his reinstatement in service with all consequential benefits. But till date nothing has been done.

A copy of the representation dated 15.05.02 is annexed herewith as **Annexure - 4.**

- 4.10 That the applicant has no alternative but to approach this Hon'ble Tribunal for his redress. The remedy sought for in this application, if granted, will be just, adequate and complete.
- 4.11 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

- 5.1 For that, the impugned order of termination is bad in law and liable to be set aside.
- 5.2 For that, the respondents have acted in a most arbitrary and unfair manner which has rendered the entire action against the applicant illegal and liable to be declared without jurisdiction.
- 5.3 For that, the respondents have given a complete go-bye to the established principles of service jurisprudence and have mechanically passed the impugned order of termination and therefore the same is liable to be set aside and quashed.

Sujit Sunkar Bajaj

5.4 For that, the warning issued by the respondent no. 6 on 01.03.02 though without any basis, was itself a minor punishment under Rule 16 of the CCS (CCA) Rules, 1965 and hence imposition of the highest punishment thereafter amounts to putting the applicant to double jeopardy.

5.5 For that, the disciplinary authority of Group D staff being the Executive Committee of the Vidyalaya, the respondent no. 2 had no jurisdiction to pass the impugned order of termination and in this view of the matter the impugned order is liable to be set aside and quashed.

5.6 For that, the respondent no. 2 has *prima facie* acted/passed the impugned order on the basis of a Summary Inquiry Report submitted by the respondent no. 5 behind the back of the applicant and has not given the applicant any opportunity to explain his case and as such the impugned order suffers from non-compliance of the due process of law.

5.7 For that, the entire exercise of the respondents against the applicant has been vitiated due to undue influence of Major Rohtash who is no body in the affairs of the Vidyalaya.

5.8 For that, in any view of the matter, the impugned order is arbitrary, without jurisdiction and therefore liable to be set aside.

Sujit Subbar Beidjan

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the impugned order of termination from service dated 02/03.05.02 (Annexure - 3) be set aside and quashed.

Sujit Suhler Barilga

8.2 That the respondents be directed to reinstate the applicant in service with all consequential service benefits.

8.3 Costs of the application.

8.4 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

The applicant though does not pray for any interim relief in this application, he prays for an early hearing of the application.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No.	7G 575879
ii) Date of Issue	05.11.02
iii) Issued from	G.P.O., Guwahati
iv) Payable at	

12. List of enclosures:

As given in the index.

Sujit Subeler Beirdha

VERIFICATION

I, Sri Sujit Suklabaidya, S/O Late Tarani Suklabaidya, aged about 41 years, resident of Lekhapani, in the District of Tinsukia, Assam, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 29 ~~day~~ of July, 2002.

Sujit Sukla Baidya

Annexure - 1

KENDRIYA VIDYALAYA
LEKHAPANI-786180, Silchar Region (Assam)

Ref. No. _____

F.PF/SSB/KVL/2001-02/1016

When is in
within
Complaint
Date _____

Date: 02.3.2002

One Jis 15/3/02

MEMORANDUM

With reference to the written complaint received by the undersigned from a girl student of class IX in r/o misbehaviour with that girl student by Sh S.S. Baidya, Gr.D, of this vidyalaya,

- i) he is hereby strongly warned for exhibiting a doubtful character/guilty of immoral behaviour towards girl student while discharging his routine duties in the vidyalaya.
- ii) He is asked to submit a written reply, on or before 8.00 AM on 4-3-2002, stating why disciplinary action should not be initiated against him under article 81 (b) of the Education Code for his misconduct with girl students.

To

Sh S.S. Baidya
Gr.D,
KV, Lekhapani

W/

Sd/-Illegible
Principal
Kendriya Vidyalaya
Lekhapani-786180

Copy to:

1. The Chairman, VMC, KV, Lekhapani
2. The AC, KVS (SR), Silchar
3. Personal File

PRINCIPAL

Chairman
2/3/02
(A)

R 81

Commission is satisfied after due a discussion

- Any member is prima facie guilty
2 more to be added

2.3.02

Sujit Subba Beirdya

Annexure - 2

To,
 The Principal
 Kendriya Vidyalaya
 Lekhapani

Sub: - Humble submission of Memo dated 02.03.02

Sir,

With reference to Memo No. F.PF/SSB/KVL/2001-02/1016 dated 02.03.02, I would like to submit the following explanation for your sympathetic consideration and favourable action please.

- (a) I have been serving in KV Sangathan since 8.3.1990 as a Group D employee.
- (b) I am sincere, honest and responsible employee at KVS.
- (c) My daughter is studying in Class II of this School and I am living with my family in family quarters.
- (d) I have never misbehaved with any student.
- (e) My behaviour with girl student is affectionate like a father.
- (f) I do not know why a girl student misunderstood my behaviour.
- (g) If any girl student misunderstood my fatherly behaviour I am ready to request her to pardon me like a daughter pardons her father.
- (h) I assure you, Sir, that in future I shall never give any reason for my complaint against me.

Sir, please read my above explanation with sympathy and forgive me.

Thanking You,

Date: 04.03.02

Yours faithfully
 Sd/- Sujit Suklabaidya
 Group 'D'
 Kendriya Vidyalaya, Lekhapani.

Received one copy

Sd/- Illegible, UDC

4/3/02

Sujit Suklabaidya

Annexure - 3

KENDRIYA VIDYALAYA SANGATHAN
 [VIGILANCE]
 18, INSTITUTIONAL AREA
 SHAHEED JEET SINGH MARG
 NEW DELHI-110016

F.10-7/2002-KVS[VIG]

DATED: 23.05.02

ORDER

A. Chet
Rai
N.

WHEREAS Sh S.S. Baidya, Group-D, Kendriya Vidyalaya Lekhapani is guilty of immoral conduct towards Km Alka Chetri for having molested her and Namita Rai for having passed sexually coloured remarks against her.

WHEREAS, the undersigned is satisfied with the Summary Inquiry Report submitted by the Assistant Commissioner, Regional Office, Silchar, statements of the victim girl students and the statement of the teachers and the Principal of the Vidyalaya, that the said Sh S.S. Baidya, Group-D is guilty of Moral Turpitude involving sexual offence and exhibition of immoral sexual behaviour towards the girl students of Kendriya Vidyalaya, Lekhapani.

AND WHEREAS, the undersigned is further satisfied that the procedure of Central Civil Services (Classification, Control & Appeal) Rules, 1965, to hold regular inquiry is not expedient in this case, as the same may cause serious embarrassment to the said student and their parents.

The evidence on record establishes the guilt of the aforesaid Sh S.S. Baidya, Group-D and hence his continuance in a co-educational institution like Kendriya Vidyalayas is prejudicial to the interest of the students and the Vidyalaya.

NOW THEREFORE, the undersigned, in the capacity of the Commissioner, KVS in exercise of the powers under Article 81(b) of the Education Code for Kendriya Vidyalayas, hereby terminates the service of the aforesaid Sh S.S. Baidya, Group-D with immediate effect.

Sh S.S. Baidya, Group-D shall be paid Pay & Allowances for one or three months as the case may be, as admissible under the rules.

Sd/- Illegible
 22.05.2002
 (H.M. Cairae)
 Commissioner

DISTRIBUTION:

1. Sh S.S. Baidya, Group-D, Kendriya Vidyalaya, Lekhapani
2. The Principal, Kendriya Vidyalaya, Lekhapani with the direction that the service of the said Sh S.S. Baidya, Group-D stands terminated with effect from the above date and that the period from 3.5.2002 to the above date may be treated as duty for which Sh Baidya may be paid Pay & Allowances. [This refers to letter No. PI/KVL/2002-03/SSB dated 9.5.2002]. The Pay & Allowances of Sh S.S. Baidya, Group-D, in lieu of notice period is to be regulated in terms of Article 81 (b) of Education Code for KVS, with reference to the order under issue.
3. The Assistant Commissioner, KVS, Regional Office, Silchar. The order dated 3.5.02 inadvertently mentioning the name of Sh S.S. Yadav, Grp 'D' instead of Sh S.S. Baidya, Grp "d" may please be withdrawn.
4. Guard File.

Certified to be true copy

S. D. Saha
 Advocate

Sujit Saha Baidya

Annexure - 4

To,
 The Vice Chairman
 Kendriya Vidyalaya Sangathan,
 Additional Secretary, Department of Education
 Ministry of Human Resource Development
 Shatry Bhawan, New Delhi.

Date : 15.05.02

Subject: **Prayer for reconsideration of Order dated 02/03.05.02 rectified by Order dated 23.05.02 passed by the Commissioner, KVS terminating my services with immediate effect.**

Respected Sir,

I have the honour to state that by the above mentioned order bearing no. F.107/2002-KVS (VIG), I have been terminated from service on the alleged ground of misbehaviour/immoral conduct towards girl students of the Vidyalaya.

In this context, I beg to say that on 02.03.02, I received a Memorandum bearing No. F.PF/SSB/KVL/2001-02/1016 from the Respondent no. 6 alleging misconduct on my part towards few girl students of class VII/VIII/IX. By the said memorandum, I was also strongly warned for my alleged misconduct etc. and was further directed to submit my reply thereto before 04.03.02, stating why disciplinary action should not be initiated against me under article 81(b) of the Education Code.

It is worth mentioning that the said memorandum did neither contain any specific allegation of misconduct alleged to have been committed by me nor did it contain the name of the students against whom such misconduct was done. The said memorandum was vague and it was issued only to harass me.

However, I submitted my reply thereto as directed and anticipated a positive action. But surprisingly, at the instance of the Respondent no. 6, one Major Rohatash, O/C 868 AT Coy (who is also husband of Mrs. Gunjan Kumar, Contractual Teacher, PRT) interrogated me on 03.03.2002 in the Vidyalaya Campus before submission of my written reply to the Memorandum and forcefully obtained my signature in some papers the contents whereof were not made known to me.

This was followed by another similar round of interrogation conducted by the said Major Rohtash on 16.03.02 in presence of the Education Officer ET Arasu, Mrs. L. Radharani, Principal, KV, Imphal and Mrs. S. Krishnamachari PGT (BIO), KV, Duliajan. In the said second round of interrogation, I was also forced to admit the misconduct of misbehaviour towards the girl students of the school and like the earlier occasion, my signatures were forcefully taken on some papers.

Sujit Suhla Singh

The Army Personnel further threatened me to outrage the modesty of my wife if I could not put signature on a white paper as directed in presence of some teaching staff of our school. As a result, I did not have any other option but to act accordingly.

That surprisingly thereafter, the order dated 02/03.05.02 was issued by the Commissioner, terminating me from service on the ground of exhibiting misbehaviour/immoral conduct towards girl students of the Vidyalaya. It is categorically stated that no such misconduct was ever committed by me and no report of misconduct or misbehavior was ever lodged against me by anybody. It is stated that authorities have made out a baseless and concocted story against me and the entire exercise have been undertaken in a clandestine manner being regardless of the relevant rules of law and the order of termination has been passed in a most arbitrary manner. It may not be out of place to mention that identical Memorandum was also issued in respect of three other employees of the Vidyalaya including a Peon and two teachers and in the similar manner they have also been terminated from service without conducting any regular enquiry as contemplated under the law. The harsh punishment of termination of service has been inflicted upon me in a most mechanical manner.

I would, therefore, fervently appeal to you to kindly consider the facts and circumstances of the case and revoke the order of termination and reinstate me in service with all service benefits.

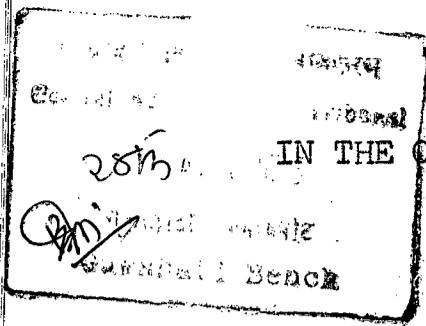
And for this act, I shall remain ever grateful to you.

Yours faithfully,

Enclo : As stated above.

(S.S. BAIDYA)
Group - D (Peon)
C/o Joydeep Dey
Margherita Tin Ali
P.O. Margherita, District-Tinsukia,
Assam.

Sujit Suhler Bairya



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

O.A. NO. 357/2002

Shri S. Sukla Baidya

- Vs -

Union of India & Ors

.... Respondent

IN THE MATTER OF :

Written statement on behalf
of respondents.

- AND -

IN THE MATTER OF :

Order passed in Misc. Petition
No. 162/02 dated. 29-11-2002.

IN - AND -

IN THE MATTER OF :

Assistant Commissioner
K.V. Sangathan, Silchar
Region.

.... Deponent.

The humble written statement of the
Deponents are follows :

- 1) That the Respondent states that, in the Original Application he has been made a party Respondent and copy of the same has been served upon him. The Respondent has gone through

contd....p/2

File by the Respondent
Kiran M.K. Majumdar
28/04/03

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- 2 -

the contents of the petition and have understood the same and he is competent to file the written statement on behalf of him and for others, they being the official Respondents.

2) That the respondents states that, the statement and averments made in the Original Application are totally denied. The statements which are not borne out of record are denied.

The Respondents further states that the statements which are not specifically admitted may be deemed to be denied.

3) That Respondents states that, before controverting the statements and averments made in the above application, the Respondents craves leave of this Hon'ble Tribunal to submit the following facts of the case in brief for appreciation.

THE FACTS OF THE CASE :

3.(1) Shri S.S. Baidya was a Group 'D' employee at Kendriya Vidyalaya, Lekhapani since 1990. In February, 2002 a complaint was lodged with the Joint Commissioner (Acad.) on phone regarding misbehaviour of some male staff of Kendriya Vidyalaya, Lekhapani with some girl students.

3.(2) The Principal, Kendriya Vidyalaya Lekhapani ordered a preliminary inquiry and the same was conducted on 27.2.2002 and

contd....p/3.

- 3 -

2.3.2002 by a committee consisting of the
following members :-

(A)

K a. Shri N.P. Singh, PGT (Hindi).
b. Smt. J.B. Gogoi, Music Teacher.
c. Smt. S.G. Sood, PRT.

3.(3) The Committee called several students of classes VII, VIII and IX to enquire whether they had any problems with any male staff of the Vidyalaya. In response one Km. Alka Chetri and another Km. Namita Rai students of class IX complained against sexual advances of Shri S.S. Baidya.

The Chairman VMC, on receipt of the report from Principal KV, Lekhapani initiated another inquiry into allegations by constituting committee consisting of the following members :-

a. Major Rohitash Kumar, I.O.C. 868 ATCOY.
b. Shri N.P. Singh, PGT (Hindi), KV, Lekhapani.
c. Smt. S.G. SOOD, PRT, KV, Lekhapani.

The Committee conducted an enquiry on 28.2.2002 and 4.3.2002. The Committee concluded that Shri Baidya physically misbehaved with Km Alka Chetri and showed "keen interest" in Namita Rai, Class IX.

3.(4) Based on these preliminary findings, the Assistant Commissioner, Regional Office,

contd....p/4.

KVS, Silchar constituted a 3 - Member Committee consisting of the following members :-

- a. Shri E.T. Arasu, EO, KVS (RO Silchar).
- b. Smt. Radharani Devi, Principal, KV No. 1 Imphal.
- c. Smt. Suhba Krishnamachar , PGT (Bio), KV Duliajan

The Committee conducted a detailed inquiry and findings of the inquiry are as follows :-

" Shri S.S. Baidya, Group 'D' indulged in unwelcome physical and verbal conduct of sexual nature."

3.(5) Based on material made available to him and the above mentioned inquiry reports the Commissioner, KVS came to the conclusion that Shri S.S. Baidya was guilty of immoral conduct and since it was not expedient to hold a regular inquiry in this case as the same would cause serious embarrassment to the students and their parents, by virtue of powers vested in him under Article 81(b) of the Education Code for KVs terminated the services of Shri S.S. Baidya on 23.5.2002.

3.(6) Aggrieved by the said order Shri S.S. Baidya, Group 'D' has filed a appeal, to the Vice Chairperson, KVS, New Delhi. He was heard in person on 06-11-2002 by the Vice Chairperson, KVS. He was given opportunity by the Appellate Authority to prove his innocence, but he could

not do so. The Vice Chairperson took a serious note of Kum. Alka Chetri's written statement that Sri Baidya fondled her breast when she was in class - VIII. Then Kum. Namita Rai has also stated that he is prone to physical and verbal sexual misconduct. Hence the appeal was dismissed and the same was communicated to him vide letter No. 946/2002-KVS(Vig.) dated 15-01-2003.

Copy of the order is
annexed herewith.

- 4) That with regard to statement made in para 4.1 and 4.2 the Respondent does not forward any comment.
- 5) That with regard to the statement made in para 4.3 the Respondent denies the correctness of the same and state that in the light preliminary submission the para does not ~~xxxx~~ warrant any further comment.
- 6) That with regard to the statement made in para 4.4, 4.5 and 4.6 the Respondent does not admit the same in toto and forward the true fact as -

On getting report from a girl student the principal issued a memorandum stating his mis-behaviour with girl student. The allegation made against him by the girl student was inquired at Vidyalaya Level, Chairman's level, and Regional office level as stated in preliminary submission.

contd....p/6.

- 6 -

All the committee inquired in the case has stated that he had mis-behaved with the girl student.

The allegation made by Shri Baidya against Major Rohtash about forcefully taking signature on some paper has no relevance.

7) That with regard to the statement made in para 4.7, 4.8 and 4.9. The Respondent states that -

The allegation made against the Inquiry Committee at Regional Office level has no relevance. Shri Baidya was never forced to put his signature on some papers.

Under the provision of Article 81(b) of the Education Code for Kendriya Vidyalayas, Commissioner is the Competent Authority who satisfied that the procedure of CCS (CCA) Rules, 1965 to hold regular inquiry is not expedient in his case, as the same may cause serious embarrassment to the said student and their ~~own~~ parents. Hence in exercise of the powers under the provision of the above stated article terminated the service of Sri Baidya.

Aggrieved by the order of the Commissioner, Sri Baidya has filed an appeal to the Vice Chairperson, KVS which was dismissed by the Appellate Authority and communicated the same vide No. - F.9-46/2002-KVS(Vig.) dated 15-01-2003.

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8) That the Respondent states that since the matter has been rightly dealt by the departmental Authority and the gravity of offence does not leave any room for leniency the Authority has to apply the judicious mind and passed the reasoned order.

In view of above submission,
the Hon'ble CAT may be pleased
to dismiss the O.A. filed by
Sri S.S. Baidya.

3

VERIFICATION

I, Sunder Singh Sehrawat, S/o Shri Harish Chander, Age about 52 years, presently working as the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region, Maligaon Chariali, Guwahati-12 do hereby verify that the statement made in paragraphs 1-5 and 8 are true to my knowledge and those made in paragraphs 3.1-3.6, 6, 7th are based on records.

28th April
And I sign this verification on this the day of 2003 at Guwahati.

Place : Guwahati

Sunder Singh Sehrawat
DEPONENT

Date : 28/04/03