

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: _____/

Misc Petition No: _____/

Contempt Petition No: _____ 51/03 (CA 384/02)

Review Application No: _____/

Applicants: - Radhey Shyam Maurya

Respondants: - Mrs J. Das Basu & others

Advocate for the Applicants: - J. Purseem

Advocate for the Respondants: -

Notes of the Registry	Date	File	Order of the Tribunal
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This contempt petition
has been filed by the
applicant up to 24.05
the C.A.T. (Procedure)
Rules, 1987 for implemen-
tation of the directions
passed by this Hon'ble
Tribunal vide order
dated 4.2.03 passed
in CA 384/02.

Laid before
Hon'ble Court on
04.10.03.

[Signature]
29/10/03
Section Officer

For copy order
dated 30/10/03. [Signature]

bb

Heard Mr. R.S. Maurya who appeared in person.

Issue notice on the respondents to show cause as to why contempt proceeding, as prayed for, against the alleged contemnors shall not be initiated, returnable by four weeks.

List the case on 3.12.2003.

[Signature]
Vice-Chairman

Notice & order dt. 30/10/03
Sent to D/Section for
issuing to respondent
no. 1 to 4.

24.12.2003 Present : The Hon'ble Mr. Justice
B. Panigrahi, Vice-Chairman
The Hon'ble Mr. K.V. Prahl-
adan, Member.

Case D/No. 2224 to 2227
4/11/03. Dt. 08/11/03

24/12/03

Vakalat filed today
in the court by R3

24/12/03

Pl. Comply order dated 24.12.03.

JS
26.12.03

Order dt. 24/12/03, sent
to D/Section for issuing
to both the parties.

Case
12/1/04

The applicant Sri R.S. Maurya,
is present in person. Mrs. R.S.
Choudhury, learned counsel has
entered appearance on behalf of the
alleged contemnors and prayed for
time to file reply. From the order
passed by the Hon'ble Gauhati High
Court, it appears that the prayer
for interim direction was rejected.
In that view there is no option left
but to comply with the order passed
by the Tribunal.

Mrs. R.S. Choudhury, learned
counsel for the contemnors prayed
for four weeks time to comply with
the order passed by the Hon'ble
Tribunal. Let the matter appear
after four weeks. In the meantime
we hope and trust that the alleged
contemnors would comply with the
order passed by this Tribunal.

Let the matter appear on
29.1.2004 for orders.

K.V. Prahladan
Member

B. Panigrahi
Vice-Chairman

mb

22.1.2004 Present: The Hon'ble Shri Bharat Bhushan
Judicial Member.

The Hon'ble Shri K.V. Prahladan
Administrative Member.

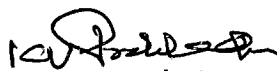
The applicant in person and Mr. I. Chou-
dhury, learned proxy counsel on behalf of
the alleged contemnors were present.

It has been brought to our notice by
the learned proxy counsel for the alleged
contemnors that Writ Petition against the
order passed by the Tribunal had been filed
before the Hon'ble Gauhati High Court.

Contd.

Contd.

22.1.2004 Even otherwise, the perusal of the ordersheet dated 24.12.2003 shows that four weeks time has already been granted to the respondents/alleged contemnners to comply /with the order that four weeks has not expired till today. The matter has already been fixed on 29.1.2004. So let the matter be come up only on 29.1.2004 alongwith the connected cases.


Member(A)


Member(J)

bb

17.2.2004 Present: Hon'ble Mr K..V. Prahladan,
Administrative Member

Let the case be listed on
26.2.04 before the Division Bench.


Member

nkm

26.2.04 Present: Hon'ble Mr.K.V.Prahaladan,
Administrative Member
Hon'ble Mr.Shanker Raju, ~~Judicial~~ Administrative
Member.

As Writ petition filed against our order in WPC 2392/03 has been admitted and finally heard and the judgment is awaited from the Hon'ble Gauhati High Court, the C.P. is adjourned for four weeks.

List on 30.3.04.

However, we point that no stay is granted by the Hon'ble Gauhati High Court.


Member(A)


Member(J)

bb

1.3.04

An affidavit
behalf of the
Respondent has been
submitted



-B- Ep. 51/03 (OA 384/02)

25/3/04

An addl. affidavit
has been filed on
behalf of 740 petitioners
highlighting the
subsequent developments
in the matter.

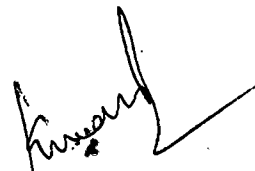
25/3/04

30.3.2004 Present : The Hon'ble Sri Kuldip
Singh, Member (J).

The Hon'ble Sri K.V. Prah-
ladan, Member (A).

The Contempt petition stands
dropped for the reasons recorded in
separate sheets.

10/Pradeep
Member (A)


Member (J)

bb

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Contempt petition No.51/2003 (O.A.384/2002)

Date of Order : This, the 30th Day of March, 2004.

THE HON'BLE SHRI KULDIP SINGH, JUDICIAL MEMBER.

THE HON'BLE SHRI K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Radhey Shyam Maurya
P.G.T.(Chemistry), K.V.Khanapara
C/o. Universal Book Depot
Six Mile, Khanapara
Guwahati - 22 (Assam).

.... Petitioner.

Appeared in person.

- Versus -

1. Sri D.S.Bist
The Joint Commissioner (Admn.)
(The Appellate Authority)
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg, New Delhi-16.

2. Sri D.K.Saini
S/o. Sri C.L.Saini
(Disciplinary Authority and Ex-A.C.)
C/o.Kendriya Vidyalaya Sangathan
Maligaon, Guwahati-12.

3. Sri S.S.Sahrawat
S/o. Sri Harish Chander
The Assistant Commissioner (Present)
Kendriya Vidyalaya Sangathan, Maligaon
Guwahati-12.

4. Mrs.J.DAS BASU
W/o. Sri A.K.Basu
Principal
Kendriya Vidyalaya, Khanapara
GHY - 22.

. . . Respondents/Contemnors.

By Sr.Advocate Mr.K.N.Choudhury & Mrs.R.S.Choudhury for
Contemnor No.3.

ORDER (ORAL)

KULDIP SINGH, MEMBER (J) :

We have heard the petitioner in person and also Mrs.
R.S.Choudhury, learned counsel for the alleged contemnors.

2. The petitioner had filed an O.A.No.384/2002 seeking
quashing of the order of punishment removing the applicant
from service and re-instatement. This Tribunal by judgment
and order dated 4.2.2003 directed the alleged contemnors to
re-instate the applicant within stipulated time with full

back wages. Against the said order the respondents/contemnors approached the Hon'ble High Court and filed WP(C) No.2392 of 2003. By judgment and order dated 4.3.2004, though the Hon'ble Gauhati High Court reversed certain findings of the Tribunal, but at the penultimate para of the said judgment observed that the order of reinstatement would remain undis-^{and}turbed. The petitioner/charges officer would be re-heard only on the question of penalty/punishments including back-wages etc and appropriate order of punishment would be passed other than that of either removal or dismissal from service. Consequent hereupon the alleged contemnors did not re-instate the petitioner, so he filed this contempt petition in order to compel the contemnors to comply with the order of the Hon'ble Gauhati High Court.

3. In the reply of the said C.P. Mrs.R.S.Choudhury, learned counsel appearing on behalf of the alleged contemnors has placed on record an order dated 29.3.2004 whereby the petitioner has been asked to appear before the Disciplinary Authority on 7.4.2004 at 11 a.m. in his Office Chamber, Kendriya Vidyalaya Sangathan for further proceeding in this regard. The petitioner objects to the passing of this order as condition of re-instatement is precedent for passing of this order. However, Mrs.Choudhury, learned counsel for the contemnors, assures us that since the order of re-instatement has to come from Delhi and that has not been received, the order dated 29.3.2004 has been issued to the petitioner. Mrs.Choudhury assures us that order of re-instatement would be received within few days and before holding of proceeding ^{and} on 7.4.2004, only after the re-instatement of the petitioner proceeding would be initiated in compliance of the order passed by the Hon'ble Gauhati High Court.

4. Keeping in view the assurance of the learned counsel for the contemnors, the Contempt petition cannot proceed further and the same is to be dropped. However, we make it

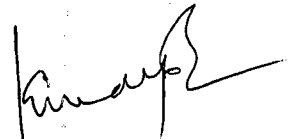
✓

clear that before re-instatement of the petitioner the Disciplinary Authority cannot hold proceeding against him.

With this, the Contempt proceeding stands dropped.



(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER



(KULDIP SINGH)
JUDICIAL MEMBER

bb

दिनांक पर आवेदन का तारीख Date of application for the copy.	स्थान और कोषिका का जवाबदा सहाय्य सूचित करने की तिथि तारीख Date fixed for notifying the requisite number of stamps and folios.	जवाबदा स्थान और कोषिका देने की तारीख Date of delivery of the requisite stamps and folios.	प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	तारीख Date of making over the copy to the applicant.
8/12/03	9/12/03	9/12/03	9/12/03	9/12/03

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

WP (C) No. 2392 of 2003

Appellant

Petitioner

Commissioner, RVS & Bros.

Versus

Sri. Radhey Shyam Maurya.

Respondent

Opposite Party

Appellant & Mr. K.N. Chowdhury (Sr. Adv.)

For Petitioner Mrs. R. S. Chowdhury.

Respondent Mr. S. Jahan

For Opposite Party Mr. J. Rehman
Mr. J. Longiem

Adv. for the case for

[Signature]

IN THE MATTER OF : THE PETITIONERS

1. Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016.

Gauhati High Court

2. Joint Commissioner (Admn),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016.

3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Maligaon, Guwahati - 12.

4. Principal,
Kendriya Vidyalaya, Khanapara,
Khanapara, Guwahati - 22.

... PETITIONERS

- VERSUS -

✓
Commissioner of Amdavi
Gauhati High Court
Guwahati

1. Sri Radhey Shyam Maurya,
Son of Late Ram Kumar,
Resident of Six Mile , Khanapara,
Guwahati - 22.

Handwritten signature/initials

... RESPONDENT
APPLICANT

Gauhati High Court

4 11

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p>WP© No.2392/03</p> <p>BEFORE</p> <p>THE HON'BLE CHIEF JUSTICE</p> <p>HON'BLE MR JUSTICE I.A.ANSARI</p> <p>05.12.2003</p> <p>Heard Mr KN Choudhury, learned counsel for the petitioner and Mr DK Mishra, learned counsel for the respondent.</p> <p>After hearing the parties, we do not find any sufficient reason to grant stay of the impugned judgment and order dated 4.2.2003 and the prayer is rejected.</p>

*Prayer is rejected
as administrative*

Gauhati High Court

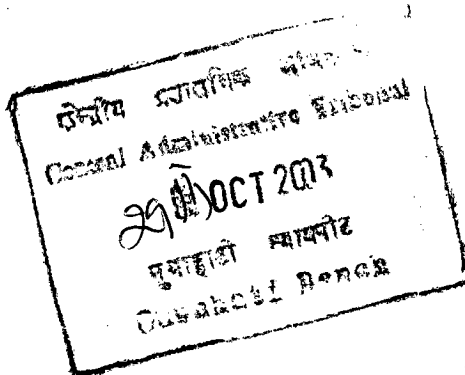
*Mr P.P. Naolikor
Chief Justice*

*Slk I.A. Ansari
Justice*

4846

8/12/03

CERTIFIED TO BE TRUE COPY
Shri K. K. Sanyal
Date *9th day of Dec. 2003*
Superintendent (C. S. Section)
Gauhati High Court
Printed Under Act No. 1, 1872



Filed by -

Petitioner - in - Person

29/10/03

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL GAUHATI BENCH :: GAUHATI

CONTEMPT PETITION (CIVIL) No. 51 /2003

IN

O.A. 384/2002 (Allowed).

Radhey Shyam Maurya,

..... Petitioner.

- Vs -

Mrs. J. DAS BASU & others,

..... Respondents/Contemnors.

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2.		Order dated 04.02.2003 passed in O.A. 384/2002.		A1		10-19
3.		Letter dated 10.02.03		A2		20
4.		Postal Receipts dated 11.2.2003.		A3		21
5.		Advertisement dtd. 28.10.03		A4		22

Filed by :- 29/10/03

(R. S. Maurya),

Petitioner - in - Person.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GAUHATI BENCH :: GAUHATI

CONTEMPT PETITION (CIVIL) NO. 51 /2003

IN

O.A. No. 384/2002 (Allowed)

IN THE MATTER OF :-

An application under Section - 17
of the Administrative Tribunal
Act'1985 read with the provisions
of the Contempt of Court Act'1971.

- AND -

IN THE MATTER OF :-

An application U/S 24 of the Central
Administrative Tribunal (Procedure)
Rules'1987 for implementation of
the directions passed by this Hon'ble
Tribunal vide order dated 04.02.2003.

- AND -

IN THE MATTER OF:-

Wilful - disobedience and deliberate
violation by non-compliance of the
Order dated 04.02.2003 passed by
this Hon'ble Tribunal in O.A.384/2002.

- AND -

IN THE MATTER OF:-

Radhey Shyam Maurya,
P.G.T.(Chemistry), K.V, Khanapara,
C/o. Universal Book Depot,
Six Mile, Khanapara,
Gauhati - 22 (Assam).

..... Petitioner.

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- 2 -

- VERSUS -

1. Sri. D.S. Bist,
The Joint Commissioner(Admn.)
(The Appellate Authority)
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 16.
2. Sri. D.K. Saini,
S/o. Sri. C.L. Saini,
(Disciplinary Authority and Ex-A.C.)
C/o. Kendriya Vidyalaya Sangathan,
Maligaon, Gauhati - 12.
3. Sri. S.S. Sahrawat,
S/o. Sri. Harish Chander,
The Assistant Commissioner(Present),
Kendriya Vidyalaya Sangathan, Maligaon,
Gauhati - 12.
4. Mrs. J.DAS BASU,
W/o. Sri. A.K. Basu,
Principal,
Kendriya Vidyalaya, Khanapara, GHY - 22.

..... Respondents/Contemnors.

The humble petition of the petitioner above
named :-

MOST RESPECTFULLY SHEWETH :-

1. That, the petitioner was a Post Graduate Teacher (P.G.T.) in Chemistry at Kendriya Vidyalaya, Khanapara, Gauhati - 22 and at present is resident of C/o. Universal Book Depot, Six Mile, Khanapara, Gauhati - 22.
2. That, the petitioner approached this Hon'ble Tribunal by filing an Original Application registered as O.A. 384/2002 against the order of removal dated 1.5.2002 passed by the Respondent No.2 and Appellate order dated 15.11.2002 passed by the Respondent No.1 respectively.
3. That, the Hon'ble Tribunal upon hearing both parties at length was pleased to allow the O.A. 384/2002 vide order dated 04.02.2003 with the direction to reinstate the petitioner within a period of one(01) month from the date of the receipt of the order with full back wages and accordingly the copy of the order dated 4.2.2003 was served to the Respondents by hand as well as by Post both on 10.2.03 and 11.2.03 respectively for implementation but the same is not implemented by the Respondents till today.

The copy of the order
dated 4.2.2003 passed in O.A.
384/2002 and letter dated
10.2.03 with postal receipt are
Annexed as Annexures A1, A2 & A3
respectively.

4. That, thereafter, the petitioner submitted the representations dated 4.3.03 as well as on 17.6.03 through the Hon'ble Chairman, V.M.C., K.V, Khanapara and also personally met to the Respondent No.2 in order to implement the aforesaid order dated 4.2.03 but no positive action has been taken from the concerned end even after the expiry of about more than 08¹/₂ months time.

The copy of the representations may be produced as and when required by the Hon'ble Tribunal.

5. That, the petitioner humbly states that the Respondents ^{have} not complied with the order till today and as such the Respondents are liable to be prosecuted as per the provisions of law. Be it submitted that a specified period of one (01) month was already mentioned in the order dated 4.2.2003 ^{passed} in O.A. 384/2002 and therefore there is clear violation of the said order of this Hon'ble Tribunal and it is a fit case of wilful disobedience of the Respondents .

6. That, the petitioner humbly submits that the Respondents have wilfully violated and deliberately not complied the order of this Hon'ble Tribunal and thus denied the petitioner to reinstate in his post as Post Graduate Teacher in Chemistry at K.V, Khanapara within the specified period. Therefore, the Respondents have shown utter disregard and disrespect to this Hon'ble Tribunal Order.

Further, it is most humbly submitted that there is a clear vacancy of PGT (Chemistry) in K.V, Khanapara which is abundantly clear from the advertisement made by the Respondent No. - 4 (Principal, K.V, Khanapara) in the Assam Tribune dated 28.10.2003 and as such the wilful disobedience and open defiance of this Hon'ble Tribunal's Order dated 04.02.2003 is apparent by the Respondents.

The copy of the Advertisement dated 28.10.2003 is annexed as Annexure - A4 .

7. That, the Respondent No. 3 has preferred a Writ Petition (Civil) No. 2392/2003 in March 2003 before the Hon'ble Gauhati High Court but the Hon'ble High Court was pleased not to grant any stay till date even after the lapse of about nine (09) months time and as such the said Order dated 04.02.2003 passed by this Hon'ble Tribunal in O.A. 384/2002 is still in force and therefore due to non - implementation of the said Order the Respondents are liable to be prosecuted under the various provisions of law for causing wilful delay with ulterior motives in implementation of the said Order.

8. That, the petitioner most humbly submits that he has been removed from his services by Respondent No. 2 twice vide Orders dated 29.5.2003 and 01.05.2002 respectively only at the instance of Respondent No. 4 who has fabricated/tutored several documents including appeal dated 8.5.2002 etc. and also committed serious illegalities as well as irregularities in purchases of Chemicals etc. of Chemistry Department for personal wrong ful gain. It is humbly submitted that both the aforesaid removal orders were set aside by this Hon'ble Tribunal vide orders dated 28.6.2001 and 04.02.2003 (Annexure A.

9. That, the petitioner is out of job since 1.5.2003

and is a resident of U.P. state and he has no other source of income except his monthly salary and thus, it has become very difficult task for him to feed his children, to provide Medical treatments, to pay tuition fee etc., to pay house rent etc. due to non - implementation of this Hon'ble Tribunal Order dated 04.02.2003 by the Respondents wilfully and as such the petitioner alongwith his Six(06) family members have suffered and irreparable loss and injury for which Respondents No. 3 and 4 are specifically responsible.

10. That, adding insult to the injury the Respondent No.4 directed the petitioner vide Order dated 05.06.2000 to vacate his official staff quarter under the threat of stringent actions and since then the petitioner is living in a rented quarter under great financial hardships and difficulty and as such the petitioner is deprived from his right to life and personal liberty by the Respondent No.4. by way of non - implementing the Order dated 04.02.2003 as well as ^{non-}releasing regular monthly salary to him, and thus, the Respondents are liable to be prosecuted under the Contempt of Court Act.

11. That, the Respondents are guilty of offence of Contempt of Court under the Contempt of Court Act read with the relevant Rules and procedures under the Central Administrative Tribunal Act'1985 for wilful - disobedience by non-complying the Hon'ble Tribunal's Judgment and order dated 04.02.2003 till today and for the same the Respondents are liable to be exemplary punishment.

12. That, there is no other alternative and equally efficacious remedy except this petition which is filed bonafide before this Hon'ble Tribunal for the interest of justice.

It is therefore, most humbly prayed
that your Lordship(s) would be pleased to admit
this petition , to issue notice upon the Respondents
and may be pleased to summon the physical appearance
of the Respondents/Contemnors before this Hon'ble
Tribunal to explain personally as to why the
Respondents should not be prosecuted against the
offence of Contempt of Court Act read with the
relevant provisions of the Administrative Tribunal
Act'1985 and also as to why an exemplary punishment
should not be passed on the Respondents for wilful
disobedience and deliberate violation of the
Order dated 04.02.2003 passed in O.A.384/2002
by this Hon'ble Tribunal and after hearing the
parties be pleased to punish the Respondents
accordingly and further, be pleased to direct
the Respondents to implement the Order sated
04.02.2003 at the earliest within a fixed period
as well as to release the pay etc. to the Applicant
and/or pass such order(s) as your Lordship(s)
may deem fit and proper to meet the ends of justice
under the facts and circumstances of the case.

And for this act of kindness the humble petitioner
is duty bound and shall ever pray.

A F F I D A V I T

G

I , Radhey Shyam Maurya, S/O (Late) Ram Kumar, aged about 43 years and at present resident of C/O Universal Book Depot, Six Mile , Khanapara , Gauhati-22 do hereby solemnly affirm and state as follows:

1. That, I am the Petitioner in the instant case and as such competent to swear this affidavit.

2. That, the statements made in paragraphs- ..1..2..3..4..5..6..7..8..9..10..... are true to my knowledge and belief and the rest are my humble submissions before this Hon'ble Tribunal.

And , I sign this affidavit on this the 28th day of ^{October} ~~September~~ ,2003 at Gauhati .

Place: Gauhati

Date: 28/10/2003.

28.10.2003

Radhey Shyam Maurya

Deponent

D R A F T C H A R G E

.....

That the Petitioner states that the Respondents / Contemnors named herein this Petition are liable to be prosecuted under the Contempt Of Court Act read with provisions of Administrative Tribunal Act, 1985 for wilful- disobedience and non- compliance of the Order dated 04/02/2003 passed by this Hon'ble Tribunal in O.A. 384/2002 till today.

Original Application No. 384 of 2002.

Date of Order : This the 4th Day of February, 2003.

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

THE HON'BLE MR S.K.HAJRA, ADMINISTRATIVE MEMBER.

Radhey Shyam Maurya
S/o (Late) Ram Kumar
Post Graduate Teacher (P.G.T.), Chemistry
Kendriya Vidyalaya, Khanapara, Guwahati-22... Applicant.

The applicant appeared in person.

- Versus -

1. Kendriya Vidyalaya Sangathan
Represented by the Joint Commissioner (Admn)
and the Appellate Authority
19, Institutional Area, Shaheed Jeet Singh Marg
New Delhi - 16.
2. The Assistant Commissioner
Kendriya vidyalaya Sangathan
Maligaon, Guwahati - 12.
3. Sri D.K.Saini
S/O Sri C.L.Saini
The Disciplinary Authority
Kendriya Vidyalaya Sangathan
Guwahati-12.

Mrs. J. Das Basu
S/O Sri A.K. Basu
The Principal
Kendriya Vidyalaya Khanapara
Guwahati - 22, Assam.

Respondents.

By Mr. M.K. Mazumdar, Standing Counsel for KVS.

ORDER

CHOWDHURY J. (V.C.) :

This application under section 19 of the Administrative Tribunals Act, 1985 has arisen and is directed against the order dated 1.5.2002 removing the applicant from service as well as the order passed by the Appellate Authority dated 15.11.2002 dismissing the

Contd./2

the appeal in the following circumstances :-

1. The applicant, at the relevant time, was working as Post Graduate Teacher (P.G.T.), Chemistry in the Kendriya Vidyalaya, Khanapara. While he was serving as such the applicant was placed under suspension vide order dated 1.6.99 under Sub-rule (i) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 with immediate effect. The Article of charges was served upon the applicant vide memo dated 9.8.99. The full statement of Articles of charges framed against the applicant are reproduced herein below :-

ARTICLE-I

That the said Shri R.S.Maurya, while functioning as PGT(Chemistry) Kendriya Vidyalaya, Khanapara, Guwahati during the academic year 1998-89 went to Kendriya Vidyalaya, Dinjan to conduct practical examination of CBSE, Chemistry for Class XII (Sc.) on 15.02.1999 without permission/relieving by the competent authority.

This act on the part of Shri R.S. Maurya constitutes a misconduct, and thus violated Rule 3(1) (i), (ii) & (iii), Rule 1964 as extended to the Kendriya Vidyalaya Sangathan employees.

ARTICLE-II

That Shri R.S.Maurya, while functioning as PGT(Chemistry) Kendriya Vidyalaya, Khanapara had not conducted the practical classes of Class XI till January'99 and during the cumulative Test 1998-99 examination all students were awarded 30/30 marks in Practical examination of Chemistry.

Thus, Shri Maurya has acted in the manner of unbecoming of KVS employees and thus violated Rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rule, 1964 as extended to Kendriya Vidyalaya Sangathan employees.

Contd./3



ARTICLE-III

That during the session 1998-99 Shri R.S. Maurya while functioning as PGT (Chemistry), Kendriya Vidyalaya, Khanapara, has refused to take Practical examination of Chemistry of Class XI (1998-99) and asked the students to bring chemicals for Practical. Shri Maurya also refused to take CBSE (AISSCE) '99 Chemistry Practical examination for Private students.

Thus, Shri Maurya has violated the code of conduct for Teachers as laid down in Education code for Kendriya Vidyalayas in chapter VI and Rule 3(1) (i), (ii) & (iii) of the Central Civil Services (Conduct) Rules, 1964 as extended to the employees of Kendriya Vidyalaya Sangathan.

ARTICLE-IV

That Shri R.S. Maurya while working as PGT (Chemistry) in Kendriya Vidyalaya, Khanapara during the academic year 1998-99, had not submitted session ending question papers in the stipulated date as notified by the Principal.

Thus Shri Maurya, PGT (Chemistry) has violated Rule 3(1) (i), (ii) & (iii) of Central Civil Services (Conduct) Rules, 1964 as extended to the employees of the Kendriya Vidyalaya Sangathan.

ARTICLE-V

That the said Shri R.S. Maurya, while working as PGT (Chemistry) at Kendriya Vidyalaya, during the period 1998-99 never attended assemblies, staff meetings called by the Principal thus Shri R.S. Maurya had not obeyed the orders of the Principal.

This act on the part of Shri Maurya constitutes a mis-conduct which is unbecoming to teacher (employee) of KVS in violating of Rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rules 1964, as extended to the employees of Kendriya Vidyalaya Sangathan.

ARTICLE-VI

That Shri R.S. Maurya while functioning in the aforesaid capacity at Kendriya Vidyalaya, Khanapara during the

Contd./A



(13)

25

academic year 1998.99 had tampered the Official documents.

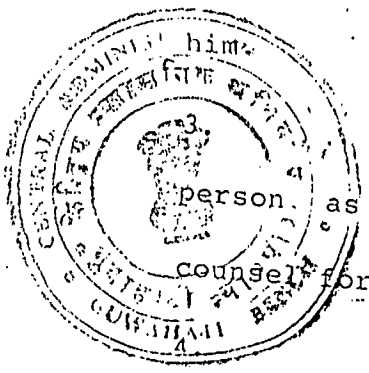
Thus Shri Maurya, has violated the Rule 3(1) (i), (ii) & (iii) of Central Civil Services (Conduct) Rules 1964 as extended to the employees of Kendriya Vidyalaya Sangathan."

The charges were accompanied with the statement of imputation of misconduct or misbehaviour in support of the Article of charges as well as a list of documents. The applicant prayed for time to submit his reply to the memo of charges. Instead the respondents proceeded with the enquiry exparte and the applicant was removed from service vide order dated 29.5.2000. The applicant assailed the said order of removal in O.A.20 of 2001 and by judgment and order dated 28.6.2001 the order of removal dated 29.5.2000 was set aside and the respondents were directed to start denovo enquiry by appointing new enquiry officer providing him a fair opportunity to defend his case. The applicant thereafter submitted his written statement on 19.9.2001 explaining the charges and denying the allegations. The respondents conducted the enquiry through an enquiry officer and on consideration of the representation of the applicant by order dated 1.5.2002 the disciplinary authority accepted the findings of the enquiry officer and found the applicant guilty in respect of five of the charges, exonerating him from charge No.5 and accordingly removed the applicant from service with immediate effect. The applicant moved this Tribunal again by way of an Original Application which was numbered and registered as O.A.219 of 2002. By judgment and order dated 17.7.2002 the Tribunal thought it fit that since an

Contd./5

appeal was preferred before the appellate authority the appellate authority need to dispose of the appeal at the first instance and accordingly directed the respondents to dispose of the appeal within specified time, if not disposed earlier. By order dated 15.11.2002, the said appeal was also disposed of confirming the penalty of removal from service by the Joint Commissioner (Admn) & appellate authority. Hence this application assailing the action of the respondents as legally unsustainable.

2. The respondents contested the case and submitted ~~the~~ written statement. According to them, the applicant was given a fair opportunity to defend his case and on analysis of the evidence of record the authority rightly imposed the penalty of removal upon the applicant and therefore there is no scope to provide any relief to



We have heard Mr.R.S.Maurya, the applicant in person, as well as Mr.M.K.Mazumdar, learned standing counsel for the KVS at length.

We have given our anxious consideration on the matter. We have already indicated the nature of the charges. Admittedly, in the departmental proceeding no witnesses were examined. The enquiry officer referred to some documents which ~~was~~^{were} relied upon, but on perusal of the materials on record submitted by Mr.M.K.Mazumdar, learned counsel for the KVS, we do not find any materials indicating the fact that applicant was confronted with the said documents and an explanation was recorded from him in

that regard. At the first instance a document and for that matter a content of the document ipso facto can be relied upon as a piece of evidence against the delinquent officer, unless the officer concerned is given an opportunity to contest the same by way of cross examination. The enquiry officer as well as the disciplinary authority and appellate authority fell into error in relying upon those materials by infringing the rules of natural justice. In this context it would be apt to recall the following observation of the Supreme Court of India in M/s. Bareilly Electricity Supply Co. Ltd. -vs- The Workmen and others reported in AIR 1972 SC 330 (330):-

" The application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these



: 7 :

general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognised and admit of no doubt."

5. The enquiry officer in his findings nowhere took into consideration the explanation of the applicant cited in the written statement. The enquiry proceeding also indicated as to some objections raised by the applicant and it also did not take note of some documents mentioned by the applicant in writing before the enquiry officer. The enquiry proceeding also mentioned that the applicant infact submitted applications dated 19.1.2002 (Annexure-A 13 (ii) & (iii) in order to prove the genuineness and authenticity of the documents to be relied on. The enquiry officer endorsed that those applications were received on 19.1.2002 but no ostensible reason was shown as to why those witnesses were not called for. The conduct of the enquiry officer was seemingly one sided. He only took into consideration the point of view of the departmental authority without even considering the plea of the applicant. The findings arrived at by the enquiry officer ~~was~~ also seemingly

Contd.,8

perverse. The findings of the enquiry officer was made with total non-application of mind and lacked fair consideration of the case of the applicant. The disciplinary authority in its turn mechanically accepted the report of the enquiry officer. It seems that the enquiry officer also recorded the evidence of one Dr.C.B.Dwivedi and one Sh. Amulya Narzary as D.W.I & II. The order sheet does not show as to why those two witnesses were called for, at whose instance. Even in the copy furnished to the applicant in respect of depositions of Dr.C.B.Dwivedi & Sh. Amulya Narzary the signature of the enquiry officer was not discernible. It also appears to us that to a large extent there are even similarities in the reports of the two enquiry officers. It also appears that the findings of the enquiry officer ~~are~~ contrary to the charges levelled against the applicant. The disciplinary authority, as alluded, passed the impugned order of removal without application of mind and mechanically accepted the report of the enquiry officer.

An appeal is provided in the statutory scheme. The appellate authority is required to consider the appeal on merit and also to see as to whether the charged officer was provided with the procedural safeguard. The appellate and disciplinary authority also require~~d~~ to consider as to whether the delinquent officer was provided with the procedural safeguard in the enquiry, whether the same was conducted by adhering to the procedural propriety, whether the findings arrived at are based on materials on record and also the punishment imposed was proportionate on the facts. The appellate authority in the instant case rejected the appeal without recording and considering

Contd./9

the pleas raised by the applicant. In the departmental enquiry the authority is to provide fairness in action and take into consideration the explanation submitted by the charged officer. An enquiry proceeding is not a empty formality. It is to conform to the principle of natural justice which also means that the plea of the charged officer is to be taken into consideration and thereafter only it would reach its own conclusion.

7. We have already indicated the nature of the charges. In Article-I the applicant was charged for contravention of Rule 3(1) (i), (ii) & (iii) in conducting practical examination of CBSE in Chemistry for Class XII Science on 15.2.1999 in K.V. Dinjan without permission/relieving by the competent authority. Admittedly, the applicant went to K.V., Dinjan on assignment to conduct practical examination. The T.A. DSA. was also seemingly paid to the applicant. What was the requirement of a reliever in conducting practical examination was not discernible. As regards Article-II, the applicant in his written statement explained that marks were allotted as per the direction issued by the Principal in the practical examination. In the facts and circumstances of the case the applicant even prayed for production of the witness, the Principal concerned. But no such steps were seemingly taken. At any rate, in the findings of the enquiry officer the defence of the applicant was totally brushed aside. No materials are discernible to hold the applicant guilty of chage Nos.3, 4 & 6 on analysis of the materials on record. The



disciplinary authority reached its decision based on consideration wherein the authority manifestly accorded inappropriate weight on the materials on record as well as the explanation submitted by the applicant. Similarly, the decision arrived at by enquiry officer and approved by the disciplinary and appellate authority are not supported by any materials on record and reasons cited by the authority in holding the applicant guilty ~~is~~ seemingly incomprehensive on the basis of the materials on record. The findings arrived by the enquiry officer upheld by the disciplinary and appellate authority ~~are~~ legally unsustainable in law.

For all the reasons stated above, we are of the opinion that the impugned order of removal on the basis of enquiry is not liable to be sustained and accordingly we set aside the impugned order of removal dated 1.5.2002 as well as the appellate order dated 15.11.2002. The respondents are directed to re-instate the applicant within a month from the receipt of the order with full back wages. The applicant shall be deemed to be in service and entitled for the consequential benefits.

Subject to the observations made above, the application is allowed.

There shall, however, be no order as to costs.

Deputy Registrar (A)
Central Administrative Tribunal

(G) Garabati

7/10/2003

Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)

(20)

Annexure - A2 82

BY HAND

To
Sri S.S. Sahrawat

Date- 10/02/ 2003.

The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
MALI GAON, (RO) Gauhati-12

Subject:- Submission of Order and Judgment dated 04 February, 2003,
passed in O.A. 384/2002 by the Hon'ble Tribunal, Gauhati

R/SLr,

Please find enclosed herewith a copy of the Order
and Judgment dated 04/02/2003 passed in O.A. 384 /2002 by the
Hon'ble Tribunal Gauhati for implementation within specified time
for the interest of justice.

It is for your kind information and n/a please.

Enclosure:-

Order dated 04/02/2003.

R.S. MAURYA
10/2/03
Yours Faithfully,

(R.S. MAURYA)

P.G.T. (Chemistry)

K.v. Khanapara, Gauhati-22

C/O Universal Book Depot , Six Mile
Khanapara, Gauhati- 22 (ASSAM)



(21)

Annexure - A3

39

NOT INSURED

Amount of Insurance Rs. 5738

Received in Registered

Addressed to: S. S. Sahana, K. V. Sangalson, Madhgaon, Ch-12

Date of Receipt: 11/2/01

SPEED POST

189014

RECEIPT

DATE 11/2/01

No.

TIME

To: J. Das Biser The Principal K.V. Ch-12	Sender: R. S. Sahana Ch-12
Speed Post Charges Rs. 20/-	

DATE

STAMP

OFFICER INCHARGE



EE84279264 21N

SPEED POST

189013 RECEIPT

DATE 11/2/01

No.

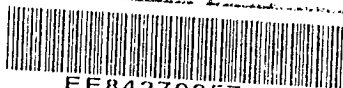
TIME

To: S. S. Sahana K. V. Sangalson, Madhgaon, Ch-12	Sender: R. S. Sahana S. S. Sahana, K.V. Ch-12
Speed Post Charges Rs. 20/-	

DATE

STAMP

OFFICER INCHARGE



EE84279257 11N

(22)

34

Annexure - A4

The Assam Tribune dtd 28-10-2003

**K.V. KHANAPARA
GUWAHATI-781022**

Wanted: PGT in Physics/
Chemistry/Biology - 01 post
each. Candidates to walk in for
interview from 9 am - 12 noon
on 1st Nov. 2003 with all
certificates & (B.Ed. and
Employment No. Compulsory)
throughout 1st class
candidates, B.Ed. not regd.
Principal.
CD/SV/4058/1

-23-

26 FEB 2003

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

CONTEMPT PETITION NO. 51/2003

IN

ORIGINAL APPLICATION NO. 384/2002

IN THE MATTER OF:

Sri R.S. Maurya

... **PETITIONER.**

- Versus -

Sri D.S. Bist & Others.

... **RESPONDENTS.**

- AND -

IN THE MATTER OF :-

An affidavit on behalf of the respondents.

I, Shri S.S. Sherawat, S/O Sri Haris Chander aged about 52 years currently holding the charge of Assistant Commissioner, Kendriya Vidyalaya Sangathan, Maligaon, Guwahati - 12 do hereby solemnly affirm and state as follows: -

1. That I am the Assistant Commissioner of the Kendriya Vidyalaya Sangathan, Maligaon and I have been impleaded as Respondent No. 3 in the aforesaid Contempt Petition. As such, I am well conversant with the facts and circumstances of the case and I am competent to swear this affidavit. I have been duly authorised by the other respondents to swear this affidavit on their behalf.
2. The deponent/respondent No. 3 herein places the following facts for due consideration before this Hon'ble Tribunal:

Filed By:
The Respondents
Through: 35
Mr. R.S. CHOWDHURY
ADVOCATE
26/2/04

- i) That the Respondents in Original Application No. 384/2002 had approached this Hon'ble Gauhati High Court by way of a writ petition challenging the Judgment and Order dated 04.02.2003 passed by this Hon'ble Tribunal in O.A. No. 384/2002. The said writ petition has been registered and numbered as W.P. (C) No. 2392/2003. Be it stated herein that the respondents had filed the said writ petition on 13.03.2003.
- ii) That the said writ petition was admitted before the Hon'ble Gauhati High Court vide Order dated 09.05.2003 and the matter was fixed for consideration of stay after two weeks. However, for reasons not known to the deponent, the matters could not be taken up. It is pertinent to mention herein that while matters remained thus, the petitioner herein filed a miscellaneous petition before the Hon'ble Gauhati High Court praying inter-alia for expeditious hearing of the writ petition No. 2392/2003 filed by the Respondent herein. The said Misc. Case was registered as Misc. Case No. 1704/2003.
- iii) That the deponent humbly states that the Hon'ble Gauhati High Court however, rejected the application for stay of the Judgment and Order dated 04.02.2003 filed by the Respondents in W.P.(C) No. 2392/2003 vide order dated 06.12.2003. The respondents herein immediately thereafter also filed a Misc. Case on 9.12.2003 for expeditious hearing of the entire writ petition filed by the Respondents herein. The said Misc. Case was registered and numbered as Misc. Case No. 2449/2003.
- iv) Both the said Misc. Cases No. 1704/2003 filed by the petitioner herein as well as 2449/2003 filed by the respondent herein came up before the Hon'ble Gauhati High Court on 02.01.2004. After hearing the counsel for the parties, the Hon'ble Court was pleased to fix the entire matter for hearing/final disposal on 4.02.2004 and the Misc. Case No. 2449/2003 was disposed of accordingly.
- v) That thereafter on 04.02.2004, the matter came up before the Hon'ble High Court for final disposal of the case. The Court after hearing both the counsel for the parties at length was pleased to keep the Judgment reserved.

3. That the deponent humbly and respectfully begs to submit that in view of the averments and statements of the facts made hereinabove, it is respectfully prayed that this Hon'ble Tribunal may be pleased to keep the matter in abeyance till the Hon'ble High Court delivers the Judgment in the aforesaid W.P.(C) No. 2392/2003.
4. That the deponent humbly submits that the respondents hold the orders passed by this Hon'ble Tribunal in highest regard. However, due to the fact that the writ petition was admitted before the Hon'ble Gauhati High Court, the said order dated 04.02.2003 passed by this Hon'ble Tribunal in O.A. No. 384/2003 could not be implemented.
5. That the deponent reserves the right to file a detailed affidavit against the Contempt Petition No. 51/2003, if so deemed pertinent.
6. That in view of the facts and circumstances that have been narrated above, it is hereby prayed that the Hon'ble Tribunal may be pleased to grant adjournment in the said contempt petition till delivery of the Judgment by the Hon'ble Gauhati High Court.

And for this act of kindness, the deponent as is duty bound to shall ever pray.

Affidavit

-26-

38

A F F I D A V I T

I, Sri S. S. Sherawat, son of Sri Harish Chander, aged about 52 years at present working as the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region, Maligaon, Guwahati -12, do hereby solemnly affirm and state as follows :

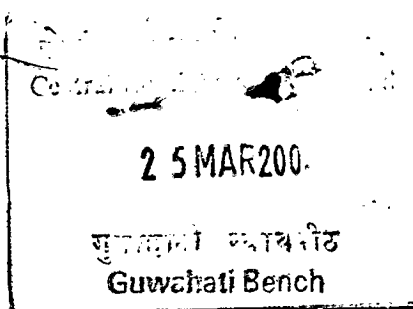
1. That I am the Respondent No. 3 in the instant case and as such I am fully conversant with the facts and circumstances of the case. I have been duly authorised by the other respondents to swear this affidavit on their behalf.
2. That the statements made in this affidavit and in paragraphs 1 to 6 are true to my knowledge and information derived from record and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the 22nd day of January, 2004 at Guwahati.

DEPONENT

Identified by :

Advocate's clerk.



27-39

Filed by the Petitioner
-in- Person-
R. S. Maurya
25.3.04

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL GAUHATI BENCH :: GAUHATI

CONTEMPT PETITION NO. 51/2003

IN

ORIGINAL APPLICATION No.384/2002

IN THE MATTER OF:-

Radhey Shyam Maurya,

..... Petitioner.

- Vs -

Mrs.J.DAS BASU & others..

..... Respondents/Contem-
nors.

- AND -

IN THE MATTER OF:-

An Additional-Affidavit on behalf of
the petitioner highlighting the
subsequent developments in the matter.

- AND -

IN THE MATTER OF:-

Judgment and Order dated 04.03.2004
passed in W.P.(C) No.2392/03 by the
Hon'ble High Court filed by the
Respondents herein.

- AND -

IN THE MATTER OF:-

Wilful and deliberate violation of
the judgment and order dated 04.03.2004

passed in W.P.(C)No.2392/2003
wherein the Order of reinstatement
part is kept undisturbed as per
the Hon'ble Tribunal ,Gauhati
Judgment and Order dated 04.02.2003
passed in O.A. 384/2002.

I, Radhey Shyam Maurya, aged about 43 years S/o. (Late)
Ram Kumar, r/o. at C/o. Universal Book Depot, Six Mile, Khanapara,
do hereby solemnly affirm and state as follows :-

1. That, I am the petitioner in the instant C.P. and as
such I am fully conversant with the facts and circumstances
of the Case.
2. That, the deponent highlighting wilful and deliberate
violation of the Judgment and Order dated 04.02.2003 passed
by this Hon'ble Tribunal in O.A. 384/2002 preferred the above
noted Contempt Petition which is pending for disposal before
this Hon'ble Tribunal since, September'2003.
3. That, the Respondents/Contemnors on 26.02.2004
intimated before this Hon'ble Tribunal that a Writ Petition
2392/2003 was admitted against the Order of this Tribunal
without granting any stay and the said Writ Petition was
finally heard on 04.02.2004 and the Judgment was kept
reserved by the Hon'ble High Court, Gauhati, and accordingly
the said C.P. was adjourned for 04(four) weeks vide Order
dated 26.02.2004 by this Hon'ble Tribunal.

4. That, on 04.03.2004, the Hon'ble Gauhati High Court was pleased to announce the reserved Judgment and Order in the aforesaid Writ Petition in the presence of the Counsel of the Respondents herein whereby upheld the Judgment and Order dated 04.02.2003 passed by this Hon'ble Tribunal in O.A.384/2002 so far as reinstatement part is concerned. However, the Hon'ble High Court, Gauhati was pleased to direct the Contemnors/Respondents to re-hear the Petitioner herein, (Charged Officer) in respect of quantum of punishment as well as back wages.

The copy of the Judgment and Order dated 04.03.2004 passed by the Hon'ble High Court in W.P.(C) No.2392/03 is annexed as Annexure - A.

5. That, on receipt of the copy of the Judgment and Order dated 04.03.2004 the deponent immediately approached in-person to the Respondent No.-3 (Disciplinary Authority) with a prayer to implement the said Order but the said Contemnor refused to accept the same on the plea that he has already received copy of the said Judgment and Order dated 04.03.2004 being his own Writ Petition.

6. That, the deponent begs to state that even after passing of the Judgment and Order dated 04.03.2004, he is yet to be reinstated in service with the consequential service benefits.

— Apart from that the Respondents are yet to intimate the deponent regarding the compliance of the other part of the Judgment.

The Contemnors knowing fully well about the Judgment and Order dated 04.03.2004 are yet to comply with the said direction and kept on violating the same. The Contemnors/Respondents even knowing also fully well about the pendency of this C.P. have choosen not to intimate the Hon'ble Tribunal regarding the Annexure - A Judgment and Order as well as its compliance which clearly shows complete disregard to the aforesaid Judgments .

7. That, the deponent begs to state that the Contemnors in continuation to their wilful and deliberate violation have been continuing their aforesaid act of wilful disobedience and deliberate violation even after passing of the Judgment and Order dated 04.03.2004 by the Hon'ble High Court. The Contemnors/Respondents therefore are liable to be punished accordingly for their aforesaid wilful disobedience and deliberate violation and accordingly severe punishment in accordance with the law is required to be ordered against each of the Contemnors.

8. That, taking into consideration the subsequent development as well as to highlight the further violation of the Hon'ble Court's Order and Judgment the deponent has preferred this Additional - Affidavit with a prayer to treat the same to be a part of the C.P.No.-51/2003 and with a prayer to draw-up appropriate Contempt Proceeding against each of the Contemnors/ Respondents.

- 5 -

9. That, the statements made in paragraphs -
..... are true to my knowledge and those made in
paragraphs - 1.5.6..... are matter of records which I
believe to be true and the rests are my humble submission
before this Hon'ble Tribunal.

And, I sign this affidavit on this the 25th day of March'04
at Gauhati.

Radhey Shyam Maurya
DEPONENT

Identified by:-

प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की उपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
11/3/04	12/3/04	12/3/04	12/3/04	12/3/04

- 32 -

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

PRINCIPAL SEAT

WRIT PETITION © No.2392 of 2003

1. Commissioner,
Kendriya Vidyala Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg
New Delhi - 110 016.
2. Joint Commissioner (Admn),
Kendriya Vidyala Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016.
3. The Assistant Commissioner,
Kendriya Vidyala Sangathan,
Malligaon, Guwahati - 12.
4. Principal,
Kendriya Vidyala, Khanapara,
Guwahati - 22.

Gauhati High Court

... PETITIONERS

-vs-

Shri Radhey Shyam Maurya,
Son of Late Ram Kumar,
Resident of Six Mile, Khanapara,
Guwahati - 22.

.... RESPONDENT/
APPLICANT.

BEFORE
THE HON'BLE MR.JUSTICE P.G.AGARWAL
THE HON'BLE MR.JUSTICE S.K.KAR

For the Petitioners :: Mr.KN Choudhury,
Mrs.RS Choudhury, Advocates.

For the Respondents:: Mr.D.K.Mishra, Advocate.

Date of hearing :: 04.02.2004

Date of Judgment :: 4.3.2004.

JUDGMENT AND ORDER

Kar.J.

The causal background of this petition, filed under Article 226/227 of the Constitution of India praying for an appropriate writ or a direction, is the impugned judgement and order dated 4.2.2003 passed by the Central Administrative Tribunal, Guwahati Bench (in short, 'the CAT') in O.A. No.384/2002 (Annexure-K to the Writ Petition).

2. The facts leading to the repeated litigations are as follows, shorn of unnecessary details.

The respondent herein (Shri Radhey Shyam Maurya, henceforth to be referred only as 'Maurya') was the applicant in O.A.No.384/2002 aforesaid. The respondent Maurya was initially appointed as primary teacher in K.V.S. (Kendriya Vidyalaya Sangathan) and subsequently selected as trained graduate teacher in 1993 and then as post graduate teacher in Chemistry from 1995 in K.V.S., Khanapara, Guwahati. He was placed under suspension on 1.6.99 (vide office order No.14-5/99-KVS (GR)/2001-93 dated 1.6.99). Disciplinary proceeding (DP) under rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short, CCS(CCA) Rules) was drawn up against him on 9.8.99 and the articles of charges numbering five were framed. (As per the writ petitioners) statements of the allegations of mis-conduct and mis-behaviour on which articles of charges were framed, together with a list of documents proposed to be proved were furnished to him also. But the respondent failed to present his written statement against the aforesaid charges within a stipulated time. The Inquiry Officer (I.O.) and the Presenting Officer (P.O.) were appointed and Inquiry report was accordingly submitted stating therein that most of the charges

have been established. Copy of the Inquiry report was forwarded to the respondent on 20.4.2000 asking him to make representation, if any, but respondent kept silent. On consideration of the Inquiry report and other accompanying circumstances the Disciplinary Authority (DA), who is petitioner No.3 in the writ petition, found respondent guilty of mis-conduct as per Rule 3(1)-(i) ii) and (iii) of Central Civil Services (Conduct) Rules, 1964 (in short CCS (Conduct) Rules) and an order of removal of respondent from service was passed and served upon him on 29.5.2000 before receiving any representation from him within the stipulated time-limit of 5th of May, 2000 (It is stated that representation was received in the afternoon of 29.5.2000 but the decision to impose penalty of removal was taken in the forenoon of 29.5.2000). The order of removal dated 29.5.2000 was challenged in appeal by the respondent subsequently on 9.6.2000 and it was considered by the competent authority and the appeal was rejected by order dated 5.2.2001.

Gauhati High Court

3. The respondent thereafter approached the CAT by presenting an application, O.A. No.20/2001. Learned Tribunal by order dated 28.6.2001 set aside the D.P. and the order of penalty was quashed with a direction to go for de novo Inquiry by appointing another Inquiry Officer. The direction of the CAT was complied with by the D.A. and fresh inquiry proceedings were taken up on 19.10.2001, 29.11.2001, 19.12.2001, 18.1.2002, 19.1.2002 and 22.2.2002 by appointing Mr.N.D.Joshi as the new Inquiry Officer. Written statement from the respondent was received in this context on 19.9.2001 and on completion of the inquiry, the inquiry report was submitted on 9.3.2002 holding that except article of charge No.V all other article of charges have been proved. On receipt of the Inquiry Report the respondent submitted his representation dated 11.4.2002 to the D.A. challenging the validity and legality of the Inquiry report and the D.A. after careful consideration of the Inquiry report and the representation of the delinquent officer (i.e. the respondent) imposed penalty of removal from service by order dated 1.5.2002 (memo

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No.F.14-5/01-KVS(GR)/6692-94 dated 1.5.2002). An appeal was preferred thereafter by the respondent before the petitioner No.2 on 8.5.2002 but without awaiting for the result of the same another application before the CAT was filed which was registered as O.A. No.219 of 2002. Vide order dated 17.7.2002 the learned CAT declined to admit the application with a direction for disposal of the pending appeal expeditiously.

4. The appellate authority (petitioner No.2 herein) after giving personal hearing to the appellant (respondent herein) and taking into consideration relevant facts confirmed the penalty of removal from service rejecting the appeal. Thereafter, the order of the appellate authority was challenged by an application before the CAT in O.A. No.384/2002, contending therein that Inquiry proceeding was vitiated and the finding of the Inquiry Officer was perverse and praying for quashing the order of removal dated 1.5.2002 as well as the order of appellate authority dated 15.11.2002. The petitioners herein duly contested the said application by presenting written statement and producing all the relevant documents but learned CAT by the impugned judgment and order set aside the order of removal as well as the order of the appellate authority with a further direction for re-instatement of the respondent within one month with full back wages etc. Hence this present writ petition pleading perversity, impropriety and illegality, etc. in the impugned order.

5 It was further contended in the petition filed by the writ petitioners that there is manifest errors in the impugned judgment, and the order of re-instatement with all consequential benefits is entirely unfounded. That the learned CAT over-looked the fact that the respondent herein had himself in his connected written statement dated 19.9.2001 admitted most of the charges. That the CAT completely failed to appreciate the documentary evidence. That it was entirely wrong on the part of the learned CAT in holding that the Principle of Natural Justice had not been followed during the course

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of the Inquiry. That a bare look into the minutes of the sittings of the Inquiry Proceedings will reveal that the respondent was afforded all reasonable opportunities to present his case and was supplied with all papers as were asked by him and all accommodations sought were conceded to by the Inquiry Officer. That the impugned order could not reflect any procedural impropriety but would be demonstrative of non-application of judicial mind. That if allowed to stand it will result in gross mis-carriage of justice. That it was consistently held by the Hon'ble Apex Court that disobedience, misconduct and dissatisfaction of the master, etc. are the grounds to justify dismissal from service. That power of judicial review to be exercised by CAT is similar to that usually exercised by the High Court under Article 226 of the Constitution. That whether it is the Tribunal or Court, it can interfere only, if the charges that were framed in the disciplinary proceeding on the basis of imputation are improper, or particulars of charges do not bring out any case of misconduct, or the charge is contrary to the law. That the tribunal cannot take over the function of the disciplinary or appellate authority and has no jurisdiction to look into the truth of the charges or correctness of the findings recorded by the DA or the appellate authority, as the case may be.

6. The sole respondent Shri Maurya presented his affidavit-in-opposition in this case on 28th May, 2003 contending, inter alia, that the Inquiry Officer neither followed the procedure as prescribed under Rule 14 of the CCS(CCA) Rules, 1965 nor adhered to the principles of natural justice while conducting the inquiry on 19.10.01, 29.11.2001, 19.12.2001, 18.1.2002, 19.1.2002 and 22.2.2002. That the Inquiry Officer did not allow him (the delinquent/charged officer and respondent herein) to examine himself in order to disprove the charges and he was not even permitted to call witnesses for cross-examinations who were connected with the documents relied upon by the DA. That the Inquiry Officer only interrogated the respondent/charged officer (C.O.). That the detailed written statement was submitted by the respondent on 19.9.2001 with regard to the

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article of charges formulated against him. That the pleas taken by the respondent was not discussed by the Inquiry Officer while presenting the inquiry report and presented his one-sided report. That the inquiry report submitted by the second Inquiry Officer, Shri N.D.Joshi on 22.3.2003 (wrongly given in place of 09.03.2002) is similar to the Inquiry Report submitted by the earlier Inquiry Officer, Mr.R.K.Gautam in the ex-parte inquiry report on 20.4.2000(wrongly mentioned instead of 25.03.2000). That the respondent is being victimized and harassed for raising his voice against sub-standard/inferior quality of chemicals supplied by the authorities and such of his contentions may be substantiated from the audit report dated 4/22.5.2000 enclosed with the application No.384/2002 and the respondent has been put under great difficulty. That his family is suffering since 1.6.99 when he was put initially under suspension and the litigations started one after another. That any stay of order dated 4.2.2003 will bring untold miseries to his family.

Gauhati High Court

7. It is seen that in his affidavit-in-opposition the respondent has also reproduced, in brief, what he had stated earlier in written statement dated 19.9.2001 and repeated in his representation dated 11.04.2002 before the Disciplinary Authority with respect to the article of charges and Inquiry Report.

7.A. By order dated 5.12.2003 this court refused to stay the impugned judgment and order dated 4.2.2003.

8. We have heard Mr.KN Choudhury, learned senior counsel for the writ petitioners, as well as Mr.D.K.Mishra, learned senior counsel appearing for the sole respondent; perused the materials on record and the documents produced before the Court and considered the submissions made.

9. Following citations were referred to us, only by the counsel appearing for the petitioners -

(a).AIR 1957 SC 882 (885)(paras 9/10); Union of India – Vs- T.R. Verma.

(b).2002 (3) SCC 443, State of U.P & Others –vs- Ramesh Chandra Manglik (paras 10/11) at pages 447-9.

©.2002 (8) SCC 68 (paras 4/5 and 6) Debotosh Pal Choudry –vs- Punjab National Bank & Others.

10. Before we enter into the discussions of law of propriety and tenability of the impugned order, let us have a introductory look into the material facts of the case. The material and relevant part of the articles of charges framed against respondent are reproduced as below for the sake of easy reference and convenience, etc.-

ARTICLE-I

That the said Shri R.S.Maurya, while functioning as PGT (Chemistry) Kendriya Vidyalaya, Khanapara, Guwahati during the academic year 1998-99 went to Kendriya Vidyalaya, Dinjan, to conduct practical examination of CBSE, Chemistry for Class-XII (Science) on 15.2.1999 without permission/relieving by the competent authority.

ARTICLE-II

.....
..... all students were awarded 30/30 marks in Practical examination of Chemistry.
.....
.....

ARTICLE-III

.....
asked the students to bring chemicals for Practical.
.. refused to take CBSE (AISSCE) '99 Chemistry Practical examination for Private students.
.....

ARTICLE-IV

.....
..... had not submitted session ending question papers in the stipulated date as notified by the Principal.
.....
.....

[Handwritten signature]
[Handwritten signature]

ARTICLE-V

.....
 never attended assemblies, staff meetings called
 by the Principal

ARTICLE-VI

.....

 During the academic year 1998-99 had tampered the
 Official documents.

11. It is the admitted position that there were as many as 6 sittings before the Inquiry Officer spreading over a period of more than 4 months. It is also another fact which is not in dispute that the article of charge No.I took most of the time and inquiry was abruptly closed with regard to article of charges No.II to VI within 2/3 days and that charge No.V was not established.

12. It will be significant and appropriate to look into the written statement (Annexure-F) dated 19.9.2001 presented by the respondent before the Disciplinary Authority in connection with the Departmental Proceeding . The necessary and significant part of the written statement which may be argued as admission may be cited in the following excerpts from the written statement. We quote -

ARTICLE-I

.....
 2. That the Principal, K.V.,Khanapara vide order No.F.58/KVG/97-98/685-686-687 dated 4.2.99 relieved me for conducting Chemistry Practical Examination in K.V., Narangi on 5th and 6th February, 1999. However, no formal 'Relieving Order' was issued in respect of K.V, C.R.P.F, Amerigog, Gauhati and K.V, Dinjan respectively. Thereafter, by seeing the plight of the Class-XII students, I submitted an application to the Principal, K.V, Khanapara on 10.2.99 for relieving me to conduct the Chemistry Practical Examination at K.V, C.R.P.F, as well as K.V.,Dinjan. However, there was no response from the Principal, K.V.,Khanapara. I met her personally and requested her to relieve me. But she

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refused to respond. I was in affixed as what should I do so that I am not put in difficulty. Since, I was appointed as External Examiner to conduct the Chemistry Practical Examination of Class-XII at K.V., C.R.P.F. and K.V, Dinjan by the C.B.S.E and by the Principal respectively, I felt duty bound to conduct the Chemistry Practical Examination at both the places on or before 15.2.99. I am astonished as to why no mention has been made of my conducting Chemistry Practical Examination in K.V, C.R.P.F., Amerigog, Gauhati. Be it stated that I again submitted an application dated 15.2.99 to the Principal and accordingly informed her my action/departure to K.V, Dinjan for conducting Chemistry Practical Examination in respect of Class-XII students. Further, it is also stated that neither I was given any "phone call message" by Mr.K.K.Choudhary, Regional Officer, C.B.S.E, nor I was asked not to go to K.V, Dinjan for the same. It is also to be worth mentioning herein that there is no closed nexus between myself and Mr.Achhar Singh, Principal, K.V,Dinjan. Mr.A.Singh is well known to me being the former and neighboring Principal of K.V, C.R.P.F wherein the present Principal, K.V,Khanapara tried for her posting in the year 1995 by replacing him."

ARTICLE-II
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SECOND PART

"3(B).
Since the Chemistry Practical Classes could not be conducted due to shortage as well as non-availability of chemicals arising due to reasons stated above, for which students could not be made to suffer. After completion of the Class XII Projects and Practicals, I wrote a letter to the then Principal namely, Shri N.D.Bhuyan on 13.12.98 seeking his guidance into the matter. The aforesaid letter was handwritten letter and the same was handed over to the then Principal, K.V, Khanapara. It was felt that since the Chemistry Practical Examination cannot be taken, and therefore, uniform marks should be given to the students without making any discrimination and therefore each students were given 30 marks.
....."

ARTICLE-III
FIRST PART.

"4.(A)
After conducting the Chemistry Practical classes of XI and XII, both these items namely Methylated Spirit and Distilled water were almost exhausted. And in the interest of the students of the students of Class XI , I asked them to bring these two chemicals so that the

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Chemistry Practical Examination may be conducted in a fair and efficient manner. (Please refer Annexure-6). I have no otherwise personal interest in the matter.

The Notice dated 20.3.99 was sent by me to the Principal, K.V., Khanapara for her counter - Signature and when she refused to sign, it was pasted on the Notice-Board as well as displaced on the door of the Chemistry Laboratory and the same was informed to the students also 23.3.99, was fixed for Chemistry Examination for girl-students, however, none of them reported to the laboratory, rather they were found in the Principal's chamber."

ARTICLE-IV

"5. I requested her to permit me to use cyclostyled question paper by cutting stencils one day prior to the Examination. However, she did not say anything. I took silence as her permission. Moreover, under similar situation I prepared the cyclostyled question paper one day before the Cumulative Test by seeking the verbal permission of the then Principal." ...

..... Therefore, it is crystal clear that the Principal was averse to the method adapted by me. The fact, that on being ordered by the Principal on 26.2.99, I immediately handed over the Question Paper to the seniormost P.G.T., namely, Mrs. B.P. Goswami. Therefore, it, itself would establish that I did not violate her order and thus there was no insubordination leading to unbecoming behaviour etc as alleged."

For the sake of brevity further the contentions of the respondent put in his written statement may not be reproduced. But if one goes by the contentions of the entire written statement it will be seen that it is in the type of admissions of the facts alleged with explanations appended to plead innocence. It is already observed that the respondent actually reproduced part of his written statement dated 19.9.2001 before Disciplinary Authority in his present affidavit-in-opposition here before us.

13. In the context of the nature/type of evidence to be adduced by the Presenting Officer in inquiry proceedings in order to prove charges framed against delinquent officer, Mr. Choudhury while leading us through AIR 1957 SC 882, wanted to impress upon us the

following observations of the Constitutional Bench of the Hon'ble Apex Court made therein. It goes as below:

" Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which contains in a Court of Law.

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

Gauhati High Court

Learned counsel has categorically submitted that in a disciplinary proceeding the standard of proof is 'preponderance of probability' and not 'proof beyond reasonable doubt', and burden is equally on both sides to establish the respective cases pleaded by them. He opposed vehemently the contention of the learned counsel of the opponent side that niceties of the evidence Act is to be taken care of by the Inquiring Authority.

14. Giving our anxious considerations to the submissions made, and the factual aspects reflected in this writ petition vis-à-vis the contentions of the delinquent officer (C.O) in his written statement before the disciplinary authority and the affidavit-in-opposition presented here, we find, at the risk of repetition, that most of the facts are undisputed, or in other words, there is a case of admission of material facts, leading to the imputations, by the

respondent. Principles of Evidence Act provides that things admitted need not be formally proved.

15. Learned counsel for the respondent tried to impress upon us strenuously about the reasons why respondent is being proceeded against by the Disciplinary Authority and submitted that the harassment to the respondent started only when respondent No.4 joined in the post of Principal in the concerned K.V.S., Khanapara on 29.5.2002. The authority had not been in favour of the respondent thereafter and matter of purchases of articles was personalized because respondent was against the proposal of purchase of sub-standard chemicals for the Chemistry Laboratory. However, we find that these facts are beyond the scope of scrutiny in this writ petition. What is required to be seen in this writ petition is whether the impugned judgment and order is legal and justified in the background of the factual propositions, either, admitted or proved. It is also another requirement to see whether natural justice was followed in the Departmental Proceedings and the delinquent was given a reasonable opportunity of being heard in respect of the charges against him as per the dictates of sub-clause(2) of Article 311 of the Constitution of India.

16. In (2002) 3 SCC 443 (supra) it was held that non-supply of documents, by itself, is not fatal unless it is shown that prejudice was caused to the delinquent thereby. Vide para 11 of the judgment cited, it was held:

“..... The submission is that the delinquent will also have to show as to in what manner any particular document was relevant in connection with the inquiry and what prejudice was caused to him by non-furnishing of a copy of the document.”

It was also observed in the same para that ‘obligation to supply copies of documents is confined only to material and relevant documents which have been relied upon in support of the charges and nothing

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more'. The other case-law cited, i.e. (2002) 8 SCC 68, also speaks on the same subject and we find there is nothing more to discuss on this topic.

17. Inquiry Proceeding: Coming to the facts during the inquiry proceedings (a photocopy of which has been placed before us) it will be seen that the delinquent took active part in the proceedings all through out and had presented his exhaustive replies vide the connected written statement dated 19.9.2001 (Annexures 'F' and 'I' to the writ petition and counter respectively). During the initial stage of the proceeding it is recorded by the Inquiry Officer that the charged officer desired to examine documents and it was confirmed that the charged officer was supplied with all the documents on 9.7.2001 and 18.7.2001. On 29th November, 2001, the Inquiry Officer noted as below:

"The P.O. once again showed all the listed documents numbering serial Nos. 1 to 27 in original/Xerox copy in some of the cases (specified on the list) and satisfied the queries of the C.O.)"

During initial part of the proceedings on 29.11.2001 the Inquiry Officer made following noting in the proceedings:

"The C.O expressed satisfaction in respect of the documents requisitioned by him and agreed to extend full co-operation in the future course of action."

It is also clear from the facts recorded in the written statement that the charged officer made extensive replies which can be done only when all the documents were made available to him. It will be worthwhile to note here that the disciplinary authority mentioned only few documents as evidence and no name of the witnesses was cited in the list of witnesses. Therefore, aforesaid objection regarding non-supply of documents has no force, if not misconceived; and accordingly stands rejected.

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18. Coming to the question of article of charge No.I, contention of the charged officer before the Inquiry Officer was that in identical cases other teachers were granted permission to conduct the examination whereas it was refused in his case. We fail to understand what is, or may be, the relevancy of such objection. However, C.O. admitted he left the station without relieving order to conduct practicals at K.V., C.R.P.F and K.V., Dinjan, for welfare of the students. Annexure-L/1 and L/2 are the relevant documents. Annexure-L/1 is addressed to the Principal, Kendriya Vidyalaya, Khanapara, Guwahati by one A.Singh, Principal, Kendriya Vidyalaya, Dinjan, appointing respondent Maurya as external examiner for Chemistry practical at Kendriya Vidyalaya Dinjan (Army). It contains an endorsement from the Principal concerned that he cannot be relieved as there was no communication from C.B.S.E. Annexure-L/1 and L/2 of writ petition are copies of same documents marked as Annexures 2 and 4 of the counter. Therefore, it is a clear admission on the part of the respondent that he went to K.V. Dinjan to conduct Chemistry practical examination on 15.2.99 without getting necessary permission from his Principal. It will be significant to refer to his counter affidavit in this context. In para 3(a) of the counter affidavit, it is stated that the Principal did not pass any order in respect of Kendriya Vidyalaya, C.R.P.F., Amerigog and K.V., Dinjan but he conducted the practical examination there as he was duty bound to do so without formal relieving order. The respondent submitted that although he conducted practical examinations both at K.V., CRPF, Amerigog, Gauhati as well as KV, Dinjan, he was charged only with the allegation of taking practical examination at Dinjan and not that at K.V., CRPF etc without being formally relieved. We find no substance in such type of submissions as there is no law that department is to include in the charge each and every short-comings or acts of misconduct and cannot proceed with one or more of them in exclusion of others.

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19. Although it cannot be disputed that the enquiry was conducted in the form of questions and replies with respect to documents there is nothing to show that it is not permissible. If we go by the proceedings recorded by the Inquiry Officer it will reflect that the charged officer was given all opportunities to defend his case. It is clearly mentioned that Dr.C.B.Dwivedi and Mr.A.Narzary were produced as defence witnesses by the charged officer and learned Inquiry Officer had held that their evidence is not at all relevant so far the article of charges against the delinquent (charged officer) are concerned. So, the comment of CAT that it is not shown who brought these witnesses is unwarranted and misconceived. During the proceedings of 22.2.2002 the charged officer was behaving like authority directing the Inquiry Officer what the Inquiry Officer should do and what he should not. Although this annoyed the Inquiry Officer but it appears that the Inquiry Officer did not do anything to impute prejudice or impropriety on his part in conducting subsequent part of the inquiry. In their reply to the counter affidavit, the writ petitioners have clearly stated in para 3 as follows:

“ He was not only provided with all the relevant documents (to which he had duly expressed his satisfaction and the same was recorded during the proceeding of 29.11.2001) but also two witnesses produced by the respondent were duly examined by the Inquiry Officer on 18.1.2002 as will be revealed from records and therefore, the statements made contrary thereto are categorically denied.”

Therefore, it is not appropriate to say that the charged officer was not given opportunity to examine the documents and it is not certain on whose behalf these witnesses were examined as opined by the learned CAT.

20. Coming to the inquiry report, annexure-G/2 we find that the Inquiry Officer had recorded in his report that Disciplinary Authority provided all opportunities to the charged officer to inspect the original and additional documents numbering about 61. A plain

reading of the inquiry report will disclose that there is no scope of imputing prejudice. Moreover, no document was disputed as such by the charged officer as has been observed earlier in this judgment. We find substance in the submission of Mr. Choudhury that the delinquent officer only made evasive denials of the charges against him.

21. In our humble opinion the law in AIR 1972 SC 330(339) has been misquoted in this case by the learned CAT. It was given in the context of a case where a document was produced in court but its contents were challenged by the opponent. It is in that connection the Apex Court opined as follows -

“.....Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence, such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced.....”

There is nothing to dispute the law but the question is whether its ratio is applicable in the present factual assertions. We confidently say 'No'. The authenticity of none of the document was in challenge in the connected departmental inquiry. It is also not correct to say that the Inquiry Officer 'nowhere took into consideration the explanation of the applicant cited in the written statement' as observed by learned CAT. We have already noted that it was only 'explanation' that was forwarded by the Charged Officer as defence and nothing more. But fact remains that explanations so forwarded were never satisfactory to prove innocence.

22. Along with a copy of his representation dated 11.04.2002 against the inquiry report the Respondent (charged officer) annexed copies of several documents, e.g., (i) written statement dated 19.9.2001, (ii) appointment letters as examiner by Asst.Secy, CBSE & Principal, Dinjan K.V., (iii) his letters of request to Principal, K.V.,Khanapara for 'Relieving orders' dated 10.2.1999, 15.2.99, (iv) minutes of meeting of parents of Students of K.V.,Khanapara on 1.8.98, 23.8.98, (v) order by Principal, Shri N.D.Bhuyan, Principal, K.V. empowering him and other to purchase chemicals, (vii) appreciation letter from Secretary to Govt. of Assam for purchasing chemicals and managing laboratory well, (viii) copies of question papers in chemistry, Biology, (ix) attendance sheets of students in practical examination in groups, (x) letter addressed to him by student explaining why they could not attend class, (xi) letter to Principal by him for sanction of Rs.1,000/- for purchase of chemicals etc., (xii) bills for chemicals, (xiii) explanation for not entering in stock register, (xiv) several letters addressed to Inquiry Officer by him requesting what steps to be taken by Inquiry Officer in conducting the inquiry, (xv) receipt of telegraph sent to I.O. for furnishing him with Rules etc from Disciplinary Authority and (xv) letter by Inquiry Officer to him in connection with appointment of Defence Assistant etc.etc.

23. The reply by the Inquiry Officer to his request for appointment of Defence Assistant goes as follows (relevant portion of letter only) –

"... you are permitted to recommend the name of a serving/retired employee of the KVS alongwith his consent and other details viz. Qualification, Full official & residential address etc. to the undersigned latest. by 31.12.2001.

It is clarified that a person, other than the KVS, will not be permitted to assist you in defending your case as per the KVS rules."

Therefore, it will not be correct to say that the D.A./I.O. had even not allowed to appoint Defence Assistant, as contended by the respondent in his counter-affidavit.

24. We are constrained to observe that the respondent (charged officer) went far beyond his limit in most audacious way in the pretext to defend himself from the charges. The volumes of documents submitted along with the affidavit-in-opposition; the contents of the written statement dated 19.9.2001 and the representation dated 11.04.2002 against the Inquiry report, would clearly demonstrate that these are full of unwarranted accusation against the Inquiry Officer and Disciplinary Authority in a most pedant and inane manner, which by themselves, again may be termed as unbecoming of an honest and sincere civil servant.

25. Be that as it may, let us now examine adverting to the main topic whether 'reasonable opportunities' were denied to the respondent. What is 'reasonable opportunity' has not been defined in the Constitution or the General Clauses Act, but by now, due to several judicial interpretations, it has acquired a legal meaning as opposed to vagaries and the word 'reasonable' now means according to rules of Natural Justice, which are rules of law. A reasonable opportunity in legal significance includes opportunity given to the employee to cross-examine the witnesses examined against him and to lead evidence in support of his version where the department submitted a charge-sheet against him. It is a question of fact. It is only when an opportunity denied is of such a nature that the denial contravenes a mandatory provision of law or rules of natural justice that it could vitiate the whole departmental proceeding/trial. Moreover, prejudice to the Govt. servant resulting from such denial must be proved. (AIR 1976 SC 2037; R.C.Sharma Vs Union of India). It was held by Court that Rules of Natural Justice are not embodied rules nor they can be elevated to the position of fundamental rights. The aim of rules of natural justice is to secure

justice or to put it negatively to prevent miscarriages of justice. They can operate in areas not covered by any law validly made, that is to say, they do not supplant the law but supplement it. It cannot be disputed that whenever a complaint is made before a Court that some principles of natural justice had been contravened what Court has to do is to decide whether the observance of that rule was necessary for a just decision on the facts of the case. It was also held that rules of natural justice are not rigid but flexible and their applications depend much upon the setting and background of statutory provisions. If we examine the facts of the case in hand, as discussed before-hand against the light of the principles of law of natural justice we find no contravention of the principles here. The charged officer actively participated and was given all fairness, fair plays and reasonable opportunities in the inquiry in question. It will be worth noting here in this context what he stated in para 2(v) of his-written representation dated 11.4.2002 on the Inquiry report. We quote-

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"..... The law requires that an adjudicating authority should first deal with the charges, the evidence in support of the charges and the defence against the said charges and discuss them in his report before reaching the findings which could be based only on the discussions made in the manner as stated above but, that has not been done in the instant case and the defence has been dealt with first in total isolation and thereafter the prosecution case has been dealt with. This has caused a great prejudice and the Inquiry Report is accordingly vitiated."

(emphasis supplied)

26. To summarize, a simple reading of the more than needed exhaustive representations dated 11.4.2002 aforesaid against the inquiry report will demonstrate that the respondent had categorically admitted the facts giving rise to the charges trying to justify in his own way, his actions claiming exoneration; but then, there were no denials of the most of the charges. Respondent has referred to specific documents relied upon by the Disciplinary Authority to give his explanations; and in his own conception of the proceedings and the

laws, took part all along in the latest Departmental Proceeding. We find no clear-cut case of violation of the principles of natural justice in this case. Rather in our considered view the matter has been made unnecessarily complicated by the respondent without following any norms and on no valid reasons. There is a clear case of insubordination, aggressive mannerism and defiance of authority of superiors on the basis of the undisputed factual matrix. Here is a well-established case of defying the authority of the superior acting in a manner unbecoming of a civil servant. Thus, misconduct and misbehavior have been proved by the inquiry in question and respondent is liable for punishment.

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It is stated that the respondent has been in service for about 18 years by now. He is re-instated by order of the learned CAT and this Court has not granted any stay of the impugned order passed by CAT. Hence let us now consider the question whether the punishment of removal of the respondent from service is disproportionate to the nature of misconduct in question. We are aware of the law that once there is a finding regarding proof of misconduct, what should be the nature of punishment to be imposed is for the Disciplinary Authority to consider; quod vide, 1996 (10) SCC 371; N.Rajaratnam Vs State of Tamilnadu & another. It is the settled principle of law that penalty must be commensurate with misconduct. In the instant case the respondent had also expressed the conflict of his mind and confusion as to what should have been his appropriate action vis-à-vis the refusal of the authority to grant the requisite 'relieving order' for going out of station in order to hold practical examination when he mentioned in the written representation dated 11.04.2002 as follows:

" Sir, with all humility at my command I state that had I not gone to K.V, Dinjan for conducting Chemistry Practical Examination I would have still been charged for the dereliction of my duty. I made a request to the I.O. to call the appointment orders of teachers of K.V, Khanapara who were appointed as External

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Examiners in 1998-99 etc. and then to see whether all the appointments were issued by the C.B.S.E., Gauhati or some were also issued by the Principal of the respective Vidyalaya. This request was denied unjustly."

He is suffering for more than four years since 1.6.99 and perhaps is repentant now.

28. In our view the over-all impact of the defence version and the plea of explanations against the charges brought, will justify a penalty other than removal or dismissal from service. In a recent case Hon'ble Apex Court, reported as 2003 (10) Scale 495; State of Rajasthan & Ors Vs Sujata Malhotra, held in the context of delinquent remaining absent from duty for five years as follows:

"5. High Court possibly would not be within its power to interfere with an order of punishment inflicted in a departmental proceeding until and unless any lacuna in the Departmental Proceeding is noticed or found. But having regard to the fact that the order of reinstatement has already been implemented and the respondent is continuing in service subsequent to the order of the High Court, we are not inclined to interfere with that part of the order of the High Court, even though, we find considerable force in the arguments of the counsel for the State of Rajasthan."

29. In the results, it is hereby ordered as follows. The findings and the views of learned CAT in so far they are inconsistent with the findings and the views expressed in this judgment of ours are reversed and varied save the question of re-instatement of the respondent into service. The order of reinstatement will remain undisturbed. The petitioners will re-hear the respondent/charged officer only on the question of penalty/punishments including back-wages etc. and pass appropriate order of punishment other than that of either removal or dismissal from service.

30. Under facts and circumstances, parties are left to bear their own costs.

Sd/ S. K. Kar
Judge

Sd/ P. G. Agarwal
Judge

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Date 12.3.04
Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76, Act I, 1973

Application No 5756
ATD 11/12/04