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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 173/02.....

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

E.P/M.A No.....

1. Orders Sheet. OA-173/02.....Pg. 1.....to 5.....
2. Judgment/Order dtd. 20/01/2003.....Pg. 1.....to 7 Dismissed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....173/02.....Pg. 1.....to 19.....
5. E.P/M.P.....NIL.....Pg.....to.....
6. R.A/C.P.....NIL.....Pg.....to.....
7. W.S. submitted by the respondents.....Pg. 1.....to 27.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FROM No. 4.
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH;

ORDER SHEET

Original Application No. 173/2002

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants. Lal Babu Ram

-Vs-

Respondant(s) H. O. I. Jam (K.V.S.)

Advocate for the Applicant(s) R. P. Sarmah, B. Chakrabarty, U. Das

Advocate for the Respondant(s) Counsel for K.V.S.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is for C. F. No. 23. 50/-disposed by 173/76.524.906 Dated 20.5.2002 By Dy. Registrar (S) 01</p>	4.6.02	<p>None appears of the applicant. List on 8.7.02 for Admission.</p> <p><u>U. Sharma</u> Member <u>U. Sharma</u> Vice-Chairman</p>
<p>Steps not yet filed by the counsel of the applicant, said for favour of orders.</p>	9.7.02	<p>Heard learned counsel for the parties. Application is admitted. Call for records. Issue notice on the respondents. Returnable by four weeks. List on 12.8.02 for orders.</p> <p><u>U. Sharma</u> Member <u>U. Sharma</u> Vice-Chairman</p>
<p>By 22.7.02</p>	1m	

23.7.02

By order dated 9.7.2002 the O.A. was admitted, made returnable by four weeks. Office indicated that the Applicant did not take required steps. Further one week's time is allowed to the applicant to take necessary steps.

List on 1.8.2002 for orders.

No. steps filed by
the counsel of
the applicant.

24
31.7.02.

Vice-Chairman

mb

1.8.02

None appear for the applicant.

Mr.N.K.Mazumdar learned counsel ,
appearing on behalf of the respondents.
Mr.Mazumdar has stated that he has been
instructed to appear on behalf of the
respondents. Office is directed to show
the name of Mr.Mazumdar as the learned
counsel for the respondents. The
applicant has not taken steps.
They may take steps within the time.
Mr.Mazumdar will take steps on behalf
of the respondents. The applicant may
also furnish the copy of the application
to Mr.Mazumdar.

List on 7.8.02 for orders.

Member

Vice-Chairman

lm

15.1.03

W/s on behalf
of the respondents
submitted.

Puro

Notes of the Registry

Date

Order of the Tribunal

1.8.02

None appears for the applicant.

Mr.N.K.Mazumdar learned counsel appearing on behalf of the respondents. Mr.Mazumdar has stated that he has been instructed to appear on behalf of the respondents. Office is directed to show the name of Mr.Mazumdar as the learned counsel for the respondents. If the applicant has not taken steps, they may take steps within three days. Mr.Mazumdar is agreeable to accept the copies on behalf of the respondents. The applicant may also furnish three copies of the applications to Mr.Mazumdar.

List on 7.8.02 for orders.

K. K. Sharma
Member

Vice-Chairman

lm

7.8.02

No steps so far taken by the applicant List again on 12.8.2002 for orders.

K. K. Sharma
Member

Vice-Chairman

mb

12.8.02

Mr. U.Das, learned counsel for the applicant informed that he will take steps within two ^{days} weeks.

List again on 27.8.2002 after completion of service report.

K. K. Sharma
Member

mb

27.8.02

Mr. M.K.Mazumdar, learned counsel for the Respondents stated that they ~~h~~ received copy of the application and they are taking steps for filing written statement. List the matter on 10.10.2002 for orders.

K. K. Sharma
Member

Vice-Chairman

mb

No. steps taken by the applicants.

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6.8.02

No. steps taken still now.

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26.8.02

TKA

10.10.02

The respondents are yet to file written statement. List again on 14.11.2002 to enable the respondents to file written statement.

ICU Sharma
Member

Vice-Chairman

mb

No. Wks has been
Vikal

14.11 Due to circuit sitting at
Shillong, the case is adjourned
to 27.11.2002

- MLO

A.K. Fuz
(ST)

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26.11.02

27.11.2002

Mr. M.K. Mazumdar, learned counsel appearing on behalf of KVS, submitted that he has obtained instruction on the matter. The respondents are ordered to file written statement within four weeks from today.

List the case on 6.1.2003 for order.

No. Written Statement
has been Vikal

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3.1.03

bb

Vice-Chairman

6.1.2003

Present: Hon'ble Mr Justice V.S. Aggarwal, Chairman

Hon'ble Mr K.K. Sharma,
Administrative Member

15.1.03

Wps on behalf
of the Respondents
submitted.

Dis.

Mr M.K. Majumder, learned counsel for the respondents, states that he will be filing the written statement during the course of the day in the Registry of this Tribunal. In this view of the matter, it is directed that it may be listed in the regular list on 29.1.2003.

ICU Sharma
Member

Chairman

nkm

29.1.2003

Mr M.K. Majumder, learned
counsel for the respondents
produced the 22 cases before
the court.

A.K.

Received
MLO
7.1.2003

4

Note of the Registry	Date	Order of the Tribunal
	29.1.2003	<p>Present: Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman Hon'ble Mr S.K. Hajra, Administrative Member</p> <p>Mr U. Das, learned counsel for the applicant stated that the brief is not with him and therefore, he is not in a position to argue the case. This cannot be a ground for adjournment. However, considering the facts and circumstances of the case, to do full justice in the case, we adjourn the case for the day. List it tomorrow i.e. 30.1.2003, for hearing.</p> <p><i>[Signature]</i> Member Vice-Chairman</p>
	30.1.2003	<p>Heard counsel for the parties. Judgment delivered in open Court, kept in separate sheets.</p> <p>The application is dismissed in terms of the order. No costs.</p> <p><i>[Signature]</i> <i>[Signature]</i> Member Vice-Chairman</p>

11.3.2003
Copy of the Judgment has been sent to the Office for issuing the same to the applicant as well as to the L/Adv. for the Respondent.

bb

DATE OF DECISION 30.1.2003.....

..... Sri. Lal. Babu Ram APPLICANT(S).

..... Mr. R. P. Sarmah, B. Chakraborty, & M. Das. ADVOCATE FOR THE APPLICANT(S).

- VERSUS -

..... KVS. & Others. RESPONDENT(S).

..... Mr. M. K. Mazumdar. ADVOCATE FOR THE RESPONDENT(S).

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

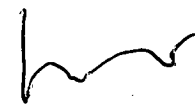
THE HON'BLE MR S.K. HAJRA, ADMINISTRATIVE MEMBER.

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

Yes

no.

Judgment delivered by Hon'ble Vice-Chairman.



Original Application No.173 of 2002.

Date of Order : This the 30th Day of January, 2003.

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

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

Sri Lal Babu Ram

Resident of Village:- Garubandha

P.O:- Missamari, Dist:- Sonitpur

Assam.

. . . . Applicant.

By Advocates Mr.R.P.Sarmah, B.Chakraborty & U.Das.

- Versus -

1. Kendriya Vidyalaya Sangathan

Through its Chairman, 18 Institutional Area

Saheed Jeet Singh Marg

New Delhi - 16.

2. The Commissioner

Kendriya Vidyalaya Sangathan

18, Institutional Area

Saheed Jeet Singh Marg

New Delhi - 16.

3. The Assistant Commissioner

KVS, Guwahati Regional Office

Maligaon, Guwahati-11.

. . . Respondents.

By Advocate Mr.M.K.Mazumdar.

O R D E R

CHOWDHURY J.(V.C.):

The key issue pertains to legitimacy of the action of the respondents in termination of the service of the applicant in aid of Article 81(b) of the KVS Code by dispensing regular enquiry. The basic facts leading to the institution of this proceeding are outlined herein below:-

1. The applicant was first appointed as Primary Teacher in the year 1994 and he was initially posted at Langjing, K.V.No.2 Imphal. In the year 1998 he was transferred at Missamari in Sonitpur District. While he

was serving as such, the applicant was informed as to receipt of certain complaint for alleged misbehaviour towards Kumari Rinku a girl child of class VI A and accordingly the same was intimated to him by memo dated 14.2.2002. The said memo also mentioned formation of a Preliminary Enquiry Committee consisting of Senior PGT, Head Mistress, Tr Rep of VEC and Parent member of Vidyalaya Management Committee. The applicant was directed to co-operate with the Committee in the proceedings and give his explanation on or before 16.2.2002 by 10 a.m. The applicant accordingly submitted his explanation before the Enquiry Committee. By communication dated 25.2.2002 the applicant was advised to report to the Principal, KV Missamari for appearing before the Enquiry Committee on 27.2.2002. According to the applicant, he appeared before the Committee on 27.2.2002 but he did not find any other witnesses or the complainant before the Enquiry Committee. The applicant was not furnished any documents which were relied against him and by the impugned order dated 1.4.2002 his service was terminated dispensing with the enquiry. Hence this application assailing the legitimacy of the action of the respondents as arbitrary and discriminatory. The applicant also contended that the order of termination was passed with improper motive.

2. The respondents submitted written statement contesting the proceeding. The respondents asserted and stated that a complaint against the applicant was received from a father regarding alleged misbehaviour towards his daughter a student of class VI of Kendriya Vidyalaya,

Missamari. The Assistant Commissioner, Regional Office, Guwahati was directed to conduct a summery enquiry into the complaint. The Assistant Commississioner investigated the matter by deputing Sh.B.C.Arukh, Education Officer, Smt.S.Chelin, Principal Kendriya Vidyalaya, IOC Noonmati, and Smt. Sushila Lazman, TGT(Eng), Kendriya Vidyalaya, Missamari. The said committee conducted a detailed enquiry in the Vidyalaya on 25.2.2002 and interrogated the students including the victim girl, the teachers including the applicant against whom the complaint was made. the parents of some of the other complaining girl students. They also inspected the Vidyalaya premises including the music room and the Scouts and Guide room where the alleged act was committed to have a proper perspective of the matter. The committee submitted its findings which was also reproduced in the written statement. The Assistant Commissioner forwarded the report before the Commission with an observation that the applicant was found guilty of immoral conduct towards the girl student and as such he suggested for appropriate action against him. The Commissioner, KVS considered the case in detail and on assessment of all the materials on record, came to the conclusion that the applicant was prima facie guilty of immoral conduct towards Ms.Rinku Kumar of Class VI of Kendriya Vidyalaya, Missamari, took recourse to action under Article 81(b) of Education Code for KVS and terminated his service with effect from 1.4.2002.

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3. We have heard Mr.B.Chakraborty, learned counsel for the applicant and also Mr.M.K.Mazumdar, learned counsel appearing for the KVS at length. Mr.B.Chakraborty took us to the materials on record and contended that it was not a case for taking aid of Article 81(b) and with an improper motive the respondents resorted to Article 81(b). Mr.Chakraborty submitted that all the employees of KVS are though subject to disciplinary control of the Sangathan, they are also entitled for the protection given in Central Civil Services (Classification, Control and Appeal) Rules, 1965 and under the constitutional scheme an employee is entitled for reasonable opportunity to defend guaranteed in Article 80 of the Education Code. The learned counsel for the applicant contended that since the applicant was holding a post of PRT in the KVS, he is entitled to all the safeguard guaranteed under the constitutional scheme. The learned counsel also contended that Article 81 is an exception of Article 80 and those are to be exercised in rarest of the rare cases. Mr.Chakraborty also in support of his contention of this case referred to two decisions of the Hon'ble Supreme Court in Dr.I.C.D.Panday vs - Union of India & Ors. reported in (1996) 3 GLT 402 and in Rakesh Kr. Chanchal - vs - ^{Inspector General} of Police, & Ors. reported in (2000) 2 GLJ 6.

4. We have given our anxious consideration on the contention raised by the learned counsel for the applicant. Article 81 is similar to the provisions mentioned in Article 311(2)(b). It is no doubt, an exception to the rule, but then such rule is introduced only with a view to avoid embarrassment to cause of

employer and also to protect and preserve the moral of the victim girls. the content of Article 311(2)(b) is delineated by the decision of the larger Bench of the Supreme Court of India in Union of India & Another - vs - Tulsiram Patel reported in (1985) 3 SCC 398. An exception is carved out in Article 81(a) in Education Code for KVS in the following manner:-

(i) In the case of a purely temporary employee who is known to be of doubtful integrity or conduct, but where it is difficult to bring forth sufficient documentary or other evidence to establish the charges, and whose retention in the Vidyalaya, etc. will be prejudicial to the interests of the institution.

(ii) In the case of a temporary employee suspected of grave misconduct, where the initiation of regular proceedings against him in accordance with the provisions the CCS(CCA) Rules, 1965, is likely to result in embarrassment to class of employees and/or is likely to endanger the reputation of the institution.

In cases of the above type, the appointing authority may record the reasons for termination of the services of the employee in its own record and thereafter terminate the services of the employee under the rterms of appointment without assigning any reason. Where the appointing authority is the Principal, action to terminate the services of an employee under the terms of appointment shall be taken only after obtaining the prior approval of the Assistant Commissioner."

The Article provides that in cases of the type mentioned, the appointing authority is to record the reasons for termination and thereafter terminate the services of the employee.

5. We have gone through the record of the proceedings which clearly indicated that the Principal of the KVS received complaint from the father of the victim girl and thereafter a Committee was appointed which submitted its report finding the charged officer guilty of misbehaviour towards a girl student. The said report was forwarded to the Assistant Commissioner by memo dated 1.4.2002 and the Commissioner on assessment of the enquiry report, statement of the victim girl student and other students of the Vidyalaya, statement of the teachers and the Principal of the Vidyalaya found the applicant guilty of moral turpitude involving sensual misdemeanour offence towards the girl student and apprehended that continuance of the charged officer in a co-education institution like KVS was prejudicial to the interest of the students of the Vidyalaya and thus in aid of powers under Article 81(b) of the Education Code of KVS he terminated the services of the applicant with immediate effect.


6. Undoubtedly, the applicant is visited with a extreme penalty of termination without holding an enquiry. In our anxiety, that no injustice is caused to the applicant, we have perused the record thoroughly and did not find ~~any~~ any illegality or flaw in resorting to such steps. We have also perused the statements of the concerned persons including the victim girls.


7. Considering all the aspects of the matter we are satisfied that the authority took a decision on assessment of materials available with them. We are also

satisfied with the reasons in not holding a regular enquiry. We have also taken into consideration the two decisions referred to by the learned counsel for the applicant Mr. B. Chakraborty and found both the cases are distinguishable in facts. No illegality is discernible requiring our intervention under Section 19 of the Administrative Tribunals Act, 1985.

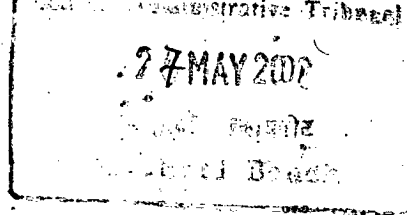
For all the reasons stated above, we do not find any merit in the application and accordingly the same is dismissed.

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


(S.K. HAJRA)
ADMINISTRATIVE MEMBER


(D.N. CHOWDHURY)
VICE CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Guwahati Bench.

O.A No. 173 of 2002

Between

Sri Lal Babu Ram

.....Applicant

-And-

Kendriya Vidyalay Sangathan & Ors.

.....Respondents.

INDEX

Sl.No.	Documents	Page
1.	Application	1 — 11
2.	Verification	12
3.	Annexure- A	13 — 14
3-A	Annexure- A-1	15
4.	Annexure- B	16
5.	Annexure- C	17
6.	Annexure- D	18
7.	Annexure- B-1	19

Filed By :

B. Chatterjee -

Advocate.

27/5/02

Filed by the applicant
through
Anil Kumar Choudhary
27/5/2002
Lal Babu Ram

DISTRICT-SONITPUR.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

Guwahati Bench.

(An application under Section 19 of the Administrative Tribunal Act, 1985.)

For use in Tribunal's Office

Signature Date

O.A. No. - 173 12002

Between

Sri Lal Babu Ram.

Resident of village-Garubandha,

P.O. Misamari, dist-Sonitpur, Assam.

.....Applicant.

And

1. Kendriya Vidyalaya Sangathan,
Through its Chairman, 18 Institutional Area, Saheed Jeet
Singh Marg, New Delhi-16.
2. The Commissioner,
Kendriya Vidyalaya Sangathan, 18, Institutional Area,
Saheed Jeet Singh Marg, New Delhi-16.
3. The Assistant Commissioner, KVS, Guwahati Regional
Office, Maligaon, Guwahati-11.

Respondents.

.....Contd.

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

- i) The applicant through this application assails the order dated 1.4.2002 passed by the Commissioner, Kendriya Vidyalaya Sangathan by which the service of the applicant was terminated purportedly exercising power under Article 81(b) of the Kendriya Vidyalaya Code dispensing with holding regular enquiry.

2. Jurisdiction of the Tribunal :-

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

3. Limitation :

The applicant also declares that the present application is within the limitation period as has been prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case :-

1. That the applicant is a citizen of India and is a present resident of village-Garubandha, P.O. Misamari, district-Sonitpur. The applicant belongs to schedule caste community. The applicant, as such, is entitled to the rights and privileges as guaranteed under the Constitution and the relevant rules framed thereunder.
2. That the applicant, who has passed both the B.A. and B.Ed., following due procedure, was appointed upon selection as Primary Teacher in the year 1994 and his initial posting was at Langjing, K V. No 2 Imphal. In the year 1998, the applicant joined upon transfer at Misamari under Sonitpur district.

A copy of the appointment order dated 7.9.94 is annexed herewith as ANNEXURE-A.

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3. That the applicant right from his student life developed a keen interest in sports and other extra-curricular activities. Even after joining at the Kendriya Vidyalaya Sangathan (herein after referred as KVS in short), the applicant nurtured this interest as well. It was for this reason, the applicant from time to time was entrusted to look after and accompany whenever there is any sports meet or other co-curricular activities and when ever any sports or scout team has to participate outside the station. The applicant all the time performed his duty to the satisfaction of the authority without any complain from any corner.
4. That as already stated above, having a deep faith on the responsibility of the applicant, the school authority used to sent the applicant as in-charge of the team whenever the sports or the scout team had to go outside to participate in meets. The applicant as in-charge escorted 4 sports/scout teams including both boys and girls with only one lady teacher in various occasions at KV Noonmati, KV Umroi Cantt., KV No.1 Tezpur etc. The applicant also accompanied the sport team at regional basis as well as national level to Kanpur and other places and in all the occasions there were both boys and girls from the schools and in not a single occasion, there was any complaint in this regard about managing the group or as regard to his character.
5. That it is not out of bound to state here that the applicant studied in the same KV Missamari cantt. And at present one of his brother as well as his son are also studying in the same school. The applicant bears a deep emotional feeling towards this school because of the reason of his involvement right from his childhood.

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6. That on 9.2.2002, a two day camp was organised at the school at KV Misamari Cantt. for the scouts in which about 135 students including 48 Girls and 87 boys participated. Besides, there was 10 teachers including the applicant and among the teachers, there was 4 lady teachers also.

7. That to the utter shock and surprise of the applicant, he was served with a memorandum by the Principal of the school on 14.2.2002 stating therein that a complaint has been received from a girl student of class VI who participated in the scout camp. The applicant was further asked to report before a committee consisting of 4 members on or before 16.2.2002.

A copy of the said memorandum dated 14.2.2002 is annexed herewith as ANNEXURE-A-1.

8. That the applicant appeared before the committee on 15.2.2002 when the committee asked the applicant to make some irrelevant question but did not provided him with the copy of the complaint or the statements of the person so taken in his absence by the said committee. The applicant having not given sufficient time to make his defence, however under compelling circumstances gave his statements in defense which was not a reasonable opportunity to defend his case. It is not known to the applicant whether the said committee called other teachers who are present at the camp and took their deposition as the applicant did not find other teachers or students when he was called, neither the applicant was given opportunity to cross examine nor their deposition copy was given to him.

A copy of the letter dated 15.2.2002 by which the applicant was asked to *reply* is annexed herewith as ANNEXURE-B.

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9. That in the mean time vide an order dated 18.2.2002, the applicant was transferred from KV Misamari to KV AFS, Digaru and the applicant was accordingly relieved on 19.2.2002.
10. That vide a communication dated 25.2.2002, the applicant was again asked to report before the Principal, KV Misamari and accordingly the applicant appeared on 27.2.2002 when also he did not find any other witnesses or the complainant as such the applicant was denied from the opportunity to cross examine them. The applicant was not shown the documents that was relied or used against him. The so called enquiry officer who was the Education Officer from the Regional Office Guwahati came with a predetermined mind hurriedly put some irrelevant question and discharge the applicant without giving him sufficient time and opportunity to explain in defense.

A copy of the letter dated 25.2.2002 is annexed herewith as ANNEXURE-C.

11. That finally vide an order dated 1.4.2002, issued by the Commissioner, KVS, the applicant was terminated from his service purportedly exercising power under Article-81-(b) of the Kendriya Vidyalaya Code dispensing with the enquiry. Having issued the order of termination, the Principal, KV AFS Digaru issued an order making payment of one month salary and 4 days notice in pursuance to the order dated 1.4.2002 of the Respondent No.2.

A copy of the impugned order dated 1.4.2002 and the subsequent order of the Principal dated 4.4.2002 are annexed herewith as ANNEXURE-D & D-1.

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12. That the applicant begs to state that it would have been impossible for the applicant to commit the alleged misdeed as there was in total 135 students including 48 girls students. Besides there was 10 teachers in total. When the camp was held within the school campus in a open space to which everybody was present. It is not understood thinking prudently, as to why the complainant did not raise or made a single whisper to her other fellow students or had even told the other lady teacher who were present at the camp on the date of alleged misdeed.
13. That the applicant begs to state that the applicant was never furnished with the copy of the alleged complaint nor the applicant was allowed to cross examine of the witnesses or persons who have deposed if any on the alleged incident nor he was supplied with the copy of the statements of the persons who have deposed before the so called enquiry committee. Be it stated here that the applicant was asked to appear before a committee vide a letter dated 25.2.2002 as such he ought to have been provided with the copy of the statements, imputation of charges and the documents sought to have used against him. This drawbacks has seriously cause prejudice to the applicant in defending his case.
14. That the applicant begs to state that the so called allegation was not brought before the lady teachers who were all along present at the camp nor the matter was reported before the Principal who visited the camp. The applicant seriously believe that the allegation was brought to malign him and to cause harassment so that he can be remove. Just to remind here that the applicant who belongs to schedule caste community was always sought to be victimise by other members of the teaching faculty. The applicant just before few days of holding the camp have heated exchange of words with one senior teacher, Sri Namboori who

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interestingly was again asked to enquire into the matter as the convenor. The applicant was further not in the good book of Sri Namboori who was made a member to look into the allegation.

15. That the applicant humbly states that there was no scope or any intention on the part of the applicant to go for such alleged acts as he has not only studied in the same school, but his own son and a younger brother are still studying in the said school. The applicant or any male member including have no chance to enter room as alleged as the girls were allowed to sleep separately where there was two lady teacher in each room during the camp. It is not out of bound to state here that the applicant has carried out such camp in number of occasions earlier without any complaint from any corner.
16. That as already stated above, the allegation was an after thought at the instance of some vested interest persons who wanted to drive out the applicant from the school because of his popularity among the students and the locals for his long association with the school. The applicant was not at all involved with such alleged misdeeds. The applicant showing a care for the child has even asked the child as to why she had left the camp for shopping complex without the permission of the teachers on the very same day of alleged occurrence. The action of termination being vitiated for not providing a reasonable opportunity to make his defense, the order of termination dated 14.2002 is therefore liable to be quashed and set aside.
17. That the applicant begs to state that the purported exercise of power was exercised under Article 81 (b) of the Kendriya Vidyalaya Education Code which is an guidelines framed under executive discharge of function cannot override the

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protection so given under Article 14, 16 21 and 311 of the Constitution of India and as such same being ultravires to the Constitutional provision is therefore liable to be strike down.

18. That it is stated that the power conferred under Article 81 (b) is unguided, uncanalized and unconstitutional as the same put an unreasonable restriction in the matter of fundamental rights as guaranteed under the Constitution of India, as such the same is liable to be struck down as ultra vires.

5. Grounds for present application.

- a. For that the applicant was denied from reasonable opportunity to defend his case which has seriously prejudice him. The present is a not a fit case whereby the process of regular enquiry was dispensed with as the matter was not related with the security of the state. The applicant was not given chance to remove the stigma which has been cast upon him without reasonable proof. Hence the order of termination dated 1.4.2002 is liable to be quashed and set aside.
- b. For that from the entire sequence of events as stated above it is apparent that the applicant was never given the copy of the complaint, the copy of the statements of person who have deposed before the so called committee. The applicant was further not provided with the copy of the documents used against him. This short comings has therefore vitiated the entire action of the Respondents and as such the order of termination dated 1.4.2002 is liable to be quashed and set aside.
- c. For the Respondents in terminating the service of the applicant acted in a predetermined way in gross violation of the principles of natural justice and

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administrative fair play for which the order dated 1.4.2002. is not maintainable and as such is liable to be quashed and set aside. The order being a punitive one was acted upon without providing any reasonable opportunity to defend his case.

- d. For that Article 81(b) being an administrative guidelines cannot override the protection and the rights as enshrined under the Article 14, 16, 21 and 311 of the Constitution of India. The order dated 1.4.2002 being not passed in consonance with the aforesaid Articles of the Constitution of India, the order of termination dated 1.4.2002 is therefore liable to be quashed and set aside.
- e. For that the Article 81(b) of the Kendriya Vidyalaya Code being in violation of Article 21 and 311 of the Constitution of India is therefore liable to be strike down as ultra vires .
- f. For that the allegation against the applicant having never raised before the teachers who were present at the camp including the principal. The allegation being baseless and concocted one having not proved by due course of regular enquiry providing opportunity to the applicant to adduce evidence in his defense, the action of the Respondents in the instant case besides being arbitrary, illegal, mala fide and biased is also violative of Article 16, 19 and 21 of the Constitution of India.
- g. For that the action of the Respondents in the instant case is patently mala fide and perverted based on irrelevant and extraneous consideration. The order dated 1.4.2002 is therefore liable to be quashed and set aside.

.....Contd.

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- h. For that the impugned action besides being arbitrary , illegal and malafide is also liable to be condemned and set aside as same has been done whimsically, capriciously and under colorable exercise of power without due application of mind. The applicant cannot be terminated in the way the same was done as per the order of appointment.
- i. For that the order so assailed and the entire exercise of power has been performed in violation of the principle of natural justice and administrative fair play. The orders as such is liable to be quashed and set aside.
- j. For that in any view of the matter the impugned action is bad in law as well as in fact and as such the same is liable to be quashed and set aside.

6. Details of Remedies exhausted :-

The applicant declares that he has no other alternative efficacious remedy other than to approach this Hon'ble Tribunal for getting redressal. The applicant who is a married, is the lone earning member of the family and as such the applicant also deserve interim order to protect himself from irreparable loss and injury.

7. Whether Any Appeal or Suit Is Pending In any Court With Regard To The Subject Matter In Agitation:

That the applicant further declares that there is no suits, application or writ petition pending before any court or tribunal with regards to the matter as agitated in this petition.

8. Details of Relief Sought for:-

.....contd.

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Under the facts and circumstances stated above, the applicant humbly prays that this Hon'ble Tribunal may be pleased to admit this application, call for the records and after hearing the parties may be pleased to pass an order setting aside the impugned order dated 1.4.2002 (Annexure-) and further be pleased to issue direction upon the Respondents to reinstate the applicant back to his service with all benefits and/or pass such order/orders to which the applicant is entitled as per law and equity including the cost of the proceedings.

9. Interim reliefs if any :-

Under the present facts and circumstances, the applicant prays that the impugned order dated 1.4.2002 passed by the Respondent No. 2 may be stayed.

10. Particulars of I.P.O :

I.P.O. No. dated for Rs. 50.00 (Rupees Fifty only) is enclosed.

.....Contd.

VERIFICATION

I, Sri Lal Babu Ram s/o Bhagwant Ram, aged about 36 years, resident of Garubandha Village, P.O Misamari district- Sinitpur as the applicant in the instant application do hereby verify that the statements made in this instant application 1, 2, 3, 4(1, 3 to 6, 8, 9, 12 to 18), 6 & 7. _____ paragraphs are true to my knowledge and belief and those in paragraphs 4(2, 7, 10 & 11) are being matters of information derived from records which I believe to be true and the rest are my humble submission before this Hon,ble Tribunal.

I sign this verification on this 27th day of May, 2002 at Guwahati.

Lal Babu Ram.
Signature.

.....Contd.

No. F. 2-16/22795/KVS-SR/23912-447

Dated: 22.8.84

M E M O R A N D U M

SUB: OFFER OF APPOINTMENT TO THE POST OF Primary Teacher

With reference to his/her application dated 12.2.84

Shri/Smt. Lal Babu Ram

is hereby informed that he/she has been selected for appointment against temporary post of Primary Teacher

in Kendriya Vidyalaya Sangathan on an initial pay of Rs. 1200/- in the scale of pay 1200-30-1380-E B-30-1560-ED-40-1800-ER-40-2040/- as per terms and conditions indicated below:

1. He/She will draw allowances and other benefits in addition to pay at rates as admissible to the Kendriya Vidyalaya Employee.
2. This offer of appointment is subject to the candidate being declared fit for the post of FRT by a Civil Surgeon.
3. If the candidate is a women, she should certify that she is not in the family way at the time of acceptance of the appointment. If, however, she is pregnant of twelve weeks standing or over at the time of acceptance of appointment as a result of medical test, she will be declared temporarily unfit and the offer would be treated as withheld for the present. She would be re-examined for a fitness certificate six weeks after the date of confinement & her appointment would be subject to production of medical certificate from a Civil Surgeon. In case, the candidate fails to comply with these instructions her selection will stand cancelled and no further correspondence will be entertained from her. On production of medical fitness certificate, she will be appointed to the same post.
4. T.A. on first appointment in case of journeys for taking up initial appointment to a post in the North Eastern Region limited to ordinary bus fare/second class rail fare for road/rail journey for himself/herself and his/her family will be admissible.
5. He/she will be on probation for a period of 2 years which may be extended by one year by competent authority. Upon successful completion of probation he/she will be considered for confirmation in his/her turn as per KVS rules, provided nothing adverse is found against him/her upon verification of his/her character and antecedents by the competent authority. Adverse report on his/her character/antecedent submitted by the competent authority will render him/her liable to be terminated from the services under Kendriya Vidyalaya Sangathan.
6. During the probation and thereafter, until he/she is confirmed, the services of the appointee are terminable by one month's notice on either side without any reason being assigned thereof. The appointing authority, however, reserves to itself the right to terminate the services of the appointee before expiry of the stipulated period of notice by making payment of sum equivalent to the pay and allowances for the stipulated period of notice or the unexpired portion thereof.
7. If at any time after the appointment any statement/declaration furnished/made, whether before or after his/her selection, is found false, his/her services shall be terminable forthwith without giving prior notice.
8. Other terms and conditions of service governing the appointment as laid down in the Education Code for Kendriya Vidyalayas as amended from time to time. Since Kendriya Vidyalaya Sangathan Group Insurance Scheme has been introduced with effect from 01/01/83 joining to above scheme is compulsory.

Attested
R. S. -
Adm. -

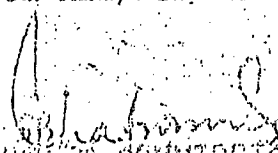
9. He/She will be liable to be transferred any where in India in the interest of Kendriya Vidyalaya Sangathan. Initially he/she is posted as PRT at Kendriya Vidyalaya ~~XXXXXX~~ Dholehara

10. A person already in service will be allowed to join Kendriya Vidyalaya Sangathan when/she produces relieving order of his/her parent department at the time of joining. He/she will not request for transfer outside Silchar Region within three years of initial posting.

11. In case of any dispute or claim against the Kendriya Vidyalaya Sangathan in respect of service or any contract arising out of or flowing from this offer of appointment, the courts at Delhi alone shall have jurisdiction.

12. If he/she accepts the offer under the terms and conditions stipulated above, she/he should send his/her acceptance immediately on receipt of this Memorandum in the form attached to the Principal and the undersigned and join Kendriya Vidyalaya mentioned above. Necessary proforma for purpose mentioned in forms VIIA/B, VIII to XI and XIII are enclosed herewith which should be submitted to the Principal concerned after getting the same duly completed in all respects. This acceptance should reach the undersigned in any case by 22.9.94. If the offer is not accepted by the said date or after acceptance if the appointed does not report for duty at the above named Kendriya Vidyalaya on 26.9.94, this offer of appointment will be treated as automatically cancelled and no further correspondence will be entertained from him/her in this regard.

Enclot: As above.


ASSISTANT COMMISSIONER

To

Shri Lal Babu Ram

S/O Shri Bhagwant Ram

VILL. Gorubandha P.O. ~~XXXX~~ Missamari

Dist. Sonitpur PIN. 784506

Copy forwarded to: Assam.

1. The Principal, Kendriya Vidyalaya Dholehara
The date of joining of the candidate may be intimated to this office telegraphically after the candidate reports for duties. In case he/she does not join by the stipulated date, this office should be informed telegraphically. This appointment is further subject to production of certificates etc. as per articles 49(I) of Education Code for Kendriya Vidyalayas. The original application form alongwith its enclosures of the said candidate is enclosed herewith which should be kept in the personal file of the Official. The candidate be allowed to join his/her duties only after verification of original certificates and on submission of requisite forms/statements vide appendices VII(A)/B, VIII, IX, X, XI (if necessary) and XIII duly completed in all respects.

The receipt of this application form should be acknowledged.

2. The Deputy Commissioner(Pers.),
Kendriya Vidyalaya Sangathan,
NEW DELHI - 16.


ASSISTANT COMMISSIONER.



कन्द्रीय विद्यालय न०-१, मिसामारी
KENDRIYA VIDYALAYA No.-1, MISSAMARI

P.O. - Missamari : Pin - 784506

Dist. - SONITPUR : (ASSAM)

Ref. No F.32/KVM/2001-2002/1396

Date 14-2-2002

M E M O R A N D U M

The undersigned has received an allegation against Mr. L B Ram, PRT regarding his misbehaviour towards Kumari Rinku a girl child of class VI A.

In this connection a Preliminary Enquiry Committee consisting of

- 1) Sri TNNamboori (Senior PGT) - Convener
- 2) Mrs D D Seal (Head Mistress)
- 3) Sri B Ram, (Tr Rep of VEC) and
- 4) Mrs. Kiran Shekhawat (Parent member of VMC)

- is constituted as per KVS letter No.F.39-1/2000-KVS(GR)/2065-103 dated 30th January 2002.

Hence, he is directed to co-operate with the committee in the proceedings and give his explanation on or before 16-2-2002 by 10 a.m.

To

✓ Sri L B Ram, PRT,
K.V, Missamari

Copy to:

- 1) The Chairman,
V.M.C,
K.V, Missamari
- 2) The Chairman (Nominee),
V.M.C,
KV, Missamari
- 3) The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Guwahati

(G RAMA RAO)
PRINCIPAL

प्राचार्य/Principal

के. वि. न०-१, मिसामारी

K.V. No-1, Missamari

(G RAMA RAO)
PRINCIPAL

attached
PRT
Admmt

ANNEXURE-B

To,

The Enquiry Committee,

K.V. Missamari.

Sir/Madam,

I, L. B. Ram, PRT of K.V. Missamari, firmly deny the allegation raised against me by Kumari Rinku of Class VI A. It is completely baseless and exaggerated. I doubt foul play behind it and some hands deliberately want to put me in trouble.

2. The allegation raised by the student was not brought to the knowledge of either escort lady teacher or Principal on the same day (9.2.02). It shows the conspiracy behind it.
3. As far as the matter of touching the students I had never touched any student with bad intention. I behave with them like my own children. I show them fatherly affection.
4. When Km. Rinku came to collect the dairy to the scout room at 13.15 hrs., the door and windows of the scout room were open. A number of scouts students and watchman were standing near the scout room. She collected her dairy and left the scout room immediately.

Being a teacher I cannot misbehave with any student and knowingly I never indulged in such type of misbehavior as framed against me by the said girl.

Thanking You,

Date- 15.2.02

Yours faithfully,

Sd/- L.B. Ram

PRT, K. V., Missamari.

*attested
P.S.
Admatti*

.....Contd.



केन्द्रीय विद्यालय संगठन
KENDRIYA VIDYALAYA SANGATHAN

क्षेत्रीय कार्यालय Regional Office
मालीगोंव चारियाली Maligaon Chariali
गुवाहाटी : 781 012 Guwahati : 781 012

पत्रांक :
No. F. : 13-8/94-KVS(GR)/3663-70

दिनांक :
Dated : 25.02.02

OFFICE ORDER

Shri L.B. Ram, PRT, recently posted at Kendriya Vidyalaya, Digaru is hereby directed to report to the Principal, Kendriya Vidyalaya, Missamari on 27.02.2002(F/N) for appearing before the enquiry committee without fail.

He will be paid TA/DA as per rule for the aforesaid journey.

To,

Shri L.B. Ram, PRT
Kendriya Vidyalaya
Digaru.

(D. K. SAINI)
ASSISTANT COMMISSIONER

Copy to :-

1. The Principal, K.V. Digaru with a requested to relieve Shri Ram with a direction to report to the Principal Kendriya Vidyalaya, Missamari on 26.02.2002.
2. The Principal K.V. Missamari for information & necessary action.

ASSISTANT COMMISSIONER

attested
R.D.
Sharma

SPEED POST/CONFIDENTIAL

KENDRIYA VIDYALAYA SANGATHAN
[VIGILANCE]

18, INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI-110016.

No.F.10-4/2002-KVS(Vig.)

Dated: 01/04/2002

ORDER.

WHEREAS, Shri L.B.Ram PRT, Kendriya Vidyalaya, Digaru has been prima facie found guilty of Moral Turpitude involving exhibition of immoral and sexual behaviour towards Miss Rinku Kumari, a student of Class VI of Kendriya Vidyalaya Missamari during a scouting camp on 9.2.2002 in the Music cum Scouts and Guide Room.

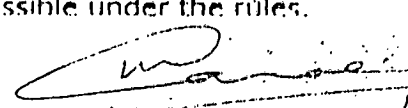
WHEREAS, the undersigned is satisfied with the Summary Inquiry Report submitted by the Assistant Commissioner, Regional Office, Guwahati, statement of the victim girl student and other students of the Vidyalaya, statement of the teachers and the Principal of the Vidyalaya, that the said Shri L.B.Ram PRT, Kendriya Vidyalaya, Digaru is guilty of Moral Turpitude involving sexual offence and exhibition of immoral sexual behaviour towards the girl student of Kendriya Vidyalaya, Missamari.

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

The evidence on record establishes the guilt of the teacher and hence the continuance of the said Shri L.B.Ram PRT in a co-educational Institution like Kendriya Vidyalayas is prejudicial to the interest of the students and the Vidyalaya.

NOW, THEREFORE, the undersigned, in the capacity of the Commissioner, K.V.S. in exercise of the powers under Article-81(b) of the Education Code for Kendriya Vidyalayas, hereby terminates the services of the said Shri L.B.Ram PRT, Kendriya Vidyalaya, Digaru with immediate effect.

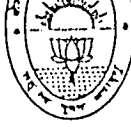
Shri L.B.Ram PRT, Kendriya Vidyalaya, Digaru will be paid Pay & Allowances for one or three months as the case may be as admissible under the rules.


(H.M. CAIRAE) 28/03/2002
COMMISSIONER

DISTRIBUTION :-

- ✓ 1. Shri L.B.Ram PRT, Kendriya Vidyalaya, Digaru
2. The Principal, Kendriya Vidyalaya, Digaru with the direction that the Pay & Allowances to Shri L.B.Ram, PRT, in lieu of notice period is to be regulated in terms of Article-81(b) of Education Code for K.Vs. In case Shri L.B.Ram is a permanent employee, he should be paid three months salary in lieu of notice period.
3. Principal, Kendriya Vidyalaya Missamari.
4. The Assistant Commissioner, KVS, Regional Office, Guwahati
5. Guard file.

attached
D.S.
Admnl



Ref. No. F.KVD/424/Estt/2002-03/09-13

Date. 4-4-02.

OFFICE ORDER

With reference to the KVS(HQ) order No.F-10-4/2002-KVS(vig) dated 1-4-02, please find enclosed herewith cheque No.887123 dated 4-4-02 for Rs.9766/- (Rupees Nine thousand seven hundred sixty six only) towards the payment of one month's salary alongwith notice period (4 days) as your services are terminated by the Commissioner, KVS(HQ) New Delhi.

To

✓ Mr. L.B. Ram, PRT,
KV AFS Digaru.

(S P VERMA)
Principal,
प्राचार्य / Principal,

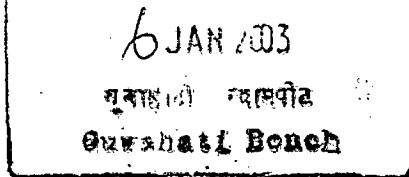
Copy to:

1. The Asstt. Commissioner, KVS (GR) Guwahati, Sonapur, Kamrup, Assam-782402
2. The principal, KV Missamari.
3. The Chairman, VMC KV AFS Digaru.
4. The Chairman, VMC KV Missamari.

(S P VERMA)
Principal.

ॐ

attested
By
Principal



Filed by Mr. K. S. Panda
Through - Mr. Majumdar
6-1-03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O.A. No. 173/02

Shri Lal Babu Ram.

-versus-

K. V. S. and others.

In the matter of -

Written statement on behalf of the
Respondent.

AND

In the matter of -

Shri S. S. Sehawat,

Assistant Commissioner,

Kendriya Vidyalaya Sangathan,

Guwahati Region.

..... Respondent.

The humble written statement of the Respondent
are as follows :-

1. That the Respondent states that in the Original application he has been made party and a copy of the same has been served upon him. The Respondent has gone through the contents of the petition and understood the same and and he is competent to file the written statement on behalf of him and for others, they being the Official Respondents.

2.....

2. That the Respondent states that the statement and averments made in the original application are totally denied. The statements which are not born out of records are denied. The deponent further states that the statement which are not specifically admitted may be deemed to be denied.

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

A complaint of Sh. N.K. Rampravesh, JE (Civ), Missamari was forwarded to KVS by the office of HRM regarding molestation of his daughter Km. Rinku a student of Class VI of Kendriya Vidyalaya, Missamari by Sh. L.B. Ram, Primary Teacher of Kendriya Vidyalaya in the music room on 9th Feb. 2002.

The Assistant Commissioner, Regional Office, Guwahati was directed to conduct a summary inquiry into the complaint. The Assistant Commissioner got the investigation done by deputing Sh. B.C. Arukh, Education Officer, Smt. S. Chelin, Principal Kendriya Vidyalaya, IOC Noonmati, and Smt. Sushila Lazman, TGT (Eng) Kendriya Vidyalaya Missamari. The said committee conducted a detailed inquiry in the Vidyalaya on 25.2.2002 and interrogated the students including the victim

girl.....

victim girl, the teachers including Shri L.B. Ram, against whom the complaint was made, the parents of some of the other complaining girl students. They also inspected the vidyalaya premises including the music room and the scouts and Guide Room to have a proper perspective of the matter.

The report submitted by the aforesaid committee contained the findings as under.:

1. Mr. L.B Ram, PRT Kendriya Vidyalaya Nagar and Scout Master of Kendriya Vidyalaya Misamari instructed Km. Rinku, VI-A to come to the Music cum Scout and Guide room on 8.2.2002 same time between 1 PM to 1.30 PM to take scout and guide diary.
2. Km. Priyanka Bagar, Class V saw Mr. L.B. Ram going with KM Rinku putting his hand over her shoulder and taking her towards the music cum scout and guide room.
3. As per the statement of Km. Rinku and after interrogation with her and Mr. L.B. Ram, it is ascertained that there was no body in that room at that time. Being second saturday it was holiday for the school. Only 135 nos of scouts and Guides were present in the vidyalaya for the camp. However, as it was the lunch hour nobody came towards scouts and guides cum music room.

4.....

4. Mr. L.B. Ram, as per KM Rinku's statement, asked her to open the almirah and bring out the scout and guide diary. While she did so, he kissed her and placed her on his lap and kissed her, again in her lips and squeezed her and placed her on his lap and kissed her again in her lips and squeezed her breast and touched her bottom.
5. Km. Rinku went crying to her patrol leader Km. Frinky Saikia and reported the matter. Km. Frinky, in turn, went to Km. Maya Pradhan, the troop leader, and reported the matter.
6. Km. Rinku did not report the matter to any escort teacher on 9.2.02 and 10.2.02. On 11.2.02 she gave a written complaint to the principal just after the morning assembly.
7. The principal called Mrs. D.D. Seal, the Headmistress and told her to make an enquiry.
8. This activity of Mr. L.B. Ram is corroborated with ~~the~~ his previous similar misbehaviour towards girl students recorded in the preliminary enquiry report, which has been re-examined by the present committee. Concerned teachers and students were interrogated and then statements obtained in this connection which are summarized below :

(i)

- (i) on 30.9.2000 parents of Km Rinku submitted a complaint ~~xxxx~~ against Mr. L.B.Ram misbehaving with their daughter while she was in class V. Mr. L.B.Ram was her class teacher. At that time Mr. L.B.Ram confessed and begged for forgiveness ~~xxx~~ and assured that he would not repeat this kind of behaviour in future in front of Ms. Aruna Sharma PET, Mr. A.K.Mishra, then I/c. Principal and Rinku's parents. However, Principal changed Rinku's section from V-C to V-A.
- (ii) On 7.2.02 Km. Zinky Saikia saw Mr. L.B.Ram squeezing the breast of Km. Sijjimal, VI-A in music room when she went to practise dance for forthcoming scout and Guide camp on 9.2.02 and 10.2.02.
- (iii) At Kendriya Vidyalaya Noonmati, Km. Tritiya Sopan and Km. Pallavi Rabha, saw Mr. L.B.Ram repeating the same activity towards Km Archana Das, of Class VIII.

9. From the previous incidents narrated by the eye witnesses and other circumstantial evidences, the committee draws the conclusion that Mr. L.B.Ram, PRT and Scout Master misbehaved with Km. Rinku by kissing her and squeezing her breast.

The aforesaid finding of the committee is supported by the statements of students/teachers and parents of the vidyalaya.

The.....

- 6 -

The Assistant Commissioner, Regional Office, Guwahati while forwarding the Report has observed that the said teacher is prima-facie guilty of immoral conduct towards the girl student and as such appropriate action to be initiated against him.

The Commissioner, KVS having considered the case in detail and having gone through the Inquiry Report and the statements of the students, teachers, and parents recorded during the course of Inquiry and other circumstantial evidence, and having come to the conclusion that Shri L.B. Ram was prima-facie guilty of immoral conduct towards Miss Rinku Kumar of Class VI of Kendriya Vidyalaya Missamari, took recourse to action under Article 81(b) of Education Code for KVs and terminated his services vide order dated 1.4.02.

Aggrieved by the said order of termination, Shri L.B. Ram preferred an appeal with the Vice-Chairman, KVS.

The observation of the Vice-Chairman, KVS while disposing of the appeal of Shri L.B. Ram is placed at annexure - 'A'.

In the light of submissions made above, the perwise comments on the O.A. may please be perused as under :

4. That the Respondent states that with regard to paras 4.1, 4.2, 4.3, 4.5, the Respondent does not forward

any.....

- (i) on 30.9.2000 parents of Km Rinku submitted a complaint ~~again~~ against Mr. L.B.Ram misbehaving with their daughter while she was in class V. Mr. L.B.Ram was her class teacher. At that time Mr. L.B.Ram confessed and begged for forgiveness ~~and~~ and assured that he would not repeat this kind of behaviour in future in front of Ms. Aruna Sharma PET, Mr. A.K.Mishra, then I/c. Principal and Rinku's parents. However, Principal changed Rinku's section from V-C to V-A.
- (ii) On 7.2.02 Km. Zinky Saikia saw Mr. L.B.Ram squeezing the breast of Km. Sijjimal, VI-A in music room when she went to practise dance for forthcoming scout and guide camp on 9.2.02 and 10.2.02.
- (iii) At Kendriya Vidyalaya Noonmati, Km. Tritiya Sopan and Km. Pallavi Rabha, saw Mr. L.B.Ram repeating the same activity towards Km Archana Das, of Class VIII.

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The aforesaid finding of the committee is supported by the statements of students/teachers and parents of the vidyalaya.

The.....

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In the light of submissions made above, the perawise comments on the O.A. may please be perused as under :

4. That the Respondents states that with regard to paras 4.1, 4.2, 4.3, 4.5, the Respondent does not forward

any.....

any comment and so far statements made in para 4.6, 4.7, 4.8, 4.9, 4.10 and 4.11 the Respondent denies the statements and forward the comment as follows -

The applicant was terminated from the service of the KVS by the Commissioner, KVS for having indulged in immoral conduct towards a girl student of the vidyalaya. The summary inquiry conducted in this regard at the behest of the Commissioner, KVS held the charge prima-facie proved against the applicant. Hence, based on the consideration of the facts and circumstances of the case and having applied his mind, the Commissioner, KVS by invoking the provisions under Article 81 (b) /of Education Code for K. Vs. passed the order of termination from service upon the ~~applicant~~ applicant.

A committee constituted by Assistant Commissioner, Regional Office, Guwahati conducted the Summary Inquiry in terms of the provisions of Article 81 (b) of Education Code for K. Vs. as directed by the Commissioner, KVS. It is evident from the Report based on the statements of the students, teachers, and parents recorded during the course of inquiry and other circumstantial evidence that Sri L.B. Ram has been prima-facie guilty of Moral Turpitude involving exhibition of immoral sexual behaviour towards Km Rinku by kissing her and squeezing her breast. The past conduct of the teacher in relation to other girl students and towards

the.....

the particular victim girl, Km Rinku, ~~xxx~~ to whose parents the teacher had tendered apology and a promise for restraint but to no avail, clearly manifest the depravity of the mindset of Sh L.B.Ram. Because of such depraved behaviour of the teacher, the students are at constant peril of being exploited.

Sh. L.B.Ram has also been given an opportunity to be heard in person and his statement recorded by the said committee which does not bring any material fact absolving him of his afore-mentioned misbehaviour.

In such cases of misconduct involving moral turpitude, conducting a regular inquiry and departmental proceedings under the CCS(CCA) Rules, 1965 is neither feasible nor desirable for the following reasons :

1. It will traumatize the girl students who have already undergone a lot of trauma.
2. During summary inquiry, the statements of the girl students were recorded by the Summary Inquiry committee itself when there was nobody except the victim girl but in the regular inquiry under CCS(CCA) Rules no such privacy can be maintained.
3. During the regular hearing the girl students have to face Inquiry Officer, Presenting Officer, charged officer and his defence Assistant. There will be a lot of embarrassment to the girl students.

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4. During the regular inquiry the PO has to ask certain questions from the girl students during examination-in-chief to defend the case in support of the department likewise the charged officer and his defence Assistant has to cross examine the victim girls by asking several + uncomfortable — questions having relevance of the or no relevance for proving the charged officer as innocent.
5. Naturally there will be mud slugging during the cross examination which will be an embarrassing situation for the girl students as well as for the parents.
6. It has also been observed that charged officer exercises a lot of pressure on the parents of the victim girls to withdraw their complaints against him and in most of the cases he ~~succeeds~~ succeeds and parents reluctantly have to withdraw their complaints in order to save the situation.
7. Students have a lot of respect for their teachers as such, during the cross-examination, it is apprehended that the girls cannot bear the influence of the teacher and will change their statements.
8. It has also been observed that due to the fear of the conservative society, parents do not like unnecessary publicity of the case of moral turpitude to avoid social stigma.

9. Continued presence of the charged officer in the school or at least his presence during the inquiry will make the victim girl students as well as their parents harassed and traumatized demoralised, etc.

In a landmark judgement in the case of Avinash Nagra -Vs- NVS given by the Hon'ble Supreme Court of India, it has been remarked that teacher owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession, he should always be willing, self disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to high levels in any walk of life. Mahatma Gandhi, Father of the Nation has stated that "a teacher cannot be without character". If he lacks it, he will be like salt without its savor students imbibe more from the teachers own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them they will have betrayed the students'. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the students into a disciplined citizen inquisitive to learn intellectual to pursue in any walk of life

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with dedication, discipline and devoting. with an inquiring mind but not with blind customary beliefs.

Kendriya vidyalayas are co-educational institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on KVS to protect the young children, in particular the growing up girls to bring them up in disciplined and dedicated pursuit of excellence.

The fallen standard of Sh. L.B.Ram is a tip of the iceberg in the discipline of teaching a noble and learned profession. without a dedicated and disciplined teacher, even the best education system is bound to fail it is therefore the duty of the teacher to take such care of the pupils as a careful parent would ~~be~~ take ~~care~~ of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher.

under these circumstances the conduct of Sh. L.B.Ram has been perceived to be unbecoming of a teacher much less a loon. Thus, concluding a regular inquiry under CCS(CCA) Rules, 1965 is not viable as it would expose the modesty of the girl students to the tardy process of cross-examination at its altar. Hence dispensing with the requirements of holding a regular inquiry in this case, and invoking the provisions of Article 81(b) of the Education

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code for Kendriya Vidyalayas, the services of Sri L.B.Ram, PGT (Chem) has been terminated by the Commissioner, KVS since his retention in a co-educational institution like Kendriya Vidyalayas is prejudicial to the interest of the students and the vidyalaya.

5. That with regard to statements made in para 4.4 the Respondent denies the statement and states that the applicant has been alleged to have conducted similar deprive acts towards, Km. Archana Das, of class VIII at Kendriya Vidyalaya Noonmati as witnessed by Km. Tritiya Sopan and Km. Pallavi Rabha, and reported to the members of the enquiry committee. In fact the service of the applicant is not at all unblemished as claimed by him as it has been besotted with many such indecent or misbehaviour with girls of Kendriya Vidyalaya, Missanari and Kendriya Vidyalaya, IOC Noonmati as he was a scout master he used to attend S/G. camps in different vidyalayas of Regional Office Guwahati.

6. That with regard to statements made in para 4.12, the Respondent denies the same and states that it has nowhere alleged that the incident took place in the presence of all the scouts - guides and teachers of the vidyalaya present in the camp. As reported by the victim girl, she was taken to the music room by the applicant on

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some pretext where he did the perverted act which has been corroborated by circumstantial evidence. He had also invited the girl to come and sleep with him at night in the music room during scouts and guides camp otherwise he would fail her. If she came, he will give her a badge and take her to all scout and guide camps. The girl got so scared of these overtures that she hung closely to the patrol leader to whom she had reported the matter instantly and later to the Principal on the first working day.

7. That with regards to the statements made in para 4.13, the Respondent reiterates the statements made denying the ~~statement~~ statement 4.6. - 4.11 and state that, a regular enquiry as envisaged under Rule 14 of CCS(CCA) Rules, 1965 was ~~the~~ not considered feasible in the present case and hence dispensing with the same action was initiated against the applicant by the Commissioner, KVS as per power vested in him under the provisions of Article 81(b) of Education Code for KVS.

The Respondents in this regard regard craves leave of this Hon'ble Tribunal to refer the Judgement and order passed by Principal Seat, New Delhi. The O.A. No. 1376/2002 between Sri K.M. Sharma -versus- Union of India passed on 28th of May 2002.

8. That with regard to statements made in para 4.14, 4.15, 4.16, the Respondentx denies the same and states that

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the averment of the applicant is not correct as the victim girl had immediately reported the matter to the patml leader to whom she had access to. Her consequent action is telling how she was scared of the applicant to move out and hung close to the patml leader. However she reported the matter to the Principal at the first instant.

His averment of being harassed on account of his rift with some teachers is baseless and after-thought. In his appeal, the applicant has alleged ~~for~~ rift with one lady teacher, Smt. Aruna Sharma PFT. Now he has stated that his rift with Shri Nambod has caused the complaint whereas the name of this teacher has not surfaced before.

9. That with regard to the statements made in para 4.17 and 4.18, the Respondent reiterate the statements made in para 4 of this written statement and states that the applicant has been given ample chance to defend his case during the course of the summary enquiry and his statement was recorded. Further he was also heard personally by the Vice Chairperson KVS before disposing his appeal. It is further stated that the various courts of law have examined the provisions of Article 81(b) of Education Code of K. V. S. and have upheld the decision of the Commissioner KVS in similar cases.

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10. That with regard to the grounds as presented by the application, the Respondent states that these are not good grounds on the facts stated above denying the statements made in this original application and further states that the procedure detailed for comments at para reiterates. The procedure detailed for conducting regular inquiry under CCS(CCA) Rules 1965 has been dispensed with as it was considered by the Commissioner, KVS, after going through the facts and circumstances of the case and having applied his mind that it is not viable as it would be to expose the modesty of the girl students to the tardy process of cross-examination at its alter and hence taking recourse to the action stipulated under Article 81(b) of Education Code for KVS., the applicant has been terminated from the service.

The applicant has been given ample chance to defend his case during the course of the summary inquiry and his statement recorded. Further, he was also heard personally by the vice-chairperson, KVS before disposing of his appeal.

Regarding the averment of the applicant that violations of principles of Natural Justice has been done and there also being violation of article 21 and 311 of the Constitution of India, it is submitted that aforesaid

provision.....

provisions of Article 81(b) of Education Code for KVS are time tested. Decision taken by the Commissioner under these provisions have been upheld by various Tribunals/Courts.

11. That with regard to the relief sought by the applicant, the Respondents state that in view of the perverse act of the applicant towards small girls, he did not deserve any kind of relief. As such the order of competent authority, terminating the services of the applicant under the provisions of Article 81(b) of Education Code of KVS and also the decision of the appellate authority to uphold the orders passed by the Commissioner may be upheld.

verification/A. G. S. /



AFFIDAVIT

I, Sunder Singh Sehrawat, age about 52 years, son of Shri Harish Chander, presently working as Assistant Commissioner, in the Regional Office of Kendriya Vidyalaya Sangathan, Maligaon, Guwahati, do hereby solemnly affirm and declared as follows :

1. That, I am the Assistant Commissioner of the Kendriya Vidyalaya Sangathan, Maligaon, Guwahati, as such I am acquainted with the facts and circumstances of the case. By virtue of my office I am competent to swear this affidavit.

2. That the statements made in this affidavit and in the accompanying application in paragraphs 1, 2, 3 (part) are true to my knowledge, those made in paragraphs 3 (part) being matter of records are true to my information derived therefrom. Annexures are true copies of the originals and groups urged are as per the legal advice.

And I sign this affidavit on this the 6 th day of Jan '03.

Identified by me

M. M. Mondal

Advocate's Clerk

Sunder Singh Sehrawat
DEPONENT



54

O R D E R.

NO. F.9-43/2002-KVS (Vig.).

Subject :- Appeal by Shri L.B.Ram, ex-PRT, Kendriya vidyalaya, Digaru against the order of termination under Article 81(b) of Education Code for KVS.

Shri L.B.Ram, ex-PRT, Kendriya Vidyalaya, Digaru has preferred an appeal dated 14.4.2002 against the order of his services by the Commissioner, KVS under Article 81(b) of Education Code for Kendriya vidyalayas. He was given a personal hearing on 22.7.2002.-

- 1) The undisputed facts of the case are that Shri L.B. Ram was a Scouts and Guide Teacher and a camp had been organised on 9.2.2002 to 10.2.2002 at K.V. Missamari where 87 boys and 48 girls participated. Besides Shri L.B. Ram, there were 9 teachers including four lady teachers.
- 2) A complaint was received from Shri N.K.Ram Pravesh, J.E.(Civil), Missamari regarding molestation of his daughter Km. Rinku, a student of class-VI, K.V. Missamari by Shri L.B.Ram, K.V., Digaru in the music room on 9th February, 2002. A preliminary inquiry was conducted on 15.2.2002 by a committee constituted by the Principal, KV, Missamari consisting of the following :-

Mr.

Mr. T.N.N. Nambodri, PGT.

Mrs. D.D. Seal, H.M.

Shri B.Ram, PGT.,

Mrs. Kiran, Parent member of VMC.

- 3) The Committee questioned Km. Rinku and her father. It recorded the statements of the patrol Leader of the Scouts & Guides Camp namely Pallavi Rava, Maya Pradhan and Zinky Saikia as well as the classmates of Km. ~~Rinku~~ Rinku, Km. Sijjimal and Km. Mariam. It also recorded the statements of the lady teachers Miss. L.e. Mech, Mrs. Madhu Tiwari, Mrs. Poonam Sinha as well the Principal Mr. G. Rama Rao, the Committee to the conclusion

there is no eye witness to the incident, the needle of suspicion points to the misbehaviour of the L.B.Ram, PRT as per the statements given by Km. Sijjimal and Km. Mariam of the same class and Km. Zinky Saikia of Class IX-B.

- 4) In view of the ~~XX~~ nature of the allegation, i.e. molestation of a girl student by the teacher a summary inquiry was conducted on 25.2.2002 by the Asstt. Commissioner, Regional Office, Guwahati by deputing Shri B.C.Arukh, Education Officer, Smt. S. Chetia, Principal, K.V., IOC, Noonmati and Smt. Sushila Laxman, TGT (English), K.V. Missamati. The Committee conducted a detailed inquiry and findings of the inquiry are as follows :- (quote) :

"1.....

1. Mr. L.B. Ram, PRT, KV, Digaru and Scout Master of Kendriya Vidyalaya, Missamari instructed Km. Rinku, VI-A to the Music cum Scout and Guide Room on 9.2.2002 at about 1 PM to 1.30 PM to take scout and guide diary.
2. Km. Priyanka Dagar, Class V saw Mr. L.B. Ram going with Km. Rinku putting his hand over her shoulder and taking her towards the Music cum Guide Room.
3. As per the statement of Km. Rinku and after interrogation with her and Mr. L.B. Ram, it is ascertained that there was nobody in that room at that time. Being second Saturday it was holiday for the school. Only 135 nos of scouts and guides were present in the Vidyalaya for the camp. However, as it was the lunch hour nobody came towards scouts and guides cum music room.
4. Mr. L.B. Ram, as per Km. Rinku's statement, asked her to open the almirah and bring out the scout and guide diary. While she did so, he kissed her and placed her on his lap and kissed her again in her lips and squeezed her breast and touched her bottom.
5. Km. Rinku went to her patrol leader Km. Frinky and reported the matter. Km. Frinky, in turn, went to Km. Maya Pradhan, the troop leader, and reported the matter.

6. Km. Rinku did not report the matter to any escort teacher on 9.2.02 and 10.2.02. On 11.2.2002 she gave a written complaint to the Principal just after the morning assembly.
7. The Principal called Mrs. D.D.Seal, the headmistress and told her to make an enquiry.
8. This activity of Mr.L.B.Ram is corroborated with his previous similar misbehaviour towards girl students recorded in preliminary enquiry report, which has been re-examined by the present committee. Concerned teachers and students were interrogated and their statements obtained in this connection which are summarized below.
 - i) On 30.9.2000 parents of Km. Rinku submitted a complaint against Mr. L.B.Ram misbehaving with their daughter while she was in Class V and Mr. L.B. Ram was her class teacher. At that time ~~xxx~~ Mr. L.B.Ram confessed and begged for forgiveness and assured that he would not repeat this kind of behaviour in future in front of Ms. Aruna Sharma, PET. Mr. A.K.Mishra, then i/c. Principal and Rinku's parents. However, Principal charged Rinku's section V-C to V-A.
 - ii) On 7.2.02 Km. Zinky Saikia saws Mr. L.B.Ram squeezing the breast of Km. Sijjimal, VI-A in music room when she went to practice dance for forthcoming scout and guide camp on 0.7.02 and 10.2.02.

iii).....

iii) At Kendriya Vidyalaya Noonmati, Km. Trita Sopan and Km. Palavi Rakha saw Mr. L.B. Ram repeating the same activity towards Km. Archana Das of Class VII.

9. From the previous incidents narrated by the eye-witnesses and other circumstantial evidence, the committee draws the conclusion that Mr. L.B. Ram PRT and Scout Master misbehaved with Km. Rinku by kissing her and squeezing her breast" (unquote).

The appellant Shri L.B. Ram was given a hearing by me on the 22nd July 02. He denied the allegations in writing and made the following additional oral statement.

- i) That he has escorted many scouts and guides groups earlier also and no untoward incident has ever occurred or reported to the Principal against him so far.
- ii) On the day of the alleged incident i.e. 9.2.2002 Km. Rinku asked him to provide scout and guide diary. Hence he took her to the music room to give her the diary. After taking the diary she immediately left the room. The doors and windows of the room were open and many students were standing on the verandah of the room.
- iii) He has been wrongly and falsely implicated in this case due to rivalry of some teachers like Smt. Aruna Sharma, PET. He says in an earlier incident

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of 13.9.2000 in which was questioned by the principal, in the presence of Rinku's parents and Smt. Aruna Sharma about molestation of Kum. Rinku, student of Class V. he was questioned for two full hours. At the end, he begged their pardon but maintained he had done no wrong. He says that Mrs. Sharma had an animosity towards him due to an altercation he had with her on 7.11.2001 on the Flag Day function and 26.1.2002 i.e. after the Republic Day function in the vidyalaya. Therefore, during the latest summary enquiry Mrs. Aruna Sharma, RM PET has misreported his confessing to the parents of Km. Rinku in a similar incident which occurred on 13.9.2000. He conducted scouts & guides camp at K.V. Missamari on 9.2.2002 to 10.2.2002 very successfully and this has made many teachers jealous and they created problems for him from the very next day.

- iv) Km. Mariam and Km. Sijjimal, he said had reasons to make false allegations against him because he had pulled them up earlier on 10.2.2002. During the scouts and guide's camp these two girls were found shopping unauthorisedly without permission of their teacher or troop leader.
- v) He had a large family to support and could not have indulged in such irresponsible acts. He pleaded not guilty.

I have.....

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I have gone through the statements recorded earlier in the enquiry of 27th February 2002 and the defence put up by the appellant. My observations are as follows :

- 1) The statements recorded during the summary inquiry of 27th February 2002 indicates that Shri L.B. Ram had L.B. Ram had been involved in similar acts even prior to the incident of 9th February, 2002. Km. Zinki, Saikia is on record (statement dated 27th February) saying that she saw Shri L.B. Ram prior to this incident on 7th February 02 squeezing Km. Shijimol's breast in the scouts and guides room when she went for her practice for dance for the forthcoming scouts & guides camp. Shijimol (6th standard) confirms this indirectly when she says that L.B. Ram had 'held her' on the above occasion and had protested. He had again asked her during this camp but she said she had remonstrated and refused to co-operate. Another girl, Archana Das (Class 8C) has also disclosed that in noonmati Shri L.B Ram had fondled her breast and also insisted on sitting next to her on the return journey in the bus. Only after she started crying he let her next to Pallavi. She had not complained fearing infamy. Km. Palavi Rabha of Class VIII-B has confirmed (statement dated 27th February 2002) that at Noonmati scouts & guides camp she had seen Shri L.B. Ram fondling

Archana's.....

- 8 -

Archana's breast. She also says that this teacher often put his hand in girl's shirt pockets ostensibly to give toffees.

- 2) In the instant case Km. Rinku gave her first (apparently unsigned) complaint to the Principal immediately after the Assembly on the 11th February, which was the first working day after the alleged incident. She later signed it also. She says that on the 9th February Shri L.B. Ram had taken her to the Music room and asked her to open the almirah for taking out the diary. He kissed her and told her that he loved and no one else. He asked her to come and sleep with him at night in the music room otherwise he would fail her. If she came, he will give a badge and take her to all scout and guide camps. Later in her detailed statement before the Enquiry Committee on the 27th February, 02, she has described how Shri Ram had kissed her all over including her private parts and fondled her. He also approached her at night but she clung to Pallavi and refused the invitation. Rinku also recounted the earlier incident of molestation by the same teacher in 2000 when her mother was provoked to hit Shri L. Ram with her chappals, but was saved by the intervention of the principal and the apology tendered by Shri L.B. Ram saying that he will not touch girls in future.

3)

- 9 -

- 3) This is supported by the statements of Km Pallavi Rabha and Frinky Saikia. On the night between the 9th and 10th February 02, at about 1 or 1.30 a.m. Pallavi Rabha says she saw Shri Ram calling Rinku. Frightened by this Rinku had clung to her (Pallavi) closely to sleep. Km. Frinky Saikia who was the patrol leader in whose troop Km. Rinku was participating has also stated that Rinku had told her about the alleged molestation on 9th February, 2002 and that Sri L.B. Ram had called her (Rinku) to sleep with him at night. He also lured her that she will be taken to all scouts & guides camps if she came, otherwise he would fail her.
- 4) The contention of Shri L.B. Ram that due to jealousy for his successful conduct of Scouts and Guides camp and tiffs with Ms. Aruna Sharma on Flag day and Republic day, she had falsely attributed a confession to him for a similar incident alleged to have taken place on the 13th September 2000, is hard to accept. Not merely Rinku but so many other girls have confirmed his misdemeanour independently in the enquiry. He has attributed some prejudice to Mariam and Shijomal, but their evidence is not so important. Many others, as shown above, have come forward to

depose.....

- 10 -

depose against him and request for his transfer. Not all could be prejudiced. It should also be remembered that young girls will not like to sacrifice their good reputation furnishing details in their complaints, unless they were really aggrieved. Even if he had conducted the scouts & guides camps successfully, this does not condone the act of taking advantage of young students. On balance of consideration, I find enough evidence on record to conclude that Shri L.B. Ram is guilty of moral turpitude.

- *5) I, therefore, dismiss the appeal filed by Shri L.B. Ram and confirm the order of Commissioner KVS dated 1.4.2002 terminating his services under Article 81 (b) of KVS Rules.

sd/- Illegible.
(KUMUD BANSAL),
Vice - Chairman.