

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 544 of 2003

Jabalpur, this the 14th day of June, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Shri H.R. Chourasia
S/o Shri J.L. Chourasia
Aged about 57 years Principal
(u/s), Kendriya Vidyalaya
Sangathan, Regional Office
Jabalpur R/o LIG-68, PP Colony,
Gwarighat Road, Jabalpur(M.P.)

APPLICANT

(By Advocate - Shri Manoj Sharma)

VERSUS

1. Union of India,
Through it's Secretary,
Govt. of India,
Ministry of H.R.D. New - Delhi.
2. The Vice Chair person,
Kendriya Vidyalaya Sangathan
(Appellate Authority)
& The Additional Secretary
(Edu.) Ministry of Human
Resource Development,
120-C Wing, Shastri
Bhavan New - Delhi.
3. Shri H.M. Cairae,
Commissioner, Kendriya Vidyalaya
Sangathan, 19 Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
4. Shri R.S. Ram
Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Jabalpur Region, GCF Estate,
Jabalpur(M.P.)
5. Kendriya Vidyalaya Sangathan
Through its Commissioner
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi.

RESPONDENTS

(By Advocate - Shri M.K. Verma)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the
following main reliefs :-

- "ii). Quash the impugned order dated 18.3.02
Annexure-A-1 and order dated 18.2.2003
Annexure-A-2(limited to the extent of the

Departmental Enquiry) along with all the consequential orders culminating there from in the interest of justice.

iii). Direct the respondents to allow the applicant to perform his duties, functions and responsibilities as Principal, in the interest of justice.

iv). Direct the respondents to grant all the consequential benefits of pay, perks and status forthwith with an appropriate interest. in the interest of justice".

2. The brief facts of the case are that the applicant was working as a Principal of Kendriya Vidyalaya (for short 'KV') One Smt. Raj Kumari Shrivastava - a lady teacher has made certain allegations of sexual harassment against the applicant. Therefore a charge-sheet dated 18.3.2002 (Annexure_A-1) was issued to the applicant, against which the applicant has come before this Tribunal. The Tribunal vide its order dated 28.8.2003, passed in this OA, at the interim stage, has directed the respondents that they "may proceed with the enquiry, ^{but 2} the the disciplinary authority shall not pass any final order on the basis of the enquiry report till further orders/decision of this OA". The applicant has alleged malafide in issuing the charge sheet and has prayed for quashing the charge-sheet, stating that the charge-sheet is perverse and issued with malafide intention.


3. Heard the elaborate arguments advanced by both the learned counsel of parties.

4. The learned counsel for the applicant has stated that the charge-sheet has been issued to the applicant with ^{the malafide} intention on the part of respondents 3 & 4. He has submitted that the complainant Smt. Raj Kumari Shrivastava was not working properly at KV, Jayant Colliery. ~~as~~ The applicant being the Principal & Head of KV, Jayant Colliery, was duty bound to enforce discipline. He found that Smt. Raj Kumari Shrivastava was irregular in attendance ~~and ^{as per} duties, functions and responsibilities~~ and ~~she~~ was adopting negative attitude towards duties. She also did not attend the Seminar and Workshops. She had also taken leave ~~and~~ sent her application along with a medical certificate

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which did not specify the number of day for which medical leave was required.
Smt.Raj Kumari Shrivastava had also not signed the application. Therefore, the applicant had no option but to reject her application. It is on these grounds that she has made allegations against the applicant of sexual harassment in July, 2000, and subsequently she has made another complaint attributing sexual harassment in December, 2000. The learned counsel has submitted that Smt.Raj Kumari Shrivastava has filed complaints against the applicant only to defend herself for not doing her duties properly which were pointed out by the Principal. The learned counsel has further submitted that it is not only with regard to the present applicant, Smt.Rajkumari Shrivastava has also made allegations of harassment against the former Principal Shri S.Somasundaram, vide her letter dated 1.3.1996 -copy annexed with Annexure-A-19, who had advised her 'not to leave the Vidyalaya campus before the school time is over'. The learned counsel has also contended that a meeting of the local Management Committee was held on 21.7.2000, in which apart from various other items one of the items was regarding the complaint of Smt.Rajkumari Shrivastava against the applicant. It was held ^{unanimously} in that meeting (copy of the minutes filed at pages 78-83 of the OA) by the Members of the Executive Committee including two lady teachers, that Smt.Rajkumari Shrivastava was not taking interest in her duties and the committee resolved that "the transfer of Mrs.Rajkumari Srivastava, TGT(English) from this Vidyalaya should be made immediately in the interest of students and smooth functioning of Vidyalaya. This will create an atmosphere for good academics and other activities all round development of Vidyalaya".

4.1 The learned counsel for the applicant has further argued that ~~xx~~ the performance of the school where the applicant was earlier posted as the Principal was not upto the mark and on this account the said school was closed.




It was on this ground the local Management Committee had recommended the transfer of the Principal also. Accordingly, the applicant was transferred to Dharangdhara in Gujarat and at the same time Smt. Raj Kumari Shrivastava was also transferred to Bhuj in Gujarat. Both of them had filed Original Applications before this Tribunal. Smt. Raj Kumari Shrivastava had filed the OA against her transfer in Principal Bench of this Tribunal at Delhi whereas the applicant had filed his OA in Jabalpur.

4.2 The learned counsel has contended that in the reply filed by the respondents (in the OA filed by Smt. Raj Kumari Shrivastava against her transfer), they have supported the action taken by the applicant being the Principal of the KV. Again, while rejecting the representation of Smt. Raj Kumari Shrivastava against her transfer to Bhuj, vide memo dated 17.5.2001 (Annexure-A-4) the respondents have stated as under-


"The respondent organization has valid grounds regarding the applicant's (Smt. Raj Kumari Shrivastava) conduct and behaviour and as such, the action taken against the applicant is only in the interest of the Institution as the Principal of the school has a duty to maintain discipline and ensure smooth running of the institution".

On the other hand, ~~in the case of the applicant~~ the Tribunal has issued directions to the respondents to consider ~~the~~ re-transfer of the applicant either at Narsinghpur or at Raipur, vide its order dated 17.10.2001 in M.A.762/2001 (Annexure-A-14). The respondents have challenged this order before the Hon'ble High Court in W.P.No.6391/2001 and the Hon'ble High Court vide its order dated 10.1.2002 (Annexure-A-15) has upheld the order of the Tribunal and also passed the strictures against the respondents stating that the action of the respondents is "actuated more by prejudice, less by public interest.....higher authorities are expected to display care and compassion.....we hope and trust that petitioners (respondents in this OA) will consider the posting of respondent-1 (applicant) at Narsinghpur or Raipur as directed by the Tribunal, with open mind, in public interest



forgetting the past". It was in pursuance of these directions of the Hon'ble High Court ^{that} the applicant was transferred to Narsinghpur. The learned counsel has contended that contempt proceedings (C.C.P.No.36/2001) were also initiated by the Tribunal against respondent no.1. H.M.Cairae, Commissioner, KV Sangthan, New Delhi, (arising out of order dated 17.4.2000 passed by the Tribunal in TA 45/99 filed by the applicant) (Annexure-A-10). The learned counsel has contended that it is one of the reasons that the respondents have framed the impugned charge-sheet against the applicant with malafide intention which is totally perverse.

4.3 The learned counsel has also argued that when the applicant and Smt.Raj Kumari Shrivastava were transferred to Dharangdhara and Bhuj respectively and thereafter retransferred to other places, till then the respondents have not initiated the charge-sheet against the applicant. The complaints were made against the applicant in July & December, 2000, whereas the charge-sheet was issued to the applicant, on 18.3.2002, after the decision of the High Court dated 10.1.2002. It is also contended by the counsel that Smt.Raj Kumari Shrivastava has made complaint against the applicant also in February, 2001 i.e. at the time when she was working in Gujarat. When she made her complaint in February, 2001 she had also sent a copy of the said complaint to Assistant Commissioner, KVS, Jabalpur, who was not concerned with the matter at that point of time. Moreover, the Assistant Commissioner, KVS, Jabalpur had written a letter to respondent no.1 i.e. Commissioner, KVS, New Delhi in September, 2001 to take disciplinary action against the applicant after such a long delay. By writing a letter to respondent no.1, the Assistant Commissioner, KVS Jabalpur had pointed out that Smt.Raj Kumari Shrivastava has made complaint against the applicant to Commissioner, and he being a Class-I officer, the Assistant Commissioner could not take action against the applicant. According to the learned counsel, there was no provocation to write this letter to the



respondent no.1 to initiate disciplinary action against the applicant. He has contended that it is amply clear from the sequence of events that it was only after the contempt proceedings were filed by the applicant, that the letter was written by the Assistant Commissioner to the Commissioner to initiate action against the applicant with a malafide intention and perhaps on the provocation of the Commissioner i.e. respondent no.1. To support his claim, the learned counsel for the applicant has relied on the decision of the Hon'ble Supreme Court in the case of R.C.Sood Vs. High Court of Judicature at Rajasthan & ors. (1998) 5 SCC 493; State of Punjab Vs. V.K. Khanna & others. (2001) 2 SCC 330.

5. On the other hand, the learned counsel for the respondents has stated that Smt. Raj Kumari Shrivastava has made certain allegations of sexual harassment which is a serious matter and involves moral turpitude. He admitted that the DE was not initiated against the applicant immediately after the receipt of the complaint. He attributed this delay to the system and also stated that there was an administrative delay on the part of the respondents. He has also stated that there is no mechanism by which the truth could be found out whether the allegations of Smt. Raj Kumari Shrivastava against the applicant are correct or not. The only mechanism before the respondents is to hold an enquiry and find out the truth. He has also submitted that the respondents have not immediately ordered the DE against the applicant. It was only after the constitution of a committee to find out the fact, which has visited the Kendriya Vidyalaya and taken the statement of Smt. Raj Kumari Shrivastava and other concerned persons, including the students, and submitted its report; that the respondents have initiated the DE proceedings against the applicant. He has also submitted that after the issue of the charge-sheet the applicant has not denied the charges levelled

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against him. The charge sheet has not been issued with malafide intention.

5.1 As regards the contention of the applicant that Smt. Raj Kumari Shrivastava has written letters about her sexual harassment at the time when she was not working at Jabalpur and she has endorsed a copy to the Assistant Commissioner, KV Jabalpur, ^{learned counsel} ~~they~~ has submitted that since the incident has taken ^{place} under the jurisdiction of Assistant Commissioner, Jabalpur, he was the only concerned person with the matter. The learned counsel has further submitted that the Assistant Commissioner, KVS Jabalpur has not written at his own. It was only on an enquiry made by the respondent no.1 about the complaint made by Smt. Raj Kumari Shrivastava against the applicant, the Assistant Commissioner, KVS, Jabalpur has written to respondent no.1 to take action against the applicant.

5.2 The learned counsel has further argued that before the committee constituted by the respondents the applicant has appeared and has not alleged any allegation of malafide against the ^{respondents.} ~~It~~ It is only an after thought. To this, the learned counsel for the applicant has responded by stating that at that point of time the applicant could not have alleged malafide as the respondents were defending the action of the applicant in issuing the memo to Smt. Raj Kumari Shrivastava, while submitting their reply before the Principal Bench of the Tribunal in the OA filed by her against her transfer. In that reply the respondents had taken the stand that the action taken by the applicant was in accordance with rules as Smt. Raj Kumari Shrivastava was not attending to her duties properly. Therefore, the applicant could not make any allegation of malafide before the Committee constituted to find out the facts.

5.3 The learned counsel of the respondents has further contended that the enquiry against the applicant has almost been completed. The applicant has not participated in the enquiry but the final orders have not been passed as per the directions of this Tribunal.

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6. We have considered the rival contentions of both the learned counsel.

7. In this case, we find that one Smt. Ram Kumari Shrivastava, who was working as PGT English has made certain allegations of sexual harassment against the applicant. From the pleadings made by both the parties, we find that she has made these allegations only after she had been asked to rectify certain mistakes/defects in her application for medical leave. We also find that she had also made allegations against the earlier Principal, namely, Shri S.Somasundaram vide her letter dated 1.3.1996. It is also a fact that the respondents have not taken ^{any action} against the applicant immediately after the receipt of such complaint. On the other hand they have transferred both the applicant as well as Smt. Raj Kumari Shrivastava from the said school to different KVs in Dharangdhara and Bhuj respectively on the ground that the performance of both the applicant and Smt. Raj Kumari Shrivastava was not upto the mark, and not on the ground that Smt. Raj Kumari Shrivastava has made a complaint of sexual harassment against the Principal. All these facts were within the knowledge of the respondents, when the order of transfer against the applicant was passed. Moreover, the matter relating to sexual harassment of the applicant was discussed in the local Management Committee and it was unanimously held that the performance of Smt. Raj Kumari Shrivastava was not upto the mark. Apart from this the respondents while submitting their reply in the OA filed by Smt. Raj Kumari Shrivastava before the Principal Bench against her transfer, have defended the action of the applicant and held that Smt. Raj Kumari Shrivastava was not performing her duties properly and her performance was not upto the mark. The event of sequence also shows that the respondents have initiated action against the applicant and issued the charge-sheet only after ~~the applicant had~~

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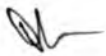
the applicant had approached this Tribunal against his transfer. The Tribunal has directed the respondents to re-transfer him either at Narsinghpur or Raipur;^{and} thereafter the respondents had filed a writ petition against the order of the Tribunal. The Hon'ble High Court had dismissed their writ petition and passed stricture against them. In the meantime the applicant had also filed a CCP against the respondents. It was only after the notice of contempt was issued by the Tribunal against Commissioner KV; that the Commissioner had written a letter to the Assistant Commissioner, KVS, Jabalpur informing him about the position of the action taken against the applicant. Moreover the Hon'ble High Court of Madhya Pradesh has clearly given a finding that the action of the respondents in not transferring the applicant either at Narsinghpur or Raipur is "actuated more by prejudice, less by public interest". The contention of the learned counsel for the respondents that the applicant has not made any allegation of malafide before the fact finding committee does not appear to be correct as at that point of time the respondents were defending the action of the applicant before the Principal Bench of the Tribunal in the case filed by Smt. Raj Kumari Shrivastava. The sequence of events also supports the contention of the learned counsel for the applicant that the disciplinary proceedings have been initiated against the applicant by the respondents with malafide intentions and on the ground that the applicant has moved the contempt petition and the Hon'ble High Court has passed certain strictures against the respondents. Till the Hon'ble High Court had passed the order against the respondents, they had not taken any action against the applicant. On the other hand they have been defending/justifying the action

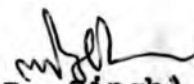
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of the applicant against Smt. Raj Kumari Shrivastava as may be seen from the reply filed before the Tribunal in the OA filed by Smt. Raj Kumari Shrivastava, and also from the order dated 17.5.2001(Annexure-A-4) passed by the respondents reproduced in para 4.2 above. We also find that when the DE was initiated, the applicant and Smt. Raj Kumari Shrivastava were not working together. They were transferred long back. We also find that Smt. Raj Kumari Shrivastava has otherwise never made any complaint against the applicant of sexual harassment before he had issued a memo to her for doing her duties properly. This is further corroborated by the fact that Smt. Raj Kumari Shrivastava had also made similar complaints against one Shri S.Somasundaram, the then Principal of the School. When the said Somasundaram had also issued memo directing her to attend her duties properly .

8. In view of the reasons stated above, we are constrained to hold that the DE proceedings have been initiated against the applicant with malice only with a view to harass the applicant at the verge of his retirement. In this view of the matter, the impugned charge-sheet and subsequent proceedings initiated against the applicant are not sustainable in the eye of law and are liable to be quashed.

9. In the result, the OA is allowed. The impugned charge-sheet dated 18.3.2002 is quashed and set aside. The subsequent enquiry initiated against the applicant consequent to the issue of charge-sheet dated 18.3.2002 is also quashed. The respondents are directed to grant all consequential benefits to the applicant within a period of four months from the date of communication of this order. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman