

CENTRAL ADMINISTRATIVE TRIBUNAL  
JABALPUR BENCH

**O.A. 249 of 2001**

**Date of Decision : 15.05.2004**

Mr. R. C. Ram : Applicant (s)

Mr. P. N. Dubey : Advocate for the Applicant (s)

**Versus**

Union of India & Ors. : Respondent (s)

Mr. M. K. Verma : Advocate for the Respondent (s)

**CORAM:**

**THE HON'BLE MR. A. S. SANCHVI** : MEMBER (J)

**THE HON'BLE MR. M. P. SINGH** : VICE CHAIRMAN

**ORDER**

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 it needs to be circulated to other Benches of the Tribunal?

*yes*

R. C. Ram,  
Aged 35 years.  
Son of Shri. Attabaru Ram,  
Ex-Primary Teacher,  
Kendriya Vidyalaya,  
Air Force Station,  
Amla, Distt Betul (MP).

- Applicant -

**Advocate : Mr. P. N. Dubey**

**Versus**

1. Union of India, through  
Secretary Human Resources Development.  
New Delhi.
2. Commissioner, Kendriya Vidyalaya  
Sangathan, 18, Institutional Area,  
Shahid Jeetsingh Marg,  
New Delhi.
3. Chairman,  
Vidyalaya Management Committee,  
Cum-Station Commander,  
Air Force Station, Amla,  
Betul (MP).
4. Principal.  
K. V. Air Force Amla,  
Betul.

- Respondents -

**Advocate : Mr. M. K. Verma**

- 3 -

**ORDER**

**O.A. 249 of 2001**

**Date : 15/06/2004**

Hon'ble Shri. A. S. Sanghvi : Member (J).

Heard Mr. P. N. Dubey for the applicant and Mr. M. K. Verma for the respondents.

2. The applicant was serving as a Primary Teacher under the respondent no.4. He has been removed from the service vide order dated 22.2.2001 of the respondent no. 2. The order dated 22.2.2001 of the respondent no.2 inter alia states that the applicant has been found guilty of moral turpitude involving sexual behavior towards the girl student of K. V. Amla. The order goes on to prefer to a summary inquiry into the misbehavior conducted by the committee consisting of Shri. A. P. Gupta, Education Officer, Smt. M. Dutta, Principal, K.V. Ambajhari and Shri. Ram Kumar, Principal, Kendriya Vidyalaya, Khandwa and further states that having been satisfied with the procedure of holding regular inquiry of imposing a major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of the KVS is not expedient in this case, as it would cause severe embarrassment to the minor girl student, to hold such an

inquiry is hence dispensed with. The evidence on record establishes that Shri. R. C. Ram, Primary Teacher (applicant) is *prima facie* guilty of moral turpitude involving sexual behavior towards girl student. The order finally proceeds to provide that the Commissioner of the Vidhyalaya in exercise of the powers under Article 81 (b) of the Education Code for KVS terminates the service of the applicant with immediate effect. It is also directed that the applicant will be paid pay and allowances as admissible under the rules in lieu of the notice period.

3. This order of the Commissioner, KVS is challenged by the applicant on the ground that the conclusions of the Commissioner were arbitrary, in violation of Rule and natural justice. It is contended that the applicant has not been given any opportunity of defending himself and without holding any inquiry in the charges against him, he has been removed from the service. It is also contended that Clause 81 (b) of the KVS Code is redundant in its ~~regards~~ and that the same is ultra ~~virg~~ the Articles 14 and 16 of the Constitution of India. He has also contended that he has been victimized by the Principal of KVS and that without holding even a summary

inquiry and without giving him any opportunity of defending himself, order of removal from service is passed by the Commissioner. The same is therefore illegal, arbitrary and unjust. He has prayed for setting aside the order and being reinstated in the services with all back wages.

4. The respondents on the other hand in their reply have contended inter alia that on the complaint of the mother of a minor school student on 5.9.2000, about the sexual harassment by the applicant to the minor school student a fact finding inquiry was conducted by the Principal of the school and during the course of the inquiry the applicant had even confessed that on 2.9.2000 he had molested the girl and had apologized for his conduct. The Assistant Commissioner, KVS had ordered a fact-finding inquiry by deputing an Education Officer. The mother of the girl had however in the meanwhile lodged the FIR in the police and the applicant was arrested by the police on 6.9.2000. He was placed under judicial custody till the morning of 9.9.2000. The committee which inquired into the incident had submitted its report to the Commissioner and after going through the report, being satisfied with the procedure of holding regular inquiry for

imposing the major penalty in accordance with the CCS (CCA) Rules, 1965 as applicable to the employees of the KVS was not expedient in this case as it would cause serious embarrassment to the minor girl student and her parents and a small child cannot be permitted to go through the traumatic process of cross examination etc., and hence to hold such an inquiry was dispensed with. Since the inquiry report reveal that the applicant was *prima facie* guilty of moral turpitude involving exhibition of sexual behavior towards the girl student, in exercise of the powers under Article 81 (b) of the Education Code for KVS, the Commissioner terminated the services of the applicant vide his order dated 22.2.2001. The respondents have maintained that the order is passed as per the provisions made in the Code and that the same is not arbitrary, illegal or unjust. They have also contended that the O.A. is not maintainable as the applicant has rushed to the Tribunal without first exhausting the remedy of appeal. According to them, as per Article 81 (b) of Education Code for KVS the applicant can prefer an appeal to the appellate authority i.e., Vice Chairman, KVS within the prescribed period of 45 days. Since the applicant had not preferred such appeal, the O.A. is clearly not maintainable. So far the

challenge to the ~~virtues~~ of Article 81 (b) of the Education Code is concerned, the respondents have submitted that in a similar matter involving the sexual harassment to a girl student and removal of the employee of the KVS the Principal Bench of the Tribunal in O.A. No. 1376 of 2002 decided on dated 28.5.2002 has upheld the validity of the removal order as well as the validity of the Article 81 (b). They have prayed that the O.A. be dismissed with costs.

5. We have heard the learned counsels of both the parties at length and carefully perused the relevant orders and the provisions of the rules. So far the preliminary objection raised by the learned counsel for the respondents about the maintainability of the O.A. is concerned, it cannot be denied that the O.A. is filed by the applicant without first exhausting the statutory remedy of appeal. Section-20 of the A.T. Act, 1985 clearly provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to the redressal of the grievances. Sub Rule 2 provides that a person shall be deemed to have availed ~~two~~ <sup>all</sup> of the remedies available to him under the rules as

to redressal of grievances (a) if a final order has been made by the government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievances.... ..

6. In the instant case, the order of the Commissioner removing the applicant from service is an appealable order under Article 81 (c) of the Education Code and as such the applicant was required to first prefer the appeal against that order and only after the decision under appeal going adverse to him, could have moved this Tribunal. Since the applicant has approached this Tribunal without first exhausting the statutory remedy of appeal clearly the O.A. is not maintainable and deserves to be rejected on this ground alone.

7. So far the impugned order of the Commissioner is concerned, the same is admittedly passed invoking Article 81 (b) of the Education Code for K.V.S. The applicant has challenged validity of this Article and contended that this Article is ultra vires the provisions of Article 14 and 16 of the Constitution and as such deserves to be quashed and set

aside. The respondents have pointed out that the validity of this Article is already up held by the Principal Bench of this Tribunal in O.A. no. 1376 of 2002. They have supplied the copy of the judgment of the Principle Bench and having gone through that judgment we find that the issue raised in this O.A. has already been considered and decided by the Principal Bench. The Principal Bench has upheld the validity of the Article 81 (b) of the Education Code and we do not see any reason to differ from the view taken by the Principal Bench. We reproduce the relevant observations of the Principal Bench as under :-

If one has regard to the aforesaid provisions of the Article 81 (b) and the order of dismissal from service, we find that the order of dismissal from the service cannot be faulted on the ground that no formal inquiry has been conducted in the matter. Provisions contained under Article 81 (b) are salutary. They are intended to take care of situation like the one, which has arisen in the present case. In the cases where there are allegations of a serious nature involving an immoral conduct towards the girl student involving sexual offence and exhibition of immoral sexual behavior the necessity of holding the formal inquiry under the said Article 81 (b) is dispensed with and that too for good reasons, namely to avoid embarrassment to the girl student and to the parents and to the Vidhyalaya itself. In the aforesaid circumstances, we do not find that applicant is entitled to any relief.

~ (iii)(c) ~

8. We may add that even proviso ~~to~~ Article 311 (2) makes identical provisions for dispensing with the inquiry when it is found that it was not reasonably possible to hold inquiry.

9. When the constitution itself provides for dispensing with the regular inquiry in certain cases where it is not advisable or possible to hold the inquiry, the said Article <sup>81(b)</sup> to be ultra vires the provisions of constitution can hardly arise. These provisions intended to protect the sexual harassment towards any student of KVS cannot be upheld as contravening or coming into conflict the Article 14 and 16 of the Constitution. This provision is intended to protect the interest of the victim of the sexual harassment and the same can in no sense be said to be violative of any of the Articles of the Constitution. We, therefore, reject this contention of the applicant.

10. For the aforesaid reasons, we are of the considered opinion that the applicant is not entitled to any of the reliefs prayed. The present O.A. therefore fails and is dismissed. No order as to costs.

*A. S. Sanghvi*  
(A. S. Sanghvi)  
Member (J)

*M. P. Singh*  
(M. P. Singh)  
Vice Chairman

MBT

*Issued on 23-6-84*

प्रकाशन सं ओ/न्या.....जलपुर, दि.....  
प्रतिलिपि अच्योपिता:-  
(1) राधिय, उच्च न्यायालय बार एवं एडवोकेट, जलपुर  
(2) अकेडेम श्री/श्रीमती/दूर्दा.....के कानूनी PN Dubey  
(3) प्राप्ति श्री/दैर्दा/दृष्टि.....के कानूनी MR Verma  
(4) अध्यात्म, ठोकरा, जलपुर, जलपुर  
सुन्नता एवं आवश्यक कार्यालयी द्वारा  
*Raymond*  
उप न्यायालय/6/84