

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 275 of 2002

Jabalpur, this the 28th day of February, 2003.

Hon'ble Mr. R.K. Upadhyaya, Member (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

Ganesh Shukla S/o late Shri Sankardayal
Shukla aged about 56 years by occupation
Librarian (Removed) Central School
Pachmarhi District Hoshangabad.

-APPLICANT

(By Advocate- Mr. D.K. Dixit)

Versus

1. Kendriya Vidyalaya Sangathan
through the Commissioner, 18,
Institutional Area, Shaheedjit
Singh Marg, New Delhi.
2. Dy. Commissioner (Adm.),
Kendriya Vidyalaya Sangathan, 18,
Institutional Area Shahidjeet Singh
Marg, New Delhi.
3. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Bhopal.

-RESPONDENTS

(By Advocate- Mr. M.K. Verma)

ORDER

By R.K. Upadhyaya, Member (Adm.):

The applicant is aggrieved by order of removal from service under the provisions of Article 81(d) of the Education Code. The applicant has also requested that he may be allowed to join as Librarian either at Pachmarhi, Hoshangabad or at Sehore as per orders of the respondents.

2. The applicant was initially appointed on the post of Librarian in the year 1971 and was posted at Pachmarhi. By an order dated 05.08.1996 the applicant was transferred to Jhabua, which was later on modified by order dated 21.8.1996 transferring him to Sehore. In view of his personal problems, the applicant had made a request for cancellation of his

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transfer and had also filed Writ Petition No.3991/96 in the High Court at Jabalpur. The Hon'ble High Court in the writ petition had issued a direction to respondents to dispose of his representation. The claim of the applicant is that the representation filed was rejected by the respondents. Therefore, he had filed another Writ Petition bearing No. 4221/97. The representation of the applicant as well as writ petition did not bring him the desired results. However, on account of his personal problems he could not join the place of posting as directed by the respondents. Ultimately, it is claimed that permission to join at Sehore was granted by an order dated 29.11.2000 (Annexure A-12). This letter also indicated that if the applicant did not take-over the charge within 15 days at Sehore, it will be presumed that the applicant was not interested in taking over charge and proceeding under the provisions of Article 81(d) of the Education Code will be started. The claim of the applicant is that on receipt of this letter, he informed the Assistant Commissioner of Kendriya Vidyalaya Sangathan, respondent No.3 as well as Principal of Kendriya Vidyalaya, Sehore that his wife had suffered certain injuries. Therefore, he needed further time of 4-5 days. He had also informed that he was likely to take charge on 16/17.12.2000. It is claimed that a copy of this letter was sent by registered post to respondent No.3. It is further claimed that before he could proceed to join he fell ill and the Attending Physician advised him rest for two months, as can be seen from the certificate dated 19.12.2000 (Annexure A-16). The applicant after having been declared medically fit w.e.f. 18.2.2001 (Annexure A-17) intended to join at Sehore as advised earlier. However, in the intervening period, show-cause notice under Article 81(d) (3) of Education Code dated

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24.1.2001 (Annexure A-18) was sent by the respondent No.3 and the applicant could not be in a position to join at Sehore. The respondents No.3 ultimately passed an order dated 26.3.2001 (Annexure A-20) under Article 81(d) of the Education Code confirming the loss of lien of the applicant and removal from service of K.V.S. The learned counsel of the applicant states that the applicant always wanted to join the place where he was posted. It was because of his wife's illness initially, later on his own illness, which prevented him from reporting for duty. It is also urged that the respondent No.3 had not communicated refusal of the request of the applicant for joining during the illness of the applicant. The learned counsel also stated that the provisions of Article 81(d) of the Education Code are arbitrary and deserve to be quashed. If the applicant was absent on account of valid reasons, he could be proceeded with under normal rules applicable to the Government employees of the K.V.S.

3. The learned counsel for the respondents invited attention to the reply filed wherein it has been stated that the applicant has been avoiding joining at the place of transfer on one pretext or the other. Provision under Article 81(d) of the Education Code for Kendriya Vidyalayas has been framed and approved by the Board of Governors of the KVS to check the unauthorised absence of teachers and other employees from duties. The provision enjoins that the teachers or other employee who remain absent from duty for more than 15 days without sanction of leave by the Competent Authority is liable to action under Article 81(d) of the Education Code, which ultimately culminates in abandonment of service and provisional loss of lien from the post. It is stated that the employees of Kendriya Vidyalaya

Sangathan having All India transfer liability and the applicant having been relieved from his earlier place of posting in Pachmarhi had been absent without proper sanction of leave. Therefore, he was liable to be proceeded under the provisions of Article 81(d) of the Education Code. The learned counsel stated that the order passed by the respondent No.3 was subject matter of appeal and the Appellate Authority and Revisionary Authority had confirmed the order of the respondent No.3. Regarding validity of provisions of Article 81(d) of the Education Code, he invited attention to the order dated 10.12.2002 in OA No.511-CH of 2002 of Chandigarh Bench of this Tribunal in the case of N.N.Rao Vs. Union of India & others, where the validity of provisions has been upheld relying on the judgement of Hon'ble Supreme Court. Attention was also invited to the order of Principal Bench of this Tribunal dated 13.5.2002 in the case of Mrs. Prem Juneja Vs. Union of India & others, wherein it has been observed that the Rule 22 of KVS Rules authorised the Governors of the K.V.S. to frame terms and conditions of the services to be prescribed for appointment in the K.V.S. The Article 81(d) of the Education Code has been incorporated with the object, ~~of~~ ~~to~~ continued and uninterrupted availability of teachers and other staff, which is the prerequisite to inspire confidence of the students and parents in the system of Kendriya Vidyalayas for dealing with the problem of unauthorised absence of teachers and other staff. The learned counsel further stated that same view has been upheld in other orders of this Tribunal in the case of Mrs. Jyoti Sharma Vs. KVS and others in OA No.1669/2002 dated 10.12.02 of Chandigarh Bench of this Tribunal and in the case of Brij Bhushan Lal Vs. K.V.S. & others in OA No.1206-FP/2001 of Chandigarh Bench. The learned counsel stated that the

applicant has been absent since 1996 without sanction of leave. Therefore, no relief can be granted to the applicant and his application deserves to be dismissed.

4. We have heard the learned counsel of both the parties and have perused the material available on record.

5. There is no dispute that the applicant was transferred and relieved of his charge of Librarian of Kendriya Vidyalaya, Pachmarhi sometime in the year 1996. The respondents have been ~~taking~~ enough time in issuing the show-cause notice and taking action and it was only on 29.11.2000 (Annexure A-18) that a memorandum was issued to him asking him to join duty immediately at Sehore. This memorandum also brought to his attention the provisions contained in Article 81(d) of the Education Code. In response to this memorandum dated 29.11.2000, the applicant intimated his willingness to join immediately, but he needed extension of time for joining of 4-5 days. It appears that the applicant became sick as per medical certificate of the Attending Physician dated 19.12.2000 (Annexure A-16), which recommended him rest for two months. As soon as this medical certificate and request for extension of joining time was sent, the order of provisional loss of lien and show-cause notice under Article 81(d) (3) of the Education Code dated 24.1.01 (Annexure A-18) was issued. There is nothing on record that the request of the applicant for extending joining time on account of illness was intimated to him. As a matter of fact ~~that~~ the show-cause notice dated 24.1.2001 (Annexure A-18) and final order of loss of lien and removal from service dated 26.3.2001 (Annexure A-20) are stereo-typed and do not deal with the request of the applicant and representation against the show-cause notice sent by the

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applicant on 31.1.2001 (Annexure A-19). The order dt. 26.3.2001 of removal from service reads as follows:-

"Whereas in terms of Sub-clause (6) of Article 81(d) the request of Sh. Shukla was considered. He failed to explain the reasons of his being absent from duty wef 14.11.96. He was given several opportunities asking him to report for duty. But he did not comply with the orders of his superiors. As per his request he was further given an chance for reporting for duty vide this office letter No. F.25-280/96-KVS (BPL)/7469, dt. 29.11.2000 with the instructions that if he fails to report by the stipulated date, action under provisions of Article 81(d) of Education Code will be taken against him.

Now, the undersigned is satisfied that Sh. Shukla has voluntarily abandoned his services in terms of the provisions of Sub-clause (1) of this Article. Therefore, the undersigned orders confirming the loss of his lien on his post. Thus, Sh. Shukla is deemed to have been removed from the service to KVS wef 14.11.1996."

The provisions of Article 81(d) of the Education Code have been upheld by the Courts on the ground that this contains principles of Natural Justice in as much as a notice show/notice is given to the applicant before taking any action. Giving a show-cause notice is not mere formality, If a reply to the show-cause notice is received that has to be considered before passing a final order. From the impugned order dated 26.3.2001 (Annexure A-20) as reproduced earlier, no-where states the contentions raised including the inability to join because of illness. It is not a case of the respondents that the applicant submitted a false medical illness certificate or he did not intend to join as ordered. This is so presumed because the respondents have not so to [✓] intimated the applicant.

6. The reliance placed by the learned counsel of the respondents on various orders of this Tribunal also supports the view, which we have expressed in the preceding paragraph. In the case of N.N. Rao (supra), the applicant was transferred to Faridkot from Andhra Pradesh. In that case, the applicant had joined duty on 15/16.1.2001 and thereafter

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from 17.1.2001 he absented from duty without any communication. In the case of Mrs. Prem Juneja (supra), it has been noticed that "the applicant herself shows that she was not interested in pursuing her service and she voluntarily abandoned her service, ~~even~~ the extension of leave applied by the applicant was refused by the concerned authorities.

In the case of Mrs. Jyoti Sharma (supra), the applicant ^{Tribunal} never exhibited her intention to stage a comeback. This / has deployed the manner in which the orders ^{are} / passed by the ^{and} respondents / has observed as follows:-

".....It would, therefore, be proper and in the interest of employee as well as the department that the final order is passed after considering the representation of the concerned employee to the show cause/provisional notice in an objective manner. Such an order should contain the reasons for arriving at the conclusion that since the employee has voluntarily abandoned the service, he is liable to be removed. Sh. H.C. Arora, learned counsel for the respondents may take note of this observation. He would do well to advise the department to ensure that in future reasoned orders are passed."

Even in the case of Brij Bhushan Lal (supra), it has been observed that the applicant "..... did not join his duties. Even after the service of the provisional notice, he did not manifest his intention to join at the place of his posting. The reply filed by him to the provisional notice speaks loud about the intention of the applicant that he was not prepared to join, in any case, at Port Blair." From the perusal of the discussion with reference to the orders on which reliance has been placed by the learned counsel of the respondents, it is observed that the facts in the present case are distinguishable, in as much as the applicant was willing to join at the place where he has been posted. It was because of his illness that he could not join within the time allowed and asked for some extension of time. However, before ~~such~~ the applicant could get a

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reply on his request and report for duty, the provisional loss of lien notice dated 24.1.2001 (Annexure-A-18) has been issued. The applicant has filed reply to this notice as per letter dated 31.1.2001 (Annexure-A-19). The impugned order of confirmation of loss of lien under Article 81(d) of the Education Code and removal from service dated 26.3.2001 (Annexure-A-20) does not bear any discussion about the reasons for not joining the applicant as ordered. In our opinion, on the facts of this case, the impugned orders dated 24.1.2001 and 26.3.2001 deserves to be quashed and we order accordingly and the respondent no.3 will be at liberty to pass a fresh order after considering the reasons for not joining as ordered. In view of the decisions made above, the order dated 20.3.2001 is set aside and the orders of Appellate Authority and Revisionary Authority in respect of that order are also set aside. Since the matter is being remitted to the respondent no.3 he will take further action in accordance with law.

7. Subject to the observations made in the preceding paragraph, this application is disposed of without any order as to costs.

(Mrs. Meera Chhibber)
Member (J)

(R.K. Upadhyaya)
Member (Admnv.)

पुस्तकालय से ली/जमा..... जयपुर, दि.....
प्रतिष्ठान के नाम पर

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सूचना एवं आवश्यक कार्यवाही हेतु

उप निदेशक
4/8/03

Issued
on 5.3.03
BS

D. K. Dixit, Adm.

M. K. Verma, Adm.