IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of April, 2011

Original Application No.167/2007

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Krishan Chand
s/o Shri Narain Singh
r/o Village Silothi,
Post Asawta,
Tehsil Palwal, Faridabad
Haryana.

.. Applicant

(By Advocate: Shri R.P.Sharma)

Versus

1. Navodaya Vidyalaya Samiti
through Principal Secretary
(Joint Commissioner (Admn.),
Administrative Building,
Indira Gandhi Stadium,
New Delhi.

2. Commissioner,
Navodaya Vidyalaya Samiti,
A-28, Kailash Colony,
New Delhi.

3. Dy. Commissioner,
Navodaya Vidyalaya Samiti,
18, Sangram Colony,
Mahaveer Marg,
C-Scheme,
Jaipur

.. Respondents

(By Advocate: Shri V.S.Gurjar)

O R D E R (ORAL)

Brief facts of the case are that the applicant was initially appointed as PGT (Chemistry) in Navodaya Vidyallaya Samiti and joined his duties on 10.12.1991 in Navodaya Vidyalaya situated at Jaswantpura (Jalore). He was transferred to Navodaya Vidyalaya, Chhokarwara (Bharatpur). Certain complaints were filed against the applicant and the respondents decided to initiate disciplinary proceedings invoking provisions of sub-rule (1) of Rule 10 of CCS (CCA) Rules, 1965. The applicant was put under suspension vide order dated 15.2.2006 and considering the nature of complaint and charges, it was not expedient to hold regular inquiry under the provisions of CCS (CCA) Rules, 1965 and considering the fact that serious embarrassment will be caused to the concerned students and their guardians, the competent authority in exercise of the powers conferred under the provisions of the notification dated 20.12.1993 terminated services of the applicant.

2. The learned counsel appearing for the applicant challenged the termination order mainly on the ground that the Disciplinary Authority has taken decision without any basis although the authority who is empowered to dismiss/remove or terminate shall record reasons in writing in denying opportunity under clause 2 of Rule 14 before making order of dismissal. It is also contended that the applicant asked for certain documents but the same were not made available and respondents refused to provide copies as demanded by the applicant through Para 5 of his representation

Ann.A/5. The respondent vide Ann.A/8 dated 16/31.3.2007 refused to provide copy but given opportunity to the applicant to inspect the documents as the respondents were of the view that since the applicant was involved in a case of moral turpitude involving sexual behavior towards the students and in an inquiry conducted into the charges of moral turpitude involving immoral sexual behavior towards the students were prima-facie found proved and to maintain their dignity the documents were not made available to the applicant, but he was allowed to inspect the documents.

3. The applicant also challenged the order AnnA/1 dated May 18, 2006 on the ground that it is not reasoned order which has been passed.

4. We have perused the impugned order Ann.A/1. Since complaints submitted by the students and guardians of immoral sexual behavior towards students were received against the applicant while posted at Navodaya Vidyalaya, Chhonkarwara, Bharatpur and looking to the gravity and seriousness of the charges leveled against the applicant, inquiry was conducted and the charges have been established and the applicant was found guilty of moral turpitude involving exhibition of immoral sexual behavior towards students of Class-IX of the school. The Disciplinary Authority also felt that it is not expedient and practicable to hold a regular inquiry under the provisions of CCS (CCA) Rules, 1965 in the matter on account of serious embarrassment that will be caused to the concerned students and their guardians.

5. The learned counsel appearing for the respondents referred to the judgment of the Supreme Court in the case of Avinash Nagra vs. Navodaya Vidyalaya Samiti and ors., (1997) 2 SCC 534 and more particularly para 12. which thus reads:-

> "12. It is axiomatic that percentage of education among the girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the girl children to 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 the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parentis and such is the duty, responsibility and charge expected of a teacher. The question arises whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him? The fallen standard of the appellant is the tip of the iceberg in the discipline of teaching. A noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. Enquiry is not a panacea but a nail in the coffin. It is self inspection and correction that is supreme. It is seen that the rules wisely devised have given the power to the Director, the highest authority in the management of the institution to take decision, based on the fact-situation, whether a summary enquiry was necessary or he can dispense with the services of the appellant by giving pay in lieu of notice. Two safeguards have been provided, namely he should record reasons for his decision not to conduct an enquiry under the rules and also post with facts the information with Minister, Human Resources Department, Government of India in that behalf. It is seen from the record that the appellant was given a warning for his sexual advances towards a girl student but he did not correct himself and mend his conduct. He went to the girls' hostel at 10 p.m. in the night

and asked the hostel helper, Bharat Singh to misguide the girl by telling her that Bio-Chemistry Madam was calling her, believing the statement. she came out of the hostel. It is the admitted position that she was an active participant in cultural activities. Taking advantage thereof, he misused his position and made sexual advances towards her. When she ran away from his presence, he pursued her to the room where she locked herself inside; he banged the door. When he was informed by her roommates that she was asleep, he rebuked them and took the torch from the room and went away. He admitted his going there and admitted his meeting with the girl but he had given a false explanation which was not found acceptable to the Enquiry Officer, namely, Asstt. Director. After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him not worthy to be a teacher in the institution. Under those circumstances, the question arises whether the girl and her roommates should be exposed to the cross-examination and harassment and further publicity? In our considered view, the Director has correctly taken the decision not to conduct any enquiry exposing the students and modesty of the girl and to terminate the services of the appellant by giving one month's salary and allowances in lieu of notice as he is a temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls to tardy process of cross-examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof. In view of his admission that he went to the room in the night, though he shifted the timings from 10 p.m. to 8 p.m. which was not found acceptable to the respondents and that he took the torch from the room, do indicate that he went to the room. The misguiding statement sent through Bharat Singh, the hostel peon, was corroborated by the statements of the students; but for the misstatement, obviously the girl would not have gone out from the room. Under those circumstances, the conduct of the appellant is unbecoming of a teacher much less a loco parentis and, therefore, dispensing with regular enquiry under the rules and denial of cross examination are legal and not vitiated by violation of the principles of natural justice."

The learned counsel also referred the case of Commissioner, K.V.Sangathan & Ors. vs. Ratin Pal decided on August 18, 2010 by Hon'ble Supreme Court in SLP (Civil) No.4627/20008 wherein the Hon'ble Supreme Court observed as under:-

"We have heard learned counsel for the parties and perused the record of the appeal. We have also gone through the file containing the paper relating to the inquires, which was produced by the learned counsel for the appellants. The file was also made available to the learned counsel for the respondents for his perusal. It is not in dispute that in both the inquires, one of which was conducted by a team of 9 teachers and the other by a two Member Committee, the girls, who made the complaints stood by the allegations made in the complaints and vividly described the manner in which the respondent had sexually assaulted them. In the second inquiry, the parents of the girls also repeated the allegation. Two of them also stated that they were threatened by the respondent with dire consequences. Respondent did make an attempt to protect himself as victim of some conspiracy but he could not produce any tangible evidence either before the inquiry Committee or Appellate Authority. Even before the Tribunal, he could not substantiate the charge that he was being framed up for extraneous reasons. Appellant No. 1 scrutinized the statements of the girls students and their parents and felt convinced that it would not by reasonable and practicable to conduct an inquiry under the 1965 Rules because the same would cause serious embarrassment to the girls, who were aged 11 to 12 years and their parents and would also vitiate the atmosphere of the school. Therefore, it is not possible to find any fault with the decision taken by appellant No. 1 to dispense with the regular inquiry and invoke Article 81(b) of the Education Code. In its order dated 3.4.2003, the Tribunal recorded cogent reasons for negating the respondent's challenge to the termination of his services, but the High Court upset that order as also the one passed by appellant No. 1 without even adverting to the reasons recorded by him for dispensing with the inquiry.

The High Court's observation that appellant No. 1 had not recorded his satisfaction on the desirability of dispensing with the regular inquiry is clearly erroneous. A reading of the order extracted in the earlier part of this judgment shows that appellant No. 1 had independently analyzed the statements of the girl student and their parents and came to the conclusion that it was not expedient to conduct regular inquiry because that would embarrass the girl students and their parents and would also vitiate atmosphere of the school. The reasons assigned by appellant No. 1 cannot, by any stretch of imagination, be treated as extraneous or irrelevant to the exercise of power under Article 81(b) of the Education Code.

> As a sequel to the above discussion, we hold that the High Court committed serious error by quashing/setting aside the order of punishment passed by appellant No. 1 and the one passed by the Tribunal dismissing the application filed by respondent no. 1.
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> In the result, the appeal is allowed. The impugned order of the Division Bench of the High Court is set aside and the one passed by the Tribunal dismissing the OA of respondent is restored. However, it is made clear that if any amount is payable to the respondent in accordance with the relevant rules, then such amount shall be paid to him within two months."

6. The learned counsel Shri R.P.Sharma relied upon the judgment in the case of M/s Mahabir Prasad Santosh Kumar vs. State of U.P. and ors. reported at AIR 1970 SC 1302 wherein the Hon'ble Supreme Court observed that opportunity to a party interested in the dispute to present his case on question of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of law to the facts found, are attributed of even a quasi-judicial determination. Recording of reasons in support of a decision by a quasi judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

7. We have given our thoughtful consideration to the rival submissions of the respective parties. We have also carefully gone through the serious charges leveled against the applicant and also carefully scanned the judgments referred to by the respective

parties. It is not disputed that the applicant was served charge sheet dated 23.8.2005 under Rule 16 of the CCS (CCA) Rules, 1965 for poor performance for the board classes result of XII class chemistry of CBSE in the year 2005. The disciplinary proceedings could not be completed on account of termination of services of the applicant on the ground of moral turpitude. The applicant was placed under suspension on account of sufficient, valid and cogent reasons since a disciplinary case was contemplated against the applicant vide Ann.A/3. Keeping in view the mandate of Rule 19 an order can be made straightway by the Disciplinary Authority without following prescribed procedure provided under Rule 14 to18 of the CCS (CCA) Rules, 1965 wherein the Disciplinary Authority is satisfied that it is not reasonably permissible to hold an enquiry in the manner provided in the rules. In the instant case, the involvement of the applicant in a conduct involving moral turpitude is apparent on the face of record on account of the fact that the applicant was prima-facie found guilty of moral turpitude having immoral sexual behavior towards student of Class-IX of Jawahar Navodya Vidyalaya (JNV), Bharatpur and keeping in view the findings arrived at by the Committee constituted to enquire into immoral sexual behavior and offence of sodomy, committed by the applicant with the students of JNV, the competent authority has rightly concluded that it was not expedient and practicable to hold regular enquiry under the provisions of CCS (CCA) Rules, 1965 in the matter, which was likely to cause serious embarrassment to concerned student and the guardians/parents. It is not disputed

and even crystal clear that from bare perusal of para 5 of the representation Ann.A/8 the applicant demanded copy of complaint of student, medical report of the student, complaint of all the students, committee report, statement of students, staff recorded during the preliminary enquiry, preliminary enquiry report, question-answer (examination) proceedings of the committee and copy of the statement of the applicant recorded during enquiry. The Hon'ble Supreme Court in the case of Avinash Nagra (supra) considered the question whether the conduct of the appellant is befitting with such higher responsibilities and as he by his conduct betrayed the trust and forfeited the faith whether he would be entitled to the full-fledged enquiry as demanded by him and observed that the fallen standard of the appellant is the tip of the iceberg in the discipline of teaching, a noble and learned profession; it is for each teacher and collectively their body to stem the rot to sustain the faith of the society reposed in them. The Hon'ble Apex Court in the case of Commussioner, KVS vs. Ratan Pal (supra) also considered the issue of statements of girl students and their parents and felt convinced that it would not be reasonable and practicable to conduct an inquiry under the 1965 Rules because the same would cause serious embarrassment to the girls who were aged 11 to 12 years and their parents and would also vitiate the atmosphere of the school. Therefore it is not possible to find any fault with the decision taken by the appellants to dispense with the regular inquiry and invoke Article 81(b) of the Education Code. The observations made by the Apex Court in the aforesaid

judgments squarely covers the present controversy as in the present case also there were serious allegations against the applicant and the applicant was found guilty of moral turpitude involving exhibition of immoral sexual behavior towards student of class-IX and the Disciplinary Authority has rightly observed that it is not expedient and practicable to hold a regular inquiry under the provisions of CCS (CCA) Rules, 1965 in the matter on account of serious embarrassment that will be caused to the concerned students and their guardians. In the present case, we are of the firm view that since serious allegations of moral turpitude involving exhibition of immoral sexual behavior have been leveled against their teacher by the students and as held by the Supreme Court, under these circumstances, the conduct of the applicant is unbecoming of a teacher much less a loco parentis and, therefore, dispensing with regular enquiry under the rules and denial of cross-examination are legal and not vitiated by violation of the principles of natural justice. Consequently, we find no merit in this case and the same is dismissed.

8. The OA is disposed in the aforesaid terms with no order as to costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

(JUSTICE K.S.RATHORE)
Judl. Member

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