

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

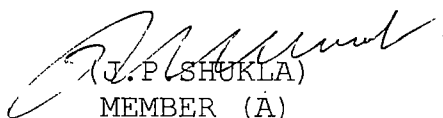
ORDERS OF THE TRIBUNAL


30.10.2007

OA 62/2007

Mr. Amit Mathur, counsel for applicant.
Mr. V.S. Gurjar, counsel for respondents.

At the request of learned counsel for the applicant, let the matter be listed on 12.11.2007.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

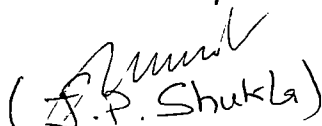
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12-11-2007

Mr. Amit Mathur, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

Heard learned Counsel for the parties.

For the reasons dictated separately,
the OA is allowed: ^{or} MA No 159/2007 for vacation
if any dismissed _{u-}


(J.P. Shukla)
M(A)


(M.L. Chauhan)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 12th day of November, 2007

ORIGINAL APPLICATION No.62/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Madhvi Sharma
d/o Shri P.M.Sharma,
aged around 44 years,
r/o 81, Mansarovar, Jaipur,
presently working as PGT in KV No.2, Jaipur

.. Applicant

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India
through Secretary,
Ministry of Human Resource,
New Delhi.
2. Commissioner, KVS, New Delhi.
3. Assistant Commissioner, KVS, Jaipur

.. Respondents

(By Advocate: Shri V.S.Gurjar)

O R D E R (ORAL)

The applicant while working as PGT (Chemistry) in Kendriya Vidyalaya No.2, Jaipur was issued a chargesheet dated 4.5.2006 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The Article of charge against the applicant is that she has violated rule 3(1)(iii) of CCS (Conduct) Rules, 1964 as applicable to employees of Kendriya Vidyalaya Sangathan (KVS). At this stage, it will be useful to extract the statement of articles of charge framed against the applicant, which thus reads:-

" ARTICLE-I

That the said Smt. Madhavi Sharma, PGT (Chem) while working in KV No.2 Jaipur Cantt. was directed to acquire B.Ed. qualification from recognized University within 2 years from 16.1.2004 vide KVS (RO) Jaipur letter No.F.11-61(DP)/2002-KVS (JPR) dated 16.1.2004 but she has not obeyed the instructions of her superior authority.

Thus she has violated rule 3(1)(iii) of CCS (Conduct) Rules, 1964, as applicable to employees of KVS."

The charge memo also include statement of imputation of misconduct or misbehaviour in support of articles of charges which is annexed with the charge memo at Annexure-II. It is mentioned therein that the applicant was initially appointed as PGT (Chemistry) on trial basis without B.Ed. degree vide memorandum dated 7.8.87. Subsequently, she acquired B.Ed. degree from Varanasaya Sanskrit Vishwavidyalaya, Varanasi in

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January, 1990 which was declared as fake university by the U.G.C. It is further stated that the applicant was directed to acquire the B.Ed. qualification within 2 years from 16.1.2004 but she failed to acquire the requisite qualification within the extended period of two years i.e. upto 16.1.2006, which is an essential qualification for a regular teacher in KVS and this act of the applicant is obviously in contravention to existing service rules of KVS. Thus, the applicant has violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. The applicant has submitted reply to the chargesheet. Inquiry Officer was appointed. The Inquiry Officer submitted report and the applicant was found guilty of the charges. The applicant has also made grievances regarding not affording full opportunity by the Inquiry Officer. The applicant has further pleaded that she has taken admission in B.Ed. course immediately but due to Chiken Gunia and Dangu she could not appear in the B.Ed. Examination. It is further stated that she will be again appear for this examination in the year 2007 itself, but the respondents are pre-determined to remove her from service. It is on the basis of these facts that the applicant has filed this OA thereby praying for quashing of the chargesheet dated 4.5.2006 and subsequent proceedings pursuant to such chargesheet.

2. When the matter was listed on 7.3.2007, while issuing notice to the respondents ex-parte stay was

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granted thereby permitting the respondent to proceed with the chargesheet and the inquiry but will not impose penalty till the next date of hearing and the matter was listed on 16.5.2005. Thereafter the matter was listed from time to time but the ex-parte stay was not extended.

3. Notice of this application was given to the respondents. The respondents have filed reply. The facts, as stated above, have not been disputed. It is stated that as per letter issued by the U.G.C., Varasneya Sanskrit Vishwavidyalaya, Varanasi is a fake institute and, therefore, B.Ed. qualification acquired by the applicant from this University is a fake B.Ed. degree which is not a valid qualification for the post of PGT and as such the applicant does not possess essential qualification. It is further stated that a bare perusal of the offer of appointment issued to the applicant dated 7.8.1987 (Ann.1(A) made it very clear that the appointment was on trial/temporary basis till she acquires the essential qualification as per the rules. It is further stated that offer of appointment was made subject to the condition stipulated therein and further conditions detailed out under condition No.5, wherein it has been specifically mentioned that the applicant would be placed 'On trial' initially for a period of two years which may be extended by one year if she is not able of acquire teaching degree within two years. The applicant was required to

complete training degree either by joining a regular course in a recognized Teachers Training Institute or through summer-cum-correspondence course of the Regional College of education. It is further stated that it was necessary for the applicant to qualify the teachers training course in not more than two attempts, failing which she will not be eligible for being appointed in service of KVS on regular basis and will have no claim whatsoever in the Sangthan. It is further stated that one of the conditions which was stipulated in the offer of appointment was that in the event of her completing the training course satisfactorily/ acquiring teaching experience, she will be appointed as PGT (Chemistry) on regular basis and the offer of appointment was further subject to other relevant terms and conditions of service as laid down in Education Code for KV, as amended from time to time. The respondents have also further categorically stated that at the relevant time when the offer of appointment was made in favour of the applicant trained teachers were not available and hence to avoid administrative difficulties it was decided to grant them a concession to acquire the degree of B.Ed. while being on 'trial' basis. The respondents have further stated that the applicant was afforded full opportunity to defend her case, but the applicant made every attempt to delay the enquiry proceedings on one or the other pretext. She was given full opportunity

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to defend her case but she deliberately avoided to participate in the inquiry proceedings on one or the other reasons thereby prolonging the inquiry. Thus, the Inquiry Officer had no option but to proceed ex-parte yet another opportunity to submit defence within 10 days was granted as is evident from bare perusal of the inquiry report. Therefore, according to respondents, action of the respondents is perfectly legal and valid.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The charge against the applicant is that she is guilty of misconduct as prescribed under Rule 3(1)(iii) of the CCS (Conduct) Rules as applicable to the employees of the KVS, which thus reads:-

"3. General

(1) Every Government servant shall at all times-

(i)...

(ii)...

(iii) do nothing which is unbecoming of a Government servant."

The Government of India also issued instructions from time to time thereby detailing the act and conduct which amount to misconduct. In this regard the Government has issued instructions further vide DOPT OM dated 7th February, 1977. Para 2.2 of the said instructions prescribed that cases of trivial nature

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should be eliminated. At this stage, it will be useful to extract para 2.2, which thus reads:-

"Cases of trivial nature should be eliminated-. Rule 3(1) of the Central Civil Services (Conduct) Rules, 1964 provides that a Government servant shall at all times maintain absolute integrity and devotion to duty and do nothing unbecoming of a Government servant. This rule serves the specific purpose of covering act of misconduct not covered by other specific provisions of the rules. It is, therefore, necessary that disciplinary authorities should satisfy themselves that the alleged acts of misconduct do not attract the provisions of any specific rule before taking recourse to Rule 3(1) *ibid*. Where action is taken under Rule 3(1) particularly on ground of unbecoming conduct, special care should be taken to eliminate cases of a trivial nature. Supervisory officers should look into this matter during periodic inspections and ensure that disciplinary proceedings under Rule 3(1) are not initiated on ground which are unjustified."

Now the question which requires our consideration is whether action of the applicant in not acquiring the B.Ed. qualification within the prescribed time constitute a misconduct within the meaning of Rule 3(1)(iii) of CCS (Conduct) Rules. As already stated above, the charge against the applicant is that she has disobeyed the instructions of her higher authority whereby she was asked to acquire B.Ed. qualification from a recognized university within further extended period of two years i.e. upto 16.1.2006. According to us, such an act on the part of the applicant does not constitute misconduct. It may be relevant to state here that at the most it may be a part of lapse on the part of the applicant in not qualifying the B.Ed. examination within the period prescribed by the

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respondents. At this stage, it may be stated that vide memorandum dated 7.8.87 (Ann.1A) the applicant was given offer of appointment to the post of PGT (Chemistry) on trial basis subject to conditions mentioned in para 5 of the said memorandum. Admittedly, such appointment on trial basis was given because according to the respondents there was shortage of the qualified staff and in order to see that teaching work in various KVs, which according to respondents are approximately 929, do not suffer, it was decided to appoint such persons who did not possess B.Ed. degree, which was one of the essential qualification as per the conditions laid down in the recruitment rules. The fact that the applicant was given appointment on trial basis for a period of 2 years which was further extendable by one year during which period the applicant was required to acquire B.Ed. degree is clear from condition No. 5(i) of the offer of appointment. Condition No. 5(iii) of the said letter stipulates that appointment as PGT (Chemistry) on regular basis will be given only on completion of training course. Thus, from perusal of memorandum dated 7.8.87 i.e. offer of appointment it is clear that appointment of the applicant was on trial basis and such appointment was limited only for a period of two years, further extendable for one year during which period the applicant was required to obtain teaching experience by obtaining B.Ed. degree from a

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recognized institute. The consequences of not completing the B.Ed. degree during the aforesaid period is also stipulated in para 5 (iii) of the offer of appointment i.e. the applicant's services shall be regularized only if the requisite teaching experience is acquired in the meanwhile. Once the applicant has not obtained the B.Ed. degree/teaching experience from a recognized institution, the services of the applicant were not required to be regularized and her services could have been dispensed with in terms of the conditions stipulated in the offer of appointment. Certainly, according to us, not acquiring B.Ed. degree/requisite teaching experience within the time stipulated by the respondents vide letter dated 16.1.2004 which was further extended for 2 years shall not amount to misconduct in terms of the instructions issued by the DOPT vide OM dated 7th February, 1977, relevant portion of which has been reproduced hereinabove. As already stated above, the consequences of not obtaining B.Ed. Degree/teaching experience within a period of 3 years as per condition No. 5(i) will dis-entitle the applicant for appointing her on regular basis and once consequences are provided as per memorandum dated 7.8.87, it is not a case of misconduct as defined vide Govt. of India decision dated 7th February, 1977. It was not open for the respondents to frame chargesheet for not obeying the instructions dated 16.1.2004 of her superior authority

whereby the applicant was granted two years' time to acquire B.Ed. degree from a recognized university which period was further extended for 2 years.

The law on this point is no longer res-integra. The Apex Court in the case of A.L.Kalra vs. The Project and Equipment Corporation of India Ltd., AIR 1984 SUPREME COURT 1361 held that where consequences are provided for breach of condition, that course should be followed rather than initiating disciplinary inquiry, as breach of rules did not constitute misconduct. That was a case where appellant therein was issued a chargesheet for not maintaining 'absolute integrity' and to 'do nothing which unbecoming of a public servant'. The charge against the applicant was that he has not refunded the advance taken for house building within the time stipulated under the rules framed for granting House Building Advance. The appellant was also charged of not returning within the stipulated time advance taken for purchase of motor cycle. He was removed from service after inquiry on the ground that the violation of the rules for granting House Building Advance amounted to not maintaining absolute integrity and thus he was found guilty of misconduct. The Apex Court held that rules granting advance themselves provided the consequences of breach of condition. Therefore there was no ground for initiating disciplinary proceedings as the breach of rules did not constitute misconduct. It was further

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held that the rule was vague and of a general nature what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. It was further held that failure to return advance for house building or advance for purchase of vehicle have consequences under the rules, as such, it would not amount to misconduct. Similar is the situation in the present case. In case the applicant has not obtained B.Ed. degree from the recognized institution, the respondents were not remediless. They should have proceeded in accordance with the terms and condition of the appointment where the consequence is provided for not acquiring teaching degree in terms of condition No. 5(i) and (iii). It was open for the respondents not to regularize services of the applicant and further the terms of appointment of the applicant was for a limited period i.e. maximum 3 years. Thus, according to us, the instructions issued by the respondents for acquiring B.Ed. degree from recognized institution within extended period of 2 years, is not a misconduct. At the most, it may be lapse on the part of the applicant for which she could have been dealt with separately in accordance with law and not by way of initiating disciplinary proceedings, especially when such act of the applicant does not fall within the definition of misconduct as enumerated

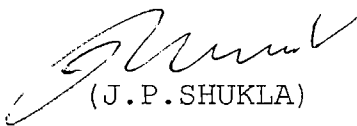
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in the instructions issued by the Govt. of India from time to time.

Before parting with the matter, we may notice the contention of the learned counsel for the respondents that the applicant has obtained fake B.Ed. degree from Varanasaya Sanskrit Vishwavidyalaya, Varanasi in January, 1990 which was declared as fake university by the UGC, as such, the charge framed against the applicant is sustainable. We have given due consideration to the submissions made by the learned counsel for the respondents, but we are not inclined to accept the contentions so raised by the learned counsel for the respondents. As can be seen from the memorandum of charge, which has been reproduced in the earlier part of the judgment, the applicant has been charged for not obeying the instructions of her superior authority whereby she was directed to acquire B.Ed. qualification from a recognized university and not charged for obtaining employment/regularization in service on the basis of B.Ed. degree from an institution which has been declared fake University by the UGC. In that eventuality, it could have been a misconduct. But since the charge is regarding not obeying the instructions of the higher authority the contention raised by the learned counsel for the respondents is without any basis.

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6. For the foregoing reasons, we are of the view that the applicant had made out a case for grant of relief. Accordingly, the present OA is allowed. The impugned chargesheet dated 4.5.2006 (Ann.A1) and the inquiry report dated 02.02.2007 (Ann.A15) is hereby quashed and set-aside. It will be open for the respondents to proceed further in the matter in accordance with law.



(J.P. SHUKLA)

Admv. Member



(M.L. CHAUHAN)

Judl. Member

R/