

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 13th day of July, 2011

Original Application No.179/2010

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Rajeev Kumar Paliwal,
s/o Shri L.S.Sharma,
r/o Plot No.7, Shiv Colony,
Ganesh Halwai Ki Gali,
Devpura, Bundi.
Last employed as
Trained Graduate Teacher (Hindi),
JNV Sitapura, Bundi.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Navodaya Vidyalaya Samiti
through Joint Director (Administration),
A-28, Kailash Colony,
New Delhi.
2. The President/Chairman,
Vidyalaya Samiti Cum Minister,
Ministry of Human Resources Development,
(Department of Education),
New Delhi.
3. The Commissioner,
Navodaya Vidyalaya Samiti,
A-28, Kailash Colony,
New Delhi.
4. The Deputy Commissioner,
Navodaya Vidyalaya Samiti,
18 Sangram Colony,
Mahaveer Marg,
'C' Scheme,
Jaipur

5. Shri R.L.Mali,
Principal,
Jawahar Navodaya Vidyalaya,
Sitapura, Distt. Bundi.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

ORDER (ORAL)

Brief facts of the case are that the applicant while posting at Jawahar Navodaya Vidyalaya (JNV), Sitapura, Bundi was assigned to work as Warden of Boys Hostel in addition to his teaching work. It is alleged that on the basis of direction of the respondent No.5 FIR was lodged against the applicant alleging therein that the applicant made sexual advances towards Miss Laxmi Saini, a Class-VII student and after investigation, it is submitted by the learned counsel appearing for the applicant that the police has filed Final Report. In contemplation of the enquiry, the applicant was placed under suspension vide order dated 28.7.2006 (Ann.A/9). On the complaint filed against the applicant by the girl student, preliminary and summary enquiry was conducted and vide impugned order Ann.A/2 dated 19.2.2007, looking to the serious allegation against the applicant, services of the applicant were terminated with immediate effect, against which appeal has been preferred by the applicant and the Appellate Authority has maintained the same punishment.

2. The termination order as well as the appellate order has been challenged by the applicant on the ground that the Appellate



Authority is the Commissioner whereas the appellate order has been passed by the Joint Commissioner who is not competent. Further challenged on the ground that while placing the applicant under suspension vide order dated 28.7.2006 it was made clear that in exercise of power conferred by sub rule (1) of Rule 10 of CCS (CCA) Rules, 1965 the applicant was placed under suspension with immediate effect as disciplinary proceeding against the applicant is contemplated. Thus, by way of this order, the respondents were intended to initiate a regular enquiry but instead of conducting regular enquiry, summary enquiry has been conducted. It is also stated that the police after investigation found the case as false and submitted the Final Report, therefore, the material relied upon by the Disciplinary Authority is contrary to the record.

3. The applicant has also alleged mala-fide against respondent No.5 and stated that the complainant as well respondent No.5 are of OBC category, therefore, a false case has been planted at the behest of respondent No.5 against the applicant, which has been denied by respondent No.5 in his reply stating that these allegations are without any basis.

4. The respondents have controverted the submissions made on behalf of the applicant and submitted that in the peculiar facts, circumstances and material available on record, the action of the respondents is perfectly legal, valid and in consonance with the service law jurisprudence. Further stated that in the Indian society a teacher enjoys exalted and elevated status. The Indian society has elevated the teacher as "Guru Brahma, Gurur Vishnu, Guru Devo



"Maheswaraha" but the applicant by his conduct betrayed the trust and forfeited the faith of the students and parents. The learned counsel appearing for the respondents also referred to notification dated 20th December, 1993, which reads as under:-

"F.No.14-2/93-NVS(Vig.)

Dated: 20th December, 1993

NOTIFICATION

The Executive Committee of the Samiti at its meeting held on 12th January, 1992 had approved adoption of Central Govt. Rules and Regulations in the service matters of the employees of the Samiti mutatis mutandis till such time the Samiti framed its own rules and regulations. The above decision of the Executive Committee had been notified to all concerned vide No. F.6-1/92-NVS (Admn.) dated 30th March, 1993.

It has further been decided with the approval of the Executive Committee that the relevant provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as amended from time to time, which are applicable to all members of the staff of the Samiti, mutatis mutandis shall suitably amended to provide for special procedure in certain types of cases. Accordingly, the provisions of Central Civil Services (Classification, Control and appeal) Rules, 1965 as applicable to the employees of the Samiti, relating to procedure for imposing penalties will stand amended to provide for special procedure in certain types of cases as enunciated below:-

A (i) In cases of purely temporary employee who is known to be doubtful integrity or conduct but where it is difficult to bring forth sufficient documentary or other evidence to establish the charges, and whose retention in the Vidyalaya etc. will be prejudicial to the interest of the Institution; and

(ii) In the case of a temporary employee suspected of grave misconduct, where the initiation of regular proceedings against him in accordance with the provisions of CCS (CCA) Rules, 1965 is likely to result in embarrassment to a class of employee and/or is likely to endanger the reputation of the Institution.

The appointing authority may record the reasons for termination of the services of the employee in its own record and thereafter terminate the services of the employee under

the terms of appointment without assigning any reason. Where the appointing authority is the Principal, action to terminate the services of an employee under the terms of appointment, shall be taken only after obtaining prior approval of the Deputy Director.

B. Whenever the Director is satisfied, after such summary enquiry as he deems proper and practicable in the circumstances of the case, that any member of the Navodaya Vidyalaya is *prima facie* guilty of moral turpitude involving sexual offence or exhibition or immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one month's or three months pay and allowances depending upon whether the guilty employee is temporary or permanent in the service of the Samiti. In cases, procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of Navodaya Vidyalaya Samiti, shall be dispensed with, provided, that the Director is of the opinion that it is not expedient to hold regular enquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Director shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman of the Samiti informed of the circumstances leading to such termination of services.

The above provisions will take effect from the date of issue of the notification."

5. After referring the notification wherein it was provided that whenever the Director (now Commissioner) is satisfied after such summary enquiry, as he deemed proper and practicable in the circumstances of the case, that any member of the Navodaya Vidyalaya is *prima facie* guilty of moral turpitude involving sexual offence and immoral sexual behaviour, he can terminate the service of that employee by giving him one month or three months' pay and allowances depending upon whether the guilty employee is temporary or permanent in the services of the Samiti. In such a situation, the procedure prescribed under CCS (CCA) Rules was



liable to be dispensed with, in case the Commissioner is of the opinion that it is not expedient to hold regular enquiry on account of serious embarrassment of the student or his guardians or such other practical difficulties after recording reasons. Thus, the present case is covered under Clause-B of the notification dated 20th December, 1993.

6. Having heard the rival submissions of the respective parties and upon perusal of the material available on record as well as the impugned orders passed by the competent authority and the Appellate Authority and the provisions of law and the judgments referred to by the respective parties. The learned counsel appearing for the respondents also referred judgment dated 25th April, 2011 of this Tribunal passed in OA No. 167/2007 and submits that the present controversy is squarely covered by the aforesaid judgment rendered by this Tribunal.

7. We have also carefully perused the order passed by this Tribunal in the aforesaid OA. A similar controversy was involved in OA No.167/2007 and while deciding the aforesaid OA, this Tribunal has considered the judgment rendered by the Hon'ble Supreme court in the case of Avinash Nagra vs. Navodaya Vidyalaya Samiti and Ors., reported at (1997) 2 SCC 534 and also the judgment in the case of Commissioner K.V.Sangathan and Ors. vs. Ratin Pal decided on August 18, 2010 in SLP (Civil) No. 4627/2008 as well as 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 and observed as under:-



"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 to 18 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. Upon careful perusal of the judgment rendered by this Tribunal and looking to the facts and circumstances of the present case, no doubt the judgment squarely covers the present controversy besides the ratio decided by the Hon'ble Supreme Court in the case of Avinash Nagra (supra) wherein in para 12 the Hon'ble Supreme Court observed as under:-

"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."

9. We have also carefully perused the judgment of the Hon'ble Supreme Court in the case of Commissioner K.V.Sangathan and ors. vs. Ratin pal (supra) wherein the Apex Court has 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 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 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.

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."



10. We have also thoroughly considered the Final Report but it cannot be said that the FIR was false at its face value and when in the enquiry the applicant is found guilty of moral turpitude involving sexual offence and exhibition of immoral sexual behaviour towards the girl student, the Final Report filed by the police agency is of no consequence in view of the findings of the enquiry.

11. Further, the Appellate Authority has carefully considered the case of the applicant and also the order of termination passed by the Commissioner. Since the Commissioner has applied his mind while forming opinion that it was neither expedient to hold the regular enquiry in the case and considering this fact, the Appellate Authority concluded that the appeal made by the applicant is devoid of merit. The Appellate Authority has observed that the applicant was guilty of serious misconduct of misbehaving with a girl student and the gravity of the offence was magnified keeping in view the fact that the applicant was teacher and the victim was his student, therefore rightly upheld the penalty imposed by the Commissioner. As there were serious allegations against the applicant and the applicant was found guilty of exhibition of immoral sexual behaviour towards girl student of Class-VII, the Disciplinary Authority has rightly observed that it is not expedient and practicable to hold regular enquiry under the provisions of CCS (CCA) Rules, 1965 in the matter, on account of serious embarrassment that will be caused to the concerned student and her guardian.



12. Looking to the facts and circumstances of the present case, we are of the firm view that since serious allegation of moral turpitude involving exhibition of immoral sexual behaviour has been leveled against their teacher by the student 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 principles of natural justice. Therefore, we are of the view that the competent authority has rightly terminated the services of the applicant and the Appellate Authority has rightly upheld the same.

13. Accordingly, we find no merit in this OA and it is therefore, dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S.Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/