

Reserved
(On 20.03.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
CIRCUIT SITTING AT NAINITAL

Dated: This the 17th day of April 2018

Original Application No. 331/01633 of 2013

Hon'ble Dr. Murtaza Ali, Member – J
Hon'ble Mr. Gokul Chandra Pati, Member – A

Om Prakash Rai, S/o Late Uma Shankar Rai, R/o Village and Post –
Baghauna, District – Ballia.

By Adv: Shri Vinay Bhusan Upadhyaya . . . Applicant

V E R S U S

1. Commissioner, Kendriya Vidyalaya Sangathan, (HQ), 18, Institution Area, Shahidjeet Singh Marg, New Delhi.
2. Joint Commissioner (Admn), Kendriya Vidyalaya Sangathan, (HQ), 18, Institution Area, Shahidjeet Singh Marg, New Delhi.
3. Assistant Commissioner (Deputy Commisioner), Kendriya Vidyalaya Sangathan, Salawala, Hathibarkala, Dehradun (UK).
4. Principal, Kendriya Vidyalaya, O.N.G.C., Dehradun.
5. Chairman, Kendriya Vidyalaya Sangathan, (HQ), 18, Institution Area, Shahidjeet Singh Marg, New Delhi.
6. Vice Chairman, Kendriya Vidyalaya Sangathan, (HQ), 18, Institution Area, Shahidjeet Singh Marg, New Delhi.

By Adv: Shri N.P. Singh . . . Respondents

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The present OA has been filed under Section 19 of the
Administrative Tribunals Act, 1985 for the following reliefs:-

"I. Quash and set aside the impugned orders dated 19.12.2007, 2.3.2010 and 7.2.2011 issued by the respondent No. 2, 7 and 3 (Annexure No. 1, 2 and 3 to this OA in compilation No. I.

- II. *Directing the respondents to reinstate the applicant forthwith with immediate effect and to pay all the back wages and other consequential benefits entitled to the applicant from the date of his suspension to the date of reinstatement with 18% interest per annum.***
- III. *to, pass any other and further order as may deem fit and proper in the facts and circumstances of the case.***
- IV. *to allow the present original application with cost.”***

2. The brief facts of the case as narrated in the O.A are that the applicant was posted as Physical Education Teacher on 22.08.1995 at Kendriya Vidyalaya (in short KV) Bhel, Haridwar as a regular teacher. The applicant subsequently joined on 19.08.2000 at KV, ONGC Dehradun on transfer. While he was posted at KV, ONGC, Dehradun, a joint complaint was made by the 12 Girls Students on 12.04.2006 against the applicant for sexual misbehavior with girl students. A joint compliant without any date was filed on 13.04.2006 (Annexure A-5) by 12 girl students of Class VIII C of KV, ONGC Dehradun to the Principal of the Kendriya Vidyalaya, that the representation has been signed on 13.04.2005 by 5 teachers of the Vidyalaya. A committee constituting of 7 members was conducted by the Principal KV, ONGC Dehradun on 13.04.2006 to conduct preliminary inquiry. The preliminary inquiry committee submitted his report to the Principal and the Principal forwarded the same to the Chairman Vidyalaya Management Committee and on the day to the Assistant Commissioner, KV, ONGC, Dehradun on 17.04.2006 (Annexure A-7). The applicant was suspended by the Assistant Commissioner KVS, Dehradun on 17.04.2006. The Assistant Commissioner KVS Dehradun constituted a summary inquiry committee in pursuance of the KVS (Head Quarters), New Delhi circular dated 12.01.2002. The main victim Miss Manisha Thapa of Class VIII C submitted a written representation on 26.02.2007 (Annexure A-10) to the Principal KV, ONGC Dehradun requesting him that the date mentioned on the application was by mistake written as 12th April

2006, but it was actually occurred on 13th April, 2006. The applicant demanded the documents and reasons alongwith the inquiry report vide his application dated 12.06.2007 (Annexure A-11) under RTI Act, 2005, but no reply has been given to the applicant.

3. The applicant filed OA No. 955/07 before this Tribunal challenging the suspension order dated 17.04.2006 and this Tribunal vide order dated 05.10.2007 (Annexure A-12) directed the applicant to file detailed representation before the Joint Commissioner Admin (HQ), New Delhi who shall decide the same within 03 months. During the pendency of the aforesaid OA the Commissioner KVS, New Delhi issued Memorandum dated 25/30.07.2007 (Annexure A-13) to show cause as to why the services of the applicant may not be terminated under Article 81 (B) of the Education Code of Kendriya Vidyalayas. The applicant submitted a representation on 11.08.2007 before the Commissioner KVS, New Delhi and demanded some documents relating to the allegation. It is stated in the OA that these documents were not supplied to the applicant. It is also stated in the OA that the Joint Commissioner Administration, KVS rejected the representation of the applicant by his order dated 30.11.2007 (Annexure A-15) without providing any remark. By means of the impugned order dated 19.12.2007 the Commissioner KVS (HQ), New Delhi terminated the services of the applicant under Article 81 (B) of the Education Code without supplying the copies of the complaints which have been submitted by Km. Manisha Thapa dated 12.04.2006 and 13.04.2006 (Annexure A-5). The applicant filed an appeal on 03.02.2010 (Annexure A-2) against the termination order dated 19.12.2007 before the appellate authority. It is stated in the OA that the appellate authority

dismissed the appeal of the applicant on 02.03.2010 (Annexure A-2) without proper judicial discussion on the legal points raised by the applicant. The applicant submitted his review petition on 29.05.2010 (Annexure A-17) as mercy petition to the Chairman KVS for quashing the punishment order as well as the appellate order. It is submitted in the OA that while the review petition of the applicant was pending before the Chairman, KVS, the Joint Commissioner (Admn) of KVS (HQ), New Delhi rejected the said review petition on 07.02.2011 (Annexure A-3).

4. In the counter affidavit filed by the respondents, it is submitted that the Preliminary Inquiry Committee after conducting the inquiry into the allegation after interactions with the complaints including Miss Manisha Thapa, confirmed the alleged incident and prima-facie approved the alleged charges against the applicant. The matter was reported to KVS, Regional Office, Dehradun for taking appropriate action against the matter. After taking into the consideration all the facts and circumstances, cross examination of Shri O.P. Rai, statement of witness, other girl students of the class and interaction with parents of the victim student, the committee submitted the summary report on 24.02.2007, with conclusion concluded that the applicant is guilty of the misconduct. The Commissioner, KVS as per Article 81 (B) of the Education Code of Kendriya Vidyalaya Sangathan and after going through all the records and seriousness of the case, decided to proceed against the applicant under the Education Code of Kendriya Vidyalayas as it was not expedient to hold a regular inquiry under the CCS (CCA) Rules, 1965 since that would serious embarrassment to the girl students and could cause a trauma for them because of their tender age. It was further mentioned in the counter

that Hon'ble Supreme Court in its order dated 30.09.1996 in Civil Special Leave Petition No. 4525/96 – Avinash Nagra vs. Navodaya Vidyalaya Samiti & Others reported in (1997) 2 SCC 534 has held that the procedure to be adopted in such cases would require show cause notice, containing the charges together with the statements recorded in Summary Inquiry alongwith a copy of the report of the summary inquiry would be given to the charged person and such charged person would be given an opportunity to submit his explanation without having the right to cross-examine the witnesses or complainant. This explanation will, as per the Court order, be considered alongwith all other records before a final order is passed by the disciplinary authority under Article 81 (B) of the Education Code. It is further submitted that Hon'ble Karnataka High Court has reiterated that the aforesaid procedure should be followed in its judgment dated 01.07.2002 in Writ Petition No. 23535/02. The applicant was given following documents vide Commissioner's show cause notice dated 25/30.07.2007 (Annexure A-13):-

- a. Charges
- b. Facts in support of the charges.
- c. Copies of statements recorded in summary inquiry.

5. It is further stated in the counter that after providing the applicant the opportunity of being heard and after considering the record and reply dated 11.08.2007 of the applicant, the Commissioner, in exercise of his powers conferred upon him under Article 81 (B) of the Education Code terminated the services of the applicant vide order dated 19.12.2007 (Annexure A-1). The applicant filed another OA No. 448/08 before this Tribunal and after considering the matter this Tribunal dismissed the said OA No. 448/08 on the ground of availability of alternative remedy of

appeal vide order dated 14.09.2009. Thereafter, the applicant preferred an appeal before the appellate authority and the appellate authority also heard the applicant in person on 03.02.2010 as well as the views of the Kendriya Vidyalaya Sangathan in the matter and decided the appeal upholding the order of the disciplinary authority.

6. It is further stated in the counter that the Summary Inquiry Committee submitted the report of summary inquiry on 24.02.2007 and not on 21.04.2006. There were some procedural infirmity in earlier summary inquiry report due to which it was remitted back to the Summary Inquiry Committee to complete the procedural requirements. The said committee has also referred to its earlier report in the report while furnishing its subsequent report. The concerned girl students had submitted the representation to the Principal, KV, ONGC, Dehradun on 26.02.2007 (Annexure A-10) i.e. much before the Show Cause Notice dated 25/30.07.2007 issued by the Commissioner, KVS, New Delhi to the applicant, stating that the incident occurred on 13.04.2006, not on 12.04.2006 as informed earlier. Regarding the claim of applicant under RTI Act, it is stated that no such application dated 12.06.2007 was received from the applicant.

7. The applicant filed his Rejoinder affidavit in which he has reiterated the same points as submitted in the OA. He has further submitted that the Commissioner KVS, New Delhi did not supply the original complaint of 12 girls dated 12.04.2006 to the applicant before issuing the impugned termination order.

8. In the supplementary counter affidavit filed by the respondents in reply to the rejoinder affidavit, it is stated that some new facts have been brought by the applicant in the rejoinder affidavit and submitted that the order dated 19.12.2007 terminating the services of the applicant is self-explanatory. The show cause notice issued to the applicant mentioned the details about the complaint of the girl students. Hence, the complaint related to the case actually occurred on 13.04.2006, not on 12.04.2006. Regarding to the signature of Km. Manisha Thapa, it was mentioned that the girl being a minor and innocent, the signatures at different places may vary, but that cannot be the basis of to call it forged signature. It is further stated in the supplementary counter affidavit that the contention of the applicant that on 13.04.2006 there was no teaching period of the applicant for Class VIII – C, is not correct because of the submission of the applicant before the Committee, where it was stated in reply to a question that he had supplied tennis ball to the girls of Class VIII – C (Annexure SCA-1 to the Suppl. Counter). It was further reiterated that the alleged incident of misbehavior actually occurred on 13.04.2006 and in view of the seriousness of the complaint, the order of termination of 19.12.2007 is rightly issued.

9. We heard the counsels of both the parties on 20.03.2018. Learned counsel for the applicant reiterated the contentions as stated in the OA as well as in the RA, emphasizing on the following contentions:-

- i. Copy of the original complaint was not supplied by the Committee or disciplinary authority, as a result of which the applicant could not defend himself properly while submitting his reply to the show cause of notice dated 25/30.07.2007 (Annexure A-13). He also raised this point before the appellate authority, which was not considered.

- ii. The Committee which was constituted vide office order dated 13.04.2006, to conduct preliminary inquiry about the complaint consisted of three teachers who were not superior in rank to the applicant. Hence, the report dated 17.04.2006 submitted by the said Committee (Annexure A-6) is vitiated.
- iii. The Appellate Authority did not consider all relevant contentions raised in his appeal petition dated 03.02.2010 (Annexure A-16), while passing the impugned appeal order dated 02.03.2010 (Annexure A-2).
- iv. The signature of main complainant Km. Manisha Thapa in both the complaints at Annexure A-4 and in letter dated 26.02.2007 (Annexure A-10) are different. Hence, the learned counsel raised the question of authenticity of the original complaint. It was also submitted that all these complaints against the applicant were not genuine and apparently fabricated by the then Principal to harass the applicant.

10. Learned counsel for the respondents submitted that the procedure laid down under the Article 81(B) of the Education Code as well by Hon'ble Apex Court has been followed by the disciplinary authority while dealing with the compliant of sexual harassment by the applicant and opportunity has been given to the applicant to defend. Accordingly, the impugned punishment orders were stated to be just and legal. He further submitted that the disciplinary authority in exercise of the power under Article 81 (B) of the Education Code of Kendriya Vidyalayas has applied his mind while passing the order to waive the requirement of the regular inquiry in this case.

11. Before we consider the case on merit, the application for Delay Condonation filed by the applicant to condone delay in filing the OA is required to be disposed of. The application mentions the reasons like his financial difficulty and illness of the daughter of the applicant requiring heart surgery and illness of his wife as the reason for delay in filing the OA after rejection of his appeal vide the impugned order dated 2.03.2010 (Annexure A-2). The respondents in their counter to the delay condonation application have mentioned that the delay has not been explained and no documentary evidence of the illness was submitted. In reply, the applicant in his Rejoinder furnished the papers relating to the illness of his daughter including her surgery. Hence, in view of the grounds mentioned in the Delay condonation application to explain the delay in filing the OA, we allow the said application and condone the delay in filing the OA.

12. Regarding merit of the OA, it is seen that the applicant has challenged the impugned orders mainly on the following grounds:-

- The impugned orders passed by the respondents are illegal and colourable exercise of power beyond the facts and circumstances of the case.
- No chargesheet was issued to the applicant, nor the copy of the complaint of the victim girl was given to him as required as per the circular dated 24.1.2002 (Annexure CA-2 of the Counter).
- The circular dated 24.1.2002 of Kendriya Vidyalaya Sangathan provides for taking the statements of other girl students and teachers, which was not done by the Summary Inquiry Committee.
- Originally the girls complained about the incident on 12.4.2006, but vide letter dated 26.2.2007 i.e. after expiry of about ten months, the girls wrote to the Principal stating that their earlier application may be considered as 13.4.2006 in place of 12.4.2006.
- The disciplinary authority and Appellate Authority failed to consider these facts. Hence, the impugned orders are illegal and arbitrary.

13. The procedure in such cases to be followed is laid down in the Article 81(B) of the Education Code applicable for the Kendriya Vidyalaya Sangathan, which states as under (Annexure CA-1 to the Counter):-

“81.(B)Termination of Services of an employee found guilty of immoral behavior towards students: Where the Commissioner is satisfied after such a summary enquiry as he deems proper and practicable in the circumstances of the case that any member of the Kendriya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behavior towards any student, he can terminate the services of that employee by giving him one month's or three months' pay and allowances accordingly as the guilty employee is temporary or permanent in the service of the Sangathan. In such cases procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of the Kendriya Vidyalaya Sangathan, shall be dispensed with provided that the Commissioner is of the opinion that it is not expedient to hold regular enquiry on account of embarrassment to student or his guardians or such other practical difficulties. The Commissioner 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 Sangathan informed of the circumstances leading to such termination of services.

Note: Whenever and as far as possible, a summary inquiry in the complaint of immoral behavior by a teacher towards the students of Kendriya Vidyalayas may be got investigated by the Complaints Redressal Committees constituted in the Regional Offices.”

This special procedure also has a provision for the appeal to be filed by the employee aggrieved by the order under the Article 81(B) to the Vice Chairman, KVS. The Article 81(C)(iv) provides the procedure for consideration of the appeal, which states as under:-

“(iv) Consideration of Appeal- In the case of an appeal under this article, the Appellate Authority shall consider whether in the light of the provisions of Article 81(b) of the Education Code and having regard to the circumstances of the case, the order of termination is justified or not and confirm or revoke the order accordingly.

The Appellate Authority shall consider the following and pass orders confirming or setting aside the order of termination passed under Article 81(b):-

(a) Whether the requirement laid down under Article 81(b) has been complied with and if not, whether such non-compliance has resulted in the violation of the provisions of Article 81(b) or in the failure of justice, and

(b) Whether the order of the Commissioner is warranted by the material on record.”

As stated in the Counter, the procedure laid down in the Article 81(B) as per the judgment of Hon.ble Supreme Court in the case of Avinash Nagra vs. Navodya Vidyalaya Samiti & Others reported in (1997) 2 SCC 534 has been followed by the Commissioner who has come to a conclusion to waive the need for the regular inquiry in this case and issued a show cause notice dated 25/30.07.2007 (Annexure A-13). The applicant requested for some documents, including original complaint of the victim girl before submitting his reply vide his letter dated 11.8.2007 (Annexure A-14). The Commissioner vide his letter dated 25.09.2007 supplied the documents except original written complaint of the victim girl and her mother.

14. The applicant had filed the OA No. 448/2008 against the impugned punishment order dated 13.12.2007 in this Tribunal and vide order dated 14.09.2009, the applicant was directed to file appeal before the Appellate Authority. The grounds taken in the appeal dated 3.02.2010 filed by the applicant have been mentioned in the impugned appeal order dated 2.03.2010. One of the ground in the appeal was two reports submitted by the Summary Inquiry Committee i.e. report dated 21.4.2006 which was not accepted by the disciplinary authority and then another report dated 24.2.2007. As noted in the report dated 24.2.2007, KVS (HQ) instructed the Summary Inquiry Committee to rectify the defects so that the applicant can be punished. The Committee submitted a second report dated 24.2.2007 which was accepted by the disciplinary authority. To the ground the Committee has submitted two reports, the Appellate Authority

observed that there were some procedural infirmity in the summary inquiry report due to which it was remitted back to complete the procedural requirement. The report dated 24.02.2007 (Annexure CA-4 of the Counter) has disclosed the following observations of the Commissioner on the report of the committee dated 21.04.2006 as under:-

"Pursuant to KVS, DDR, Admn. Section letter 7-80/2005-KVS(DDR) dated 05.01.2007 (Confidential), the committee re-submits the summary report after rectifying short comings pointed out. This report is in continuation to the earlier report submitted by the committee on 21.04.2006.

"The committee noted the following observations made by KVS(HQ), New Delhi on the report submitted by the committee on 21.01.2006.

1. Summary Inquiry Report is not self contained.

The observations at the item No. 2,3, & 4 are related to the preliminary inquiry committee report submitted by the Principal, KV, ONGC, Dehradun. The shortcomings mentioned in these items are rectified by the members."

Hence, the report dated 24.02.2007 of the Summary Inquiry Committee was in continuation to the report dated 21.04.2006 of the Committee. But the impugned orders of the disciplinary and appellate authority have considered only the report dated 24.02.2007 without considering the report dated 21.04.2006 of the Committee, which was a part of the final report dated 24.02.2007 of the Committee. The report dated 21.04.2006 stated the following about the complaint against the applicant:-

".....

REPORTING

The committee met the mother Smt. Ranhjana, Father Sh. Guman Singh Thapa on 20.04.06 and km. Manisha Thapa and obtained their statement in writing. The committee obtained statement of Smt. Kumud Omveer Singh, V.P, Sh. Kailash Prasad Drg. Tr. And Sh. H.O. Mishra, T.G.T Maths.

The committee also cross-examined Sh O.P. Rai Accused and obtained his statement. Sh. O.P. Rai has submitted one statement into the alleged misconduct to the committee members on his behalf.

The committee had a through discussion in the matter and studied all statements. The findings of the committee is :

- 1. The committee unanimously found that accused Sh. O.P. Rai has committed the mis-conduct as reported by Km. Manisha Thapa in her statement dated 13.04.06. The committee found that all other girls also made the same type of mis-conduct by Sh. O.P. Rai with them.**

2. *The committee did not interrogate or cross-examined other girl students of other classes for the reason that it would have the adverse effect and vitiated the environment.*
3. *The committee also found Sh. O.P. Rai had reputation of a tough and rough teacher but none of the staff have stated about anything adverse about his character.”*

The report dated 24.02.2007 mentioned that it had “cross-examined” the parents of the victim girl Km. Manish Thapa, Smt. Kumud Ombir Singh, Vice-principal, Sh. Kailash Prasad, Drawing Teacher, Sh. HO Mishra, TGT (Maths), Km, Manish Thapa and the accused Shri OP Rai on the alleged incident and obtained their statements. Then the said report has recorded the finding as under:-

*“To Respected
Principal
K.V. ONGC,
Dheradun
26.02.06*

Respected mam we have to say that the incident occur of 13th April 2006 was the date mentioned on that application was by mistaken written 12th April 2006 but it was actually occurred on 13th April 2006. As we are sorry for that mistake.

Thanking You.

*Your's faithfully
Girls of 8th C*

1. *Priya*
2. *Manisha*
3. *Simran*
4. *Bhargavi*
5. *Nayana*
6. *Aditi*
7. *Chitra*
8. *Bhavna*
9. *Abdanshee*
10. *Dhruvika*
11. *Diksha. K*
12. *Prerna”*

15. Regarding the procedure to be adopted by the Committees constituted for the preliminary inquiry and summary inquiry has been specified in the circular dated 24.01.2002 (Annexure CA-2 to the Counter) issued by Kendriya Vidyalaya Sagathana (in short KVS) as under:-

*“.....
VIDYALAYA LEVEL
.....*

A committee may be constituted comprising of two or three gents/lady teachers and executive committee members to conduct the preliminary inquiry.

The committee may obtain the statement of the victim girl and her parents as well as the other students who witness the incident or to whom the victim girl narrated the incident, statement of the teachers should also be obtained to whom the victim girl made the complaint initially.

The committee may ask about the behaviour of the accused teacher towards other girl students and other teachers and their statements may also be recorded.

REGIONAL OFFICE LEVEL

After receiving the preliminary inquiry report from the school the Assistant Commissioner may send a team comprising of an Education Officer, a Lady Principal and a senior Lady teacher of the Vidyalaya to conduct summary inquiry.

The team may discuss the issue with the victim girl(s)/their parent(s), other girl students, teachers, Principal and the accused separately and their statements may be recorded with their signature.

”

16. As per the circular date 24.01.2002 of KVS, the Committee constituted for preliminary inquiry was required to take the statement of other students who might have witnessed the incident and may also ask about the behaviour of the accused teacher towards other girl students and other teachers and their statements may be recorded. From the report dated 17.04.2006 of the preliminary inquiry, copy of which is attached at Annexure A-6, the name of the students and teachers whose statements have been recorded (except the statement of the applicant) has not been disclosed, although it refers about oral and written complaints of the girl students. The statements recorded during preliminary inquiry have not been discussed in the report which has simply observed that as per the statements of the girl students, misbehavior of the applicant towards girl students has been established. Whether statement of some other students who might have witnessed the incidents has been recorded as per the circular dated 24.01.2002 is not very clear from the report of the preliminary inquiry committee. The applicant has stated the finding of the preliminary inquiry committee to be without any basis. It is clear that the

preliminary inquiry report is not as per the circular dated 24.01.2002 of the KVS (Annexure CA-2 to the Counter) as the Committee constituted for preliminary inquiry has not adhered to the procedure as laid down in the circular dated 24.01.2002.

17. Further, as per the circular dated 24.01.2002, the Summary Inquiry Committee was required to take the statements of other girls whose name was there in the complaint dated 13.04.2006 and their parents apart from Km. Manish Thapa and her parents. In the interest of justice, the Summary Inquiry Committee was required to record statements of other girl students about the complaint against the applicant and/or about the applicant's conduct and behaviour as required as per the KVS circular dated 24.01.2002. Instead of following the procedure as laid down under the said circular, the committee adopted its own procedure and has examined only the main complainant (Km. Manisha Thapa) and her parents and perused the statements of other girl students recorded by the preliminary inquiry committee and these statements have been relied upon by the Committee while coming to the conclusion that the complaint against the applicant has been proved. It is noted that as per the circular dated 24.01.2002, the Summary Inquiry Committee is to record the statements of the complainant and witness girl students and the circular does not provide for the committee to rely on the statements recorded during preliminary inquiry. As the alleged incident on 13.04.2006 took place in the class/school, it should have been witnessed by other students. Hence, by not recording the statement of some of the other girl students who might have witnessed the incident as required as per the circular dated 24.01.2002 and relying on the statements recorded during preliminary inquiry and not recording the reasons for not following the

procedure as laid down under the circular dated 24.01.2002, the Summary Inquiry Committee has committed a serious mistake. Therefore, the report of the Summary Inquiry Committee as produced before us is flawed. This is particularly so in view of the finding of the Summary Inquiry Committee in its report dated 21.04.2006 (Annexure A-9), which is taken as a part of the report as per the report dated 24.02.2007 of the Summary Inquiry Committee, that none of the staff has stated about anything adverse about the applicant's character. Hence, in the interest of justice, it was necessary for the Summary Inquiry Committee to have inquired into the matter more objectively as per the procedure laid down under the circular dated 24.01.2002 to find out the truth about the complaint and also about the behaviour of the applicant towards other girl students..

18. The point about the Summary Inquiry Committee not taking the statement of other girl students apart from Km. Manisha Thapa was raised by the applicant in his appeal dated 3.02.2010 (Annexure A-16) and it was disposed of by the Appellate Authority with the following observations in his order dated 2.03.2010 (Annexure A-2):-

“4. As the complaint was made by the girl students about immoral behaviour of Shri O.P. Rai their statements were recorded. The committee did not feel it necessary to record the statements of other students.”

From above, it appears that the Appellate Authority chose to ignore this point raised by the applicant in spite of the fact that the procedure adopted by the Committee to finalize the report was not as per the procedure laid down in the circular dated 24.01.2002 of KVS as discussed earlier.

19. We find that in the appeal order dated 2.03.2010, the Appellate Authority has noted in para 9 of page 6 of the order that “Shri O.P. Rai

was in the habit of committing immoral behaviour with the girl students off and on but the girls did not report the matter out of modesty....." It is seen that the disciplinary authority has also observed in para 5(ii) of the order dated 19.12.2007 that "some more girl students narrated the immoral sexual behaviour of Shri OP Rai with them on several occasions, as per their written statement. But from the report dated 21.04.2006 and dated 24.02.2007 and 21.04.2006, the Summary Inquiry Committee has not recorded any finding about misbehavior of the applicant to other girls, although the report of the committee has recorded the finding that the applicant is guilty of all charges made by Km. Manisha Thapa in her complaint dated 13.04.2006. On what basis the Appellate Authority has observed about past misbehavior of the applicant is not clear to us, no such finding has been mentioned in the report of the Summary Inquiry Committee.

20. This was a complaint against the applicant who was a teacher in KVS, having serious implications for the safety of the students and also for the career of the applicant. In the case of Avinash Nagra vs. Navodaya Vidyalaya Samiti & Others reported in (1997) 2 SCC 534, Hon'ble Supreme Court has held as under:-

"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 parent is 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 an ice berg in the discipline of teaching, a noble and learned professing; 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 on 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, a 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 of his sexual advances towards a girl student but he did not correct himself and mend his conduct. He went to the girl 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 adopted 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 room mates 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.....

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."

21. Applying the ratio of the judgment of Hon'ble Apex Court in the case of Avinash Nagra (supra) to this case, it is in order for the Commissioner to dispense with the need for a regular inquiry as per the CCS (CCA) Rules, 1965 invoking the Article 81(B) of the Education Code in view of the allegation of misbehavior against the applicant by some girl students of the school. But it is necessary to conduct the summary inquiry as per the circular dated 24.01.2002 of KVS before taking action under Article 81(B) against the applicant.

22. In view of the finding of the Summary Inquiry Committee in its report dated 21.04.2006 that none of the staff have stated anything adverse about the character of the applicant. The Summary Inquiry

Committee should have tried to record the statements of some other girl students about the behaviour of the applicant to other girl students and about the incidents from some of the witnesses, have who might have witnessed the incidents as required under the circular dated 24.01.2002 of KVS (Annexure CA-2), particularly when the incident had taken place in a class in presence of other students, before arriving at any conclusion in a manner which is just and fair. If the Committee could not record the statement of other students, the reason for the same should have been disclosed in the report.

23. For the reasons mentioned in the foregoing paragraphs, we are of the view that the Appellate Authority has not considered the appeal filed by the applicant in accordance with the provisions of law. Accordingly, the impugned appeal order dated 02.03.2010 (Annexure A-2) is not sustainable under the law. Hence, the impugned order dated 02.03.2010 is set aside and quashed and the matter is remanded to the Appellate Authority to consider the appeal dated 3.02.2010 (Annexure A-16) filed by the applicant afresh as per the provisions of the law taking into account the grounds of the appeal and the reports dated 21.04.2006 and 24.02.2007 of the Summary Inquiry Committee including the statements recorded by the committee during inquiry and pass a fresh order within three months of receipt of a copy of this order. The applicant is also at liberty to file a fresh appeal with additional grounds and if such a fresh appeal is filed by the applicant before the Appellate Authority within two weeks from the date of receipt of a copy of this order, then it shall also be considered by the Appellate Authority alongwith his appeal dated 03.02.2010 as per the law.

24. The OA is allowed as above. No order as to costs.

(**Gokul Chandra Pati**)
Member (A)
/pc/

(**Dr. Murtaza Ali**)
Member (J)