CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No-1011/2014

Order Reserved on 23.07.2015
Order Pronounced on: 06.11.2015

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. A.K. Bhardwaj, Member (J)

Karampal Arya
Ex-PRT
S/o Sh. Sita Ram Arya
Resident of Village-Mohanpur
P.O. Dulothjat
Distt: Mohindergarh
Haryana-123021 -Applicant

(By Advocate: Shri Pradip Chhindra)

Versus

1. Kendriya Vidyalaya Sangathan
Through
Commissioner,
18 Institutional Area
Shaheed Jeet Singh Marg
New Delhi-110016

2. Kendriya Vidyalaya Sangathan
Deputy Commissioner (Admn.)
18 Institutional Area
Shaheed Jeet Singh Marg
New Delhi-110016

3. Kendriya Vidyalaya Sangathan
Disciplinary Authority,
Regional Office, Government Hospital Road,
Gandhinagar, Jammu. -Respondents

(By Advocate: Shri K.M. Singh)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant of this OA was working as a Primary Teacher in Kendriya Vidyalaya Sangathan (KVS, in short). He was posted at Kendriya Vidyalaya, Leh, in the State of Jammu & Kashmir. Certain complaints dated 24.10.2008, 01.11.2008 and 05.11.2008 regarding the applicant misbehaving with the minor girl students of the Vidyalaya had been lodged, and the respondents thereafter ordered on 06.11.2008 for the Vice-Principal of the Kendriya Vidyalaya, Nubra, Jammu & Kashmir, to conduct a fact finding enquiry, and to submit a report. At around the same time, on 06.11.2008, a criminal complaint was registered with the Police against the applicant, on the basis of the complaint of six minor girl students of Class-XII, Science Stream, of Kendriya Vidyalaya, Leh, and an FIR came to be registered and lodged before the Criminal Court against the applicant thereafter.

2. During the fact finding enquiry, the officer concerned questioned the applicant also and prepared a report and submitted to the Respondent-authorities. The respondents thereafter issued a Memorandum dated 17.03.2009 to the applicant under Rule 14 of the

CCS (CCA) Rules, 1965, on the basis of Statement of Articles of Charge that he had misbehaved towards minor girl students, and also given corporal punishment to some of them, and that an FIR has been registered against him under Section 354 of RPC Act, applicable in the State of Jammu & Kashmir, by the minor girl students, and also that the applicant does not take his classes regularly, and indulges in doing destructive and disruptive activities in the Vidyalaya.

3. However, the applicant has submitted that nearly four months after having lodged the complaint at the Police Station, Leh, which was converted into an FIR lodged with the Criminal Court of competent jurisdiction, the concerned complainant minor girl students executed affidavits dated 16.03.2009, 28.03.2009 and 07.04.2009, this time stating that they had not made any statement against the applicant, and that the allegations made by them against the applicant and some other teachers were false and baseless.

4. It so happened that in the criminal case the complainant minor girl students were made to give their statements on oath, between 05.05.2009 and 11.06.2009, before the Court of Chief Judicial Magistrate, Leh, Ladakh, in which they had denied that anything was written on the papers when they had signed those papers, and also

stated that they had been sent to the Police Station by the then Principal of Kendriya Vidyalaya, Leh, in order to sign some blank documents. Thereafter, on 08.05.2009 and 29.07.2009, the fathers of two of the minor girls also executed affidavits stating that their daughters were forced by the officiating Principal of Kendriya Vidyalaya, Leh, to submit the original complaints dated 05.11.2008 and 11.11.2008, though these affidavits did not state anything about the criminal complaint registered by their minor daughters at the Police Station on 06.11.2008.

5. In response to the Memorandum dated 17.03.2009 (supra) issued to the applicant, he submitted his defence to the *ad hoc* Disciplinary Authority on 26.05.2009, also praying that no documents had been supplied to him along with the Memorandum of Charge, and that all the allegations made against him in the Memorandum are incorrect, and that he does not even know the minor girl students who have lodged the complaints before the Respondent Authorities, and the Police. He had also pointed out that the minor girl students who had filed the Criminal complaint had since given their statements before the Criminal Court, exonerating him, and had also filed an affidavit to the effect that they were forced to file false complaints by the Principal of Kendriya Vidyalaya, Leh.

6. On 27.06.2009, the Chief Judicial Magistrate, Leh, passed an order in the Criminal case before him stating that since the prosecution witnesses, the minor young girl students of the Vidyalaya, who were the cited eye witnesses, had not uttered even a single word against the accused persons during the evidence adduced by them in the Court, and since no witness had deposed against the accused persons, the prosecution had utterly failed to prove the criminal case, and the accused persons, including the applicant, were acquitted of the charge under Section 354 of RPC, applicable in the State of Jammu & Kashmir.

7. However, the Disciplinary Enquiry Committee continued its hearings on 05.10.2009, and concluded the same on 08.10.2009. The applicant has complained that the complainant minor school girls of the Vidyalaya, who had lodged the initial complaints with the authorities against him, complaining of misbehaviour, were not made witnesses in the disciplinary enquiry also, and only the other witnesses were produced and cross-examined, as is evident from Annexure A-10 of OA.

8. The applicant has tried to seek shelter behind the fact that on 21.01.2009, the Presenting Officer before the Disciplinary Enquiry Committee submitted his brief to the Enquiry Officer through Annexure A-11, in which the Presenting Officer also did not advance any argument pertaining to applicant's misbehaviour with the minor girl students of the Vidyalaya.

9. On 20.01.2010, the Enquiry Officer submitted his detailed enquiry report (Annexure A-12) in which he had held the applicant to be guilty of having violated Rule 3 (1) (i) & (iii), of the CCS (Conduct) Rules, 1964, and Article 59 (34) (a) (i) & (iii) of the KVS Education Code. This report was forwarded to the applicant by the Disciplinary Authority through Annexure A-13 dated 17.02.2010, directing him to submit his written statement of defence on the Enquiry Report, to which he responded through Annexure A-14 dated 30.03.2010.

10. The Disciplinary Authority thereafter passed its order dated 24.05.2010 (Annexure A-15) and ordered for imposition of a penalty of removal from service, which shall not be a disqualification for future employment under the Government.

11. The applicant thereafter filed his appeal against the order of punishment through Annexure A-16 dated 25.08.2010, which appeal was rejected through the Appellate Authority's order dated 23.12.2010, Annexure A-17.

12. The applicant filed his first OA No.113/2012 thereafter, which was heard on 01.11.2012 by the same Bench, and the following oral orders were passed in the Court:-

> "The matter was heard in brief. Learned counsel for the respondents fairly conceded that the order of the Appellate Authority dated 23.12.2010 (Annexure A-1) impugned in this OA was not a speaking one, as the points raised by the applicant in his appeal have not been fully and appropriately considered.
>
> Therefore, taking note of the fair submission made by the learned counsel for respondents, we strike down the orders of the Appellate Authority dated 23.10.2013 (Annexure A-1), and remit the matter back to the Appellate Authority, with directions to pass a fresh speaking and reasoned order, on merits of the appeal dated 25.08.2010, preferred by the applicant. Needless to add that the applicant would be at liberty to challenge both the orders of the Disciplinary Authority impugned in this OA, as well as the fresh order to be passed by the Appellate Authority, in case he still feels aggrieved after the order of the Appellate Authority has been passed afresh. No costs".

13. The respondents have, thereafter, passed the impugned detailed order dated 06.03.2013, through which the applicant was ordered to be reinstated in his services, though the intervening period, i.e., the

period from the date of his removal from service, to the date of his joining at the new place of posting, was ordered to be declared as *'dies non'* for all purposes.

14. The applicant has, therefore, filed the present OA with the following prayers:-

> "a) Set aside the order dated 06.03.2013 passed by Sh. S. Vijaya Kumar, Joint Commissioner (Admn.) & Appellate Authority Kendriya Vidyakaya Sangathan;
>
> b) Reinstate the applicant to the post of PRT alongwith all benefits including back salary, allowances, seniority, promotion and any other benefits applicable and that this Hon'ble may deem fit;
>
> c) Pass any other or further order that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case".

15. In order to support these prayers, the applicant has taken the grounds that the order as passed by the Appellate Authority now is in violation of the principles of natural justice, and the respondents have decided his appeal without the Appellate Authority giving him any opportunity of personal hearing. He has further alleged that the Appellate Authority has passed an unreasoned order, without any application of mind to the merits of the matter, and had arrived at a conclusion more serious than that arrived at by the Enquiry officer. The applicant has further taken the ground that the Appellate

Authority has failed to appreciate that the evidence in support of the findings arrived at by the Appellate Authority is his (the applicant's) purported admission that on many occasions he had to go outside the classes for hours together to talk to some alleged police personnel, and this purported admission has been blown out of context to reach an erroneous finding.

16. It has been submitted by the applicant that when that person, who was, perhaps, a policeman, used to be allowed by the Principal to enter the playground of the Vidyalaya, he had no option but to leave his classes, to attend to that person, and to talk to him, as he believed that person to be Policeman, and was terrified by his frequent presence. He has raised a ground that he never evaded any classes on his own volition, and that the Appellate Authority has, in passing its order, travelled beyond the proven evidence before the Enquiry Officer, and attributed value to hearsay statements, whereby he has been denied a right to defend himself against such imputations.

15. The applicant has taken the further ground that even assuming for a moment that he had visited the residence of a student during school hours without permission from the Principal, but the prosecution has not been able to prove that such an act on his part

had in any manner interfered or clashed with his duties, and his class schedule, and, therefore, in the absence of any evidence showing that such an act on his part had in any manner interfered or clashed with his duties in the school, the respondents could have only at best marked the day as '*dies non*'. Thus, the applicant has submitted that the said act of his could not have been the basis to arrive at the findings of the nature of which they have been arrived at in the appellate order as passed now.

18. He has denied that he had ever indulged in any conduct unbecoming of a teacher, or has concealed any facts in the enquiry, or has displayed arrogant behaviour and spoken in loud tone in the chamber of the Principal several times, and had ever indulged in groupism, in order to influence the functioning of the Vidyalaya.

19. In their counter reply, the respondents took the preliminary objection that the OA suffers from misjoinder of necessary parties, as there are three party respondents as per memo of parties, and the KVS had been made a party through all the three respondents, and, considering this aspect alone, the OA deserves to be dismissed. Though this averment is true, we decline to dismiss the OA on this ground alone, as it can be described as a drafting or clerical error.

20. It was further submitted by the respondents that the applicant has not laid a challenge to the Charge Sheet dated 17.03.2009 issued to him under Rule 14 of the CCS (CCA) Rules, 1965, the enquiry report dated 20.11.2009 (supra), the order of punishment imposed by the Disciplinary Authority dated 24.05.2010 (supra), and on these accounts also, the OA deserves to be quashed.

21. The respondents have, thereafter, in their para-wise reply, explained the facts of the case regarding the state of affairs as had prevailed in the concerned Vidyalaya, and it was submitted that the judgment passed by the Chief Judicial Magistrate, Leh, does not absolve the applicant from his liability for disciplinary action being taken against him, because standard of proof in a Disciplinary Enquiry is different than that required in a criminal case.

22. They have submitted that at all stages, the representations of the applicant have been duly forwarded and considered. It was submitted that though the earlier appeal had been considered by the Appellate Authority as time barred, but when once this Tribunal had struck down the same, and remitted the matter back to the Appellate Authority to pass a reasoned and speaking order on merits, the

present impugned order had been passed after considering all the contentions of the applicant.

23. Now that the Appellate Authority has passed the order reinstating the applicant in service, and toning down the penalty for his removal from service to a reduction by two stages in the time scale of pay for a period of three years, it was submitted that the applicant has no case to seek full salary and wages for the period when he was out of service, and had not performed any duties, in view of the gravity of the offence committed by the applicant. It was also pointed out that the applicant himself had not filed a Revision Petition before the Additional Commissioner (Admn.) within six months of receipt of the impugned order dated 06.03.2013, which remedy was available to him, and he had failed to avail it, and it was, therefore, prayed that the OA deserves to be dismissed with costs.

24. The applicant filed his rejoinder more or less reiterating his contentions, and submitting that the present OA has been properly instituted, and ought to be allowed by this Tribunal. He Again reiterated that the concerned minor girl students had failed to depose before the Criminal Court regarding the applicant having misbehaved with them, and having inflicted corporal punishment upon them, and

it was submitted that after his acquittal in the criminal case, it does not lie in the mouth of the respondents to state anything contrary to the said findings. It was submitted that when he had been exonerated by the Criminal Court of the same charges, the disciplinary proceedings on the same subject matter were rendered infructuous, and he could not have been found guilty under the Disciplinary Enquiry.

25. It was further submitted that he should have been given a personal hearing by the Appellate Authority, and it was denied that he was not required to be heard personally by the Appellate Authority before passing the speaking order. It was reiterated that Appellate Authority has recorded a finding more serious than that of the Enquiry Officer, without any further material having been brought on record. It was also denied that the Appellate Authority has considered all of his submissions in the light of the enquiry report and the relevant records. It was further submitted that reliance ought not to have been placed on the Disciplinary Authority's order dated 24.05.2010, which has no consequence, since it has been set aside by the order dated 01.11.2012 passed by this Tribunal in his earlier OA No.113/2012 (already reproduced above). It was, therefore, prayed that OA be allowed in terms of the prayer clause.

26. Heard. It was submitted on behalf of the applicant during arguments that the actions of the respondents smell of arbitrariness and perversity, and contrary findings have been arrived at, before they passed the impugned order. Further, the learned counsel for the applicant relied upon the order of this Tribunal dated 06.04.1994 in **Bhagat Singh vs. Union of India and Ors.** in OA No.1205/89 and other connected matters, which detailed order we have gone through, and need not reproduce here.

27. Learned counsel for the applicant also relied upon the Supreme Court judgment in the case of **Katikara Chintamani Dora vs. Guntreddi Annamanaidu and Others (1974) 1 SCC 567**, to submit that an authority cannot go beyond the jurisdiction circumscribed for being exercised by him, and submitted that in the instant case the Appellate Authority had gone beyond his jurisdiction in having passed the impugned order.

28. In his reply arguments, learned counsel for the respondents relied upon the Supreme Court judgment in the case of **Union of India and Another vs. B.C. Chaturvedi (1995) 6 SCC 750**, in which it has been held that adequacy of evidence, or reliability of evidence,

cannot be permitted to be canvassed before the Courts/Tribunals, and the Disciplinary Authorities are the sole judges of facts, and that the Courts and Tribunals, in their power of judicial review, do not act as an Appellate Authority, to re-appreciate the evidence, and to arrive at their own independent findings on the basis of that evidence, and then substitute their own conclusions in regard to the penalty imposed, and impose some penalty other than that imposed by the concerned Disciplinary Authorities.

29. We have considered the case of the applicant, and have gone through the voluminous pleadings very carefully. We are quite disturbed and disappointed with the turn of events concerning the instant case.

30. As is apparent from the order passed by the same Bench on 01.11.2012, the findings of the Disciplinary Authority were not at all set aside that day, and only the order of the Appellate Authority dated 23.12.2010, rejecting the appeal of the applicant on the point of delay had been set aside, as the points raised by the applicant in his appeal had not been considered by the Appellate Authority, and, therefore, only, liberty had been granted to the Appellate Authority to pass a fresh reasoned and speaking orders on the merits of the applicant's

appeal preferred on 25.08.2010. Therefore, the stand taken and argument advanced by the applicant in his OA, as well as in the rejoinder, that the Disciplinary Authority's order itself had been set aside by us earlier, and could not have been discussed or considered by the Appellate Authority, is without any substance or merit.

31. We also find that as per the Rules and the law laid down in this regard, the Appellate Authority is not required to give a personal hearing to the delinquent official, and that the impugned order of Appellate Authority, as passed at present, is a sufficiently detailed and speaking order, and has considered the facts in regard to four categories of misconduct which had been alleged against the applicant in respect of:-

(a) misbehaviour with girl students,

(b) inflicting corporal punishment to girl students,

(c) does not take his classes regularly,

(d) indulgence in doing destructive activities in the KV, Leh.

32. We find and hold that the present impugned order, as passed by the Appellate Authority, is a fully reasoned and speaking order, but it is rather much more liberal than we would have considered

appropriate in the facts and circumstances of this case, and hence our being disturbed and disappointed.

33. We are perplexed that when specific complaints of sexual harassment of minor young school girls had been made, the charges as filed before Chief Judicial Magistrate, Leh, related only to the charge under Section 354 of RPC, as applicable to the State of Jammu & Kashmir, though we do not know as to whether they covered the offences similar to that under Section 354A & 509 of IPC, and did also cover any charges in respect of the offences in the nature of the offences which are now covered under the Protection of Children from Sexual Offences Act, 2012 (the POSCO Act, 2012, in short). We are also surprised and disturbed that the learned Chief Judicial Magistrate, Leh, perhaps could not understand and appreciate the discomfiture and trauma which the minor young girl students would have faced when they were forced to stand in the Witness Box before him in his Court!! We are astonished that his judicial conscience was not pricked by that discomfiture and trauma of minor young school girls, being forced to face the prospect of having to face Examination-in-Chief, Cross Examination and Re-Examination in the Criminal case while standing in the Court's Witness Box. Therefore, it was no wonder that those minor young school girls could not stand by their

written complaint made earlier to the Police on 06.11.2008, and shied away from deposing anything whatsoever, against the applicant and others, when made to stand in the Witness Box, without the learned C.J.M. understanding their predicament, and the extent to which they would have been traumatized.

34. In an order in OA No. 2878/2014 **R.S. Misra vs. Union of India & Ors.**, a Coordinate Bench, including one of us, has on 04.11.2015 observed as follows:-

> "In fact we are surprised and concerned that the Article 81 (B) of the KVS Education Code stops at the termination of the services of a KVS employee, even if the employee concerned has been found by the Commissioner KVS to be *prima facie* guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, and it does not further prescribe for a criminal case complaint also to be registered against such a KVS employee under the Protection of Children from Sexual Offences Act, 2012 (POSCO Act, in short), and does not cast any responsibility on either the Commissioner, KVS, or anybody below him in the official hierarchy, to become a complainant under that Act. Sexual harassment, whether physical or verbal, or through exhibitionism, has no place in a civilized society. And such harassment of the school-children is even more reprehensible a crime, which should not be allowed to let go by the society unpunished. As a result, such delinquents, who are found to be *prima facie* guilty of offences which are punishable under the POSCO Act, escape their criminal liability in respect of their offences against the innocent children of the Kendriya Vidyalayas. The scope of this Article 81 (B) of the KVS Education Code obviously needs to

> be enlarge, to be able to punish such delinquents under the POSCO Act also".

35. In this case, even though the misconduct of the applicant in respect of (a) misbehaviour with girl students, and (b) inflicting corporal punishment to girl students, has been held to be partially proved, we are appalled, disturbed, disappointed, concerned and sad at the leniency still then shown by the Appellate Authority, while considering the applicant's case. As we had observed in that case, in all such cases of sexual harassment of KVS students, who are minor school children, such children ought to be protected by the POSCO Act (supra), or even under Sections 354A and 509 of IPC, or any other parallel provisions in the RPC of the State of Jammu & Kashmir, and there ought to be a procedure to bring the delinquent teachers and staff of the KVS, who are found *prima facie* guilty of such reprehensible sexual harassment offences, to book under the POSCO Act, or its parallel provisions in the IPC and in the RPC of the State of Jammu & Kashmir also, and more so in such cases, as the present one, in which the charges have been held to be partially proved, which is a finding of a much more culpable offence, beyond a finding merely of *prima facie* guilt only, which is covered under Article 81 (B) of the KVS Education Code.

36. On detailed consideration, we find no merit in the OA, and are disappointed with the Respondent-authorities in having taken such a lenient view, as has been taken by the Appellate Authority of the applicant in the impugned order, but we are bound by the law as laid down by the Supreme Court in **B.C. Chaturvedi** (supra), and we cannot replace the order of punishment as imposed by the Appellate Authority, even though we are most disturbed and disappointed by the quantum of leniency shown to the applicant by the Appellate Authority in the presently impugned order.

37. In the result, the OA as presently filed, is dismissed as without having any merit whatsoever. But, we issue directions to the respondents to administratively examine the aspect of initiating appropriate action against the applicant under the POSCO Act, 2012, or Sections akin to Sections 354A and 509 of the Indian Penal Code in the RPC of State of Jammu & Kashmir, after following appropriate administrative procedures, as may be warranted. Since such sexual harassment of the minor school children takes place during the school hours, it is more so the institutional and moral responsibility of the KVS to devise a mechanism to take appropriate action in parallel to impose penalty under the POSCO Act, 2012, or Sections 354A and 509 of the Indian Penal Code, upon the

delinquents who have been found to be *prima facie* guilty of indulging in any type of sexual harassment offences, punishable under the POSCO Act, irrespective of whether such charges have further been partially proved Departmentally or not, as that aspect of responsibility of examining the culpability under the POSCO Act rests with the Special Criminal Courts designated for the POSCO Act offences.

38. With these directions, the OA is dismissed, but there shall be no order as to costs.

(A.K. Bhardwaj)
Member (J)

(Sudhir Kumar)
Member (A)

cc.