

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00512/2018

DATED THIS THE 01st DAY OF APRIL, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

T.Md.Akram Khan
S/o Shri.T.Babu Khan
Aged about 55 years
Ex.TGT (WET)
Kendriya Vidyalaya
Ministry of Human Resource Development
Government of India
Raichur, Karnataka.

....Applicant

(By Advocate Sri Izzhar Ahmed)

Vs.

1. Principal
Kendriya Vidyalaya
Near Market Yard
Gooty, Anantpur-District
Andhra Pradesh-515401.
2. Deputy Commissioner
Kendriya Vidyalaya Sangathan
Regional Office
Picket, Hyderabad-500 009.
3. Commissioner
Kendriya Vidyalaya Sangathan
18, Industrial Area
Shaheed Jeet Singh Marg
New Delhi-100016.
4. Secretary-cum-Vice Chairperson
Kendriya Vidyalaya Sangathan
18, Industrial Area
Shaheed Jeet Singh Marg
New Delhi-100016.

5. Union of India
through the Secretary
Department of Secondary & High Education
Shastri Bhavan
New Delhi-110 001.

...Respondents

(By Advocate Sri Vishnu Bhat)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The factual matrix of the applicant's case is as follows:

The applicant was appointed on 22.6.1987 and while working as Trained Graduate Teacher(TGT), there was a complaint made by Shri Syed Adil Basha on 16.4.2014(Annexure-A3) to the 1st respondent stating that the applicant misbehaved with his 3 daughters and also the girl students but he has not stated the sexual harassment with his daughters. The 1st respondent conducted inquiry dtd.17.4.2014(Annexure-A4) and collected the statement of the students and the statement of one lady teacher(Smt.G.Triveni) who was a prosecution witness in the case but the same was not done by forming a committee and even not informed to the applicant. The 1st respondent constituted a committee of 4 members wherein Smt.G.Triveni is one of the members, for preliminary enquiry dtd.19.4.2014 (Annexure-A5) to look into the complaint made against the applicant. The applicant submits that the said complaint is prepared by the 1st respondent in revenge against the applicant because he filed a complaint against the 1st respondent regarding irregularities in the administrative functions. The applicant submits that Smt.G.Triveni was prosecution witness and she cannot be the member of the committee. The report was forwarded to the 2nd respondent on 21.4.2014(Annexure-A6). The applicant submits that the 1st respondent has taken two actions on the same day i.e. forwarding the report to the Chairman and issuing show-cause notice

dtd.21.4.2014(Annexures-A7 & A8) regarding sexual harassment towards girl students without waiting the decision of the Chairman. Thus the malafide intention of the 1st respondent is very much clear and he failed to act as master with the applicant. He filed defence reply dtd.22.4.2014 (Annexure-A9) against the show-cause notice dtd.21.4.2014 denying the charges as illegal and false. By ignoring the defence reply of the applicant, the 2nd respondent constituted a Committee of Summary Inquiry vide office order dtd.28.4.2014(Annexure-A10) on the report of the 1st respondent. In the preliminary enquiry, the lady teacher, Smt.G.Triveni was one of the members of the committee and further in the summary enquiry, she was one of the members. Therefore, she cannot be a member of all the committees to justify the truth against the applicant on immoral behaviour. The complaint was withdrawn by the complainant on 1.5.2014. The 1st respondent issued a letter dtd.2.5.2014(Annexure-A11) to the 2nd respondent along with the withdrawal of complaint by the complainant Shri Syed Adil Basha. Therefore, there was no complaint against the applicant after 1.5.2014 and the entire procedure adopted by the respondents is illegal and without evidence.

2. The applicant submits that the 1st respondent issued show-cause notice dtd.3.5.2014(Annexure-A12) regarding the shortage of books in the library against the applicant and is determined to punish the applicant. But he has not taken any action and even not verified the records. The Assistant Commissioner, KVS, Hyderabad submitted report dtd.9.5.2014(Annexure-A13) to the 2nd respondent and the applicant submitted defence reply saying that he was not provided opportunity to cross examine the evidences of 9 regular teachers and 4 contractual teachers. The report states that the applicant has done immoral behaviour with 48 students out of 58 as impractical consequences. The statement of the 1st respondent is not

related to the immoral behaviour and the statement of the lady teacher (Smt.G.Triveni) is not valid being member of the committee. The 2nd respondent issued letter dtd.19.5.2014(Annexure-A14) to the 3rd respondent who has issued show-cause notice dtd.28.3.2016(Annexure-A15) considering the summary report dtd.9.5.2014 under Article 81 (B) of Education Code and also referring the orders of Hon'ble Apex Court in Civil Appeal No.14526/1996 and in WP.No.23535/2002 of Hon'ble High Court of Karnataka without going into the facts on record. The applicant submits that there is no rule specified in the Education Code for KV that the respondents have delegated powers to take action against the teacher suo-motu. The applicant filed his defence reply dtd.13.4.2016(Annexure-A16) to the 3rd respondent against the show-cause notice dtd.28.3.2016 submitting facts of the case. The 3rd respondent without considering the statement of 48 students and the statement of 9 regular teachers and 4 contractual teachers as per the summary inquiry report and also the ACR of the applicant of long period of 28 years, imposed the penalty of termination from service vide dtd.27.9.2016(Annexure-A17) and the applicant relieved on 1.10.2016 (Annexure-A18) due to termination order. It is binding effect to consider the service records of the applicant on major penalty. He filed appeal dtd.8.11.2016((Annexure-A19) to the 4th respondent against the termination order and requested to reinstate him into the service. On 10.11.2016(Annexure-A20), the applicant was promoted to the selection grade by the 3rd respondent. The applicant appeared for personal appearance before the appellate authority (4th respondent) on 6.6.2017(Annexure-A21) and verbally requested for voluntary retirement on the long length of 28 years of service if the situation is beyond the control to set aside the termination order protecting the action on the lower sub-ordinate staff. He submitted representation dtd.6.6.2017

(Annexure-A22) in the personal hearing but the same was not considered by the appellate authority. The department of KVS, Bangalore issued office order dtd.26.7.2017(Annexure-A23) regarding pay fixation of the applicant on the selection scale w.e.f. 22.6.2011. The applicant filed representation dtd.15.2.2018(Annexure-A24) to the 3rd respondent for pensionary benefits modifying the penalty considering 28 years of service and liabilities of the family at the age of 52 years and marriageable daughters. But the same was not considered by the 3rd respondent and he has not forwarded the same to the 4th respondent for modifying the penalty. The 4th respondent issued appellate order dtd.9.4.2018(Annexure-A25) confirming the termination order without considering the facts on record and it is based only on the complaint of Sri Syed Adil Basha. The appellate authority i.e. 4th respondent is bound to pass order within 30 days but he deliberately delayed the decision by 1 year 2 months from the date of appeal dtd.8.1.2016 knowing that the applicant was already relieved on 1.10.2016.

3. The applicant further submits that one girl student (S.Rasheeda Bannu, D/o Anwar Basha) filed representation dtd.10.10.2016(Annexure-A26) to the 3rd respondent against the 1st respondent and the lady teacher Smt G.Triveni for taking wrongful action against the applicant on immoral behaviour and they have collected the statements by the students against the applicant but the 3rd respondent has not taken any action against them on the complaint of the girl student and parent. In the summary inquiry report dtd.9.5.2014, it is not stated the sexual harassment and hence Article 81(B) of Code has wrongly exercised by the respondents. Extract copy of Article 81(B) of Code is enclosed as Annexure-A27. Aggrieved by the action of the respondents, the applicant has filed the present OA seeking the following relief:

i. Set aside the impugned office order No.21061-25/2014-2015-KVS(H.No.)/950 dtd.28.4.2014(Annexure-A10), Summary Inquiry Report dtd.09.05.2014 (Annexure-A13), Show-cause Notice No.F.21061/IV-7/2014-KVS (Vig)/3015-3020 dtd.28.3.2016(Annexure-A15), termination order No.F.21061/IV-7/2014-KVS(VIG)/3833-3838 dtd.27.9.2016 (Annexure-A17), and the appellate order No.F.21061/IV-7?2014-KVS(Vig)/9347-9351 dtd.9.4.2018 (Annexure-A25) as illegal, wrongly exercising power under Article 81 (B) of Code being applicant was complainant against the respondent-01 and the complaint was withdrawn dtd.01.05.2014 and there is no provision in Education Code for suo-moto action.

ii. Direct the respondent-03 to re-instate the applicant considering the service records as long length of 29 years with back wages and all consequential benefits within the stipulated time.

4. The applicant relied on the identical case of *JNV vs. S.B.Sankadavar* in *WP.12682/2011* which is dismissed by the Hon'ble High Court of Karnataka on 28.11.2013(Annexure-A28) relying upon the case of *Government of India (KVS) vs. Dhanu S Rathod* reported in *ILR 2002 KAR 4911* and held that '*the summary enquiry report does not empower the authority to dismiss or remove an employee without giving opportunity of hearing on the charge or to have his say with regard to the evidence.It is also relevant to note here, before issuance of termination order, it seems that the complaint lodged by the girl is also withdrawn.*' The applicant submits that the copy of the complaint and the statement of lady teacher Smt.G.Triveni was not served on him and the preliminary enquiry was constituted by the 1st and 2nd respondents without giving opportunity to him. Even that the respondents have not given opportunity to cross-examine the statements of Smt.Asmat Unniusa, Mr.N.Kareem Khan, Smt.G.Triveni and Sri.Syed Adil Basha. The complaint was withdrawn on 1.5.2014 and therefore, the action after the withdrawal of complaint has no status and invalid and Article 81(B) of Code is not applicable from 1.5.2014 to 9.4.2018 in terms of the order in the above *WP.No.12682/2011* dtd.28.11.2013. The applicant also relied upon the identical

cases of *KVS vs. Jerome Reman Kerketta in WP(C).1972/2014* which is dismissed by the Hon'ble High Court of Guwahati on 17.3.2014 and *R.S.Mishra vs. UOI(KVS) in CA.No.5372/2012* decided on 22.8.2012 by the Hon'ble Apex Court in support of his case.

5. On the contrary, the respondents have submitted in their reply statement that a complaint was lodged against the applicant by a parent namely Shri Syed Adil Basha on 16.4.2014 saying that Shri T.Akram Khan(Applicant) is mis-behaving with girl students in the Vidyalaya such as saying sexual harassment and requested to take action which should be confidential. On receipt of the complaint, as the matter is of serious nature and immediate action is required to inform the Chairman and to initiate necessary action as per rules, the Principal, KV Gooty reported the matter to the Chairman, VMC of the Vidyalaya on the same day. The Principal concerned constituted a Preliminary Inquiry Committee and submitted the report to the Dy.Commissioner, KVS, RO, Hyderabad on 26.4.2014 along with relevant documents with the finding that the allegations levelled against the applicant were established. Thus the preliminary inquiry was conducted on the basis of parent's complaint and not on the fabricated documents or to take revenge against the applicant as has been stated by the applicant. The Dy.Commissioner, KVS, RO, Hyderabad constituted a Summary Inquiry Committee as per rule vide letter dtd.28.4.2014. Smt.G.Triveni, PGT(Chem) was detailed in preliminary inquiry as a member of the committee. However, she is again detailed as member of summary inquiry there being no suitable lady teacher available in the school at that time. The Summary Inquiry was headed by Assistant Commissioner of KVS Regional Office and Smt.G.Triveni is only one member of the committee along with two other members and it has submitted report on 9.5.2014. The procedure of dispensing with

the regular enquiry and conducting the summary inquiry has been upheld by the Hon'ble Supreme Court in SLP No.4627/2008 filed by *KVS vs. Rathin Pal* under Article 81(B) of Education Code of KVS. The competent Disciplinary Authority issued a show-cause notice to the applicant on 28.3.2016 to submit his representation as to why his services should not be terminated under Article 81(B) of the Education Code for KVS. The applicant submitted his representation on 13.4.2016 in reply to the show-cause notice. The disciplinary authority after carefully examining the report of Summary Inquiry Committee including report of preliminary enquiry, in exercise of powers conferred under Article 81(B) of the Education Code for KVS terminated the services of the applicant vide order dtd.27.9.2016. Aggrieved by the same, the applicant preferred an appeal dtd.7.11.2016 to the Vice Chairperson, KVS who is the Appellate Authority under Article 81(B) of Code. The appellate authority granted the personal hearing to the applicant on 6.6.2017 for submission of new facts if any in his defence. The appellate authority after considering all facts on record, found that no new facts were submitted by the applicant. Accordingly, after due application of mind, the appellate authority passed a reasoned and speaking order and decided not to interfere in the orders passed by the disciplinary authority and thus rejected the appeal of the applicant. His request for voluntary retirement has no merit for consideration as in the proven charge of immoral behaviour towards girl students, the penalty of termination from service is imposed on him and there is no provision of pension in the case which is dealt under Article 81(B) of Education Code for KVS.

6. The respondents submit that the contention of the applicant that the complainant Shri Syed Adil Basha has withdrawn his complaint at a later stage and hence the action after the withdrawal of complaint has no status and invalid, is denied as it has

no bearing upon the findings of the preliminary as well as summary inquiry. Moreover, in withdrawal letter the complainant has nowhere stated that the complaint was false or the applicant had not misbehaved with girl students. It is clearly mentioned that the complaint is being withdrawn due to request from his family and complainant's dearest friends. Thus such communication from the complainant has no merit for consideration in the instant case where the allegations of immoral behaviour have been established. The previous service record of the applicant does not absolve him of the proven misconduct. The opportunity of cross-examining the victim girl student has been dispensed with in Article 81(B) of Education Code for KVS. As the disciplinary authority was of the opinion that it was not expedient to hold regular enquiry, it has recorded the reasons for dispensing with the inquiry as per CCS(CCA) Rules 1965 as it would cause serious embarrassment to the minor girls and could also cause a trauma for them because of their tender age. As per ruling by the Hon'ble Supreme Court in Civil Appeal No.14525/1996 in *Avinash Nagra vs. Navodaya Vidyalaya Samiti & others*(1997-Vol.II SCC-P.534-543) vide order dtd.30.9.1996, the applicant was given statement of charge, facts in support of the charges, statement of victim girls, other girls, statement of staff members and reports of the preliminary as well as summary inquiry along with a show cause memorandum dtd.28.3.2016. The Hon'ble Supreme Court in SLP(C)No.9808/2002 in the case of *Navodaya Vidyalaya Samiti & others vs. Babban Prasad Yadav* has laid down pre-requisites for holding summary inquiry which have been duly followed in the instant case. The cases referred to by the applicant in the OA are different and lacks relevancy with the instant case. Therefore, the OA is liable to be dismissed.

7. The applicant has filed rejoinder reiterating the submission already made in the

OA and submits that the respondents have not examined his service records while imposing the penalty of removal from service ignoring the age of 52 years and completed 29 years of service without any complaint and any penalty in departmental proceedings. It is well settled that a man cannot be dishonest suddenly. The removal is harsh and ignored the livelihood of the applicant as settled by the Apex Court. It is not stated in the reply under what condition the complainant was not examined by the applicant. The 1st respondent has invited the complainant to prepare fabricated complaint against the applicant to take grudge and revenge and that is the reason the complainant was not examined by the applicant in the entire departmental proceedings. Hence, it is violation of principles of natural justice. The 1st respondent has not applied mind that as per KVS guidelines where there is such serious nature comes in picture, he should inform to the local police about the situation. There is no such action by the 1st respondent. The word used by the 1st respondent the 'confidential' is applicable for preliminary enquiry only before issuing major charge sheet. The 1st respondent failed to establish rule of the department that one lady teacher Smt.G.Triveni was investigation officer in all 3 committees and she is debarred as one of the members in all 3 committees. The 1st respondent admitted that Smt.G.Triveni was only 'suitable lady teacher' in all 3 investigation committees which is against the rule. The said word 'suitable lady teacher' and 'non-availability of lady teacher' have different connotation. There are 114 lady teachers in various schools in Hyderabad region when Smt.G.Triveni was nominated as one of the members. Therefore the question arises that why one lady was nominated by the 1st respondent for investigation against the applicant. It is not his case that he asked for cross-examining the girls students but he requested for cross-examination with the 9 regular teachers and 4 contractual teachers. The 1st

respondent had suppressed the facts that there is complaint of the parents of the girl students to the 3rd respondent against the 1st respondent while recording statement from girl students against the applicant. The judgments cited by the applicant has very much relevance to his case. The 1st respondent has not enclosed rules, provisions and judgments referred to in the reply and moreover the reply is filed by the 1st respondent only and it is restricted to present the case on specific averments against the 1st respondent. Respondents No.2 to 5 have not filed any reply statement. And hence the reply is not maintainable.

8. Heard the Learned Counsel for both the parties and perused the materials and the written arguments notes submitted by both the parties in detail. The applicant in this case was charge sheeted for inappropriate behaviour towards girl students which was confirmed by the preliminary inquiry and subsequently by the summary inquiry. At the end of these inquiries, the disciplinary authority passed an order terminating the services of the applicant with immediate effect and he was relieved from the service of the respondents on 01.10.2016. His subsequent appeal to the appellate authority also failed. Some of the main contentions raised by the applicant related to the complainant namely that the father of the three girl children who had complained against the inappropriate behaviour of the applicant which started the entire proceedings, was not cross-examined and no opportunity was given to him to verify the contents of the complaint during the examination of the complainant. The second main point raised by the applicant is that the same complainant had withdrawn his complaint subsequently. One more point which the applicant makes is that a lady teacher who was part of the preliminary inquiry continued as part of the summary inquiry also and this vitiated the proceedings. The applicant has alleged during the proceedings that it was the personal enmity of the Principal of the

respondent institution which resulted in this charge gaining ground leading to his final termination. In his representations during the proceedings, he had also complained that the Principal and his own brother-in-law had conspired against him and instigated the complainant and got a complaint lodged. The applicant also states that the children under mass psychology stated certain things which was construed as his immoral behaviour against the children.

9. The respondents have gone into the representations in detail and have answered the same in detail in their proceedings. The respondents have stated that the reasons of conspiracy by the Principal etc., appear to be frivolous and they have lent credence to the fact that the school going children in Std 6th & 7th etc., would not fraudulently make such complaints at the instigation of other persons. The respondents have also confirmed that the applicant was provided with all the documents like the statement of the victim girls, other girl students, staff members, Principal etc., and copies of the complaint made by the complainant and inquiry reports submitted by the preliminary and summary inquiry committees enabling him to make a proper representation in his defence. They have also pointed out that even though the lady teacher who was part of the preliminary inquiry was also a member of the summary inquiry committee, there were other two members in that committee and all the three of them have concurred with the findings, and as such they have not accepted the contention that merely because the same person was there in the two committees, the inquiry proceedings could not be relied upon. On the point of the complainant withdrawing the complaint, the respondents have pointed out that nowhere in the withdrawal has the complainant suggested that the facts of the complaint were not true and that it is being withdrawn due to the request of the applicant's family and his friends. At this point, we should also note that in the

withdrawal of the complaint dtd.1.5.2014, the complainant also states that one of the reasons he is withdrawing is that "it will not happen(sic) future". Therefore, it is obvious that the complaint itself was withdrawn only due to extraneous factors relating to the family of the applicant wherein the complainant does not categorically say that the complaint was false and in fact indirectly hints that the improper behaviour of the applicant was a fact and he is withdrawing that because it will not happen in future.

10. The respondents have cited a number of cases upto the Hon'ble Supreme Court relating to the summary inquiry proceedings in view of the sensitivity of the minds of young girl children who should not face any trauma or harassment during the proceedings. The applicant himself admits that the children under mass psychology stated certain things which were construed as his immoral behaviour against the children. On the fact of the records and the statements of many of the children, it is apparent that the applicant had in fact indulged in inappropriate behaviour leading to his termination. The respondents have rightly held that this is very serious misconduct and that the applicant should not find a place in the educational institution of the nature of the respondent institution or in any educational institution for that matter. It is a fact that the complainant was not allowed to be cross-examined by the applicant. But when the facts of the complaint had been corroborated by a preliminary inquiry and subsequently by a summary inquiry and the fact that the complainant himself withdrew the complaint under pressure from the family members and friends and also stating that this will not happen in future, all point to the fact that the complaint was not made in a flippant manner with only a view to harrass the applicant. The cases cited by the applicant viz., WP(C).1972/2014 before the Hon'ble Guwahati High Court, CA.No.5372/2012

arising out of SLP(C).No.23219/2010 etc., are based on different facts and circumstances and do not help the case of the applicant.

11. Therefore, for the above reasons, the OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00512/2018

Annexure-A1: A copy of letter dtd.13.09.2013
Annexure-A2: A copy of letter dtd.24.3.2014
Annexure-A3: A copy of complaint dtd.16.04.2014
Annexure-A4: A copy of letter dtd.17.4.2014
Annexure-A5: A copy of memo dtd.19.4.2014
Annexure-A6: A copy of letter dtd.21.4.2014
Annexure-A7: A copy of memo dtd.21.4.2014
Annexure-A8: A copy of memo dtd.21.4.2014
Annexure-A9: A copy of defence reply dtd.22.4.2014
Annexure-A10: A copy of office order dtd.28.4.2014
Annexure-A11: A copy of letter dtd. 2.5.2014
Annexure-A12: A copy of memo dtd.3.5.2014
Annexure-A13: A copy of summary inquiry report dtd.9.5.2014
Annexure-A14: A copy of letter dtd.19.5.2014
Annexure-A15: A copy of memo dtd.28.3.2016
Annexure-A16: A copy of defence reply dtd.13.4.2016
Annexure-A17: A copy of termination dtd.27.9.2016
Annexure-A18: A copy of relieving order dtd.1.10.2016
Annexure-A19: A copy of appeal dtd.8.11.2016
Annexure-A20: A copy of promotion order dtd.10.11.2016
Annexure-A21: A copy of representation dtd.6.6.2017
Annexure-A22: A copy of attendance certificate dtd.6.6.2017
Annexure-A23: A copy of pay fixation dtd.26.7.2017
Annexure-A24: A copy of representation dtd.15.2.2018
Annexure-A25: A copy of appellate order dtd.9.4.2018
Annexure-A26: A copy of complaint against Principal dtd.10.10.2016
Annexure-A27: A copy of Article-81 (B) of Education Code
Annexure-A28: A copy of order dtd.28.11.2013 in WP.12682/2011

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

Annexure-A29: A true copies of list of Lady teachers under RTI dtd.30.11.2018 and 3.12.2018
Annexure-A30: A true copy of appellate order dtd.28.2.2018 and letter dtd.20.8.2018
Annexure-A31: A true copy of order dtd.17.3.2014 in WP.1972/2014 of High Court of Gauhati
Annexure-A32: A true copy of order dtd.22.8.2012 in CA.5372/2012 by the Apex Court

Annexures with written arguments note filed by the applicant:

-NIL-

Annexures with written arguments note filed by the respondents:

Annexure-1: Order dtd.16.8.2010 in SLP(C) 4627/2008 Commissioner, KV Sanghathan & Ors v. Rathin Pal

Annexure-2: 1997 SCC (L&S) 565 (Avinash Nagra vs. Navodaya Vidyalaya Samiti & Others

Annexure-3: ILR 2002 KAR 4911 (The Govt. of India vs. Dhanu S.Rathod) (Para 14 and 20 Page No.4924 and 4928)

Annexure-4: Order dtd.23.7.2015 in WP.No.85353/2013 (S-CAT) passed by the Hon'ble High Court of Karnataka, Dharwad

Annexure-5: Order dtd.5.3.2013 passed by this Hon'ble Tribunal in OA.No.266/2011

Annexure-6: Order dtd.27.2.2018 in WP.34115/2016
