

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00538/2017

Date of CAV : 05-10-2018
Date of Order : 16-11-2018

Between :

K. Nageswara Rao S/o Late K. Paidithalli,
Aged 48 years, PGT History,
JNV Dist : Prakasam-II, AP
(under suspension with HQrs at NVS RO, Hyderabad). ...Applicant

AND

1. Union of India Rep by its Secretary,
M/o HRD, Department of School Education
And Literacy, New Delhi.

2. The Commissioner,
Navodaya Vidyalaya Samithi,
Department of School Education and Literacy,
Ministry of HRD, Noida, B-15 Institutional Area,
Sector-62, UP-201309.

3. Deputy Commissioner,
Navodaya Vidyalaya Samithi,
Hyderabad Region, Nallagandla Road,
Gopannapalle, Hyderabad-107.

4. Principal, Jawahar Navodaya Vidyalaya,
No.2 Kaljuvvalapadu,
Prakasam District – 523241. ...Respondents

Counsel for the Applicant: Mr. K. Sudhaker Reddy

Counsel for the Respondents : Mr.N.Srinatha Rao, SC for NVS

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the A.T.Act, 1985 to direct the respondents 2 and 3 not to take any action against the applicant in respect of the crime No.20/2017 on the file of Inspector of Police, Tadivaripalli Police Station, Prakasam District, pending enquiry in the Court and the action of the 2nd respondent Commissioner NVS Noida terminating the services of the applicant by the impugned order dt.23.06.2017 bearing F1-5(9)/2016-NVS (E-III) is illegal, arbitrary and consequently to direct the 3rd respondent Deputy Commissioner, NVS, Hyderabad to continue the applicant in the same post till further order in the interest of justice and pass such other order or orders that are deemed fit and necessary.

2. The brief facts of the case are that, the applicant joined in the Navodaya Vidyalaya Schools during the year 1994 and working as PGT (History) at the Navodaya Vidyalaya Samithi, Jawahar Navodaya Vidyalaya No.2, Kaljuvvalapadu, Prakasam District, A.P. On 27.02.2017 at 9.30 pm the police of T.V.Palle P.S., arrested the accused and produced him before the Podili Judicial 1st Class Magistrate for remand and he was remanded to the custody on 28.02.2017. Crime No.20 of 2017 of Tadivaripalle P.S. was registered and investigation is pending. The case of the prosecution, is that the defacto complainant is a student of 12th class in the school of the applicant and the applicant is working as PGT (History) teacher in the school since 04.02.2014. The 1st Additional Sessions Judge, Ongole, Prakasam Division granted bail with two sureties and a bond of Rs.10,000/- and he

was released. Now the Crime No.20 of 2017 is pending with the police under Investigation as such, it is a case which in the stage of preliminary investigation and as such no action can be taken against the applicant accused, as no *prima facie* case was detected. The mere remand cannot be treated as a crime. The 2nd respondent ordered an enquiry appointing G. Anasuya and two other officers by proceedings dt. 03.03.2017 bearing F.No.1-5(9)/2016-NVS(E.III) and it is pending. No enquiry report was given to the applicant. No explanation was called for. As such no disciplinary proceedings were initiated against the applicant. But the Commissioner illegally passed an impugned order on 23.06.2017 terminating the services of the applicant with immediate effect ordering to pay and allowances for 3 months as admissible under the rule in view of the notice period and directing the 3rd Respondent to relieve the applicant immediately by order dt. 27.06.2017.

3. The applicant further states that his case was foisted by one of his colleague lecturer by encouraging the students and their parents by canvassing and as a result of which this case was registered. The police was under the pressure of the parents of the complainant and registered crime No.20/2017 under Section 354 IPC and Section 10 and 12 of Protection of Children from sexual offences Act, 2012. The department appointed a committee on 4.4.2017 bearing No. 8-16/2-17/NVS-HR(Training) / Summary Trial. The applicant was asked to attend to that enquiry on 7.4.2017 and he attended. The enquiry was not completed. The enquiry report was not furnished. Moreover the criminal case filed against the complainant is in

the stage of investigation. Unless it is completed charge sheet filed, trial commenced and the accused found guilty, no action can be taken against the applicant. The applicant having served 21 years with dedication and competence cannot be terminated with 3 months notice which is illegal, arbitrary and contrary to the law. The applicant submit that the respondents did not follow the procedure contemplated under Rule 14 of the Disciplinary Proceedings Rules. There should not be any ex-parte enquiry. The procedure has to be followed under Rule 14 of CCA Rules. As such the impugned order is liable to be set aside. Hence this application.

4. Respondents have filed reply statement stating that Navodaya Vidyalaya Samiti is an autonomous organization under Ministry of Human Resource Development, Department of School Education & Literacy, Govt., of India. Jawahar Navodaya Vidyalayas are established mostly in all parts of the country to provide quality education to the rural talented children. Jawahar Navodaya Vidyalayas are co-educational residential institutions where the boys and girls reside in the campus. The onus of ensuring the safety and security of the students of the Vidyalaya lies with the teachers who are also loco parents of the students. However, the applicant indulge himself in acts of immoral sexual behaviour with girl students and same was reported to Navodaya Vidyalaya Samiti, Head Office.

5. That after receipt of the complaints made against the applicant, the 2nd respondent decided to conduct a summary inquiry against K. Nageshwar Rao PGT (History) as per Navodaya Vidyalaya Samiti's notification dated

20.12.1993 to know the veracity of the complaints. That as per the said notification dated 20.12.1993 procedure prescribed for holding inquiry 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 (now the nomenclature has been changed to the 'Commissioner') is of the opinion that it is not expedient to hold regular inquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. That in pursuance of said notification, the office of the 2nd Respondent vide proceedings dated 03.03.2017 constituted an inquiry committee through Smt. G. Anasuya, Assistant Commissioner, Dr. P. Satyanarayana, Principal, JNV, Warangal and T. Jayasree, Principal, Prakasam-I to conduct summary trial into the complaints made against applicant. That said committee submitted its report dated 07.05.2017 conclusively holding that Shri K. Nageshwar Rao, PGT (History) had taken advantage of the freedom he enjoyed and misbehaved with girls.

6. The Respondents further state that, after receipt of the said report, the Commissioner, after perusing the records of the case found the applicant *prima-facie* guilty of moral turpitude towards the girl students involving exhibition of immoral sexual behaviour towards them. Therefore, the Commissioner, NVS recorded his findings in writing that it was not expedient to hold regular inquiry as it would involve making the girl students to undergo the tardy process of cross examination etc., thus adding stress / trauma upon them in as much as they have already been

emotionally exploited and it would further cause serious embarrassment to them and their family members as well as their future life. The Commissioner, NVS therefore, in exercise of power conferred under the provision of Notification dated 20.12.1993 of Navodaya Vidyalaya Samiti dispensed with the regular inquiry under CCS (CCA) Rules and held that Shri K. Nageshwar Rao, PGT (History) guilty of charge established. Thereafter, the 2nd Respondent, is of the opinion that the ends of justice would be met by terminating the services of the delinquent teacher Shri K. Nageshwar Rao as his presence poses a constant danger to the girl students of the JNV which are fully co-educational residential institutions in which 1/3rd of the students are girls and their safety and security is of paramount importance to the institution. The 2nd Respondent felt that if the students are not safe in the hands of the teachers who are considered to be local guardian for them, then the institution will lose its reputation, faith of the public and collapses on its own if persons like Shri K. Nageshwar Rao is allowed to continue and also keeping in view the overall interest of organization, the Society, the future of the girl students and problems to the parents of the girl students exercised the powers conferred on him vide Samiti's notification No.14-2/1993-NVS (Vig.0, dt. 20.12.1993, terminated the services of Shri K. Nageshwar Rao, PGT (History) from the Samiti after paying three months notice pay and allowances. Accordingly order has been issued. It is respectfully submitted that the notification dated 20.12.1993 in which Commissioner, NVS is empowered to dispense with the regular inquiry keeping in view the serious embarrassment to the students or their guardians. The Hon'ble Supreme Court in the matter of Avinash

Nagara Vs. NVS [JT 1996 (10) SC 461] held that –

“..... with a view to ensure safety and security of the girl students, to protect their modesty and prevent their unnecessary exposure at an enquiry in relation to the conduct of a teacher resulting in sexual harassment of the girl student etc. Involving misconduct or moral turpitude, resolution prescribing special summary procedure was proposed and published by notification dated 23-12-1993, after due approval of the Executive of the respondent Samiti.....It is seen that the rules wisely devised have given power to the Director (now Commissioner), 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 applicant 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, Govt., of India in that behalf”.

7. In the matter of Baban Prasad Yadav Vs. NVS reported in 2004 (2)

SCALE 400, the Hon'ble Supreme Court has held that –

“All that is required for the court is to be satisfied that the pre-conditions before exercise of power under the said rule are full filled. These pre-condition are 1) holding of summary inquiry 2) A finding in such Summary Inquiry that the charged employee was guilty of moral turpitude 3) the satisfaction of the director on the basis of such summary inquiry that the charged officer was prima facie guilty 4) the satisfaction of the Director that it was not expedient to hold an inquiry on account of serious embarrassment to be caused to the student or his guardians or such other practical difficulties and finally 5) the recording of reasons in writing in support of the aforesaid.”

The Respondents further state that the Commissioner has acted which is just and proper as well as in accordance with the provision of the Notification of Samiti dated 20.12.1993. The applicant has been given full opportunity to defend himself during the Summary Trial. In view of the above, there is no illegality or violation of law in the instant case. After receipt of complaints against the applicant, the 2nd Respondent constituted an inquiry committee with Assistant Commissioner and two principals of different schools as its members. The said committee forwarded the

complaints made against the applicant by the students and the applicant also submitted his comments against the complainants and thereafter, the committee had submitted its report enabling to further action. Therefore the averment that the committee did not call for any explanation and no disciplinary proceedings were conducted is not correct. It is pertinent to submit that the notification will be invoked only in cases, where there is allegation of sexual offence or exhibition of immoral sexual behaviour towards students by the staff and not in all the cases. In other cases, this Respondent organization has been following procedure contemplated under CCS (CCA) Rules, 1965.

8. With the forgoing submissions, the Respondents pray for dismissal of the OA.

9. Learned counsel for the applicant, in support of his contentions, relied upon the following decisions :

- (i) O.A.No.021/00643/2016 (Dr.Y.Babji Vs. UoI & 2 Ors), dt. 22.06.2017 of CAT, Hyderabad Bench;
- (ii) O.A.No.3471/2009 (P.Madhusudan Vs. NVS & Ors), dt. 14.12.2011 of CAT, Principal Bench, N.Delhi;
- (iii) O.A.180/00080/2015 (Moses Packiamony Vs. UoI & 3 Ors), dt. 8.3.2017, of CAT, Ernakulam Bench;
- (iv) POCSOA SESSIONS Case No.52/2017, dt. 23.11.2017, In the Court of the Sessions : Prakasam Division : Ongole ;
- (v) Dev Dutt Vs. UoI & Ors, dt. 12.05.2008 (CA No.7631/2002) of Hon'ble Apex Court ;
- (vi) Central Inland Water Transport Corporation Ltd., & Anr., etc., Vs. Brojo Nath Ganguly & Anr, dt. 6.4.1986 of Hon'ble Apex Court (1986 SCR (2) 278);

(vii) WP No.25868/2012, dt.03.06.2016 [L.V.Pradeep Vs. Andhra University rep. by its Vice Chancellor, Visakhapatnam & Ors]

(viii) Avinash Nagra Vs. Navodaya Vidyalaya Samiti etc., dt. 30.9.1996 of Hon'ble Apex Court ;

(xi) GM Tank Vs. State of Gujarat, Dt. 10.5.2006 of Hon'ble Apex Court ;

(x) The Chairman, Navodaya Vidyalaya Vs. Dr.T.Murugesan,dt. 13.06.2008 of the Hon'ble High Court of Madras ;

(xi) Commissioner, KV Sangathan & Ors. Vs. Rathin Pal, dt. 16.8.2010 in SLP (C) No.4627/2008

10. Learned Standing Counsel for Respondents had relied on the decision of the Hon'ble Supreme Court in the case of Avinash Nagra Vs. Navodaya Vidyalaya Samiti etc., dt. 30.9.1996. The facts of the present case are similar to the facts and circumstances of the said case. In the said case regular departmental enquiry was dispensed with and one teacher of Jawahar Navodaya Vidyalaya was found to be prima facie guilty by resorting to the power given as per notification dated. 23.12.1993, clause (B) of the said notification provides that :

“(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 of 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 allowance depending upon whether the guilty employee is temporary or permanent in the services of the Samiti. 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 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.

In the case of Avinash Nagra Vs. Navodaya Vidyalaya Samiti etc., it was held as follows :

“.....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 to an Inquiry Officer, namely. Asstt. Director. After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him to be not worthy to be a teacher in the institution. Under those circumstances, the question arises : whether the girl and her room-mates 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 allowance in lieu of notice as he is a temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls for tortuous 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 found not 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.”

In the present case the Respondents have relied upon the notification dt. 20.12.1993 issued by the Director of NVS, Clause B of the said notification is as follows :-

“B- Whenever the Director is satisfied, after such summary enquiry as he deems proper and practicable in the circumstance of the case, that any member of the Navodaya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, he can terminate the service of that employee by giving him one month's or three month's pay and allowances depending upon whether the guilty employee is temporary or permanent in the services of the Samiti. 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 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 is 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.”

In the present case, upon receipt of order dt. 3.3.2017 issued by the Commissioner, NVS to conduct Summary Trial against the applicant, it was decided to conduct summary trial against the applicant after the applicant was released on bail. The same was communicated to the Committee Members and also to the applicant. The Committee was constituted by taking one Female Assistant Commissioner, one Female Members and another Principal of Jawahar Navodaya Vidyalaya. The applicant also reported to the Committee as per the schedule. The said Committee was constituted on 3.3.2017 as per the notification dt. 20.12.1993 by the Commissioner, NVS. The Report dt. 04.05.2017 also reveals that documents submitted to the Committee were made available to the Committee and he

perused the same. The reports of the Summary Trials was also brief to the applicant. Two Members of the Committee visited the School on 26.4.2017 to ascertain from the complainant as to whether the complaints were given by the complainants or not and in order to ascertain few more facts pertaining to the case. After going through the materials narrated by the said Committee including the statement of the concerned female students of the school, the Committee was satisfied that the applicant had indulged with girls. He had taken advantage of the situations on the ground of counselling and had exploited the emotional feelings of those girl students. They also found that the applicant had taken photograph of one victim, hugged her and kissed her expressing his sexual desire.

11. Taking into consideration the said summary enquiry report, the services of the applicant were terminated by order dated 23.06.2017 passed by the Commissioner who is the Competent Authority. Commissioner also mentioned in the said order that :

“ it is felt that it is not expedient and practicable to hold a regular inquiry under the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965 in the matter on account of serious embarrassment it will cause to the concerned student and his guardians”.

“ I am, therefore, convinced that the delinquent teacher is prima-facie found guilty of moral turpitude towards a girl student involving sexual offence and these acts of the teachers could be ascribed to exhibition of immoral sexual behaviour. I am of the opinion that it is not expedient to hold regular inquiry in the instant case as such inquiry would be a tortuous process for the victim girl student, who has already been emotionally exploited, as she would be exposed to the nitty-gritty of the cross-examinations which may cause more trauma to her and serious embarrassment to her family as well as her future life. I, therefore, dispense with the regular inquiry under CCS (CCA) Rules and invoke special provisions enunciated in the Samiti’s notification dated 20th December, 1993.

In view of the aforementioned facts and circumstances, I am of the view that the ends of justice would be met by dismissal of services of the delinquent teacher as there is always a danger to the girl students in a residential institution from such a teacher who betrays the trust reposed upon him by the Society in general and the organization in particular to nurture adequately the students under his care building up their character and ensuring holistic development. Navodaya Vidyalayas are co-educational and residential nature in which 1/3rd of the students are girls. Their safety and security is of paramount importance to the institution. If they are not safe in the hands of the teacher who is considered to be local guardian for them, then the institution will lose its reputation, faith of the public and collapses on its own. Keeping in view the overall interest of organization, the Society, the future of the girl student and problems to the parents of the girl student, the delinquent teacher deserves exemplary punishment.

The undersigned being the competent authority in exercise of the powers conferred on me vide Samiti's notification No.14-2/1993-NVS (Vig) dated 20th December, 1993 hereby terminates the services of Shri K.Nageswara Rao, PGT (History) from the Samiti with immediate effect. I also order that he may be paid three months pay and allowances in lieu of notice period. Accordingly, order has been issued".

12. Learned counsel for the applicant had filed copy of appeal order dt.22.3.2017 passed by the learned Court of the Session : Prakasam Division passed by the I-Additional Sessions Judge, Ongole, by the applicant was released on bail. After he was arrested and remanded to Jail on the allegation of committing offences under section 354 of IPC and under sections 10 and 12 of Protection of Children from Sexual Offences Act, 2012. The order dated 23.06.2017 passed by the Commissioner, NVS shows that he had gone through the materials on record including the Report submitted by the Summary Trial Committee that the delinquent teacher. In the circumstances, this Tribunal is satisfied that the precondition before exercise of power under the Rule in question have been fulfilled ie by holding the Summary Enquiry, that the applicant who was the charged

employee was guilty of moral turpitude, that there was decision of the Director on the basis of the Summary Enquiry that the Charged Officer was *prima facie* guilty. There was also decision of the Director that it was not expedient to hold enquiry in view of the embarrassment to be caused to the students and to the family members of the victim and those written reasons were available on record. In the facts and circumstances in no illegality has been committed in dispensing with the regular enquiry and to invoke the special provisions as per NVS notification dt. 20.12.1993.

13. The learned counsel for the applicant had drawn attention to the fact that the applicant has been acquitted by the learned Special Judge for Trial of POCSOA Cases-cum I-Additional District & Sessions Judge, Ongole in POCSOA SESSIONS CASE No.52 of 2017, dt. 23.11.2017. In this context, learned counsel for the applicant had submitted that since the charges levelled against the applicant in the departmental proceedings are virtually same as made against the applicant in the Criminal Case in question and in view of his acquittal in the said Criminal Case, he should have been found not guilty of the allegations made against him by the Respondents.

14. In view of the forgoing discussion, this Tribunal is of the view that the punishment imposed on the applicant ie termination of services of the applicant is not disproportionate quantum of punishment on the applicant. It is further seen that due opportunity was given to the applicant by the summary Trial Committee

15. In view of the discussions already made and in view of the decision of

the Hon'ble Supreme Court reported in Avinash Nagra Vs. NVS, dt.30.9.1996 that the Director had power to dispense with the regular departmental enquiry. This Court, in the facts and circumstances of the case also of the opinion that the Director had such a power to dispense with the regular enquiry and in the facts and circumstances of the case he was justified to do so as per the reasons assigned by him.

16. The order of the Commissioner also reveals that the Commissioner was of the firm view that the incident as alleged did take place and there was no report or material to show that no such incident had taken place. This Tribunal is also satisfied that the pre conditions for exercising the extra-ordinary power for dispensing with the enquiry are fully satisfied in this case. The Committee in question should be deemed to be an enquiry authority for the purpose of CA Rules and the Report of the said Committee is deemed to be an Enquiry Report. Hence there was nothing illegal by the action of the Disciplinary Authority in taking into considerations the said report for imposing the punishment on the appellant. Taking into consideration the facts and circumstances of the present case, this Tribunal is also of the firm opinion that allegations of moral turpitude involving immoral sexual behaviour have been *prima facie* proved against the applicant in his capacity as a Teacher by the student. The said conduct of the applicant was unbecoming of a Teacher and therefore the competent authority has rightly terminated the services of the applicant and the appellate authority has legally and rightly upheld the said order of punishment.

17. The learned counsel for the applicant had relied upon the judgment given by Hon'ble High Court in WP No.25868/2012, dt.03.06.2016 in the case of LV Pradeep Vs. Andhra University. The said reported case is not applicable to the facts and circumstances of the case since there was special provision of 6(b) of Chapter XII of Andhra University Administration Manual for initiation of disciplinary proceedings.

18. In the present case after going through the report of the Committee in question and the procedure adopted by it, it is seen that there was no illegality or infirmity in the same. No arbitrariness or bias has been proved against any of the Committee Members or against the concerned authorities. The learned counsel for the applicant relied upon the judgment dt. 22.6.2017 passed by this Tribunal in OA No.643/2016 in OA No.643/2016 in the case of Dr.Y.BabjiVs. UoI and in the said case while dealing with the allegation of sexual harassment it was found in the facts and circumstances of the case that the Women Complaints Committee, being an enquiry authority had not followed the due process of the law. In the present case it has also been found that there has been a separate circular enabling the concerned authority to resort to the power given under the notification dated 20.12.1993 to dispense with the regular enquiry and the said action taken by NVS authority resorted in another case was not interfered by the Hon'ble Supreme Court as earlier discussed.

19. In view of the position of the law, the decision dated 22.6.2017 in OA

No.643/2016 is not applicable to the facts of the present case. There is no dispute regarding the legal position that in Criminal Case, prosecution has to prove its case against accused beyond reasonable doubt but in the Departmental proceedings, the same standards are not applicable to prove the charges levelled against the delinquent. The same can be proved in the standard of preponderance of probabilities. This Tribunal can only examine if there was absolutely no evidence against the applicant. In the present case there was sufficient material against the applicant and the same has been discussed by the concerned authority during the summary enquiry and it was found that the charged officer was *prima facie* guilty of the charges in the departmental proceedings. Therefore mere acquittal in the Criminal case by itself, in the facts and circumstances of the case cannot be a ground to say that this Tribunal should not rely upon the material produced before the concerned authority to hold that the charges levelled against him have been *prima facie* proved. The other decisions as cited by the learned counsel for the applicant are not applicable to the facts and circumstances of the present case.

20. In view of the forgoing discussion, this Tribunal is of the view that the punishment imposed on the applicant ie termination of services of the applicant is not disproportionate quantum of punishment on the applicant. It is further seen that due opportunity was given to the applicant by the summary Trial Committee. Accordingly OA is dismissed as devoid of merits. No order as to costs.

Dated : 16th November, 2018.

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