

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1918/2003

New Delhi this the 9th day of February, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Shri S.K. Malhotra, Member (A)

Jwala Singh,
Ex. Physical Education Teacher,
Group 'C' H No.D/925,
Gali No. 7, Ashok Nagar, Delhi.

...Applicant

(By Advocate Shri Narendra Kaushik)

VERSUS

1. Union of India, through the Secretary,
Ministry of Human Resources and
Development, New Delhi.

2. The Commissioner,
Navodaya Vidyalaya Samiti,
Admn. Block, I.G. Stadium,
I.P. Estate, New Delhi-110002

3. Shri P.S. Salaria,
Deputy Director,
Navodaya Vidyalaya Samiti,
Sec 42-A, Lucknow, Uttar Pradesh.

4. Ms. Kaneez Fatima,
Asstt Director (HQ),
Navodaya Vidyalaya Samiti,
Admn. Block I.G. Stadium,
I.P. Estate, New Delhi-110002

5. Principal,
Jawahar Navodaya Vidyalaya,
Rajouri, J&K.

...Respondents

(By Advocate Shri S. Rajappa)

O R D E R

(Hon'ble Mrs. Meera Chhibber, Member (J))

By this OA the applicant has challenged the order dated 18.6.2003 whereby his services were terminated on the ground that a complaint of moral turpitude involving



exhibition of immoral sexual behavior towards girl students was received against him while posted at JNV Rajouri, J&K. In an enquiry conducted regarding these charges it was established that the applicant is *prima facie* guilty of moral turpitude involving exhibition of immoral sexual behaviour towards girl students of class IX of JNV, Rajouri. It was 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 that will cause to the concerned girl students and their guardians. He will be paid pay and allowances for three months as admissible under the rules in lieu of the notice period (pages 16-17).

2. It is submitted by the applicant that he joined as PET on 18.7.1995 against the Scheduled caste quota and worked to the satisfaction of respondents with the best of his abilities. In 1998 applicant objected to some inferior quality sports items purchased for the school amounting to Rs. 50,000 but was directed by the Director to bring on charge all items and not to create problem. He also threatened the applicant that he would set him right by sending him back to his home. He further submitted that on 22.6.2000 he was posted to Kargil at the behest of the Principal B.R.Choudhary but the same was subsequently cancelled on 5.7.2000 on compassionate ground as his mother was constantly bed ridden.

3. On 4.11.2000, the applicant was directed to escort 13 students i.e. 10 boys and 3 girls for taking them to Bringkhera School in District Muktsar, Punjab. He asked the Principal to send one lady teacher for escorting girls but his request was turned down. Therefore, the applicant had escorted the students on 6.11.2000. On way one student, namely, Mustaq did not behave well while in journey, therefore, he rebuked him. On 9.11.2000 the applicant handed over the students to Principal J&V Bringkhera and was given return movement order dated 9.11.2000. There was no whisper of any complaint against him of any kind till such time. It was only in March, 2001, Deputy Director



visited the school of the applicant but even at that time nothing was done. He was, however, placed under suspension on 19.6.2001 in contemplation of enquiry without giving him any reasons (Annexure III).

4. Applicant vide his letter July, 2001 requested for copies of complaint or charge sheet so that he could file a representation but the same was not given to him. Mr. Bagmare conducted an oral enquiry and he also did not give any copy of the complaint to the applicant. On 15.11.2001 his subsistence allowance was raised from 50 % to 75%. Vide letter dated 22.8.2002 the applicant was directed to appear on 8.10.2002 for enquiry in the case of moral turpitude after a gap of one year and nine months (Ann. VI).

5. Applicant has challenged his termination on the ground that on 12.9.2002, the Principal gave him a character certificate certifying his character to be very good which itself shows that he was not a person who could indulge in immoral activities. He further submitted that Mr. Bashir Ahmed who is stated to have given the complaint stated categorically that he had never given such a complaint and that his daughter also had never informed him about such incident. Similarly the girl Ms Rabina Kausar had also given in writing that she along with other girls, namely, Reeta and Gagan were annoyed against the Principal as there was no lady teacher provided to escort them. Since applicant had not provided them lunch during the journey which resulted in filing baseless complaint. Applicant also submitted written submission of girl and her father along with statement of other students who were escorted on 6 and 7th November, 2000 to Punjab, thus there was absolutely nothing on record to give him penalty of termination. He further submitted that he was not allowed to cross examine any of the witnesses which vitiated the whole enquiry. He submitted that before imposing penalty, at least, he should have been given a show cause notice but in this case his services were terminated without giving him any show cause notice.

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6. Being aggrieved, he filed appeal to the Hon'ble Minister for Human Resources and Development but the same was also rejected. Thus he has no other option but to file the present OA.

7. Respondents have stated that the order of termination dated 18.6.2003 passed by the Commissioner, Navodaya Vidyalala Samiti has been passed on the basis of the Notification No. F.14-2/93-NVS (Vig) dated 20.12.1993 which confers upon the Commissioner the power to dispense with the holding of regular inquiry in cases of moral turpitude. The applicant was found guilty of moral turpitude and, therefore, the Commissioner in exercise of his powers conferred on him proceeded to pass the order of termination dated 18.6.2003. Hence the relief which the applicant has sought in the present OA is devoid of any merit, therefore, the same is liable to be rejected. They have further submitted that applicant has rushed to the Tribunal without waiting for the outcome of representation given by him to the Hon'ble Minister for Human Resources and Development. Therefore, the OA is liable to be dismissed under Section 20 of the Administrative Tribunals Act, 1985.

8. On merits they have submitted that on a complaint having been received by Deputy Director a preliminary enquiry was conducted, wherein it revealed that the applicant had tried to make advances towards the student, namely, Ms. Rabina Kausar on 7.11.2000 and that he was found prima facie guilty of committing moral turpitude. Thereafter the matter was referred to Ms. Kaneez Fatima, Assistant Director to go into the allegations of moral turpitude. After this inquiry was conducted, it was decided that the applicant was to be given an opportunity to defend himself. Accordingly, the respondents vide order dated 5.9.2002 had directed the applicant to be present and the applicant appeared on 6.9.2002 and requested time to collect information regarding his defence from Rauri which was allowed. However, they have some variance inasmuch as in one of the report it was stated that the applicant got hold of the hands of Ms. Rabina



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Kausar in the room and in another report it was held that the applicant got hold of her arms on the stairs, however the fact remains that the student reported that the applicant misbehaved with her with a view to derive sexual pleasure. Applicant was given an opportunity to defend himself and it was only after going through the records, the Commissioner came to the conclusion that the applicant was involved in molesting Km.Rabina Kausar and on being satisfied that it was unbecoming of a teacher of a residential co-educational school who is expected to perform the role of a loco parentis if permitted to continue unchecked it will shock the faith of the parents of the girl students in the co-educational residential set up of the Navodays Vidyalayas and bring in the institution and concept of teaching itself into dis-repute, he in exercise of the powers conferred by Rule 19 (ii) of CCS (CCA) Rules, 1965 and in terms of the Navodaya Vidyalaya Samiti's Notification dated 20.12.1993 terminated the services of applicant. They have submitted that the orders were passed keeping in view the law laid down by the Hon'ble Supreme Court in Avinash Nagra and Danender Kumar, respectively. They have further submitted that in these circumstances, it is not required to hold a regular enquiry. However, the applicant was given an opportunity of hearing to prove his innocence. They have thus prayed that the OA may be dismissed.

9. They have relied on the following judgements:

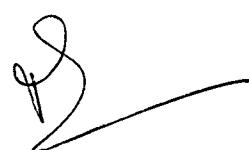
Avinash Nagra Vs.NVS reported in JT 1996 (10)SC 461.

Order dated 4.7.2000 in LPA No.116/1994 UOI & Ors. R.S.Mishra

Judgement dated 14.12.2000 given in TA 13/2000 in the case of Dharamvir Singh Vs. N.V.S.and Ors. and

Order passed in Director, NVS & Ors. Vs.Babban Prasad Yadav and Anr. (2004(2) Scale 400).

Counsel for the respondents further submitted which was not disputed by the counsel for applicant that during the pendency of this OA, his appeal was also rejected by order dated 19.2.2004 and subsequently due to change of Government, the matter was again placed



before the new Minister for Human Resources and Development but he has also rejected the appeal vide order dated 5.11.2004.

10. We have heard counsel for both the parties and perused the pleadings as well. We had directed the respondents' counsel to produce the original file to see the material on the basis of which decision was taken by the Commissioner of the Navodaya Vidyalaya Samiti to terminate the services of the applicant under Rule 19 (ii) of the CCS (CCA) Rules, 1965. From the perusal of the records it is seen that the Deputy Director, Regional Office, Chandigarh had reported about a complaint having been received under the signature of one Mohd. Basir father of Ms Rabina Kausar a student of 9th class of Navodaya Vidyalaya Samiti alleging that the applicant had indulged in immoral turpitude towards her while escorting the students from JNV Rajouri to JNV Muktsar. A preliminary inquiry was conducted through Shri. P. K. Waghmare, Assistant Director who concluded that the complaint stated to have been written by Mohd. Basir is not genuine but the said material has confirmed that the applicant has tried to make physical advances on 7.11.2000 while staying in Gurdwara at Jammu on their way to Mukstar. Thereafter a detailed investigation was ordered to be conducted by Ms. Kaneez Fatima, Assistant Director who also concluded the same by observing that the complaint dated 20.5.2001 has been found to be fictitious. However applicant did make sexual advance towards Ms. Rabina Kausar during halt at Babarpuran Singh Gurdwara at Jammu on 7.11.2000 on reaching JNV Bringkhera. Ms. Rabina Kausar who made a complaint to the Principal in writing through House Mistress but the Principal did not report to any authority for disciplinary action. It was held that exhibition of immoral and sexual advances made by the applicant were disgraceful and humiliating for the girl students. Since the preliminary investigation conducted against the applicant had brought out a *prima facie* case against him, a preliminary enquiry was ordered in order to give opportunity to the applicant to present his defence. He was given sufficient time to prepare his defence and the



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Committee consisting of three officers gave its report holding therein that the applicant is not found guilty of misbehaviour/advancement towards Ms. Rabina Kausar. This report was given on the basis that the initial complaint was not genuine and the exact location is also not clear from the different statements. Moreover, Shri Bagmare had observed that the applicant got hold of the hands of Km. Rabina Kausar in the room while Ms. Rabina has reported that the applicant got hold of her arms on the stairs. The date for alleged incidence according to the investigation is, 7.11.2000 whereas it is stated by applicant that he was in Jammu on 6.11.2000. Moreover, it would be difficult for any body to misbehave with any girl when other girl students are also present.

11. All the three reports of preliminary investigation as well as the summary trial were placed before the Commissioner of NVS, who did not agree with the reasoning given by summary trial Committee by observing that it is not really relevant on which date the complaint was written and by whom it was written what was important is whether such an incident had taken place or not and whether the facts of the said complaint were correct or not which are of serious nature.

12. He further stated that it is not important whether he caught hold of her hands or arms or whether in stair case or in a room. It is important to know whether he made an attempt so long the evidence is on record that he tried to advance towards the girl student and attempted to molest will imply it is a serious matter and calls for strict action. He further stated that the opinion of the Committee that no body can indulge in such activity in front of other girls is subjective opinion. After all students had given in writing initially and even in subsequent statement when they gave in writing not to take any action against the applicant, the reasoning given was that he would not repeat such action again as he also has children. Therefore, even from the subsequent letter it is clear that the incident had taken place but on the second thought students felt no action need to be taken against the teacher. Moreover, it has been corroborated by other girl students that



Ms. Rabina Kausar came running towards the stairs she was scared and informed them how applicant had tried to touch her. He thus came to the conclusion that all this clearly shows that applicant had in fact indulged in such activities he, therefore, *prima facie* guilty of moral turpitude involving exhibition of immoral sexual behaviour towards girl students which is totally unbecoming of a teacher of a residential co educational school to perform the role of a *loco parentis* under his custody and he deserved exemplary punishment. He further stated that since the applicant has indulged in such activity by trying to molest innocent children it is neither expedient nor desirable to hold regular enquiry as it will adversely affect the reputation of the girl student and may cause serious embarrassment and trauma to the student and her parents. He therefore, ordered to terminate the service of the applicant after giving him three months pay and allowances as admissible under the rules in lieu of the notice period in accordance with the Samity notifications order dated 20.12.1993. We fully agree with the reasoning given by the Commissioner as it is based on objective assessment.

13. The matter was further looked into by the Hon'ble Minister for Human Resources and Development on appeal but he also rejected the same after going through the file. During the pendency of this OA, since the Government had changed, the matter was once again placed before the new Minister for Human Resources and Development. He also perused the file and ultimately rejected the appeal by order dated 5.11.2004. It is thus clear that the authorities concerned have applied their mind to all the facts and have then come to the conclusion that it was not expedient to hold a regular enquiry under CCS(CCA) Rules.

14. Counsel for the applicant strenuously argued that Mohd. Basir has given in writing that the said complaint was not written by him. Therefore, no action could have been taken on the said complaint. However, as we have just quoted above this fact is not disputed by the respondents that the complaint was signed by someone else and not by



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Mohd. Basir but the fact is that the contents of the complaint after investigation were found to be correct. Therefore, even if Mohd. Basir had not written the complaint, it would not make much difference. We have seen the statements which were given by the students on different dates. We are convinced that the incident had taken place. It has to be kept in mind that Navodaya Vidhyayala Samiti is a co-educational school and Ms. Rabina Kausar belongs to conservative family of muslims. Naturally on second thought she would have felt if this complaint is acted upon, she will also be involved in the whole thing. Therefore, probably she changed her stand by saying that no action be taken against the applicant but from that statement also it is clear that incident did take place because Rabina Kausar stated he would not repeat such an action. This sort of incidents canot be ignored because in co-educational institutions teachers and Principal are supposed to act as protectors of innocent girls, if the teachers themselves misbehave with girl students like this, it can ruin the reputation of institution itself apart from mental trauma to the young girls. Therefore, it is necessary to take stern action. In these circumstances, the teacher cannot insist that regular inquiry should be conducted, nor can in the absence of holding regular inquiry it be construed that the principle of natural justice have been violated. These points have already been dealt with extensively by the Hon'ble Supreme Court in the case of Avinash Nagar's case (supra). It was held in the above said case as under:

"Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence.

....After conducting the enquiry, he submitted the report to the Director and the Director examined the report and found him not worthy to be a teacher in the institution. Under those circumstances, the 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 was a temporary employee under probation. In the circumstances, it is very hazardous to expose the young girls to the tardy process of cross- examination. Their statements were supplied to the appellant and he was given an opportunity to controvert the correctness thereof... Under those circumstances, the conduct of the appellant is unbecoming of a teacher must 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".

The same view was taken by the Hon'ble Supreme Court in Director, Navodaya Vidyalaya Samiti and Ors Vs. Babban Prasad Yadav and Anr. case (supra) by observing as follows:-

"All that is required for the Court is to be satisfied that the pre conditions before exercise of power under the said rule are fulfilled. These preconditions 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 students or his guardians or such other practical difficulties; and finally (5) the recording of reasons in writing in support of the aforesaid".

The Hon'ble Supreme Court further observed that High Court erred in holding that such a charge needed to be proved beyond all reasonable doubt. It was this held that it was not open to the High Court to have come to the conclusion that the reason given by the Director for dispensing with the enquiry was unconstitutional or illegal. In the end the order of High Court was set aside. However, having regard to the submissions of the counsel appearing for the respondents he was given an opportunity to tender his unconditional resignation from the institution with effect from the date of the order of the termination meaning thereby the order passed by authorities was in fact upheld but at the request of delinquent he was allowed to resign.

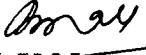
15. In the instant case applicant has not made any such request that he be allowed to give his resignation. Therefore, this part of the direction is not relevant as far as the applicant's case is concerned so long. Pre conditions as have been laid down in Babban



Prasad's case (supra) by the Hon'ble Supreme Court are fulfilled, the order passed by the respondents cannot be upset.

16. Since we are satisfied that the incident did take place as is evident from the statements given by the students mere difference in date would make not much difference because the date could have been stated by mistake also.

17. He next contended that no proper inquiry was conducted and no reasonable opportunity was given but as we have seen above that Commissioner of NVS has already recorded his finding that it was not expedient to hold a regular enquiry and so long his findings is based on objective assessment of evidence on record, we do not think his finding can be upset by the Court. We are satisfied after seeing the evidence on record that the incident did take place. In these circumstances if regular enquiry is not conducted it cannot be held that the applicant has been deprived of his rights to cross examine. From the records it is clear that applicant was also associated with the enquiry conducted by the respondents and he was also given full opportunity to defend himself as well. Moreover, his appeal has also been considered by two different Ministers for Human Resources and Development who have also applied their mind and rejected the appeal which shows that his case has been considered at various levels by various officers. We, therefore, find no merit in this OA. The same is accordingly dismissed. No order as to costs.


(S.K. Malhotra)

Member (A)


(Mrs. Meera Chhibber)

Member (J)

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