

(2) (1)

**Central Administrative Tribunal
Principal Bench**

OA No. 2008/2003

New Delhi, this the 15th day of December, 2005

**Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mr. Shanker Raju, Member (J)**

R.S. Misra,
PGT (Chemistry),
KV Sainik Vihar,
New Delhi.

....Applicant

(By Advocate: Shri M.K. Bhardwaj)

-Versus-

Union of India through

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, SJS Marg,
New Delhi - 110 016.
2. Joint Commissioner (Admn.)
Kendriya Vidyalaya Sangathan,
18, Institutional Area, SJS Marg,
New Delhi - 110 016.
3. Mrs. Radha Rani,
Principal,
Kendriya Vidyalaya,
Imphal.
4. Mr. Ranvir Singh,
Education Officer, KVS,
Regional Office KVS,
New Mehrauli Road,
New Delhi.Respondents

(By Advocate: Shri S. Rajappa)

ORDER

By Mr. Shanker Raju, Member (J):

Memorandum dated 31.03.2003 issued by the
respondents, whereby a punishment of termination has

been proposed under Article 81(b) of the Education Code for Kendriya Vidyalaya seeking explanation of the applicant, has been impugned in the present Original Application.

2. Prayer for interim relief was considered by the Tribunal on 14.08.2003 but as no order terminating the services of the applicant was there, the question of passing any restraint^h order did not arise. However, vide orders dated 05.11.2003 and 07.11.2003 applicant's services had been dispensed with and he was relieved.

3. MA 2380/2003 filed by the applicant for stay of the orders dated 05.11.2003 and 07.11.2003, after deliberation, was disposed of on 29.12.2003 whereby the operation of the above orders had been stayed till the final disposal of the O.A. However, respondents assailed the interim order before the High Court of Delhi in CWP No. 3141/2004 whereby, with the following order, CWP was disposed of:

"Petition is disposed of by providing that the termination order dated against the petitioner shall remain in abeyance for two months from this period. Tribunal is directed to dispose of the OA of the respondent expeditiously.

During the period respondent will be deemed to be in service and petitioner shall pay 50% of his subject to the outcome of the OA. Respondents will not however enter the school premises for discharge of his duties during this period in view of the nature of allegations levelled against him. This will not, however, be any expression of opinion on the merit of the OA or the nature of charges against the respondents."

4. The aforesaid decision was unsuccessfully carried out before the Apex Court as well by the respondents.

5. Brief factual matrix of the case suggest that earlier the orders whereby the applicant who was dismissed under Article 81(b) of the Code ibid were set aside by the High Court of Delhi and the applicant was put back in service with all consequential benefits. However, on the allegations pertaining to alleged indulgence of applicants in acts of moral turpitude with exhibition of immoral sexual behaviour towards girl students in the academic session 2000-01. A summary enquiry was proceeded where explanation of the applicant was taken and thereafter the competent authority, after dispensing with the services following the enquiry, issued a show cause notice to the applicant as to termination of his services. The aforesaid was represented to by the applicant, which gives rise to the present Original Application.

5. Shri M.K. Bhardwaj, learned counsel for the applicant states that as the applicant is retiring on attaining the age of superannuation on 31.12.2005 ^{31.01.2006} any action to dispense with the services would not be reasonable. He denies all the allegations and states that by misusing the powers by the respondents under Article 81 (b) of the Code ibid, the applicant has been victimized. Learned counsel would also contend that after the disposal of CWP, applicant is still in service and getting 50% of the pay, therefore, the

^(X) Corrected as per orders dated 27.3.2006 in
MA No. 260/2006 in OA 2008/03 11/05/2006
DR(J)

respondents should not have resorted to termination in the wake of stay of the operation of the orders dated 5.11.2003 and 7.11.2003. Learned counsel further contended that having decided to issue a show cause notice, the order passed does not indicate even the fact of show cause notice and the contentions raised in reply have not been considered, which is a denial of reasonable opportunity to the applicant as against the principles of natural justice.

6. On the other hand, respondents' counsel Shri S. Rajappa vehemently opposed the contentions. According to him, the stay of the High Court was in operation only for two months, yet it is not disputed that the applicant is still getting his pay to the extent of 50%. Though he reiterates the fact of termination of the applicant and his indulgence in immoral activities.

7. When Shri Rajappa, learned counsel for the respondents was confronted as to the denial of reasonable opportunity to the applicant as the impugned order does not show application of mind, he fairly conceded that although the impugned order is not assailed, yet the respondents shall re-consider the issue and pass a fresh order.

8. On careful consideration of the rival contentions of the parties and without going into the factual aspect of the matter on merit relating to the alleged implication of the applicant, yet in an administrative action when sine quo non is fairness and deprivation of reasonable opportunity to

defend is an infraction to the principles of natural justice, order passed by the respondents cannot be legally countenanced. The order of termination is oblivious of the show cause notice and no consideration has been made to the contentions raised by the applicant. One of the facets of superannuation of the applicant on 31.12.2005 shall also have to be a valid and wroth for consideration, which has escaped the notice of the respondents while terminating the services of the applicant, which requires re-consideration.

9. In the result, for the foregoing reasons, Original Application stands disposed of with a direction to the respondents to consider the representation of the applicant and also his forthcoming superannuation while passing an order afresh under Article 81(b) of the Code ibid. This shall be done before superannuation of the applicant i.e. 31.12.2005. Status of the applicant pertaining to continuance of 50% pay, till a decision is taken, shall remain as it is. No costs.

S.Raju
(Shanker Raju)

Member (J)

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M.A. No. 260/2006 in OA No. 2008/03

V.K.Majotra
(V.K.Majotra)

Vice Chairman (A)

15.12.05

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