CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2344/2003

New Delhi this the 6th day of April, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.A. SINGH, MEMBER (ADMNV)

Smt. Shikha Grover,
w/o Shri Atul Grover,
R/o 21/27, West Patel Nagar,
Patel Nagar, New Delhi-8. -Applicant

(By Advocate Shri I.C. Kumar)

-Versus-

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

2. The Joint Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016.

3. The Assistant Commissioner,
Kendriya Vidalaya Sangathan,
K.V. (OCF), Sector 29-B,
Chandigarh-160020.

4. The Principal,
Kendriya Vidyalaya No.1
Ferozepur Catt. (pb)

-Respondents

(By Advocate: Shri S. Rajappa)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 18.12.2000, removing him from service w.e.f. 1.7.96, which on corrigendum was treated as 1.7.99 with loss of lien as well as appellate order dated 28.12.2001, upholding the punishment. Applicant also assails notification of KVS dated 4.9.2000, inserting Article 81 (d) in the Education Code.

2. On perusal of record tendered by respondents the brief factual matrix unearthened relevant for adjudication is reproduced.

3. Applicant was appointed as a TGT in KVS. Due to mitigating circumstances on account of birth of a child applicant availed sanctioned maternity leave in the year 1998-99. Applicant had requested the competent authority to grant leave, i.e., Principal of the School regarding grant of extraordinary leave (EOL) due to the fact that her mother-in-law was ailing with cancer and there was none to look after her. She was duly granted extraordinary leave from 1.2.99 to 28.4.99. Thereafter she further applied for extension of leave on extenuating circumstances from 1.2.99 to 20.6.99 the leave sanctioning authority did not inform the outcome of such extension. Vide notification dated 4.9.2000 with a view to streamline the availability of Teachers the Board of Governors of KVS inserted vide notification Article 81 (d) in the Education Code of KVS, which pertains to voluntary abandonment of service and consequently loss of lien on the post. A detailed procedure has been set out.

4. In pursuance of the aforesaid notification details of Teachers remaining absent from various schools all over India have been sought. The concerned Principal forwarded the status report through Assistant Commissioner apprised the KVS. Accordingly, notices have been issued under Article 81 (d) of the Code ibid.

5. A similar reference has come to the Principal of the school where applicant was working and in pursuance thereof it has been apprised that applicant has sought for EOL.

6. On receipt of the aforesaid information a show cause notice vide memorandum dated 31.10.2000 was served upon applicant proposing provisional loss of lien on voluntary abandonment of service in so far as the allegation of remaining absent for the period 15 days or more from 1.7.96. The aforesaid show cause notice was responded to by applicant and a communication has been sent through courier to the Assistant Commissioner, which was duly received.

7. By an order dated 18.12.2000 observing that applicant has not preferred any representation in response presuming that she has nothing to say in defence loss of lien of applicant on the post has been ordered and she has been deemed to be removed from service w.e.f. 1.7.1996. As applicant was not absent from 1.7.96 but from 1.7.99 corrigendum issued on 15.2.2001 correcting the aforesaid position in their show cause notice as well as order of loss of lien.

8. Applicant preferred appeal, though time barred, which was considered by the appellate authority and taking a view that applicant now can be posted on her insistence to be posted in the visinity of her residence the appellate authority confirmed the removal of applicant, giving rise to the present OA.

9. Learned counsel for applicant Sh. I.C. Kumar contends that even after the validity of Article 81 (d) has been upheld by the High Court of Delhi in **Prem Juneja v. Union of India**, 2003 (1) AD Delhi 57, yet as the SLP has been preferred against the order of the High Court keeping in view the decision of the Apex Court in **Dharam Dutt and**

Others v. Union of India & Ors., 2004 (1) SCC 712, filing of an appeal destroys the finality of judgment under appeal and the same cannot be relied upon.

10. On merits, it is contended that assuming Article 81 (d) has been validly incorporated before her lien is terminated under clause 4 an opportunity to represent against show cause notice and thereafter satisfaction has to be arrived at by the appointing authority as to attraction of sub clause (1) of clause (d) of the Article. In the above conspectus it is stated that whereas applicant has filed the representation against the show cause notice duly delivered through courier to respondents yet in the orders passed on 18.12.2000 with close mind it is observed that applicant has not submitted any representation and without arriving at a satisfaction and without dealing with the contentions of applicant and her justified grounds the order passed, removing applicant from service, is in violation of principles of natural justice and fair play with deprivation of reasonable opportunity.

11. Shri Kumar further states that applicant was accorded leave by Principal of the school, which on extension as no information was sent as to refusal or otherwise of the leave bonafidely applicant presumed that as earlier application has been accepted, accordingly there is no voluntary abandonment of service and Article 81 (d) of the Education Code is not attracted.

12. It is further stated that absence of applicant was on account of mitigating circumstances due to critical illness of mother-in-law who was suffering from Cancer despite writing to the authorities that medical record be produced, the same was not considered.

13. In so far as the appellate order is concerned, it is stated that denial of reasonable opportunity cannot be cured by the appellate authority. The order does not give cognizance to her justified leave and the record as sent from the School by the Principal has not been taken into consideration.

14. On the other hand, respondents' counsel Sh. S. Rajappa vehemently opposed the contentions and in so far as validity of Article 81 (d) is concerned, relies upon the decision in Juneja's case (supra) as well as decision of the Chandigarh Bench in **Jyoti Sharma v. KVS**, 2003 (1) ATJ 567 to propagate his plea.

15. On merits it is stated that applicant on receipt of the notice has not shown her intention to resume duties and by way of indulgence without keeping in view her extenuating and mitigating circumstances the appellate authority offered her job back but she insisted on posting in the visinity of her residence despite having an all India transfer liability.

16. It is further stated by resorting to sub clause (1)) of Article 81 (d) of Education Code that the requirements under sub clause (3), (5) and (6) of the Article are to be re-considered for compliance and as the

appellate authority has discharged this burden no prejudiced has been caused and principles of natural justice are not followed.

17. We have carefully considered the rival contentions of the parties and perused the material on record.

18. In so far as validity of Article 81 (d) of Education Code is concerned, as the same has been upheld by the High Court in Prem Juneja's case (supra) against which a SLP is pending before the Apex Court, we do not advert to adjudicate the same.

19. However, on merits we find that in pursuance of promulgation of Article 81 (d) on 4.9.2000 a general notice has been sent to all the schools to respond back the status of absentee staff and Teachers. In pursuance thereof, Principal of the concerned school where applicant was working apprised the authority that applicant had requested for EOL. However, the reference was wrong as she has been shown to have absented w.e.f. 1.7.96, whereas the absence was from 1.7.99. However, this has been rectified through a corrigendum dated 15.2.2001 but after the orders have been passed by the appointing authority. It appears that the appointing authority terminated the lien of applicant and removed her on the basis of her continued absence from 1.7.96. This is an action taken with a closed mind and mechanical application. Moreover, principles of natural justice are part and parcel of an administrative action like fair hearing even if no provision has been made the rules are to be read as part. However, the provisions

of Article 81 (d) in sub clause (1) as a condition precedent for provisional loss of lien provides that if an employee has voluntarily abandoned the service if remained absent without sanctioned leave or beyond the period of leave would lose lien on the post unless returns within 15 days from the commencing of absence or satisfy the appointing authority, i.e., absence or inability to return was for the reasons beyond her control. Applicant, immediately on receipt of the notice preferred her reply, which, inter alia, mentions about the leave granted to her by the Principal with mitigating circumstances on account of critical conditions of her mother-in-law. Before forming an opinion as to provisional loss of lien the sine qua non is satisfaction of the appointing authority. The authorities have misconceived the facts and treated the absence from 1.7.96. They have not made any enquiry from the concerned Principal as to the status of applicant and justification for her absence. What to talk of the above, even the representation sent has not been taken cognizance of. Accordingly, we have no hesitation to hold that the opinion formed by the disciplinary authority as to provisional loss of lien is without arriving at a satisfaction that the absence was for the reasons beyond the control of applicant. Moreover, as mandated under sub clause (6) it is for the appointing authority in response to the show cause notice to satisfy as to attraction of sub clause (1) of clause (d). As no reasons have been recorded nor any consideration has been made to grounds adduced we do not find valid compliance of the provisions, which vitiates the show cause notice as well as the orders passed, terminating the lien.

20. The Tribunal in a similar case in OA-147/2003 Swarn Bala Kumar Vs. K.V.S. decided on 6.1.2004 by the Principal Bench held that in so far as loss of lien is concerned, as Article-81(d) was promulgated on 4.9.2000, the absence from the date would have to be taken cognizance of and retrospective termination of lien and removal is bad in law. This squarely applies to the present case as well, where initial lien was terminated from 1.7.96 but on corrigendum from 1.7.99 by an order dated 18.12.2000. An administrative order cannot be operative retrospectively unless specifically provided by the statute.

21. Moreover, we find that it is incumbent upon the authorities (KVS) to have published or brought to the notice the provisions of Article 81(d) as the Notification clearly provides that in acknowledgement thereof signature is to be taken from the concerned staff/teacher because the provision is stringent with a cascading effect on service. As there is no material to show that the aforesaid Notification was brought to the notice of concerned employee as well as applicant and their acknowledgement in the form of their signature, keeping in view the decision of the Apex Court in SI Roop Lal Vs. Union of India 2000 (1) SCC 664, the aforesaid action cannot be sustained.

22. Principles of natural justice and fair play are sine qua non in an administrative action where the orders are also quasi judicial in nature. Unless the order is speaking, it deprives an opportunity to the concerned to prefer an effective appeal for want of reasoning.

23. In so far as the ground that the appellate authority has gone into the validity and compliance of sub clause of 81(d) is concerned, we have perused the appeallte order. The fact of applicant being on EOL and her application for extension of leave which remained unresponded has not at all taken cognizance of. Applicant's genuine grounds for absence on mitigating circumstances have also been given a go bye. Though study of the students had not suffered as a contract employee was appointed and this is a common practise adopted by the KVS in case of employee proceeding on leave. Moreover, the very basis of termination of loss of lien has vitiated and the fact that the appointing authority has not discharged his obligation, the subsequent consideration which is not even in right perspective would not validate the order. No finding as to the compliance and the fact that representation to the show cause notice of applicant was not considered, as no finding to this regard has been recorded. This vitiates the appellate order as well.

24. In the result, for the foregoing reasons, we have no hesitation to hold that the present is a case where Article 81(d) has been misused and was not attracted. The OA is partly allowed. Impugned orders are quashed and set aside. Respondents are directed to forth-with reinstate applicant in service with all consequential benefits except back wages. Respondents shall regulate the period of absence in accordance with rules and shall be at liberty to post applicant as per the administrative exigencies. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.

(S.A. Singh)
M(A)

S. Raju
(Shanker Raju)
M (J)