

DELHI SCHOOL TRIBUNAL
PATRACHAR VIDYALAYA COMPLEX
LUCKNOW ROAD, TIMARPUR, DELHI- 110 054

Appeal No.44/2010

IN THE MATTER OF:

1. MS. DEVBALA
 (THROUGH LRS)
 BA 44 FF
 SHALIMAR BAGH (WEST)
 DELHI.

THROUGH : SH.ASHOK AGGARWAL & SH.ANUJ
 AGGARWAL, ADVOCATE

APPELLANT

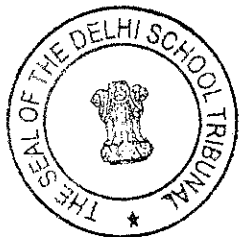
VERSUS

1. MANAGEMENT OF PRABHU DAYAL
 PUBLIC SCHOOL
 DAKSHINI BLOCK-A, SHALIMAR BAGH
 DELHI
 THROUGH ITS MANAGER
 THROUGH : SH.K.P.S.SUNDER RAO, ADVOCATE
2. THE DIRECTOR OF EDUCATION
 GOVT. OF NCT OF DELHI
 OLD SECRETARIAT, DELHI-110054
3. SH.Y.P.PURANG
 MEMBER OF MANAGING COMMITTEE
 PRABHU DAYAL PUBLIC SCHOOL
 DAKSHINI BLOCK-A, SHALIMAR BAGH
 DELHI.

RESPONDENTS

**APPEAL UNDER SECTION 8 (3) OF THE DELHI SCHOOL
 EDUCATION ACT, 1973.**

Dated:5.10.2016



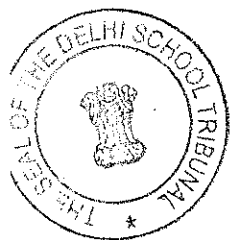
1. The facts of the case in brief, as submitted by the Appellant in the appeal, are that Govt. of NCT of Delhi

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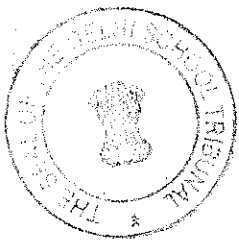
recommended the implementation of 6th CPC in the private recognized schools in Delhi.

2. In order to implement the recommendations of VI Pay Commission Respondent School had increased the fee and other charges and called upon the teachers/staff to convince and begot the support of the parents of the students to pay increased fees retrospectively. The teachers/staff did their job well and collected the increased fee with arrears thereof.
3. Respondent School in its meeting held on 1st May, 2009 decided not to pay DA and TA to the teachers/staff and to pay only basic pay/grade pay with HRA as per VI CPC. On 23.03.2009 a letter was issued by the Principal and the Manager to give full pay according to VI CPC. On 02.05.2009 the salary was credited in the accounts of staff/teachers. The staff/teachers felt they have been cheated.
4. On 04.05.2009, a group of 40 to 50 employees assembled at the gate of school and informed the security staff that they wanted to meet the manager. The security men went inside and after seeking the permission opened the gate for the staff to enter. They



went to the Manager's office and lodged their protest against the decision of withholding the payment of DA and TA despite promise and despite having collected increased fee and arrears thereof. The Manager of the school prolonged the interaction and seemed to have called the media to put the blame on the representatives of the organization of staff that they acted against the interest of the school by going to the media.

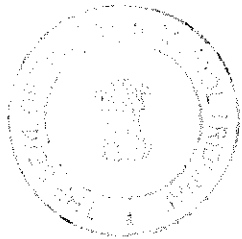
5. On 11.05.2009 the Managing Committee reported the alleged event dated 04.05.2009 twisting and exaggerating the events and facts and decided to withhold the payment of DA and TA despite having collected increased fee with the arrears thereof. The Principal was ordered by the Managing Committee to investigate into the complaint lodged by the Manager and to take suitable action if needed. Managing Committee also decided to entrust the matter to the Principal of the School to seek explanation of the concerned staff.
6. The preliminary enquiry was conducted by the Committee chaired by Shri Y.P.Purang. The Committee hurriedly returned its findings as desired by



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the Manager vide letter dated 18.06.2009. Association of teachers informed the Directorate of Education about hatching of the conspiracy by Manager/Management to oust the three teachers as they demanded for full salary according to the sixth pay commission. On 30.06.2009 Chairman of the Respondent School issued suspension letter to the Appellant. On 24.07.2009 charge-sheet was issued to the Appellant. Appellant replied the charge-sheet vide his reply dated 04.08.2009 denying all the charges leveled against the Appellant. Inquiry Proceedings were started w.e.f. 20.08.2009. Sh. B.M.Batish was appointed as Inquiry Officer and Sh. S.S.Sharma was appointed as Presenting Officers and defence assistant was also provided to the Appellant.

7. Sh. B.M.Batish, Ld.Inquiry Officer fixed 10.09.2009 as the date of preliminary hearing in the school premises and the concerned person were directed to participate in the preliminary enquiry. Matter was fixed for regular hearing of enquiry for 28.09.2009 and the hearing was concluded on 22.12.2009. On 30.01.2010 Appellant submitted his written submissions. On 03.04.2010 Inquiry Officer submitted his report to the Chairman of the Managing Committee. Memo was issued by



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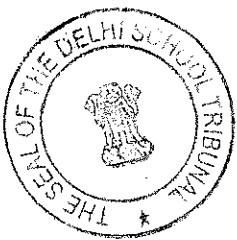
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Chairman of Disciplinary Committee on 11.04.2010 proposing the tentative punishment of removal of service and seeking the comments of the Appellant. Appellant submitted his reply on 04.05.2010. On 22.06.2010 impugned order of removal of Appellant from the service was issued.

8. It is submitted that impugned order dated 22.06.2010 is illegal and void ab-initio because the alleged charges of mis-conduct as incorporated in the charge-sheet dated 24.07.2009 were incorporated with the malafide intention to victimize the Appellant as the Appellant was office bearer of the staff association. Disciplinary Authority was not constituted according to the provisions of Rule 118 of Delhi School Education Act & Rules, 1973. Inquiry proceedings were not conducted by the Inquiry Officer according to the principles of natural justice.
9. Inquiry Officer was biased in favour of Respondent School and against the Appellant. Minutes of Meeting of Disciplinary Committee and Managing Committee have been manipulated. The punishment awarded is highly disproportionate. The mitigating circumstances have not been considered at all.



10. The impugned order dated 22.06.2010 is illegal, arbitrary and against the provisions of principles of natural justice hence the same may be set aside and Respondent School be directed to re-instate the Appellant in the service alongwith consequential benefits and full back wages.
11. Notice of the appeal was issued to all the Respondents. Respondent No.1 & 3 in their joint reply submitted that Appellant was an employee in the Respondent School. Things were running smoothly till orders of Directorate of Education dated 11.02.2009 and 25.02.2009 were passed in respect of implementation of recommendations of VI CPC. The basic problem arose when arrears towards the implementation of VI CPC were to be paid. Due to some financial implications the same could not be paid by Respondent No.1 School. The impact of VI CPC on the Respondent School was 75% increase in expenditure. The Department of Education allowed in general a set figure as per the strength of the School to collect from parents in the form of tuition fees and arrears in the limited period prescribed therein. In these circumstances the Management of the School did not have sufficient



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funds, the same had been informed to the teachers including the Appellant and to the Department of Education. The arrears were being paid in the ratio proportion which was received from the students to the employees. Principal of the School informed the employees that due to shortage of funds it was difficult to release the TA and DA immediately.

12. The summer vacations started w.e.f. 01.05.2009. On 04.05.2009 at about 10/10.30 AM Appellant alongwith other teachers entered the office of the Manager of the School and started shouting slogans for the salary. They continued their agitation for about two hours. They did not allow the Manager to get up. The Manager did not speak a single word as he was under a threat of assault from the teachers. They had also blocked the entrance of the office. Appellant alongwith other teachers also made fun of handicap of Manager. They had also threatened to disrepute the school and to continue agitation and strike. Media persons from 'Aajtak' were also called by them to sensationalize the whole issue. It was also aired on National Television, which was disrepute to the school. At about 3.30 PM when the aim of the Appellant and other teachers was



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fulfilled, they left the school threatening that a bigger demonstration will be done on 15.05.2009.

13. In these circumstances considering the conduct of the Appellant and other teachers a preliminary committee comprising of Mr. Y.P.Purang, Mr. J.P.Aggarwal & Mr. D.P.Bhatia was constituted to enquire in the entire incident. The report of the preliminary enquiry was submitted by the Inquiry Committee. On the basis of the report of preliminary enquiry order of suspension of Appellant was based and disciplinary proceedings were initiated. Disciplinary Committee/Authority was constituted as per Rule 118 of Delhi School Education Act & Rules, 1973. Inquiry Officer was appointed who had conducted the inquiry following the principle of natural justice. Defence Assistant was also provided to the Appellant. Appellant had participated in the inquiry proceedings. Inquiry Officer submitted his report to the Disciplinary Committee/Authority. Show-cause notice alongwith report was given to the Appellant who had filed reply to the show-cause notice. Disciplinary Authority after considering the reply of the Appellant proposed to impose major penalty of removal from service. Managing Committee of the School after considering the inquiry report, recommendation of

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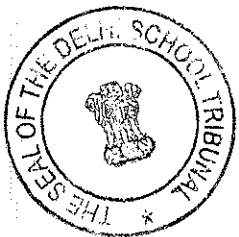
Disciplinary Committee and the reply of the Appellant to the show-cause notice awarded major penalty from removal from service to the Appellant which shall not be a dis-qualification for employment in other school vide impugned order. There is no merit in the appeal. The same may be dismissed. All other allegations made in the appeal against R-1 & R-3 have been specifically denied.

14. R2 i.e. Directorate of Education in its reply submitted that Respondent School is private, recognized, unaided school. It does not require permission of the Directorate of Education before terminating the services of its employees. There is no relationship of employer and employee between the Appellant and R1 Department.
15. Respondent No.2 had issued directions to all the private schools to implement 6th CPC recommendations. Answering Respondent has no knowledge about the alleged incident that took place on 04.05.2009. All other allegations made in the appeal against the Respondent No.2 have been specifically denied.

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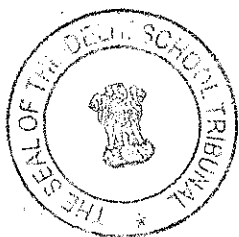
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16. The Appellant has filed rejoinder to the reply of Respondent School denying all the preliminary objections and additional pleas taken in the reply and reaffirming the stand taken in the appeal.
17. Arguments heard file perused. Ld. Counsel for the Appellant as well as Respondents addressed their detailed oral arguments. Ld. Counsel for the Appellant as well as Respondent School have filed their written submissions which are on the record. As the detailed written submissions of the concerned parties are on the record hence I do not consider it proper to incorporate the detailed arguments of the parties in this order on account of brevity.
18. The sum and substance of the arguments of the Ld. Counsel for the Appellant is that the alleged allegations made against the Appellant by the Respondent School in the charge-sheet do not constitute mis-conduct to initiate any disciplinary action. The Management with the malafied intention to victimize the Appellant who alongwith other employees were demanding implementation of VI CPC initiated the disciplinary action against appellant. The disciplinary committee was not constituted as per provisions of Rule 118 of



Delhi School Education Act & Rules, 1973 hence, the entire action is void ab-initio and illegal. Smt. Bimla Bhatia, Manager was the complainant and also a member of the Managing Committee. Sh. Y.P.Purang was the Chairman of preliminary Inquiry Committee. He was also a member of Disciplinary Committee and as well as member of Managing Committee. His presence in all the three committees is illegal and in violation of principle of natural justice. Allegations made against the Appellant were not proved as per law. Minutes of Managing Committee as well as Disciplinary Committee have been manipulated and the record is tempered with. The penalty of removal of Appellant from the service is disproportionate to the gravity of alleged mis-conduct. The Management has taken action against the Appellant with the malafide intention on the pick and choose basis, hence, action of the Managing Committee was discriminatory. In support of his arguments Ld. Counsel for Appellant placed reliance upon following authorities

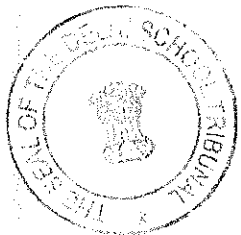
1. "M/s Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut & Ors" decided on 06.10.1983 passed by the Hon'ble Supreme Court of India case bearing No.Civil Appeal No.2911/2981, (1984) 1 SCC 1.
2. "Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation" decided on 14.01.1985 passed by the Hon'ble Supreme Court of India case bearing No.SLP (C) No.5523/1984, (1985) 2 SCC 35.



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3. "S. Pratap Singh Vs. State of Punjab" decided on 02.09.1963 passed by the Hon'ble Supreme Court of India case bearing No.Civil Appeal No.80/1963.
4. "Sardar Patel Public Sr. Sec. School Vs. Chandra Rani & Ors" decided on 29.10.2015 passed by the Hon'ble Delhi High Court case bearing No.LPA No.763/2015.
5. "Kameshwar Prasad & Ors. Vs. The State of Bihar & Anr." Decided on 22.02.1962 passed by the Hon'ble Supreme Court of India case bearing No. Civil Appeal No.413/1959, MANU/SC/0410/1962.
6. "Arjan Chaubey Vs. Union of India (UOI) & Ors." decided on 23.03.1984 passed by the Hon'ble Supreme Court of India case bearing No.Civil Appeal No.2613/1983, MANU/SC/0265/1984.
7. "Ratan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & Ors." decided on 14.05.1994 passed by the Hon'ble Supreme Court of India case bearing No. Civil Appeal No.2860/1993, MANU/SC/0329/1993.
8. "Mamta Vs. School Management of Jindal Public School & Ors" decided on 01.06.2011 passed by the Hon'ble Delhi High Court case bearing No.WP (C) No.8721/2010, MANU/DE/2424/2011.
9. "Shri Anant R.Kulkarni Vs. Y.P.Education Society & Ors." decided on 26.04.2013 passed by the Hon'ble Supreme Court of India, bearing No.Civil Appeal No.3935/2013.
10. "S.R.Tiwari Vs. Union of India & Anr." Decided on 28.05.2013 passed by the Hon'ble Supreme Court of India case bearing No.Civil Appeal No.4715-4716/2013.
11. "Indu Bhushan Dwivedi Vs. State of Jharkhand & Anr." Decided on 05.07.2010 passed by the Hon'ble Supreme Court of India case bearing No.Civil Appeal No.4888/2010.
12. "Deepali Kundu Sarvesh Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Ors. Civil Appeal No.6767 of 2013 decided on 12.08.2013.
13. "Raj Kumar Vs. Director of Education & Ors." decided on 13.04.2016 passed by the Hon'ble Supreme Court of India case bearing No.Civil Appeal No.1020/2011.



19. The sum and substance of the arguments of Ld. Counsel for R-1 and R-3 is that the Directorate of Education vide order dated 11.02.2009 and 25.02.2009

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directed to implement the recommendations of VI CPC. Due to some financial implications the same could not be paid by the R-1 School for the time being. It was also intimated to the Appellant and other school employees. Because of the impact of VIth CPC on the Respondent School expenditure of the School was increased by 75% whereas the Department of Education allowed in general a set figure as per strength of school to collect from the parents in the form of tuition fees and arrears of limited period prescribed therein. In these circumstances the Management of the School did not have sufficient funds to clear all the dues. It was categorically informed by the Principal of the School that due to shortage of funds TA & DA can not be released immediately. It was assured that as the financial position of the school will improve the employees will be paid arrears as per VI CPC.

20. During the summer vacations on 04.05.2009 at about 10/20.30 AM Appellant alongwith other employees of the school entered in the office of the Manager of the School when the Manager and Principal were discussing some matter. They started shouting and raising slogans, they did not allow the Manager to get

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up. They had blocked the entrance of the office and threatened the Manager and Principal of the School, they abused and insulted them and threatened to disrupt the school. They had also called media person from 'Aajtak' to sensationalize the whole issue. It was aired on National TV which brought dis-repute to the school. They left the premises at about 3.30 PM with the threat that they will arrange a bigger demonstration on 15.05.2009.

21. Preliminary Inquiry Committee was constituted to hold an inquiry in the entire incident. On the basis of the report of preliminary enquiry, Appellant was placed under suspension and disciplinary action initiated against the Appellant. As the Appellant had been found guilty of breach of code of conduct under Rule 123 of Delhi School Education Act & Rules, 1973. Disciplinary Authority was constituted according to the provisions of Rule 118 of Delhi School Education Act & Rules, 1973. Inquiry Officer was appointed by the Disciplinary Authority. Defence Assistant was also provided to the Appellant. Appellant had participated in the enquiry proceedings which had taken about 10 months to conclude. Show-cause notice alongwith enquiry report was given to the Appellant with the



proposed punishment. Reply of the Appellant was considered by the Disciplinary Authority which had recommended the award of punishment of removal of Appellant from the service. Management Committee after considering the enquiry report, recommendations of Disciplinary Authority and reply of the Appellant awarded a punishment of removal from the service to the Appellant vide impugned order dated 22.06.2010. Appellant has no cause of action to file the present appeal.

22. Hon'ble Apex Court in various judgement has held that Tribunal in its power of judicial review does not act as an appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The award of punishment of removal from the service to the Appellant is in consonance of the mis-conduct committed by the Appellant. There is illegality and infirmity in the order. Ld. Counsel for R1 to R-3 placed reliance on following authorities in support of his arguments.



1. B.C.Chaturvedi: V/s Union of India [1995] 8 JT 65/[1996]
2. Bank of India Vs. T.Jogam [2007] 7 SCC 236
3. Sanchalakshri Vs. Vijayakumar Raghuvirprasad Mehta [1999] 0 AIR [SC] 578
4. Narender Mohan Arya Vs. United India Insurance Co. Ltd. [2006] 3 Supreme 459/2006.

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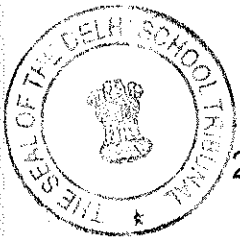
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5. South Bengal State Transport Corpn. Vs. Swapan
Kumar Mitra [2006] 1 Supreme 697/2006

23. This Tribunal has carefully considered all the arguments raised on behalf of concerned parties and have gone through the record. According to the Appellant Disciplinary Authority had not been constituted according to the Provisions of Rule 118 and Minutes of Managing Committee as well as Disciplinary Committee have been fabricated/manipulated.
24. Rule 118 of Delhi School Education Act & Rules, 1973 provides the constitution of disciplinary authority, the same is as under:

Disciplinary authorities in respect of employees- The disciplinary committee in respect of every recognized private school, whether aided or not shall consist of :

- (i) The chairman of the managing committee of the school;
- (ii) The manager of the school;
- (iii) A nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;
- (iv) The head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Head of the School, the Head of any other school, nominated by the Director;
- (v) A teacher who is a member of the managing committee of the school; nominated by the Chairman of such managing committee.



25. Managing Committee of the Respondent School in its emergency meeting dated 11.05.2009 has decided to enquire into the incident dated 04.05.2009 and

authorized Sh. Purushottam Dass, Principal of the Respondent School to take suitable disciplinary action. The relevant portion of the Minutes of Meeting dated 11.05.2009 in this regard is as under :

“To execute the resolution passed by the Managing Committee of the school as above Shri Parshotam Dass, Principal was authorized to take suitable disciplinary action against Mrs. Anita Bhardwaj, Mrs. Dev Bala and Mr. N. Ramesh verma and against the teachers and non-teaching staff members who participated in the said demonstration as per rules laid down in the DSEAR 1973. The meeting ended with a vote of thanks of the Chair.”

26. In the meeting of Managing Committee of Respondent School dated 23.06.2009, a preliminary inquiry committee, headed by Sh. Y.P.Purang, constituted to inquire into the incident dated 04.05.2009. The relevant portion of the said meeting is as under :

“The action taken on the minutes of Managing Committee Meeting held on 11th may 2009 were reported. It was also reported that a Preliminary Enquiry Committee was constituted to examine the statements submitted by Miss Bimla Bhatia, Manager and Sh. Parshotam Dass, Principal of the school on the incident of 04.05.2009 when about 45 to 50 teachers demonstrated in the School-premises without any prior information and permission and called the media persons (Delhi Aaj Tak) also:—

Preliminary Enquiry Committee

- | | | | |
|----|------------------|---|----------|
| 1. | Sh. Y.P. Purang | - | Convener |
| 2. | Sh. J.P. Agarwal | - | Member |
| 3. | Sh. D.P. Bhatia | - | Member |

5. With regard to the constitution of Preliminary Enquiry Committee, the convener informed the members that a meeting of the Committee was held on 18.06.2009. After examining the statements submitted by Miss Bimla Bhatia, Manager of the school and Sh. Parshotam Dass, Principal of the school, the committee also examined the other witnesses who were present on the day of the incident. It was also reported that Mrs. Anita Bhardwaj, PGT (History), Mrs. Dev Bala, TGT (Music) and Mr. N. Ramesh Varma, Lab Assistant did not attend the meeting



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fixed for 18.06.2009 for one reason or the other. Therefore, another meeting of the Committee was fixed for 25.06.2009 and all the three employees who did not report on 18.06.2009 were asked to appear on the scheduled date and time without fail. It was made clear to the members that if they do not appear before the Preliminary Enquiry committee on 25.06.2009 the Committee will submit its report on the merit of the reports submitted by the Manager, Principal and other witnesses who were examined on 18.06.2009."

27. The Managing Committee of the Respondent School in its emergency meeting dated 30.06.2009 considered the report of preliminary inquiry committee and decided to hold an inquiry against the Appellant qua the incident dated 04.05.2009 in view of the findings of the preliminary inquiry report. The entire Minutes of the Managing Committee dated 30th June, 2009 is as under:

"PRABHU DAYAL PUBLIC SCHOOL SHALIMAR BAGH, DELHI-88
MINUTES

An emergency meeting of the Managing Committee of Prabhu Dayal Public School was held on Tuesday, 30th June 2009 at 9:30 a.m in the Conference Room of the school.

The Following were present:-

- | | | |
|-----------------------|---|---------------------------|
| 1. Dr. V. K. Tyagi | - | Chairman |
| 2. Ms. Bimla Bhatia | - | Manager |
| 3. Sh. Parshotam Dass | - | Principal |
| 4. Sh. V. A. V. Raman | - | Member |
| 5. J. P. Aggarwal | - | Member Advisory Committee |
| 6. Sh. Jawahar Bhatia | - | Special Invitee |
| 7. Ms. Nalini James | - | headmistress |
| 8. Dr. B.L. Arora | - | Member |
| 9. Prof. I.P. Singh | - | Member |
| 10. Sh. Y.P. Purang | - | Membr |
| 11. Sh. D.P. Bhatia | - | Member |

The Chairman apprised the members about the report of the Preliminary Enquiry Committee which was submitted on 25.06.2009. the details of the report were read out to the members of the Managing Committee.

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The Chairman of Preliminary Enquiry Committee informed that two meetings of the Enquiry Committee were held on 18.06.2009 and 25.06.2009. The Committee examined the reports submitted by the Manager and Principal of the school. The Committee also called all the witnesses who were present on the day of the incident on 04.05.2009 to verify the facts submitted by the Manager and the Principal. Sh. Purang also informed that none of the two teachers Mrs. Anita Bhardwaj and Mrs. Dev Bala and Mr. N. Ramesh Varma, Lab Assistant attended the Committee Meetings held on 18.06.2009 and 25.06.2009.

The same member further asked if any communication was received from them. He was informed that letters were received from Mrs. Anita Bhardway, Mrs. Dev Bala and Mr. N. Ramesh Varma and the same were read out. After discussion at length the members were of the opinion that sufficient opportunity was given to them but they have failed to avail the opportunity. **It was finally resolved that:**

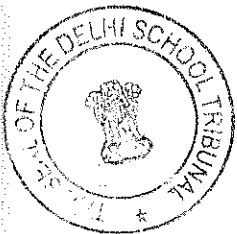
1. Mrs. Anita Bhardwaj, PGT (History), Mrs. Dev Bala, TGT (Music) and Mr. M. Ramesh Varma, Lab. Assistant be placed under suspension with immediate effect and an order be issued under the signature of the Chairman of the Managing Committee of the school.
2. There suspension is for six months and 50% Subsistence Allowance will be given to them.
3. The enquiry be expedited and completed at the earliest possible.
4. Since both the Manager – Miss Bimla Bhatia and the Principal – Shri. Parshotam Dass were witnesses during the course of enquiry proceedings, they cannot sit and associate with Disciplinary Committee because they cannot be witness as well as judge while associating the quasi Judicial Committee.
5. The following shall act as Manager and head of the school on the Disciplinary Committee against all the three employees:
 - (i) Mr. Y.P. Purang, President of Roopnagar Public School Society to act as convener of the Disciplinary Committee.
 - (ii) Dr. B.L. Arora, Retd. Principal ARSD College to act in place of Principal on the Disciplinary Committee.
 - (iii) The Chairman was authorized to appoint the Presenting Officer who shall take care of the case of the Managing Committee during enquiry proceedings.

It was also informed to the members that no approval of the Directorate of Education for placing under suspension was required as in view of the decision of Delhi High Court in the case of Kathuria Public School Vs. Directorate of Education.

The meeting ended with a vote of thanks of the Chair.

Sd/-
(Miss. Bimla Bhatia)
Manager

Sd/-
(Dr. V. K. Tyagi)
Chairman



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28. From the Minutes of Meeting dated 30.06.2009 as quoted above, it is clear that no Disciplinary Authority had been constituted in the meeting dated 30.06.2009. However, it is resolved in this meeting that Manager of School Ms. Bimla Bhatia and Principal of School Sh.Purushottam Dass will not sit in the Disciplinary Committee as they can not act as witness and judge. It is further resolved that Sh. Y.P.Purang will act as a Manager, Dr. B.L.Arora will act as Head of the School in the Disciplinary Committee against the Appellant and Chairman of Management committee was authorized to appoint the presenting officer. On the face of it, this decision is contrary to the provisions of Delhi School Education Act & Rules, 1973 as there is no provision in rules to replace both these persons.

29. Respondent School has placed on record **one undated document having nobody's signatures drafted under the heading "Action taken report"** on the Managing Committee meetings held on 22.06.2009 & 30.06.2009. The same is as under :

"PRABHU DAYAL PUBLIC SCHOOL: SHALIMAR BAGH, DELHI-88
ACTION TAKEN REPORT ON THE MANAGEMENT COMMITTEE
MEETINGS HELD ON 22 JUNE & 30 JUNE, 2009.

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1. Item No. 1 to 4 were matters of record.
2. Item no. 5 – The case of Ms. Neha Arora who resigned from the post of TGT (English from the forenoon of 1st June, 2009 was forwarded to the Directorate of Education for necessary approval for acceptance of her resignation vide this office letter 24th June, 2009.

The approval for acceptance of the resignation of Ms. Neha Arora from the post of TGT (English) has been received from the Directorate of Education vide letter dated 6th August, 2009.

3. Item No. 6 – On the basis of the report submitted by the Preliminary Committee, the Disciplinary Committee was constituted under rule 118 of DSEA 1973 to enquire into the matter in the case of Mrs. Anita Bhardwaj, PGT (History), Mrs. Dev Bala, TGT (Music) and Mr. N. Ramesh Varma, Lab Assistant. The following are the members of the Disciplinary Committee:–

- i.) Mrs. Indira Ranga – Education Officer
- ii) Sh. Y.P. Purang – Manager (in place of Ms. Bimla Bhatia)
- iii) Dr. B.L. Arora – Principal (in place of Mr. Parshotam Dass)
- iv) Mrs. Anie Mini – Teacher Representative
Kurian

The Disciplinary Committee at its meeting held on 19th Aug, 2009 appointed Sh. B.M. Batish as Enquiry Officer and Sh. S. Sh. Sharma as Presenting Officer to hold the Enquiry proceedings.”

Even according to this documents, there are only four members of Disciplinary Committee, which is against the provisions of Rule 118 and Mr. V.K.Tyagi is not the Member of Disciplinary Authority but all letters were issued under the signatures of Mr. V.K.Tyagi.

30. It is worth important to mention that Respondent School has not placed on the file any minutes of meeting dated 22.06.2009. However, Minutes of Meeting of Managing Committee dated 23.06.2009 is placed on the file. In the last paragraph of above quoted document it is mentioned that Disciplinary Committee in its meeting held on 19.08.2009 appointed Sh. B.M.Batish as

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Inquiry Officer and Sh. S.S.Sharma as Presenting Officer. So it is apparent that this action taken report must have been drafted after 19.08.2009 that is why there is reference of appointment of Inquiry Officer on 19.08.2009.

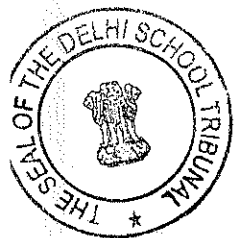
31. It is well settled legal preposition that charge-sheet, article of charges etc. are to be drafted by the Disciplinary Authority. In this case charge sheet is dated 24.07.2009.

32. From the above discussion firstly it appears that no disciplinary authority has been constituted, till 24.07.2009. Hence, the charge sheet/article of charges have not been drafted by the Disciplinary Committee, thus the same are illegal and against the provisions of Delhi School Education Act & Rules, 1973.

33. Vide letter dated 20.08.2009 Sh. B.M.Batish was appointed as Inquiry Officer. This letter was issued under the signatures of Dr. V.K.Tyagi, Chairman. Presenting Officer was also appointed vide a separate letter dated 20.08.2009 under the signatures of Dr. V.K.Tyagi but even according to above quoted "Action Taken Report" Dr. V.K.Tyagi is not member of

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Disciplinary Committee, therefore, appoint of Inquiry Officer and Presenting Officer is also illegal.

34. The Respondent School has placed on the file Minutes of the Meeting of alleged Disciplinary Committee held on 19.06.2010 at 9.00 AM. Wherein alleged Disciplinary Committee after considering all the aspects proposed the tentative penalty of removal of Appellant from the service. Relevant portion of the same is as under :

"MINUTES OF THE MEETING OF DISCIPLINARY COMMITTEE CONSTITUTED AGAINST MR. N. RAMESH VARMA, LAB ASSISTANT OF PRABHU DAYAL PUBLIC SCHOOL, SHALIMAR BAGH, DELHI IN TEMRS OF RULE 118 DSER 1973 HELD ON SATURDAY, 19TH JUNE 2010 AT 9:00 A.M

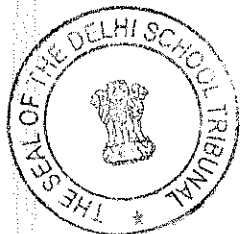
Besides Dr. V. K. Tyagi, Chairman of the school the following other members were present:-

SI. NO.	Name	Designation
1.	Mrs. Indra Ranga	Education Officer Zone IX (DE's Nominee).
2.	Shri Y. P. Purang	Manager
3.	Mrs. Anie Mini Kurain	Teacher's Representative

The Manager welcomed the members and showed his gratitude to associate, assist and cooperate to be member of the Disciplinary Committee constituted against Mr. N. Ramesh Varma, Lab Assistant of the school.

Thus accordingly resolved that:-

- (i) The tentative decision taken by the Committee to impose major penalty of removal from service which shall not be disqualification for future employment is confirmed.
- (ii) There is no substance in the representation of Mr. N. Ramesh Varma which he has submitted in response with the proposed tentative decision because he has made avasive and vague observations without specifying any point of instance. Moreover, he has given assurance that in future he will prove to be a good person but he has not come out whether he has used the language and behaviour which he has committed with the Manager and the Principal of the school.
- (iii) The whole matter thereafter may be referred to the Managing Committee of the school for further appropriate action as deemed fit.



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(iv) The office of the Disciplinary Committee stand closed and became ineffective.

(v) All the materials available with the Disciplinary Committee be sent to the Manager of the school for taking further cognize action in the matter.

Sd/-
(Dr.V.K.TYAGI)
Chairman

Sd/-
(Indra Ranga)
Education Officer
Zone IX
DE's Nominee

Sd/-
(Y.P.Purang)
Manager

Sd/-
(Anie Mini Kurian)
Teacher Representative

From the above quoted portion it is clear that the meeting of the alleged Disciplinary Committee was held on 19.06.2010 at 9.00 AM and the Minutes of the Meeting is running in 11 pages.

35. The Disciplinary Committee referred the matter to the Managing Committee of the school for appropriate action as deemed fit.
36. Respondent School has also placed on the file the Minutes of the meeting of Managing Committee of the Respondent School held on 19.06.2010 at 10.30 AM in which the Managing Committee of Respondent School had considered the recommendations of the Disciplinary Committee qua the Inquiry Report against the Appellant and approved the same. Relevant



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portion of the Minutes of the Meeting Committee held on 19.06.2010 at 10.30 A.M. are as under :

MINUTES OF THE MEETING OF MANAGING COMMITTEE OF PRABHU DAYAL PUBLIC SCHOOL; SHALIMAR BAGH AT DELHI ON 19TH JUNE 2010 AT 10:30 A.M

Besides the Chairman Dr. V. K. Tyagi, the following members of the Managing Committee were present in the meeting.

Item No. 3 – To consider the recommendations of the Disciplinary Committee on the inquiry report submitted by Sh. B.M. Batish who was appointed as Inquiry Officer in the case of Mrs. Anita Bhardwaj, PGT (History), Mrs. Dev Bala, TGT (Music) and Mr. N. Ramesh Varma, Lab Assistant placed under suspension and to decide further action in the matter.

a) It would be appropriate and fitness of the justice to impose major penalty of removal from service upon all three officials viz. Mr. N. Ramesh Varma, Mrs. Anita Bhardwaj and Mrs. Dev Bala which shall not be disqualification for future employment with immediate effect as conclusively decided by the Disciplinary Committee taking into all the aspects in view of the charge sheet, inquiry report and procedural aspects.

b) The order of deposition of major penalty of removal from service in respect of Mr. N. Ramesh Varma, Mrs. Anita Bhardwaj and Mrs. Dev Bala be issued under signature of Chairman of the Managing Committee of the school.

e) In view of the judgment/decision of Delhi High court in case of Kathuria Public School and others V/s Directorate of Education and other no approval of removal from service or imposition of major penalty is required from the Director of Education which was previously mandatory in pursuance of sub section (2) of section 8 of DSEA 1973.

37. Time of holding the alleged meeting of the Disciplinary Committee at 9.00 AM on 19.06.2010 and the time of holding of meeting of Managing Committee at 10.30 AM on 19.06.2010 wherein the recommendations of Disciplinary Committee were considered and approved,



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is most crucial to decide the case. The alleged meeting of the Disciplinary Committee was held at 9.00 AM on 19.06.2010, minutes of which are running in 11 pages. The Managing Committee of the Respondent School has considered this Minutes of alleged Disciplinary Committee at 10.30 AM and approved the same. There is only difference of one and half hour between the two meetings i.e. of alleged Disciplinary Committee and that of Managing Committee. It does not appeal even to a common sense that even the minutes which are running in 11 pages of the alleged Disciplinary Committee could have been prepared & dictated/ typed in one and half hour, what to talk of discussions as mentioned in the Minutes of the meetings. Man may tell a lie but not the circumstances. The above referred circumstances of the time gap of the two meetings reflects that the alleged drawn minutes of meeting are false/manipulated.

38. I have also carefully gone through the authorities relied upon for the Ld. Counsel for the Appellant and Respondent, there is no dispute in the ratio of law laid down in these authorities. However, the ratio of law in an authority, laid down according to the peculiar facts and circumstances of that case hence the same may



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not be applicable in the facts and circumstances of every case. In the above discussed peculiar facts and circumstances of this case, ratio of law laid down in the authorities relied upon by the Appellant and respondent is not applicable.

39. The impugned order dated 22.06.2010 has been passed on the recommendations of the meeting of the Managing Committee dated 19.06.2010 at 10.30 PM. As discussed above, this Tribunal is of the opinion that these minutes are false/manipulated, hence the impugned order allegedly approved in the meeting of the Managing Committee held on 19.06.2010 at 10.30 AM is illegal, hence, the same is hereby set aside. Accordingly, the appeal is accepted.
40. In this case unfortunately Appellant had died during the pendency of the appeal, hence she can not be reinstated. However, her LRs will be entitled for all the consequential benefits and back wages till her death.
41. With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules 1973, the LRs of the Appellant are directed to make exhaustive representation to the R1 School within a period of 4



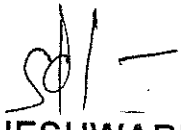
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weeks from the date of this order, as to how and in what manner the Appellant will be entitled to complete wages. The Respondent No.1 School is directed to decide the representation within 4 weeks of receiving the same by a speaking order and to communicate the order alongwith the copy of the same to the LRs of Appellant. Order accordingly. File be consigned to record room.



PLACE: DELHI
DATED: 05.10.2016


(V K MAHESHWARI)
PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL

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