

N-35 ANNEXURE P1.

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

Appeal No. 10/2011

IN THE MATTER OF:

1. SH. GIRJESH RUSTAGI,
S/O. SH. DHARAMVIR RUSTAGI,
R/O. C-70, JHILMIL COLONY,
VIVEK VIHAR, DELHI-110095

THROUGH: SH. ANUJ AGGARWAL, ADVOCATE APPELLANT

VERSUS

1. MANAGING COMMITTEE OF
VIVEKANAND SCHOOL,
THROUGH ITS PRINCIPAL,
D-BLOCK, ANAND VIHAR, DELHI-92

THROUGH: SH. R. N. OBEROI, ADVOCATE

2. VIVEKANAND SHIKSHA SAMITI
THROUGH ITS SECRETARY,
D-BLOCK, ANAND VIHAR, DELHI-92

3. THE DIRECTOR OF EDUCATION
GOVT. OF NCT OF DELHI
OLD SECRETARIAT, DELHI-110054

THROUGH: SH. S. S. PARIHAR, ADVOCATE

RESPONDENTS

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

Dated: 20.05.2016



1. The facts of the case in brief, as submitted by the Appellant in the appeal, are that he was initially

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appointed as TGT (Maths) on 13.08.1985 in the Vivekanand School, D-Block, Anand Vihar, Delhi-92 (hereinafter referred to as the Respondent School). Somewhere in the year 2000, he was promoted to the post of PGT (Business Studies). Since then he was working, as such, till 29.12.2010, when he was removed from the service vide impugned office order of the Respondent School, dated 29.12.2010.

2. The Appellant was having uninterrupted and unblemished record of service to his credit. His work and conduct was always appreciated, by the Respondent School. The Appellant was served with a memorandum of charge sheet dated 29.01.2010 whereby as many as 7, alleged charges were leveled against him. The Appellant vide his letter dated 12.02.2010, replied the memorandum of charges dated 29.01.2010 and submitted that for the reason that he had raised his voice to claim his statutory dues and for the enforcement of Section 10 (1) of Delhi School Education Act and Rules-1973, the Management of the Respondent School, including the Principal of the Respondent School, was biased against him. He had denied the correctness of the charges. Thereafter the Appellant was placed under suspension vide order



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dated 25.02.2010. The Appellant was not paid even the subsistence allowances, according to the rules, as the suspension allowances were to be raised to 75% after expiry of 6 months of the suspension but Respondent School increased the subsistence allowances to 60% only, without any justification.

3. On 02.03.2010, the Appellant received a letter from Sh. Dhiren M. Doshi vide which the Appellant was informed by Sh. Doshi that he has been appointed as Inquiry Officer by the Disciplinary Committee of the Respondent School vide letter dated 26.02.2010. The Appellant vide his letter dated 23.03.2010, requested the Inquiry Officer to supply him 8 documents mentioned in that letter. Vide letter dated 05.04.2010 the Respondent School objected to the demand of the Appellant seeking documents as per his letter dated 23.03.2010. Hence the same were not supplied to the Appellant by the Inquiry Officer. The Inquiry Officer started inquiry proceedings w.e.f. 06.04.2010 and asked the Management of the Respondent School to submit the affidavits of witnesses. The Appellant objected to the procedure adopted by the Inquiry Officer for conducting the inquiry proceedings vide his letter dated 06.04.2010. Respondent School replied



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the letter of the Appellant dated 06.04.2010 vide their letter dated 13.04.2010. On 14.08.2010 the Respondent School submitted brief submissions before the Inquiry Officer. The Appellant also submitted his submissions on 31.08.2010 in reply to the submissions of the Respondent School dated 14.08.2010 before the Inquiry Officer.

4. On 22.11.2010 the Appellant received show cause notice from the Respondent School alleging that Inquiry Officer had submitted his report dated 28.10.2010 alongwith his findings. The Appellant vide his representation dated 08.12.2010 replied the show cause notice dated 22.11.2010 issued to him by the Respondent School. The Appellant received the impugned order dated 29.12.2010 vide which the Respondent School removed the Appellant from the service with immediate effect.
5. The impugned order dated 29.12.2010 is illegal, unjust and arbitrary. The so-called Disciplinary Committee, which had issued the charge sheet to the Appellant, had no authority in law to issue the charge sheet because the same was neither the appointing authority nor the Disciplinary Authority of the Appellant. The so-



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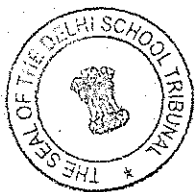
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called Disciplinary Authority had not been constituted according to the provisions of Delhi School Education Act and Rules-1973. The charge sheet was signed by the Manager of the Respondent School as a Member of the Disciplinary Committee. The charge sheet dated 29.01.2010 was invalid and illegal. The impugned order of removal dated 29.01.2010 is bad in law because the inquiry was not conducted by the Inquiry Officer according to the principles of natural justice. The Inquiry Officer was biased against the Appellant and in favour of the Respondent School. The Inquiry Officer had not provided the documents demanded by the Appellant vide his letter dated 23.03.2010 which were necessary for his defence. The Inquiry Officer had not provided reasonable opportunity to the Appellant to defend himself. Inquiry Officer had not provided opportunity to the Appellant to examine himself as one of the defence witness and to examine Smt. Sudhesh Bhatia as his defence witness. The show cause notice dated 22.11.2010 and the impugned order dated 29.12.2010, are void ab initio hence the same may be set aside and Respondent School may be directed to reinstate the Appellant with immediate effect with full back wages alongwith all the consequential benefits.



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Appeal No.10/2011

6. Notice of the appeal was issued to all the Respondents. R1 & R2 filed their joint reply. It is submitted in the reply that the grounds raised in the appeal are not at all sustainable hence there is no merit in the appeal. The Appellant was guilty of various illegalities/ irregularities. He was charged of indiscipline, disobedience, willful insubordination, using unparliamentarily language against the Principal of the Respondent School, careless and negligent attitude in checking day to day work/ home work of the students, misrepresenting, making false allegations against the authorities of the Respondent School and refusing to receive official communication addressed to him. Memorandum of charges dated 29.01.2010 was served on the Appellant. The Appellant had replied the charge sheet, however, his reply was not found satisfactory, therefore, it was decided to hold an inquiry against him. Disciplinary Committee/ Authority was constituted according to Rule 118 of Delhi School Education Act and Rules-1973. As per allocation of duties the Manager shall signed all documents on behalf of Managing Committee, shall represent the Managing Committee in the Selection Committee in absence of the Chairman, shall give appointment letter to the



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employees and shall submit other information to the Department.

7. Inquiry was conducted by the Inquiry Officer according to the principles of natural justice. Full opportunity was granted to the Appellant to defend himself. Inquiry Officer was an independent person having no bias against anyone. After considering the evidence on the file the Inquiry Officer had given his report dated 28.10.2010, copy of the inquiry report alongwith show cause notice dated 22.11.2010 was given to the Appellant who had replied the show cause notice. After considering the reply of the Appellant the impugned order dated 29.12.2010 was passed. All other allegations made in the appeal against the Respondents have been specifically denied. It is submitted that there is no merit in the appeal the same may be dismissed.

8. R3i.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



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employer and employee between the Appellant and R3 Department.

9. 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.
10. 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.
11. The sum and substance of the arguments of the Ld. Counsel for the Appellant is that, the inquiry was conducted in complete violation of Rule-118 of Delhi School Education Act and Rules-1973 (hereinafter referred to as the Act), charge sheet, appointment letter of Inquiry Officer and the impugned order were not signed by the Disciplinary Authority as provided in Rule



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118 of the Act. Disciplinary Authority was not constituted which is clear from the fact that the Appellant vide letter dated 23.03.2010 requested the Inquiry Officer to provide the list of the Members of the Disciplinary Authority as constituted by the Managing Committee, but the Respondent School vide letter dated 05.04.2010 addressed to Inquiry Officer decline the request of the Appellant for disclosing the names of the Disciplinary Authority. Even no minutes of resolution of Managing Committee vide which the alleged Disciplinary Authority was constituted, has been placed on the judicial file. No nominee of the Directorate of Education was present in any of the meeting even according to the Respondent School, the Principal of the Respondent School, who was the member of the alleged Disciplinary Authority, had appeared in witness box against the Appellant. Nothing has been placed on the record by the Respondent School that the Manager was authorized to issue the charge sheet and the Chairman was authorized to issue the removal order. In these circumstances the entire inquiry proceedings are null and void and against the provisions of the Act. Respondent School malafidely victimized the Appellant as vide his letter dated 27.09.2009 he had requested



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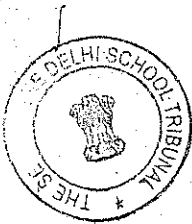
the Dy. Director of Education to implement the VI Pay Commission's recommendations. Inquiry was conducted in complete violation of principles of natural justice because the essential documents which were relevant for the defence of the Appellant, were not supplied to him inspite of his demand vide letter dated 23.03.2010. Inquiry Officer illegally rejected the request of the Appellant to examine Ms. Sudesh Bhatia, Ex.Principal as defence witness. The Inquiry Officer cannot reject his request for examining the witness on the ground that the testimony of the witness may be irrelevant. The finding of Inquiry Officer was absolutely perverse. Article No.1 of the charges is absolutely vague, unclear and not specific. It was not specified that what kind of language was used by the Appellant, which could be termed as derogatory and unparliamentary. Qua the article of charges no. 2, Principal of the Respondent School in his cross-examination admitted that except for 2 months the Appellant had always submitted teachers' diary. According to article no. 3 of the charges the Appellant was negligent while checking the notebooks of the students. There were 92 students whose notebooks were to be checked by the Appellant everyday, merely because there were some errors while checking the



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said 92 note books, it cannot be held that the Appellant was negligent teacher. According to article of charges no. 4, the Appellant had defamed the Respondent School, the allegation is based on the letter dated 22.09.2009 written by the Appellant to the DDE for implementation of the recommendations of the VI Pay Commission. The action of the Appellant in writing a letter to the Directorate of Education for the implementation of his right is a no misconduct in the eyes of law, rather this was the main cause for the victimization of the Appellant by the Respondent School. The article charges no. 5 against the Appellant is of willful insubordination. Sh. Neeraj Malhotra was no authority in the eyes of law, hence the Appellant was not obliged to report to him or to follow his instructions. The documents pertaining to the status/ authority of Sh. Neeraj Malhotra were never supplied to the Appellant despite of his request. The article of charges no. 6 is the refusal of the Appellant to accept the official communication. The Appellant had never refused to accept the memo dated 31.12.2009. Appellant's nephew had died on 20.12.2009 and the *rasam pagri* was to be held on 31.12.2009. The Appellant had duly informed Mr. Uday Rajpuria, Head Clerk, about this fact. The article of charges no. 7 is



that the Appellant had shown disrespect to the authority "does not constitute any misconduct" in as much as receiving of memo by the Appellant by writing under protest is the no misconduct in the eyes of law. Ld. Counsel for the Appellant relied upon the following authorities in support of his arguments:

1. Deepali Gundu Surwase vs. Krahti Junior Adhyapak Mahavidyalaya (D.Ed.) & Others, 2013 (10) SCC 324;
2. Mamta vs. School Management of Jindal Public School and Ors., 2011 VAD (Delhi) 630;
3. Sardar Patel Public Sr. Sec. School vs. Chandra Rani & Ors., in LPA No. 763/2015 decided on 29.10.2015;
4. H. N. Wadhwa vs. New Bank of India and Ors., MANU/DE/9798/2006;
5. Govind Shankar vs. State of Madhya Pradesh and Anr., AIR 1963 MP 115;
6. Union of India (UOI) vs. Prakash Kumar Tandon, MANU/SC/8497/2008;
7. Shri Anant R. Kulkarni vs. Y. P. Education Society and Ors., MANU/SC/0427/2013;
8. Anil Gilurker vs. Bilaspur Raipur Kshetria Gramin Bank and Anr., MANU/SC/1083/2011;
9. Arjun Chaubey vs. Union of India (UOI) and Ors., MANU/SC/0265/1984.

12. The sum and substance of the arguments of the Ld. Counsel for R1 to R2 is that the Disciplinary Committee/ Authority was duly constituted by the Managing Committee of the Respondent School. Meeting of the Disciplinary Committee/ Authority was



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held on 25.01.2010 and 17.02.2010, copy of the minutes of the same has been placed on the record. The inquiry against the Appellant was conducted in accordance of Rule 118 of the Act, charge sheet dated 29.01.2010 was signed by the Manager being Member of the Disciplinary Committee/ Authority, meeting of which was held on 25.01.2010. Directorate of Education was requested vide letter dated 24.12.2009 to nominate its nominee in terms of rule 118 (3) of the Act but Directorate of Education did not nominate any nominee. Therefore, the first meeting of Disciplinary Committee/ Authority was convened on 25.01.2010 in the light of judgment Kathuria Public School vs. Directorate of Education and Anr., 123 (2005) DLT 89 (DB). Letter dated 24.12.2009 is also referred in para No. 2 of letter dated 01.04.2010. Inquiry Officer was appointed vide letter dated 26.02.2010, as decided in the meeting of Disciplinary Committee/ Authority held on 17.02.2010. The Appellant's letter dated 23.03.2010 was frivolous as he was aware of the Members of the Disciplinary Committee/ Authority, present in the meeting held on 25.01.2010 and 27.02.2010. The arguments of the Appellant that he had been victimized is totally misconceived because prior to his letter dated 22.09.2009, he was served with



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several memos dated 23.07.2009, - 28.08.2009, 01.09.2009, 03.09.2009 and 15.09.2009, relating to his non-attending of meetings, willful neglecting the duties and showing disrespect to the authorities. The Appellant was receiving pay and allowance as per scales of VI Pay Commission in spite of the same he had made false complaint to the Dy. Director of Education thus defamed the Respondent School. All the documents on the basis of which article of charges were framed, were supplied to him. Documents demanded by him vide letter dated 23.03.2010 were irrelevant and demanded with the institution to delay the proceedings, thus were rightly declined by the Inquiry Officer. The Appellant did not challenge the order of Inquiry Officer dated 14.07.2010 in this regard. Ms. Sudesh Bhatia the Ex. Principal of the Respondent School had retired in the year 2001. The misconduct against the Appellant related to the period from 23.07.2009 onwards, therefore, her evidence was not irrelevant hence the Inquiry Officer had rightly declined the request of the Appellant to summon her as defence witness. Moreover, the Appellant did not challenge the said order of the Inquiry Officer. All the article of charges were proved during the course of departmental inquiry on the basis of evidence produced by the



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Respondent School. The assertion of the Appellant that Sh. Neeraj Malhotra was not an authority hence the Appellant was not obliged to report to him or to follow his instructions constitute utmost disobedience and willful insubordination. It is requested that the appeal has no merit hence the same may be dismissed with heavy cost. Ld. Counsel for the Respondents relied upon the following authorities in support of his arguments :

1. Apeejay School vs. Suresh Chander Kalra, 2003 (2013) DLT 531 (DB);
2. Kathuria Public School vs. Directorate of Education and Anr., 123 (2005) DLT 89 (DB);
3. Modern School vs. Shashi Pal Sharma and Others, (2007) 8 SCC 540;
4. Mrs. S. V. Sharma vs Director of Education;
5. ITDC Ltd. Vs. S. K. Roy & Ors.;
6. Kendriya Vidayala Sangathan vs. Satbir Singh Malha;
7. State Bank of Patiala & Ors. Vs. S. K. Sharma
8. Divisional Controller, Maharashtra State Road Transport Corporation vs. Prabhakar;
9. Guru Harkishan Public School vs. Director of Education;
10. Haryana Financial Corporation & Anr. Vs. Kailash Chandra Ahuja;
11. Union of India & Ors. Vs. Bishamber Das Dogra;
12. B. C. Chaturvedi vs. Union of India & Anr.;
13. Syed Rahimuddin vs. Director General CSIR and Others;



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14. Samarth Siksha Samiti vs. Director of Education.

13. This Tribunal has carefully considered all the arguments raised on behalf of both the parties and have gone through the records. The impugned order dated 29.12.2010 vide which the Appellant was removed from the service with immediate effect is as under:

VS/2010-941

Dated: 29th December, 2010

OFFICE ORDER

To

Mr. Girijesh Kumar rustagi
P.G.T (Business Studies) (U/S)
C-70, Jhilmil colony
Vivek Vihar, Delhi-95

A memorandum of chargesheet was issued to you for using unparliamentary language, intolerable and derogatory remarks against the school Principal, disobedience & willful insubordination, carelessness and negligence in performance of duties, activities against the interests & reputation of the school etc. Vide Letter No. VS/2010-724 dated 29-01-2010. Your reply thereto was found evasive and unsatisfactory. An enquiry was conducted subsequently in terms of the relevant rules of Delhi School Education Act & Rules 1973 and principles of natural justice to provide you with an opportunity to prove your innocence. You were given all possible opportunities to defend yourself during the course of enquiry proceedings. The enquiry officer in his report dated 28-10-2010 found that all the charges listed in the Memorandum of Chargesheet stand proved against you.

As per decision of the Management Committee of the school a Show Cause Notice was issued to you on 22-11-2010 to explain reasons, if any, as to why you should not be removed from service for the grave offences committed by you as per findings of the Inquiry Officer. The reply furnished by you vide letter dated 06-12-2010 has not been found satisfactory and no new material information has been given to merit reduction of the proposed penalty. The Management Committee has confirmed the proposed penalty in its meeting held on 21-12-2010.



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You are, therefore, removed from service with immediate effect i.e. from 29-12-2010.

Chairman

(for and on behalf of Managing Committee)
Vivekanand School
(Sr. Sec. Recognised)

14. The impugned order was passed on the basis of inquiry report dated 28.10.2010 held on the basis of charge sheet dated 29.01.2010 wherein the following article of charges were framed against the Appellant:

"19. The Charges against Mr. Girijesh Kumar Rustagi PGT (Business Studies) are as follows:

ARTICLE NO. 1- FOUND USING INTOLERABLE & DEROGATORY REMARKS IN UNPARLIAMENTARY LANGUAGE AGAINST THE SCHOOL PRINCIPAL.

Mr. Girijesh Rustagi went for unnecessary argument and shouted at the School Principal in the presence of the School Staff.

ARTICLE NO. 2 - CARELESS AND NEGLIGENT TEACHER

Mr. Girijesh Rustagi is highly careless and grossly negligent teacher. He has shown careless attitude by not submitting weekly planners, teacher's diary etc. in time.

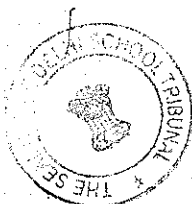
ARTICLE NO. 3- FOUND NEGLIGENT IN CHECKING NOTEBOOKS.

Mr. girijesh Rustagi had shown utmost negligence in correction of his students notebooks. He just put tick-mark while checking the notebooks in spite the answer were not correct or were incomplete.

ARTICLE NO. 4- DEFAMED THE REPUTATION OF THE SCHOOL

Mr. Girijesh Rustagi in order to hide his inefficiency, willful insubordination, unprofessional teaching attitude, undisciplined behavior, made false and fabricated allegations against the school authorities to the Directorate of Education, intentionally and deliberately to defame the school, its prestige, its honors and its reputation.

ARTICLE NO. 5- DISOBEDIENCE & WILLFUL INSUBORDINATION



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Mr. Girijesh Rustagi shows utmost disobedience and willful insubordination by refusing to give weekly planners, Teacher's Diary to Senior Secondary In charge in spite of several directions given by the School Principal.

ARTICLE NO. 6- REFUSAL OF OFFICIAL COMMUNICATIONS

Mr. Girijesh Rustagi refused to accept the office memo no. VS/2009/704 dated 31.12.2009 served to him personally by the schools staff. He also did not accept the office communications posted to him.

ARTICLE NO. 7- SHOWN DISRESPECT TO THE CONSTITUTED AUTHORITY

Instead of accepting constructive suggestions for improvements, he had shown disrespect to the constituted authority by writing "UNDER PROTEST" in the office memo no. VS/2009/684 dated 12.11.2009. In spite of the warning given in office memo No. VS/2009/686 dated 19.11.2009, he again wrote "UNDER PROTEST" in office memo No. VS/2009/689 dated 27.11.2009."

15. According to the Appellant Disciplinary Authority was not constituted according to Rule 118 of the Act. The Rule 118 of the Act is as under:

"Rule 118. 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."



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16. According to the Respondent School letter dated 24.12.2009 was written to Director of Education for nominating the appropriate person for constituting the Disciplinary Authority/ Committee but the Director of Education had not nominated any person. In these circumstances, in view of the law laid down in Kathuria Public School vs. Directorate of Education and Anr., 123 (2005) DLT 89 (DB) Disciplinary Authority was constituted. Copy of the letter dated 24.12.2009 has been placed on the file, by the Respondent School. According to the Appellant no such letter was ever written to the Director of Education. A copy of the alleged letter placed on the file has been fabricated afterward. This Tribunal has carefully perused the letter dated 24.12.2009, it bears somebody's initial but it does not bear any diary number of the receipt of the letter; it does not bear any stamp of the concerned officer; it does not bear any date when it was allegedly received in the office of the Director of Education. The Appellant has also placed a copy of the reply dated 02.02.2011 received by him under RTI Act from the department, the same is as under:



No. RTI/11/750(E)/123

Dated: 02/02/2011

To

Sh. Girijesh Kumar Rustagi,
C-70, Jhilmil Colony
Vivel Vihar, Delhi-95.

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Subj:- Reply under RTI Act 2005 vide Id. No. 1750(E) in r/o Sh. Girijesh Kumar Rustagi.

Sir,

The copies of minutes of meeting as you have sought in your application vide ID No. 1750(E). Such copies are not available in the office and E.O. Zone-I and he tried to get such copies from the school which has denied the same (letter of school is enclosed)

However, it has been intimated by E.O. Zone-I that Sh. Arvind Kumar, Principal, Govt. (Co-ed) Sr. Sec. School, Anand Vihar, was the DE's nominee in the management committee of the school. An office order being issued to said principal who has now been transferred to Distt. (South) to ascertain the said copies and the same will be provided to you as will be received from the said officer.

(USHA KUMARI)
PIO/DDE (E)

First appellate authority,
The Regional Director of Education (East)
SBV. Complex,
Rani Garden, Delhi-31. # 22522458"

17. The Appellant has also placed a copy of the reply dated 18.02.2011 received by him under RTI Act from the department, the same is as under:

"No.VS/2011-962

Dated: 27/01/2011"

To

The Education Officer,
Zone I, Distt. East,
Anand Vihar Delhi-92

Subject: - Direction for furnishing copy of the approval / minutes of meeting resolving to terminate the services of Mr. Girijesh Kumar Rustagi.

Reference: Your Letter No. DE-47/EO/E/Z-1/1750(E)/2010/54 dated 24-1-2011.

Sir,

It has been stated vide para 3. of your letter under reference that the information is required to be forwarded to the concerned authority without divulging the identity of the said authority. To our knowledge, the 'Delhi School Tribunal' constituted by the Administrator under section 11 of Delhi School



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Education Act 1973 is competent to consider appeals lodged by the employee aggrieved by the order of punishment awarded by the school. In case there is a reference from the Tribunal/ other authority, a copy of the letter may please be sent to us to take necessary action in the matter.

(Pradyumn Ahuja)
Manager"

18. The Appellant has also placed a copy of the reply dated 17.11.2012 received by him under RTI Act from the department, the same is as under:

"OFFICE OF DEPUTY DIRECTOR OF EDUCATION
DISTT. EAST; ANAND VIHAR, DELHI-92.
(RTI BRANCH)

No. RTI/11/1750 (E)/189

Dated 17/02/2011

To

Sh. Girijesh Kumar Rustagi,
C-70, Jhilmil Colony
Vivel Vihar, Delhi-95.

Sub:- Reply under RTI Act 2005 vide Id. No. 1750(E) in r/o Sh.
Girijesh Kumar Rustagi.

Sir.

The DE's nominee Sh. Arvind Kumar formerly Principal of Govt (co-ed) Sr. Sec. School Anand Vihar vide his letter dated 18/02/2011 has informed that he does not have copies of minutes of meeting, hence can not be provided to you.

(USHA KUMARI)
PIO/DDE (E)



First appellate authority,
The Regional Director of Education (East)
SBV. Complex,
Rani Garden, Delhi-31. # 22522458"

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19. In these circumstances the case of the Appellant becomes more reliable in comparison to that of Respondent School in this regard.

20. According to the Respondent School Disciplinary Authority has been constituted as per law and its first meeting was held on 25.01.2010. The relevant portion of the minutes of the meeting dated 25.01.2010 is as under:

"A meeting of the Disciplinary committee of vivekanand School, D-Block, Anand Vihar, Delhi-110092 was held on 25.01.2010 at 3:00 P.M. in pursuance of the decision of the Managing Committee of vivekanand School in its meeting held on 03.12.2009 to take stock of overall observance of discipline in the School. The following members, as per the provisions of Rule 118 of Delhi School Education Act & Rules 1973, constituting the Disciplinary Committee, attended the meeting:

1. Sh. Yog Dhyun Ahuja - Chairman
2. Sh. Pradyumn Ahuja - Manager
Nominee of the appropriate authority.
3. Mrs. Kiran Khanna - Principal
4. Mrs. Sunjana Mahajan - Staff Representative.

The Disciplinary Committee observed that the appropriate authority- the Director of Education Delhi was approached vide letter dated 24.12.2009 to nominate his representative in terms of Rule 118 of DSE A & R. 1973 to be a member of the Disciplinary Committee within 10 days. But, no Communication has been received in this regard even till date. It will not be in the interest of the School to keep the matter in abeyance any longer.

The Disciplinary Committee previewed the situation as regards observance of rules of conduct in the School.

The disciplinary Committee took up the case of another teacher, Sh. Girijesh Kumar Rustagi P.G.T. (Business Studies). The Committee observed that this teacher is involved in a series of breach of code of conduct, viz. in subordination, willful neglect of duties, sustained neglect in correcting class work or home work



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done by the students, refusal to attend meeting called by his superiors for smooth conduct of work connected with his duties in the School, misbehavior and disrespect to the constituted authority. After taking all the aspects into consideration, it was unanimously decided that a Memorandum of charge sheet should be issued to him and he may be asked to submit his reply within 15 days.

It was decided that a meeting of the disciplinary Committee may be convened after receipt of reply, if any, from Sh. Girijesh Kumar Rustagi, P.G.T (B.S) to consider these and other cases, if any, for report to the Managing Committee."

21. This meeting was attended by 4 members including the Principal of the Respondent School Mrs. Kiran Khanna.
22. A careful perusal of the opening para of the minutes of the meeting of Managing Committee dated 25.01.2010 reflects that this meeting was held in pursuance of the decision of the Managing Committee taken on 03.12.2009. Meaning thereby the alleged Disciplinary Committee was constituted on 03.12.2009 itself. While the letter was written to the Directorate of Education on 24.12.2009 for nominating his representative, thus the Disciplinary Authority was constituted even prior to the letter written to the Directorate of Education on 24.12.2009. Thus the entire exercise conducted by the Respondent School appears to be an eyewash.
23. The Respondent School has not produced any record with regard to constitution of the Disciplinary Authority. It is not clear on which date the Managing Committee



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of the Respondent School had constituted the Disciplinary Authority

24. The alleged letter requesting the Director of Education to nominate a member for the Disciplinary Authority was written on 24.12.2009 and the first meeting of the Disciplinary Authority was held on 25.01.2010 i.e. after 31 days. In these circumstances it become most important to pinpoint the date when the Disciplinary Authority was constituted because in the authority of Kathuria Public School vs. Directorate of Education and Anr., 123 (2005) DLT 89 (DB), relied upon by the Respondent School, it is held that in two weeks the Director of Education has to appoint his nominee. The alleged minutes of meeting of the Managing Committee is also relevant with regard to prove the names of the Members of Disciplinary Authority. In these circumstances it is not proved on the file whether the Disciplinary Authority was constituted within two weeks or after two weeks of the alleged letter dated 24.12.2009. It is worth important to mention here that the alleged letter is dated 24.12.2009, however it is not clear when this letter was received in the office of Directorate of Education. The Appellant vide his letter dated 23.03.2010 had demanded the copy of the



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minutes of the meeting of the Managing Committee wherein the Disciplinary Authority was constituted but for the reasons best known to the Respondent School neither it was provided to him nor the same is placed on judicial file. In these circumstances the whole proceedings with regard to the constitution of the Disciplinary Authority becomes doubtful.

25. It is also clear from the copy of the minutes dated 25.01.2010 that Ms. Kiran Khanna, Principal of the Respondent School had participated in the meeting. She had appeared as a witness in the departmental inquiry being the complainant against the Appellant. She had deposed against the Appellant and her testimony has been relied upon by the Ld. Inquiry Officer in his report against the Appellant. According to the Respondent School thereafter, she had not participated in any of the meeting. The Respondent School has produced copies of the minutes of meeting of Disciplinary Authority dated 25.01.2010 and 17.02.2010 only, copy of any other meeting of the Managing Committee is not produce on the judicial file. Hence it cannot be concluded whether the Principal of the Respondent School had participated in other meetings of the Disciplinary Authority or not.



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26. According to the Appellant he had demanded the copies of the documents which were relevant for his defence vide his letter dated 23.03.2010 but the same were not supplied to him, the Ld. Inquiry Officer relying upon the reply of the Respondent School, held that these documents were not necessary/ irrelevant for the defence of the Appellant. I have carefully gone through the letter dated 23.03.2010 vide which the Appellant had demanded the documents. The said is as under:

To,

Mr. Dhiren M. Doshi
Inquiry Officer

Subject: To periods documents in respect of the charges leveled against me by the school management.

D/Sir,

I, Girijesh Kumar Rustagi, PGT(Business studies), request your goodself to make me available the following documents from the school authorities, enabling me defending the charge leveled against me by the school management through their Memorandum of chargesheet No. VS/2010/724 dt. 29.01.2010, during the enquiry proceedings.

1. A copy of the appointment letter of Mr. Neeraj Malhotra shows his appointment as per post fixation norms, given in DSEAR.
2. A copy of the order passed by the school management duly signed by all the teachers, defining the powers of Mr. Neeraj Malhotra to act as Senior Secondary In charge and on behalf to collect the planners from the teachers taking classes X, XI & XII.
3. A copy of the office order issued by Mr. Neeraj Malhotra in the capacity of the Senior Secondary In charge for conducting meetings of the Commerce Department duly acknowledged by him.
4. A copy of the desolation passed by the managing committee in respect of signing authority in the absence of school principal while she was out of the country w.e.f. 05.06.2009 to 24.08.2009.



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5. A copy of the order passed by the school management duly signed by all the teachers, giving him the power to sign or the teachers diary of all the teachers of the school, in the ___ of the principal i.e. 05.06.2009 to 24.08.2009.
6. List of Disciplinary Committee members constituted by the managing committee in my case.
7. A copy of the minutes of the meeting of the managing committee, showing the 'Desolation' passed by the managing committee members to constitute a disciplinary committee with its member nominated by the managing committee.
8. A copy of appointment of Deveining Authority alongwith following information, who reviewed the CW/H.W. copies of Business studies and Maths of the classes and sections being taken by me:-
 - a) Name of the reviewing authority.
 - b) His/ Her qualification.
 - c) Name of the institution, he/she is associated with and in what capacity.
 - d) His/her total teaching experience.

You are requested to make me available the above mentioned documents/information so as to enable me defend my case during enquiry proceedings.

Yours Sincerely

(GIRIJESH KUMAR RUSTAGI)
PGT. (BUSINESS STUDIES)

27. I have also carefully gone through the article of charges. Even the article of charges framed against the Appellant, this Tribunal is of the opinion that most of the documents demanded by the Appellant vide letter dated 23.03.2010, were necessary and relevant for the defence of the Appellant, hence non-supplying of the documents to the Appellant prejudiced his defence and is against the principles of natural justice.



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28. According to the Appellant Inquiry Officer had refused to summon Ms. Sudesh Bhatia, Ex.Principal of the Respondent School, as defence witness of the Appellant. According to the Respondent School her statement was not relevant because she had retired in the year 2001 while the charges are of the year 2009 onwards. According to the Appellant he wanted to prove that since his appointment in the year 1985 till the entire tenure of his service during the tenure of ex. Principal work and conduct of the Appellant was good. In these circumstances this Tribunal is of the opinion that even the refusal of summoning of Ms. Sudesh Bhatia as defence witness was contrary to law, prejudicing the defence of the Appellant. It is well settled legal proposition that every delinquent official has right to produce the relevant witness in his defence.

29. Ld. Counsel for the Appellant argued that finding of the Inquiry Officer qua the article of charges was perverted. Article of charges no. 1 is that the Appellant had used intolerable, derogatory and unparliamentarily language against the Principal of the Respondent School however the same has not been specified thus



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appears to be vague. Article 2 and 3 of the charges is with regard to the negligence and careless attitude of the Appellant with regard to weekly planner and teachers' diary and checking of the notebooks of the students. The Principal of the Respondent School appeared in the witness box to prove these charges. In her cross-examination she has admitted that except only two months the Appellant had always submitted the teachers' diary in time. One of the allegations against the Appellant is that he had refused to obey the order of Sh. Neeraj Malhotra. The Appellant had demanded the documents with regard to the authority of Sh. Neeraj Malhotra vide his letter dated 23.03.2010 but the same were not supplied. Article of Charge no. 4 is with regard to defaming of the reputation of the Respondent School. According to the Respondent School the Appellant had defamed the reputation of the Respondent School by writing the letter dated 22.09.2009 to the DDE for implementation of VI Pay Commission's recommendations. Every employee has a right to demand his rights and pressing/ writing/ approaching the authorities for the same, cannot be considered as misconduct or defamation of the employer. Article of charge no. 5 is with regard to the insubordination similar to the charge no. 2. According



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to the Appellant Sh. Neeraj Malhotra was no authority in the eyes of law hence the Appellant was not obliged to report him or to follow his instructions. The Respondent School has also not produced any document with regard to his alleged authority, in spite of the demand by the Appellant, for the same vide his letter dated 23.03.2010. Article of charge no. 6 is with regard to the refusal of the Appellant from accepting the memo dated 31.12.2009, according to the Appellant on the relevant date *rasam pagri* of his nephew was to be held hence he was in hurry to go to attend the same, he had also informed Sh. Uday Rajpuria, Head Clerk in this regard. The following portion of the inquiry report is most relevant in this regard.

Q. 19 Whether you had mentioned in your report at CSD-82-84 that the CSE had gone through the content of the letter? On what basis you had made a false allegation in your affidavit at para 5 against the CSE that he had read the letter before the refusing CSD-82-84. When no report was recorded by you on office copy?

A.19 CSE did not read the content of the office Memo (CSD-82-84) but refused to accept it.

Q. 20 Whether CSE had explained the circumstances when he was going to attend the "Rasham Pagri" what time CSE had left the School after going through the contents of the said Memorandum as stated by you in your affidavit and what was the urgency to deliver a letter when the CSE was already under distress of the said demise of his nephew?

A.20 I did know that the CSE was going to attend the "Rasham Pagri".



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30. The evidence given by Sh. Uday Rajpuria in his cross-examination is absolutely in contravention of the submissions made by him in his affidavit which is as follows

"On 31.12.2009 I was asked to deliver Memo no. VS/2009-704 dated 31.12.2009 to Mr. Girijesh Kumar Rustagi PGT (Business Studies). He took the Office Memorandum from me, went through the contents, but left without receiving it in spite of my repeated requests to receive the same."

31. The article of charge no. 7 is that the Appellant has shown disrespect to the authority by writing on the memo "under protest" in the view of this Tribunal, receiving of some memo by writing under protest, does not constitute any misconduct. In view of the above discussion inquiry report appears to be perverse and also reflects on the conduct of the Inquiry Officer that he was biased in favour of the Respondent School.
32. I have also carefully gone through the authorities relied upon for the Ld. Counsel for Respondent School there is no dispute in the ratio of law laid-down in these authorities. However, the ratio of law in an authority is laid down according to the facts and circumstances of that particular case and the same may not be squarely applicable to the fact and circumstances of other case. In the above discussed peculiar facts and circumstances of this case, ratio of law laid-down in the



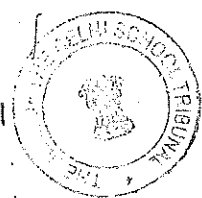
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authorities relied upon by Ld. Counsel for R1 & R2, is not applicable.

33. Considering the cumulative effect of the facts that the Principal of the Respondent School had appeared as a witness in the inquiry proceedings against the Appellant and was also participated in the meeting of Disciplinary Committee; no nominee of the Directorate of Education was present in the Disciplinary Committee; relevant documents were not provided to the Appellant in spite of his demand; the Inquiry Officer was biased and the finding of Inquiry Officer is perverted this Tribunal is of the opinion that the impugned order dated 29.12.2010 is illegal and arbitrary hence the same is set aside. R1 and R2 are directed to re-instate the Appellant within a period of 4 weeks. Appellant will be entitled for full wages alongwith all the consequential benefits from the date of this order onwards.

34. With respect to the back wages, in view of Rule 121 of Delhi School Education Act and Rules 1973, the Appellant is directed to make exhaustive representation to the R1 and R2 within a period of 4 weeks from the date of this order, as to how and in what manner the Appellant will be entitled to complete wages. The



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Respondents No.1 and 2 are directed to decide the representation given by the Appellant within 4 weeks of receiving the same by a speaking order and to communicate the order alongwith the copy of the same to the Appellant. Order accordingly. File be consigned to record room.

sd/-
(V K MAHESHWARI)
PRESIDING OFFICER
DELHI SCHOOL TRIBUNAL



PLACE: DELHI
DATED: 20.05.2016

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