

BEFORE DR.SATINDER KUMAR GAUTAM, PRESIDING OFFICER  
DELHI SCHOOL TRIBUNAL  
PATRACHAR VIDYALAYA COMPLEX  
LUCKNOW ROAD, TIMAR PUR, DELHI-110054

Appeal No.52 of 2018

Date of Institution: 05.10.2018

Date of Disposal: 27.03.2024

In the Matter of:-

**Anuradha Kumar,**  
W/o Sh. Sushil Kumar,  
R/o 80-F, Sector-7, JasolaVihar,  
New Delhi-110025

(Through: Mr. Anuj Aggarwal, Advocate)

... Appellant

VERSUS

**SatyawatiSood Arya Girls Sr. Sec. School,**  
(Govt. Aided & Recognized),  
School ID No. 1924117  
Through Its Managing Committee/Manager/Principal  
Nizamuddin East,  
New Delhi-110013

(Through: Mr. Ranjit Sharma, Advocate)

... Respondent No. 1

**Director of Education,**  
Directorate of Education,  
Govt. of NCT of Delhi,  
Old Secretariat Building,  
Civil Lines, New Delhi- 110054

(Through: Ms. BindiyaSavara, Advocate)... Respondent No. 2

**Abbreviations:-**

Respondent No. 1	:	R-1 School/Respondent School
Respondent No. 2	:	R-2/DOE
D.O.E	:	Directorate of Education
PNJ	:	Principle of Natural Justice
C.O.	:	Charged Officer
D.A.	:	Defence Assistant
P.A.	:	Presenting Officer
E.O/I.O	:	Enquiry Officer/Inquiry Officer
M.C	:	Management Committee
D.A.C	:	Departmental Enquiry Committee

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27.03.2024

## JUDGEMENT

1. The present appeal under section 8 (3) of DSEA, 1973 challenging the impugned order reference No. SAGS/2018/397 dated 30.07.2018 passed by the Chairman/ Management Committee of the Satyawati Sood Arya Girls Ser. Sec. school imposed a penalty of "removal from service which shall not be disqualification for future employment in any recognized private schools" was imposed upon the appellant. Alleging that the impugned order of termination is illegal as well as unjustified for the following inter-alia grounds:-

(A) impugned order dated 30.07.2018 is illegal, unjustified, arbitrary, discriminatory, punitive, perverse, unreasonable, unconstitutional, violation of Article 14, 16, 21 and 311 of the Constitution of India, Violation of DSEAR, 1973 and also violation of Principle of natural justice as the CCS Rules, 1965.

(B) Principal Smt. Priti Rai has made a complaint against the appellant who is a complainant and also member of the disciplinary authority. The entire enquiry in pursuance of the charge sheet dated 04.07.2016 bad in law, illegal, *non est*, and void ab initio, even an enquiry was pending against Smt. Priti Rai on the complaint made by the appellant. In these circumstances, the presence of Smt. Priti Rai as a member of DAC constituted for enquiry against the appellant, vitiate the enquiry.

2. Mrs. Renu Chawla, Manager, could not be member of Disciplinary Authority against the appellant as Mrs. Renu Chawla Manager of the R-1 had made a complaint against the appellant and in a previous

letter dated 21.02.2015 and 30.04.2009 had declared that the appellant is guilty of misbehavior i.e. the allegations for which the charge sheet was issued to the appellant as being member of disciplinary authority Mrs. Renu Chawla already made up her mind that the appellant was guilty even before the enquiry was conducted

(D) Smt. Sashi Bala Lal one teacher representative is also a member of DAC who also depose against the appellant a teacher will judge in witness violation of all canon of principle of natural justice

(E) There is no specific incident specified in the charge sheet 07.12.2016. No charge sheet could again issue without against the principle and staff member complaint made by the appellant.

(F) The appellant was directed to cross examine the witness on same day when the examination in chief was recorded no opportunity time was given to the appellant to prepared for cross examination, which is a violation of principle of natural justice.

(G) The appellant was not given any opportunity to examine her witness have even after presenting officer conclude evidence. The enquiry officer straightly fixed enquiry proceedings for submission of the briefs by her parties.

In case of **Azad Vs. DTDC SP 3850/1991 dated 25.11.2011** of High Court of Delhi observed that *"...express according to lead defence evidence is to be given by the enquiry officer to the charge officer and absence of the same vitiate the enquiry proceedings..."*

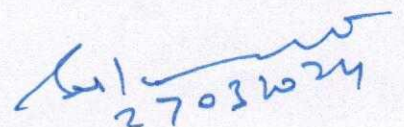
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3. It is also contended that the Enquiry Officer, Mr. K.C Arora was of 67 years of age as an enquiry officer as per the CCS Rules r/w office memo issued by DOPT and follow by DOE, Govt. of NCT of Delhi an E.O cannot be more than 65 years at the time of appointment of Enquiry Officer. The charge sheet was not issued by the DAC as constituted under Rule 118 nor the show cause notice dated 23.11.2015 was issued the Disciplinary Authority as per the statute.

4. The enquiry against Smt. Priti Rai Principal of the R-1 is still pending and charge sheet dated 07.12.2016 is based on the complaint of Mrs. Priti Rai unless the said enquiry and Smt. Priti Rai is innocent the charge sheet dated 04.12.2016 on the basis of foundation made by appellant against the principal and staff of the R-1 were false and the said foundation on which the charge sheet issue legally untenable in law. Enquiry Officer, Sh. K.C Arora was biased and act as a puppet of the R-1 as shows from the language and expression of the him in the Enquiry report dated 27.07.2017.

5. The appellant was not supplied the copy of the document as per the list of document and the application to this effect was rejected which is also violation of PNJ though the document has supplied during the enquiry proceedings tempered one.

6. As per the copy of the enquiry report supplied to the appellant purported the disciplinary authority had made up its mind to impose the major penalty which is bad in law, observed by the constitution bench of Supreme court in ***Managing Director ECIL Hyderabad Vs. B. Karunakar Etc., decided on 01.10.1993, 1993 (4) SCC 727.***

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7. The Director of Education i.e R-2 while granting the approval of major penalty has fail to consider and express the appellant reply dated 15.09.2017 therefore, the approval letter dated 28.07.2018 passed by DOE is illegal and unjustified.

8. The enquiry report against the appellant was perverse, based on no evidence against the appellant since the prosecution witness are teachers and other staff members against whom the complaint was filed by the appellant. Therefore the said witnesses were biased and there is no independent witness cited or examined by the respondent.

9. The appellant is as per section 11 of Whistle Blower Act 2010, is a whistle blower and conducting the enquiry against the appellant is illegal and violation of the provision of Section 11 of whistle blower protection act 2010

10. It is alleged that instead of taking proper action against the staff member who were guilty of as SC/ST Act. The appellant has been victimized and illegal penalized since belong to SC community and her right are protected. Sh. Vaneet Makkar who was the part of the disciplinary authority was not the Chairman, were admitted as a nominee of the Chairman. Admittedly Chairman alone who himself as a part of the disciplinary authority, cannot be nominee for any one or delegated his power to anyone. The Chairman of the R-1, whereas the entire disciplinary authority considered in the presence of Vaneet Makkar as such the constitution of DAC is violation of the order No. FDE/15(1304)/ACT/2010/3283 dated 30.06.2010 issued by the DOE, Govt. of NCT of Delhi. Which category declare nominee or director could be only

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a education officer or dy. Education officer of the Zone concerned in the present case who acted as a nominee of the DOE was re-employed in Sarvodaya Vidyalaya Aliganj, Lodhi Road, he was neither qualified nor legible to be member of the DAC in capacity of DOE nominee.

- (A) The quantum of punishment is shocking, based on question to the grave misconduct and appellant was completely unemployed since the day of removal and preferred an appeal to the education secretary which is till still pending.
- (B) The appellant recorded the entire episode in the CD for the complaint made against Smt. Priti Rai and other staff which shows the guilty of corruption of willful extortion of money from the students which have been completely ignored by the enquiry officer.
- (C) Enquiry officer has reported in his enquiry report that the lab assistant Daya Shankar examine on 10.04.2017 before the enquiry officer whereas in fact Daya Shankar had never appeared before the enquiry officer. The E.O has recorded that appellant was presented in school on 04.02.2017 the appellant was suffering from servical pain and taking casual leave on that day i.e. 04.02.2017 and 05.02.2017 was Sunday only and took CL on 06.02.2017.
- (D) The R-1 fail to provide the copy of the minutes of meeting of the disciplinary authority which also violation of PNJ.
- (E) Manager who was unqualified pointed approved as Member of DAC vide Circular No. DE /15 (H) 2004/SOM/8467-5839 dated 19.10.2004 DOE, Govt. of NCT of Delhi clarified in case of the

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Manager of the school having ten years' experience as Administration of respondent school. Smt. Renu Chawla had never as in-charge of middle wing of the R-1 as such unqualified as appointed manager of the R-1 and as member of DAC.

(F) Smt. Meenkashi Devi PGT History was examined as a witness on behalf of presenting officer of the R-1 whereas she was not in the list of witnesses along with the charge sheet.

(G) In the charge sheet dated 07.12.2016 containing five article of charge imputation of misconduct which have no co-relation with the charge as contained in detail imputation of misconduct which is part of charge sheet therefore, it is meaningless and drafted with complete non application of mind

(H) Mr. Vaneet Makkar Chairman of the Disciplinary Authority had made complaint against the appellant who could not have part of the disciplinary authority against the appellant.

(I) There are other Scheduled Caste counterparts who are harassed by the staff member of the R-1 who also made a complaint against the R-1 the witnesses have been deposed only against the appellant who are aggrieved against the SC & ST category. The statement of witnesses and the finding of the enquiry officer actually incorrect in as much as even other Scheduled Caste candidate have been harassed.

11. It is contended by the appellant that from the last 25 years, there was no complaint or memo of charge sheet against the appellant,

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only the memo and charge sheet was issued when the appellant raise her voice against the illegal action of R-1 and the staff members which is a victim and whistle blower. Therefore, to set aside the impugned order 30.07.2028 and directed the R-1 to reinstate the appellant with all consequential reliefs.

### **Reply of Respondent No. 1 (Respondent School)**

12. R-1 submitted that an established principle of law that the Disciplinary Authority is the primary authority and the courts and tribunals should not review the materials on record and scrutinize the evidence as a secondary authority. In the present case the disciplinary authority has acted absolutely in accordance with law and principles of natural justice. It is the appellant who deliberately did not participate in the disciplinary proceedings by non cross-examining the witnesses and tried at every stage to delay and derail the proceedings by shooting off letter after letter to the inquiry officer and now after completion of the enquiry proceedings, the appellant is playing a victim.

13. The appellant's record has been shown as one of the disobedience, violence and unbecoming of a teacher. Instead of devoting herself to teaching the appellant by her conduct vitiated academic environment on the campus of the school. She went on a spree of lodging complaints against all and sundry making unsubstantiated allegations of accepting admission fee and passing students after taking money etc. She did not show her respect to the principal as well as other school staff which clearly reveal her attitude and behavior. The school management issued

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memos to the appellant to improve her conduct and behavior and not to disturb the academic environment of the school.

14. The appellant always tried to misuse the provisions of the SC/ST Prevention of Atrocities Act by lodging false and frivolous complaints against the Managing Committee of the School, principal and teachers.

15. The appellant instead of co-operating with the Inquiry Officer created various hurdles in the proceedings. The complaints lodged by her, memos issued to her and her responses to those memos were the parts of the charge sheet. Those documents are parts of the present appeal and yet the appellant went on asking for the documents. Eventually she filed her response to the charge sheet. In the Course of the proceedings, she did not spare even the inquiry officer and used even derogatory language against him, which has been noted in the Inquiry Report. She questioned the constitution of the DAC without any basis and tried to halt the inquiry proceedings and in fact, she delayed it. Despite grant of opportunities, the appellant did not cross-examine the prosecution witnesses on an untenable ground of the constitution of the DAC. The grounds raised in the petition are not tenable in law. The Constitution of the DAC was absolutely in accordance with law and in consonance with Rule 118 of Delhi School Education Rules, 1973.

16. The appellant's contention against Sh. Vaneet Makkar acting as nominated Chairman is wrong and misplaced. Sh. Vaneet Makkar was nominated as Chairman and was not the nominee of the Chairman. Mrs. Renu Chawla had already retired after which she was appointed as

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Manager of the School. Ms. Shashi Bala Lal was a member of the managing Committee of the school. Even if her statement is ignored, charges are proved against the appellant.

17. So far as the complaint of the appellant against the then principal of the school is concerned that she went on a spree of laying allegations against the Principal like she charged admission fee and passed students after taking money. In this connection, an inquiry was instituted whereby it was found that the allegations were absolutely false and frivolous whereby Ms. Priti Rai was absolved of the charge.

18. The appellant had problem with the chairman, Manager, Principal, teachers and other staff members of the school without any rhyme or reason, she wanted time-table fixed according to her desire and she wanted to act as a de-facto Manager and principal of the school. The appellant had not raised any tenable grounds or reason to challenge the decision of the Disciplinary Authority and the appeal of the appellant lacks merits as deserves to be dismissed.

**19. The R-2 i.e Directorate of Education** submitted that the Management Committee of the school initiated disciplinary proceedings against the appellant and after prove of the charges, the major penalty of removal from the service was imposed. The DAC was constituted as per provision of Delhi School Education Act & Rules, 1973 and there is no violation of the Principal of Natural justice, the approval is also obtained from the competent authority.

20. The manager is fully competent and authorized to issue the said show cause notice to the appellant and the appointment of enquiry

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office Sh. K.C Arora was as per norms. As such the appeal of the appellant is liable to be dismissed as the contents of the prayer clause are wrong, false, misconceived, concocted one and the same is not sustainable in the eyes of Law.

21. The appellant filed a **rejoinder to the reply of Respondents no. 1 and 2** separately and denied the averments made in the reply. With the contention to repeat the contents made in the appeal as the respondents no. 1 action and reactions while issuing the memos and conducted the enquiry proceedings is violation of the constitution provisions as well as of the Delhi School Education Act and Rules and also violation of the Principle of Natural justice as well as provision of CCS Rules, 1965. The each para of the content of the reply to the appeal of R-1 are denied as wrong and the same are contrary to the facts stated in the appeal

**Rejoinder to the reply of R-2** also denied its factual by incorrect and the enquiry officer is biased and acted as a pappets of the R-1 The Constitution of the Disciplinary Authority is in violation of Rule 118. The approval of the R-2 for removal from the service as imposed upon the appellant with complete non application of the mind and fail to consider the reply dated 15.09.2017 filed by the appellant. On the finding of the enquiry report dated 27.07.2017 as such prayed that the prayer made in the appeal may be granted and the appeal may be allowed.

**Having heard the arguments of the Ld. Counsel for the parties and carefully gone through the material placed on record, relevant provision of law and the judgment concerned.**

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22. Mr. Anuj Aggarwal, Ld. Counsel for the appellant filed the brief written synopsis which contained that the appellant belong to Scheduled Caste category is being discriminated on the ground of caste biasness. The appellant made a complaint against the school employees pertaining to corruption and illegal demand of money on 12.01.2007 and 02.02.2009. The principal made a complaint to the manager against the appellant on 06.04.2015 on various allegations including using foul and abusive language, shouting etc. Show cause notice was issued to the appellant on 23.11.2015 which was duly replied on 29.12.2015. On 20.02.2016 the principal give an explanation to the Education Minister, Director of Education submitting that Principal is innocent and the appellant was guilty of making false complaint vide dated 22.02.2016. On 29.08.2016 the DOE directed the school to initiate disciplinary proceedings against Smt. Priti Rai Principal on account of making illegal demand of fee from the parents of the students for giving admission and also for promoting the students who failed in the examination.

On 07.12.2016 the charge sheet was issued with the following brief memorandum of charges:-

- I. Willfully neglecting the duties.
- II. Making false allegations against the Chairman, Manager etc.
- III. Showing disrespect to the constituting authority
- IV. Behaving in a rowdy and disorderly manner.
- V. Propagating communal and secretarial outlook.

There are 59 documents in the list of documents which was to be supplied to the appellant with charge sheet however no single document

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was supplied. On 15.12.2016 the appellant requested the chairman to supply the document as per the list of documents along with charge sheet, however on 19.12.2016 the school rejected the request to supply the documents to appellant and directed the appellant to give the reply of charge sheet without document vide order dated 22.12.2016. The appellant replied to the charge sheet. On 29.12.2016 K.C Arora was appointed. On 03.05.2017 presenting Officer declare that they do not want to examine any other witness. No opportunity was given to the appellant to lead or examine her witness. On 09.05.2017 the defence statement was recorded. On 27.07.2017 enquiry officer submitted enquiry report against the appellant to charge no. 1 and 2 partially proved and Charge No. 3, 4&5 were fully proved. On 31.08.2017 in the meeting of the disciplinary authority was convey a report to the appellant and decided a major penalty being imposed on the appellant. On 28.07.2018 DOE conveyed his approval for imposing major penalty upon the appellant. On 30.07.2018 the removal order was conveyed by DDE Zone.

23. It is also revealed from the enquiry conducted by the E.O and the constitution of the DAC was totally violation of the DSEAR, 1973 and violation of the PNJ on the following grounds:-

1 Smt. Shashi Bala Lal is a member of DAC as well as she depose as departmental witness against the appellant.

2. Smt. Priti Rai member of disciplinary committee and also complainant and enquiry against her also pending whereas the charge sheet was issued to the principal. Smt. Priti Rai wherein the appellant is complainant.

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3. Smt. Renu Chawla Manager of R-1 is a member of the Disciplinary Committee also himself is a complainant against the appellant and she made up her mind that the appellant was guilty in her previous letter dated 21.02.2015 and 30.04.2019 before the enquiry was conducted against the appellant.

4. The appellant was not given any opportunity by the enquiry officer to lead and examine her witness and cross examined department witness which also violation of the principle of natural justice.

24. It is further contended that the appellant was not supplied the copy of the documents annexed with charge sheet, copy of the minutes of the management committee as well as copy of minutes of disciplinary committee as such adverse intence can be drawn against R-1 that the composition of the management committee as well as disciplinary committee are bad in law. Even there is delay in concluding the enquiry proceedings and there is no specific incident alleged in the memorandum of charges nor any witnesses co-relate to the documents also. The quantum of punishment proposed by the disciplinary authority for removal from service upon the appellant is already been pre-determined before any approval from the R-2 which show the enquiry officer and the DAC are perverse in finding of the enquiry report based on the statement of the respondent's own witnesses, who are the school employees and there is no independent witness was cited or examined even no opportunity was granted to the appellant to revert its which is also a violation of the DSEAR,

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provision of the constitution of India as well as the violation of CCS Rules, 1965 and PNJ. The appellant relied upon the judgments inspired to this Tribunal which are:-

1. **Appejay School Vs. Vedprakash lakhera & Ors.** [MANU/De/2974/2019]
2. **Azad Singh Vs. DTTDC in W.P. (C) No. 3850/1991**, decided on 25.11.2011, MANU/DE/6543/2011
3. **Delhi Tourism & Transportation Development Corporation Ltd. Vs. Azad Singh**, 2013 (135) DRJ 480 (DB).
4. **Anil Gulerkar Vs. Bilaspur Raipur Kshetriya Gramin Bank & Anr.** (2011) 14 SCC 379.
5. **Madho Singh Vs. M/s Super Bazar the Co-operative Store Ltd.** in LPA No. 604/2016, decided on 23.08.2017.
6. **Sarika Dabas Vs. Modern Child Public School & Anr.** in Appeal No. 38/2019, decided on 03.02.2021.
7. **Union of India Vs. M.R. Diwan & Ors.**, MANU/DE/1007/2019.

The appellant submitted brief synopsis in tabulation form which are as under:-

<b>FACTS IN BRIEF</b>		
<b>Date</b>	<b>Event</b>	<b>Page No.</b>
16.11.1990	Appointed as TGT (Social Science) <ul style="list-style-type: none"> <li>➤ Aided School</li> <li>➤ Appellant is from SC category</li> </ul>	
16.11.1991	Confirmed	
12/01/2007 02/02/2009 30/06/2015 04/11/2015 06/11/2015	Complaints made by the Appellant against school employees pertaining to:- <ul style="list-style-type: none"> <li>➤ Discrimination on the ground of appellant being a Scheduled Caste candidate.</li> <li>➤ Corruption and illegal collection of money</li> </ul>	12  50

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29/04/2011	Promoted on the post of PGT (Political Science)	
06/04/2015	Smt. Priti Rai, Principal, made a complaint to the Manager against the Appellant on various allegations including using foul and abusive language, shouting, etc.	98  List of documents supplied along with the charge sheet
23/11/2015	Show Cause Notice was issued to the appellant	100  List of documents supplied along with the charge sheet
29/12/2015	Appellant replied to the show cause notice dated 23/11/2015	100  List of documents supplied along with the charge sheet
22/02/2016	Smt. Priti Rai, Principal, gave an explanation to the Education Minister, Directorate of Education. In the said reply, the Principle submitted that she is	99  List of documents supplied along with the charge sheet

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	innocent and the Appellant was guilty of making false complaints.	sheet
29/08/2016	DOE directed the School to initiate disciplinary proceeding against Smt. Priti Rai, Principal, on account of making illegal demand of fees from the parents of the students for giving admission and also for promoting the students who failed in the examination.	86
07/12/2016	<p><u>Charge sheet</u></p> <p>➤ 5 Allegations</p> <ol style="list-style-type: none"> <li>i. Willfully neglecting the duties</li> <li>ii. Making false allegations against the Chairman, Manager, etc.</li> <li>iii. Showing disrespect to be constituted authority</li> <li>iv. Behaving in a rowdy and disorderly manner</li> <li>v. Propagating communal and Sectarian outlook</li> </ol>	87 - 101

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	There was a list of 59 documents which were to be supplied to the Appellant along with the Charge Sheet. It is submitted that not even a single document was supplied to the appellant along with the Charge Sheet.	
15/12/2016	The appellant requested the Chairman to supply the 59 documents which were in the list of documents.	102
19/12/2016	The school rejected the request of the appellant for supplying 59 documents and directed the appellant to give reply to the charge sheet without the documents.	104
22/12/2016	The Appellant replied to the Charge Sheet	106
29/12/2016	Sh. K. C. Arora was appointed as an Enquiry Officer	111
03.05.2017	Presenting Officer completed his evidence and declared that he does not want to examine any other witness	205

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09.05.2017	Defence Statement	220
27/07/2017	<p><u>Enquiry report (against the Appellant)</u></p> <p>➤ Charge number 1 and 2 were partially proved</p> <p>➤ Charge number 3, 4 and 5 were fully proved</p> <p><u>Witnesses</u></p> <ol style="list-style-type: none"> <li>1. Mrs. Asha Kharbanda – Vice Principal - 157</li> <li>2. Mrs. Shashi Lal (PGT Maths) – 159</li> <li>3. Sh. Surya Bhan Pandey, Retired PGT Hindi – 164</li> <li>4. Mrs. Reena Baweja - 178</li> <li>5. Mrs. Rohini Rampal – 181</li> <li>6. Mrs. Meenakshi Sethi PGT (History) – 207</li> <li>7. Mrs. Sunita Singh – TGT (Drawing) - 209</li> </ol>	365 - 388
31/08/2017	<p><u>Meeting of Disciplinary Authority was convened</u></p> <p>➤ Decided to supply a copy of the Enquiry Report to the Appellant</p> <p>➤ Decided that major penalty of</p>	389 - 393

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	Dismissal from Service be imposed upon the Appellant	
	<ul style="list-style-type: none"> <li>i. Vaneet Makkar – Chairman</li> <li>ii. Mrs. Renu Chawla – Manager</li> <li>iii. Lakshmi Chand – DE's Nominee</li> <li>iv. Mrs. Priti Rai – Principal</li> <li>v. Shashi Bala Lal – Teacher's Representative</li> </ul>	
15/09/2017	The Appellant made submissions with respect to the findings of the Enquiry Officer.	
28/07/2018	DOE conveyed to the School its approval for imposing the penalty of removal from service.	
30.07.2018	Removal Order	43
05/10/2018	Appeal before the Delhi School Tribunal was filed.	

**Submissions**

S. No.	Submission	Supporting Document	Supporting Judgment

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1.	<u>Violation of Rule 118</u> Smt. Shashi Bala Lal was a member of the DAC. Presenting Officer's witness and deposed against the Appellant	389 – Minutes of DAC meeting held on 31.08.2017 159 – MW 2	Appejay School Vs. ved Prakash Lakhera & Ors. [MANU/DE/2974/2019]
2.	<u>Violation of Rule 118</u> Smt. Priti Rai, Principal, was member of the Disciplinary Committee Complainant Even Disciplinary enquiry was pending against Smt. Priti Rai when charge sheet was issued to the Principal	389 – Minutes of DAC meeting held on 31.08.2017 98 - List of documents supplied along with the charge sheet	Appejay School Vs. ved Prakash Lakhera & Ors. [MANU/DE/2974/2019]
3.	<u>Violation of Rule 118</u> Mrs Renu Chawla, Manager, was member of the Disciplinary Committee Complainant	389 – Minutes of DAC meeting held on 31.08.2017 98 - List of documents	Appejay School Vs. ved Prakash Lakhera & Ors. [MANU/DE/2974/2019]

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		supplied along with the charge sheet	
4.	No opportunity was given by the enquiry officer to the appellant to lead and examine her witnesses.	205 - Presenting Officer informed that he does not want to present any other witness and closed his case. The Enquiry Officer directed the charged officer to file her defence statement. No opportunity to lead evidence was given  183 - Dated 09.05.2017 - defence statement was filed.	Azad Singh Vs. DTTDC  WPC No. 3850/1991  DOD = 25.11.2011  (MANU/DE/6543/2011)  An express opportunity to lead evidence is to be given by the enquiry officer to the charge officer and the absence of the same vitiates the enquiry
5.	Violation of rule 14 (18) of the CCS Rules, 1965		Delhi Tourism & Transportation Development

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			Corporation Ltd. Vs. Azad Singh,  2013 (135) DRJ 480 (DB)
6.	The right of the appellant to give effective reply to the charge sheet was violated. The appellant, despite request, was not supplied the documents which were in the list of documents.	Pg. 87- Charge sheet  Pg. 102 – Request letter by the appellant to the chairman to supply the documents  Pg. 104- letter dated 19.12.2016 whereby the request of the appellant was rejected	Anil Gulerkar Vs. Bilaspur Raipur Kshetriya Gramin Bank & Anr.  (2011) 14 SCC 379
7.	Vide letter dated 31/08/2017, the appellant was supplied a copy of the Enquiry Report for her comments. In the said letter itself, the Disciplinary Authority proposed the Penalty of Removal from service upon the Appellant.	Pg. 389- Minutes of the meeting of the Disciplinary Authority dated 31.08.2017	Madho Singh Vs. M/s Super Bazar the Co- operative Store Ltd. in LPA No. 604/2016, decided on 23.08.2017

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	Therefore, demanding the comments of the appellant upon the findings of the Enquiry Officer, was merely a formality.		
8.	Despite repeated request, the minutes of the Managing Committee as well as Disciplinary Committee were not supplied to the appellant. Therefore, an adverse inference is to be drawn against the respondent school that the composition of the managing committee as well as disciplinary committee was bad in law.	Pg. 185-187 – request letter dated 03.02.2017 by the appellant  Pg. 212 –request letter dated 10.03.2017	Sarika Dabas Vs. Modern Child Public School & Anr.  Appeal No. 38/2019, decided on 03.02.2021  Para 114, 115
9.	Delay of more than 1 year in concluding the proceeding		Union of India Vs. M.R. Diwan & Ors., MANU/DE/1007/2019
10.	Vague charge sheet - no specific incident was specified in the charge sheet.		Anil Gulerkar Vs. Bilaspur Raipur Kshetriya Gramin Bank & Anr.  (2011) 14 SCC 379

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11.	The appellant was directed to cross examine the witnesses on the same day when they are examination in Chief was recorded. This resulted in violation of the principles of natural Justice.	148 Enquiry proceeding dated 27.03.2017	
12.	Enquiry against Smt. Priti Rai, Principal, was pending. Said enquiry was conducted on the complaint made by the Appellant. Until and unless Smt. Priti Rai was declared innocent in the said enquiry, it could not have been presumed that the complaint made by the appellant against Smt. Priti Rai was false.		
13.	Findings of the enquiry officer were perverse findings of the enquiry officer are based on the statements of the witnesses. It is submitted that the witnesses of the presenting		

	officer were those against whom the appellant had made specific complaints.		
14.	Quantum of punishment is shockingly disproportionate		

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25. It is an establish principle of law that the disciplinary authority is a primary authority and Tribunal/Court should not reweight the material on record and scrutinize the record of the Disciplinary authority in the matter absolutely acted in accordance with law and PNJ. The appellant participated in the enquiry proceedings she was not allowed to cross examine the departmental witness. After completion of the enquiry proceedings, the appellant is playing as a victim she is not allowed to lead defence evidence. She went on spree of lodging complaint against the respondent no. 1 official member of DAC etc. she harassed by the principal, M.C & D.A.C and E.O and the enquiry reveal her attitude and behavior. The appellant always made of harassment in the garb of SC/ST Act by alleging complaint made against the principal and fellow teachers with bald allegations. Appellant did not care a whiff about her duty as a teacher instead she desire to work as a whistle blower by doing complaints. The management of the school from her conduct and behavior cause to disturbed the academic environment. The appellant always question the manager power to issue her memo. The principal of the school was nothing to her, all these resulted in disciplinary proceedings against appellant and directions of the competent authority dated 29.08.2016 On 07.12.2016 Memorandum was issued with the charge of neglecting her duties making false allegations against the Chairman, Principal etc. which cause damaging the reputation, communal and secretarial outlook, appellant filed the response to the charge sheet and did not spare even the E.O. She did not allow to cross-examine or lead any defence evidence.

26. It is alleged by R-1 that the constitution of DAC was perfectly in consonance with the Rule 118 of DSER, 1973. Mrs. Renu Chawla Manager

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for the school had nothing against the appellant, the entire school had grievances against the appellant. There was no staff of the school against her; the manager was already retired. After which she was appointed as the manager of the school. Sh. Vaneet Makkar was nominated as the Chairman of the school and not was nominee of the School. Shashi Bala Lal was examined as departmental witness even her statement was ignored and charged against her was proved.

The respondent school contended that the appeal is without any cause of action as the appellant is not come with clean hands. The DAC was constituted as per the provision. The approval is also obtained from the competent authority, there is no violation of the principle of natural justice. R-2 performing its duty honestly in terms of the passing enquiry order on a complaint received without favouring anyone. The appeal is liable to be dismissed as same is not sustained in the eye of the law.

27. Keeping in view of the rival contention and the judgment cited, it is a matter of facts that the K.C Arora was appointed as an enquiry officer on 29.12.2016. The charge sheet was supplied on 07.12.2016 which was received on 07.01.2017 by the E.O and matter fixed for preliminary hearing at 12:00 noon in school premises. In the said letter, it was simplicity that the charge officer herself defend personally or may appoint any person as her defence assistant provided that the defence assistant should not practicing lawyers because the E.O and the presenting officer are not a practicing lawyer thereafter the regular enquiry was held on 16.01.2017, 25.01.2017, 01.02.2017, 08.2.2017, 21.20147. 07.02.2017 08.13.2017 19.3.2017 07.04.2017 and on 12.04.2017 when the charged officer filed her defence

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statement. Thereafter the presenting officer submitted the enquiry report on 09.05.2017. The charged officer also submitted her defence statement on 22.05.2017. In order to corroborate/refute the contention of the appellant, the enquiry proceedings has to be look into minutely as to consider whether the PNJ has been strictly follows in order to comply the doctrine of "Audi alteram partem Nemo judex in causa sua. Though the respondent counsel while addressing the arguments has alleged that the court or the tribunal has not required to re-appreciate the material placed on record including the evidence by the parties. However this contention is to be look into with the aspect of whether the fair proceedings have been conducted by the E.O by giving an equal opportunity to both the parties without any biasness and fair-play.

28. It is further contended by R-1 that the complaints lodged by the appellant with the Director of Education against the entire Management of the School and almost all the staff members, the appeal is against co-teachers Shikha Sharma and Manju Sharma for using caste-related words against her. This complaint containing corruption allegations against the members of the Management. The Principal of the School is referred to as the puppet, in her complaint dated 4-11-2015 lodged with the SC/ST Commission.

29. The memorandum dated 7-12-2016 was issued to the appellant in the backdrop of her allegations and reply to the memos. Article of charge are with the statement of imputation of other charges. She was assured to supply copy of documents as soon as she replied to the memo of charges. Then she submitted her short reply. It is also alleged that the DAC was

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constituted in accordance with law. The Inquiry report and the documents filed in the course of the proceedings shows that the appellant reluctant to participate in the enquiry proceedings and instead tried to delay and derail the inquiry. Statements of witnesses were recorded but she refused to cross-examine them. Since no time was given to prepare her for cross examination to her defence assistant. A bare reading of enquiry report which would alleged that some charges were partly proved, upon which tentative view was taken by the DAC to which she submitted her reply. The inquiry proceedings clearly reveal that at no stage of enquiry proceedings principle of natural justice were strictly complied with. She expressed her intent but same was by-pass during the enquiry proceedings. The charges were not clear filed with specific date and event. The appellant had complaints against delay inquiry proceedings but same was not dealt with, in order with law. It is matter of fact that her real sister is working in the same school and like her she is also an SC but she did not raise any complaint against the school.

30. The appellant has cited judgment of the Delhi High Court in ***W.P.(C) 1929/17, Apeejay School Vs Ved Prakash Lakhera*** to impress the point that a person cannot be a judge as well as witness. This is true. However, so far as the facts of the present case are concerned, even if the statement of witnesses is ignored, the charges are to be prove on the mere complaints lodged by appellant, her reply to the charges and her written brief. She did not allow to cross-examine any witness for department. She participated in the enquiry proceedings. Reliance on judgment in LPA 604/2016 is absolutely misplaced. The respondent was not only given the

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enquiry report but also the deliberations of the D.A.C dated 31-8-2017 to which she submitted her denial defence statement.

31. It is contended by the respondent school that evidence of misconduct while they comply the burden of paper upon the purpose against the appellant are overwhelming effect. There are no violation of the principles of natural justice, as fair proceedings has been conducted which approve by DAC and approval was obtained from the DOE as per statutory provision. The appellant alleged that the lodging complaints against the official of DAC and official of Management Committee which would be evident from her letter dated 10-03-2012, her statement of defence and her submissions dated 15-09-2017 against the minutes of meeting of the DAC. In fact, in all these documents she has justified her act of charges issues against the management of the School. Her complaints before various authorities are the based on the charges framed against appellant and those complaints were attached with article of charges and memos etc.

As per the statutory requirement laid down in Rule 118 of DSEAR 1973, which reproduce 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 proceedings 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;*

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v) A teacher who is a member of the managing committee of the school, nominated by the Chairman of such managing committee.”

32. In the instant case it is reveal from the record that Smt. Priti Rai, Principal of the respondent no. 1 is the member of disciplinary authority, who has also made complaint against the appellant with respect to the allegations on the basis of which charge sheet was issued to the appellant. It is also matter of record that Smt. Renu Chawla, Manager of the respondent no. 1 is also member of the disciplinary authority constituted for conducting an inquiry against the appellant. Smt. Renu Chawla, Manager of the respondent no. 1 had made complaint against the appellant vide previous letter dated 21.02.2015 and 30.04.2009 and had also declare the appellant was guilty of misbehavior etc. i.e. allegations on which the part charge sheet was issued. It is also revealed from the document as placed on record the charge sheet was not issued by disciplinary authority and the show cause notice dated 23.11.2015 too.

1) In case of **Perimal Kumar Dutta Vs. APJ School and Ors. MANU/DE/1216/2010:2010 VI AD (Delhi) 620** it was observed that :-

*“ when the Principal herself has given in writing that she would not be participating when there would be discussion of the disciplinary authority with regard to delinquent employee, there is no violation of principles of natural justice and the doctrine of bias is not attracted.”*

As per the provision if Rule 118 of DSEAR 1973, sub clause (IV) 'Head of the school' to be a member of the disciplinary committee who happened to be a 'principal' of the school in this case and the requirement of the said statute could be evaded and at the same time she is

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witness/complainant in respect of the charges were made to her. Thus, the doctrine of necessity had to be invoke which is exceptional to the principle of the bias. Besides, the Principal has given a statement before the charge sheet was issued and also affirm on oath in his examination before the inquiry officer.

*“Since I am in the witness in this inquiry so I will not participate in the decision making process after receipt of the inquiry report from the inquiry officer in the interest of justice. I have already involved in the proceedings”.*

In her defence come above, as illustrated, wherein however when the order was passed by the disciplinary authority she was not part of the disciplinary committee which pass the impugned order against the appellant. Then, there does not arise the question of applicability of the principle of no one being a judge in his own cause and of an issue likelihood of bias effecting the orders passed by the disciplinary authority. //

33. With regard to the doctrine of necessity, division bench of Apex Court in Case of the **Management Committee Vidya Bawan Mahvidyala Vs. Director of Education and Ors. MANU / DE/ 4166/2006 : ILR (2006) I Delhi 403** The appellant raised a plea to violation of principle of natural justice since the complainant and the head of the school themselves are the member of the disciplinary committee, necessarily violation of principle of natural justice, necessarily issued plea relating to bias, the appellant raise plea, three member of disciplinary committee that is the principal, teachers' representative and manager who are also the witness of the

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inquiry proceedings, vitiate the impugned order due to violation of principle of natural justice and doctrine of necessity does not applicable.

34. The Disciplinary Action Committee was constituted under Rule 118 of DSER, 1973 with the following members:-

1. Mr. Vaneet Makkar : Chairman
2. Mrs. Renu Chawla : Manager --- Witness of enquiry proceedings
3. Mr. Lakhmi Chand : DOE's Nominee – Retire Principal on extension though require to be EO/DEO.
4. Mrs. Priti Rai : Principal – Witness of enquiry proceedings
5. Mrs. Shashi Bala Lal : Teacher's Representative – Witness of enquiry proceedings

In case of **Ratan Lal Sharma Vs. Managing Committee, Dr. Hariram (Co- Education\_) High Secondary School &Ors. (MANU/SC/0329/1993 :AIR 1993 S (2155)**, the Hon'ble Supreme Court has held that "non one can be a judge in his own cause and in **Ramesh Ahluwalia Vs. State of Punjab &Ors. MANU /SC/0865/2012: (2013 (40 SLR 63 (SC)** held that were principal of the school was a member of the disciplinary committee and a witness of the management, the order passed by the disciplinary committee removing the delinquent employee from service cannot be sustained on this short ground."

35. It is also a matter of fact that appellant made a complaint against the Principal to the respondent no. 2 regarding illegal demand of fee and donations and promoting students after taking money and as well as also appointed Parveen Kumar Pandey as Librarian by unfair means, regularization of the temporary teacher to the permanent post by unfair means vide dated 29.07.2016 to the Deputy Director of Education who

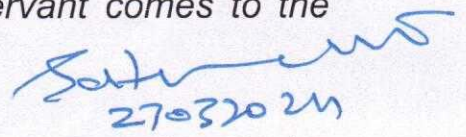
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directed the respondent no. 1 school to initiate disciplinary proceedings against Smt. Priti Rai on the complaint made by the appellant. Though in the instant inquiry proceedings Smt. Priti Rai is also a complainant as well as the member of the disciplinary committee which is contrary to the rules; provisions as well as the above refer judgment.

36. The appellant was not given an opportunity to lead her defence evidence. The appellant have also alleged that she has a proof of illegal transactions in a CD prepared by her which is submitted during the inquiry proceedings along with the defence statement but same was also not considered. The appellant has relied on judgment of **Azad Singh Vs. Delhi Tourism and Transportation Development corporation Ltd. W.P. (C ) 3850 of 1991 decided on 25.11.2011** wherein It was observed in para no. 9 and 10:

*9. Since nothing could be seen from the record if any opportunity to lead evidence was afforded to the petitioner by the Enquiry officer, it was pointed to the learned counsel for the respondent in the court proceedings on 06<sup>th</sup> December, 2006. To this, he submitted that the petitioner did not ask for any opportunity to lead evidence and therefore, he could not get any chance to produce his evidence. With this kind of state of affairs and the submissions coming from the respondent, there remains no doubt to conclude that no effective opportunity of hearing in the proceedings to lead defence evidence was afforded by the Enquiry officer to the petitioner. The plea of the respondent that no request was made by the petitioner for leading any evidence in defence was not only untenable but also contrary to the principles of natural justice.*

*In the case titled **State of Bombay Vs. Gajanan Mahadev Badley MANU/ MH/0101/1954: AIR 1954 Bom 351**, similar question arose wherein it was held that if the court believes that reasonable opportunity was not given to the official in the enquiry, the impugned order must be set aside. In that case, an attempt was made to argue that it is necessary for the servant to make a grievance that he has been deprived of a certain opportunity and it is only if he makes such a grievance and that grievance has not been removed, it would be open to him to compliant in court that reasonable opportunity was not given to him. The court rightly repelled that argument and I am in entire agreement with that. If a government servant comes to the*

  
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*court and complains that his dismissal was wrongful and that reasonable opportunity was not given to him as require by the statute, it is for the department to satisfy the court that in fact, reasonable opportunity was given to him. The providing of reasonable opportunity to the servant does not depend upon the servant asking for it. It was statutory and recognized protection which was to be afforded to the petitioner by the Enquiry officer in discharges of his obligation despite the fact whether the protection is claimed or not claimed by the servant.*

*10. In view of my above finding that there was no cogent and sufficient evidence against the petitioner and that in any case, he was neither afforded effective opportunity of cross examination nor any opportunity of leading his evidence, the petitioner could be said to have been prejudiced on account of violation of principle of natural justice. Consequently, the impugned order dated 26.06.1990 is liable to be quashed and it is ordered accordingly."*

37. Sh. K.C. Arora was appointed as an inquiry officer and he directed the appellant to appear at 11:00 am on 16.01.2017 in the school premises for the purpose of conducting inquiry against her. On 16.01.2017 the appellant request for 45 days time to her defence. The appellant also made representation to the Directorate of Education on 03.02.2017 and also a representation to the inquiry officer and again on 08.02.2017. vide letter 02.03.2017 to the Chairman of the respondent no. 1 declare the allegation made by the appellant illegal and misconceive in the nature against the principal and management committee staff and directed to proceed on inquiry on day to day basis. On 09.05.2017, appellant submitted her statement of defence before the inquiry officer along with 111 documents. On 03.07.2017 the inquiry officer submitted a brief of the document as submitted by the presenting officer directed the appellant to give her reply to the presenting officer. On 15.07.2017 the appellant submitter her reply. On 27.07.2017 the inquiry officer submitted a copy of inquiry report dated 27.07.2017 to the chairman of the disciplinary action committee whereas held that charge no. 1 and 2 partially proved and article

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no. 3 to 5 were proved beyond doubt. On 31.07.2017 a meeting of disciplinary authority was conveyed to supply the copy of the inquiry report to the appellant and upon impose a major penalty for dismissal from service. The appellant made a request to supply the copy of the 59 documents at the time of supply of copy of charge sheet however submission to this effect was decline vide letter dated 19.12.2016 alleging that the list of documents annexed with charge sheet.

38. It is also revealed that the inquiry officer K.C Arora was 67 years at the time of conducting enquiry and he is above 65 years of age as of the inquiry officer which is contrary to the CCS rules read with memo issued by the DOPT and followed by DOE Govt. of NCT of Delhi. One teacher representative Shashi Bala Lal who depose as a prosecution witness in the inquiry proceedings also member of DAC. From the inquiry report it also revealed that Daya Shankar lab assistant statement was also recorded on 10.04.2017 though his name was never appeared in the list of witnesses as supply to the C.O. Similarly with respect to Meenakshi TGT who was also examine on behalf of presenting officer of Respondent no 1 management whereas she was not citing in the list of witness as cited along with charge sheet. The statement of PW Suraj Bhan Pandey Retired PGT was recorded 10.04.2017 who identify the signature on complaint and also told that staff member have told to the chairman that the appellant misbehave with staff members, which pollute the school atmosphere. There is no where alleged date, event of the incident in the deposition of witness nor said document were exhibited even its not cited in enquiry report.

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39. The article of charge no. 1 and 2 stated to be partially proved by the inquiry officer. The article 1 alleged that willful neglecting duty as a teacher being irregular and unpunctual. The 2nd article of charge contain the parts of fabricating allegations against the officer bearers and challenging their legal powers and frames of the school though these two article of charges alleged to be partly proved as per the inquiry report dated 27.07.2017, which have been considered by DAC. The inquiry officer while consider the material on record and deposition of the department witness has not found any specific dates, events with respect to the article of charge no. 1 and 2 though it is a matter of record alleged that the appellant has filed the numerous complaints against the office bearer of respondent making bald allegations. As per the procedure and the rules of law while charge either to be prove or disprove, there is no such issue in law to be charges as partly proved. The inquiry officer during his finding on the inquiry proceedings opined that:-

*“ The charge official Mrs. Anuradha Kumar filed a complaint against other teachers for the allotment of work amongst the staff members. She did not allow the students to play during the game periods. From the inquiry report it is clear that she could not file the list of defence witnesses knowing in advance that no one in the school will stand with her on all the false complaints. She kept herself busy in wasteful activities rather concentrating on her teaching job. She questioned the appointment of the teachers like Mrs. Rohini Rampal and she also questioned the promotion of Mrs. Meenakshi Sethi inspite of the facts that the SSC and DPC was constituted in accordance with Rule 96(3) of DSEAR 1973 it amounts to constant harassment for others teachers and even putting a question on the integrity of the senior officers who were the part of the SSC/ DPC nominated by the Directorate of Education. During the inquiry proceedings the contents of the CD were watched and found that this CD has been tempered and prepared by You Tube and thus it was found to be unbelievable documents which could be relied upon. She also filed complaints against the principal, against the vice principal for their promotion although the clearance was given by the department as there was no irregularity and the DPC concluded that they deserved to be promoted as per the recruitment rules. Mrs.*

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*Anuradha Kumar used the Schedule Cast remarks for harassing other staff members and thus victimized them by filing one or the other false complaints to the higher authorities.*

*In the inquiry report, it has been clearly made out that out of five charges Article of Charge-I and II are proved partially but the Article of Charge III to V are proved beyond doubt."*

40. As such the above finding of the inquiry officer which is neither based on the document as relied nor any corroborative piece of evidence as examined bring on record during the enquiry proceedings.

**2011 (14) SCC 379 Anil GilKua Vs. Bilaspur Raipur shetriya Gramin Bank and Ors.** observe in para no. 14 that :

*"This position of law has been reiterated in the present case of **Union of India Vs. Gyan chand Chattar** and in para 35 of the judgment as reported in **SCC**, this court has observed that the law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice and the charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges."*

41. It is further observed by this Tribunal that the allegations on which the charges were held to be proved or partially proved, there is no specific finding on each of the charges in consonance with the show cause notice; reply of the show cause notice, material on record; defence representations as well as the complaint lodged by the appellant against the member of the disciplinary committee or any cogent, corroborative piece of evidence, memos etc. Apart from that the official who are witnesses on behalf of the department also the member of the disciplinary action committee and Management Committee. Even though the 59 document as annexed with the list of document along with article of charges has not been supplied. The alleged witness examined are not purported in the list of witness of the department. There is no finding of

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guilt could specifically have been recorded on the basis of the specific allegations. The disciplinary authority is not constituted in accordance with the rules and regulations though time and again have violated the procedural aspect as well as the principle of the natural justice that too of the inquiry officer, who is not being qualified being an inquiry officer already overage. It is settled preposition of law that the tribunal while considering the challenges to the order passed in the disciplinary proceedings does not act as an appellate authority and does not reassess the evidence lead in the course of inquiry nor interfere on the ground basis of the material placed on the record. If the court find that the inquiry have been conducted in a fair and proper manner, the finding render therein are based on evidence, the advocacy of the are not on which the court with finding recorded in the department enquiry. It is not open to finding of the court in the inquiry unless it shown that this been considered to be perverse if no reasonable person would have reasoned, the end will as the material placed before him. Another ground on which this court find from record of disciplinary proceeding is violation of principle of natural justice. The order passed in the inquiry proceedings are based on arbitrary, mala fide and based on extraneous consultations. This preposition of law has also been reiterated by Supreme court in number of cases including. **B.C. Chaturvedi Vs. Union of India: 1995 (6) SCC 749, Union of India Vs. G. Gunayuthan: 1997 (7) SCC 463, Bank of India Vs. Degala Suryanarayana: 1999(5) SCC 762 and High Court of Judicature at Bombay Vs. Shahsi Kant S. Patil: 2001 (1) SCC 416.**

In **Kuldeep Singh Vs. Commissioner of Police & Ors. (1999) 2 SCC 10**, it is perverse and is amenable to judicial scrutiny. It is also

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submitted that the inquiry report lacks clarity, is biased and non-speaking and therefore, is contrary to law settled.

42. On perusal of the material placed on record and the evidence explain in the enquiry report as well as the finding of the disciplinary authority, it can be seen from the vivid eye that there are utter violation of the procedure aspect of the constitution of the DAC as well as the violation of the principle of the natural justice, while constitution of the disciplinary action committee wherein the complainant and the witnesses are also members. The document as per the list of documents along with charge sheet has not been supplied and the request to this effect is also vehemently denied. The witness who are department/school has only examined and there is no. of proceedings given to lead any defence witnesses as to be allow to be provided as record. Apart from that there are so many irregularities while conducting the inquiry proceeding and the DAC proceedings which is contrary to the statutory rules and regulations and the principle of the natural justice as pointed by the appellant. In these circumstances, the impugned order dated 30.07.2018 whereby penalty of removal from service was imposed upon the appellant is liable to be set aside. Accordingly same is hereby set aside, the impugned order dated 30.07.2018 which is contrary to law and procedural as well the violation of DSEAR 1973; PNJ and Constitution of India.

### **Approval for removal from the service for DOE i.e Respondent No. 2**

43. Vide order dated 28.07.2018 Deputy Director of Education (District South-East) conveyed the prior approval of the competent authority

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i.e. the Directorate of Education vide office order no. 6410/ DE dated 29.06.2018 for imposing of major penalty for removal from service which shall not be disqualification for future employment in any recognized private school in terms of the provision contained under 117 (b) (iii) of DSEAR 1973 upon Mrs. Anuradha Kumar PGT Pol Sci. as the recommendation of the DAC of school. Though, there is no approval as such to be issued by the Directorate of Education, as per the provision of DSEAR 1973, there should be prior approval from the Directorate of Education for termination, removal or reduction in rank of any employee of recognized school Vide letter dated 29.06.2018, DDE Zone only convey the alleged approval through its letter by the said letter does not attained any such approval as its finality. Mere having signature on any paper by the DOE does not ipso-facto treat as approval unless it should be in specific order to reflected that the Director of Education applying his mind like in other cases.

### **Conclusion**

44. The appellant was initially appointed as TGT (social science) on 16.11.1990. She was confirmed as TGT (Social Science) on 16.11.1991. Appellant was promoted as PGT (social science) on 29.04.2011. The present appeal no. 52/2012 was filed on 05.10.2018. More than five years time has been lapsed for dragging this proceeding which come to at fage end. Appellant alleged that she has unblemished, meritorious service record she belong to schedule caste category. At time of filing of this case her age was 52 years, she was about to attained her age of superannuation. In case of reinstatement in service, there is every

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apprehension or likelihood that the appellant will again face similar situation and also faces similar action.

45. The Supreme Court of India in **Civil appeal no. 329 of 1956** D/d 17.09.1957 **S.S. Shetty Vs. Bharat Nidhi Ltd.** Observed in para no. 19, 20, 23, 24 are that:

*"19. Even in the case of ordinary contracts between master and servant such considerations have been imported by the courts. The observations of Greer, L.J., in Sait Vs. Power Plant co. Ltd. (1936) 3 All England reporter 322, 325 are apposite in this context.*

*"This is the case of a man who had according to my view got an engagement which was to last for life or any rate for the joint lives of himself and the company, but I think for his life because I think there are authorities to the effect that if a company winds up, that is a dismissal of the servants, and they can then prove for damages and get their dividend, whatever it may happen to be. Fortunately, the company has not been wound up, but in estimating the damages, of course, the tribunal estimating them will have to take into consideration the fact that at any time after June 26, 1935, it might have appeared to the directors that they had good reasons for terminating the plaintiff's services, reasons connected with his conduct. The present value of what his salary would be for the rest of his life must also be considered, and there must also be taken into account the fact that he is a man who might at any time terminate his service by his life coming to an end, and other matters with which I need not deal.*

*20. These are similar considerations would equally be germane in the matter of the computation in terms of money of the value of the benefit of reinstatement which was awarded to the appellant in the case before us.*

*23. Having regard to the considerations detailed above it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any Tribunal or court would do under the circumstances would be to make as correct an estimate as is possible bearing of course in mind all the relevant factors pros and cons.*

*We have ourselves devoted very anxious thought to this aspect of the matter and we have come to the conclusion that having regard to all the circumstances of the case it would be reasonable to compute the benefit of reinstatement which was awarded to the appellant*

*24. We accordingly allow the appeal and set aside the decision of the Labour Appellate Tribunal of India, Lucknow as well as the award*

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*made by the Central Government Industrial Tribunal, Calcutta and award that the appellant shall recover from the respondent being the computation of the money value of the benefit of reinstatement awarded to him under the terms of the award of the Central Government Industrial Tribunal at Calcutta dated December 5, 1950. The respondent will pay the appellant's costs of this appeal as well as the proceedings before the Industrial Tribunal and the Labour Appellate Tribunal."*

46. In the resulted which the present appeal is allowed impugned order 30.07.2018 penalty of removal from service is set aside, the appellant has remain a short tenure of service to join, by that time of filing of execution petition or any other remedies to be adopted by either of parties at the time for superannuation about to be. In order to avoid any complicity needless to computation in working of the right and obligations of the parties it is hereby directed that in the circumstances about to at the age of her retirement which shall be treated as having in service till date of superannuation.

47. The respondent no. 1 be directed to pay all consequential benefit from the date of suspension till date of superannuation, to treat the appellant in service within four weeks' time. If there is delay for making the payment, the R-1 is liable to pay interest @ 6% p.a till the realization of amount.

48. The appeal no. 52/2018 stand disposed off in terms of the above along with payment of Rs. 5000/- (Rupees five thousand) as cost to the appellant.

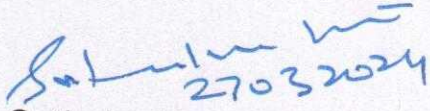
49. With respect of back wages, in view of Rule 121 of the DSEA&R, 1973 the appellant is directed to submit an exhaustive representation before the respondent school within a period of 04 weeks

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from today as to how and in what manner she is entitled to complete wages. The respondent school is directed to decide the representation to be given by the appellant within 04 weeks of receiving of the same by a speaking order and to communicate the order along with the copy of the same to the appellant. Ordered accordingly.

File be consigned to record room.

New Delhi  
27<sup>th</sup> March, 2024

  
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Dr. Satinder Kumar Gautam,  
Presiding officer,  
Delhi School Tribunal