

**(2011) 09 DEL CK 0462**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 2869 of 1994 and CM 5450, 5557, 8389 of 1994 575 of 1997 and 3052/97

Rajendra Singh

APPELLANT

Vs

Director of Education and Others

RESPONDENT

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**Date of Decision :** 05-09-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Delhi School Education Rules, 1973 — Rule 117, 118, 120

**Citation :** (2011) 09 DEL CK 0462

**Hon'ble Judges :** Dr. S. Muralidhar, J

**Bench :** Single Bench

**Advocate :** Kailash Vasdev, R.S. Hegde and Prakash Chandra, for the Appellant; Rakesh Aggarwal, for R 4 to 6 and Sangeeta Sondhi, for R 1 to 3, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S. Muralidhar, J.—The Petitioner seeks the quashing of an order dated 9th March 1994, passed by the Manager of the D.C. Arya Senior Secondary School ("the School"), Respondent No. 4 herein, compulsorily retiring the Petitioner from service under Rule 117 (b) (ii) of the Delhi School Education Rules 1973 ("DSER"). The Petitioner also seeks the quashing of a charge sheet dated 7th February 1990 and for a consequential order to reinstate the Petitioner with full back wages. The further prayer is for a direction to the School to release the amount of general provident fund ("GPF") accrued to the Petitioner.

2. The Petitioner joined Respondent No. 4 School on 20th August 1964 as Teacher Grade-II. At the time of his appointment he was a qualified graduate in Drawing. Subsequently he completed a post-graduate degree in Sociology. He claims that between 20th August 1964 and 7th February 1990, he worked satisfactorily and produced good results in the School. Copies of the commendation certificates issued to the Petitioner have been enclosed with the

writ petition.

3. On 7th February 1990 a charge sheet was issued to the Petitioner listing out nine articles of charge pertaining to acts of omission and commission by the Petitioner between 1965 and 1990. The Petitioner challenges this charge sheet on various grounds including, staleness, vagueness and mala fides of the Management Committee ("MC") of the School, in particular of the then Principal, who was arraigned as Respondent No. 6. The Petitioner in a letter dated 12th February 1990 to the Chairman of the Disciplinary Committee ("DC") objected to its constitution as not being in conformity with Rule 118 DSER. Writ Petition (Civil) No. 1679 of 1990 was filed by the Petitioner in this Court seeking the quashing of the charge sheet. However, the said writ petition was dismissed on 24 May 1990 by a Division Bench of this Court essentially on the ground that the writ petition was premature. It was observed that after the charge sheet is issued, and a regular enquiry held and if an adverse order was passed against him, then the Petitioner could file an appeal before the tribunal constituted under the Delhi School Education Act, 1973 ("DSEA"). Thereafter in July 1990, the Petitioner filed a detailed reply to the charge sheet.

4. Respondent No. 3 Mr. R.G. Gupta, who was a member of the Government Boys Senior Secondary School in Lodhi Colony, and was also the Deputy Education Officer ("DEO") of Zone-18 under which Respondent No. 4 School fell, was appointed as the Enquiry Officer ("EO"). Mr. Gupta after holding the enquiry proceedings for some time expressed his inability to continue. Consequently, on 13th September 1993, Mrs. K. Upadhyaya who happened to be the Principal of the Government Girls Senior Secondary School, Lodhi Colony was appointed as the EO. In the meanwhile, on 3rd/ 4th August 1993, Respondent No. 4 School informed the Petitioner that he was placed under suspension with effect from 3rd August 1993. On 16th August 1993, the Petitioner was informed by the School that the Directorate of Education ("DoE") had granted approval to the suspension of the Petitioner.

5. The Petitioner acknowledges that he received a letter dated 13th September 1993 from Mrs. Upadhyaya, the EO, who informed him that she had been appointed as such and required him to reach the School on 23rd September 1993 to attend the enquiry proceedings. The Petitioner states that he could not have attended the enquiry since there were orders of the Principal, Respondent No. 5, directing him not to enter the School premises. The EO again wrote to the Petitioner on 25th September 1993 asking him to attend the enquiry in the School on 27th September 1993. On 27th September 1993, the Petitioner submitted a letter dated 23rd September 1993 to the EO expressing an apprehension of bias against the EO and demanded that a person equivalent to the rank of Deputy Director of Education ("DDE") or a higher post should be appointed as the EO. A similar apprehension was expressed in another letter of the same date to the DoE.

6. The enquiry proceeded with the Petitioner not participating in it. The EO

submitted a detailed report which found the Petitioner guilty of each article of charge. The Petitioner claimed that he was not supplied with a copy of the report at that stage.

7. On 18th October 1993 the DC accepted the report of the EO and recommended that the Petitioner be awarded the major penalty of dismissal from service in terms of the Rule 117(b)(iv) DSER and that he should be disqualified from employment in any aided school. According to the Respondent No. 4 School, a copy of the report of the EO was sent to the Petitioner by Registered Post which he declined to receive. On 21st October 1993, when the Petitioner visited the School, he was again sought to be served with the show cause notice preceding the award of punishment but he refused to accept it. The Petitioner then came to the School on 26 October 1993 and delivered a letter stating that he had vacated his house and was looking for a permanent address, and correspondence may be sent at 196-D, Gautam Nagar, New Delhi. Accordingly, a copy of the show cause notice was sent at the fresh address which was received by him. However, he did not reply to the same. The Petitioner states that he in the meanwhile made representations on 26th October 1993 and 27th December 1993 regarding the appointment of a higher ranking officer as the EO. On 23rd December 1993, the DC met to consider the next course of action. Since no reply had been received from the Petitioner, it was decided to affirm the earlier decision taken on 18th October 1993 dismissing the Petitioner from service and declaring him disqualified from employment in any aided school. The DC requested the Chairman/Manager to seek the approval of the DoE. This meeting was not attended by the staff representative and the EO. By a separate letter dated 24th December 1993 the staff representative gave his approval. On 9th March 1994, Mr. R.G. Gupta, the DEO, wrote to the School conveying the approval of the DoE to the punishment of compulsory retirement, and not dismissal as proposed by the DC. It appears that thereafter the Petitioner contacted the DoE and informed him verbally that he had not received any show cause notice or copy of the enquiry report. The DoE then informed the DEO to withdraw the order dated 9th March 1994. On 11th March 1994, a letter was written by the DoE withdrawing the order dated 9th March 1994. However, by a further order dated 21st April 1994, the DoE clarified that the earlier order dated 11th March 1994 was void and restored the approval granted by the letter dated 9th March 1994. Consequently the order of compulsory retirement of the Petitioner was confirmed.

8. This Court has heard the submissions of Mr. Kailash Vasdev, learned Senior counsel appearing for the Petitioner, Mr. Rakesh Aggarwal, learned Advocate for Respondents 4 to 6 and Ms. Sangeeta Sondhi, learned Counsel for Respondents 1 to 3.

9. A preliminary objection has been taken both by the School as well as Respondents 1 to 3 that the Petitioner ought to have first approached the Delhi School Tribunal ("the Tribunal") before filing the present writ petition under

Article 226 of the Constitution. Indeed in the order dated 24th May 1990 passed by the Division Bench of this Court dismissing the Petitioner's earlier Writ Petition (Civil) No. 1679 of 1990, this Court permitted the Petitioner, if aggrieved by the result of the enquiry, to approach the Tribunal first. However, since this writ petition has been pending since 8th July 1994, this Court did not consider it expedient to relegate the Petitioner to the Tribunal after so many years. The Court proceeds to examine the submissions on merits.

10. One ground of challenge is that the entire enquiry was vitiated in law as the Petitioner was not served with any notice of the enquiry proceedings; he was denied an opportunity of participating in the enquiry. The submission is that the Petitioner intimated the School of the change of his address from Govindpuri to 39/1340, DDA Flats, Madangir, New Delhi, on 12th pril 1993. However, even prior thereto a notice of the enquiry dated 17th October 1992 was sent to the Petitioner there. It is submitted that the subsequent notices of 10th December 1992, 15th December 1992 and 28th December 1992 were also alleged to have been sent to the address at Madangir which was not yet the address of the Petitioner since he shifted there only in April 1993. The Petitioner shifted again his address in October 1993 to 196-D, Gautam Nagar, New Delhi but on 18th October 1993, a sealed envelope was sought to be served on the Petitioner at Madangir.

11. Placed on record by the School is a letter dated 17th October 1992 of Rajesh Sharma, an employee, in which it is stated that the Petitioner refused to receive the notice when it was sought to be served upon him. The Petitioner informed the notice bearer that he would meet the EO on 21st October 1992. The EO made a note of this in the proceedings on 21st October 1992. The EO also recorded in the proceedings that on that date a peon was sent to look for the Petitioner. The peon returned stating that the Petitioner had left the School without any intimation or permission from the Principal. This was around 12 noon and the school timings were up to 1.15 pm. The relevant notings in this regard have also been placed on record. On 10th December 1992 the EO issued a notice for the hearing on 15 December 1992. When the Petitioner was approached at the address at Madangir, he again refused to accept the notice stating that he would meet the EO himself. This was recorded in the proceedings on 15th December 1992. On that date, the Petitioner again did not participate in the proceedings. He was again issued a notice for the proceedings on 18 December 1992 and thereafter on 31st December 1992. He was again issued a notice of hearing on 1st May 1993. There is a noting of the teacher to the effect that the Petitioner refused to accept the notice. On 1st May 1993 the proceedings recorded the presence of the Petitioner. The proceedings read as under:

Sub: Departmental Enquiry against Sh. Rajendra Singh, Drg. Tr./TGT

Present: Sh. B.L. Singhal, Principal.

Notice was again sent to the residence of Sh. Rajendra Singh for today's hearing

and my man Sh. J.D. Malkani was also accompanied by Sh. Rajesh Sharma, teacher of D.C. Arya Sr. Section School, Lodhi Colony, New Delhi, to serve the notice on 27-04-93 at his residence, 31/14, DDA Flats, Madangir, New Delhi. Although he took the notice, but refused to give any acknowledgement as per report submitted by the above-named two persons.

Mr. Rajendra Singh came to the enquiry. Statement of Sh. B.L. Singal, Principal was recorded in his presence and he confirmed his remaining documents pertaining to him. However, he refused to participate and submitted half days leave application and left the school.

The notice of the next hearing would be sent in due course.

12. The documents on record show that every attempt was made to serve the Petitioner with the notices of the hearings of the enquiry. It does appear that the Petitioner deliberately avoided participation in the enquiry. The proceedings of the enquiry drawn up by Mr. Gupta when he was the EO have also been placed on record. A number of teaching and non-teaching staff of the School gave their statements to Mr. Gupta complaining about the unbecoming behavior and conduct of the Petitioner. It is not possible to draw a conclusion that Mr. R.G. Gupta acted mala fide or did not follow the fair procedure in conducting the enquiry proceedings. On 4 May 1993, Mr. Gupta was asked to be relieved as the EO on account of administrative reasons. On 7th May 1993, the Principal wrote to the DEO to appoint Mrs. K. Upadhyaya, the Principal of the Government Girls Senior Secondary School, Lodhi Road as the EO. Mrs. Upadhyaya immediately informed the Petitioner by a letter of her appointment as EO. On the letter dated 21st September 1993 written by her asking him to attend the enquiry, there is a handwritten endorsement of the Petitioner dated 22nd September 1993 stating that he could not enter the school premises on account of his being placed under suspension with effect from 4 August 1993. In her letter dated 25 September 1993, the EO made it clear that this was not a valid excuse since it was the MC itself which had constituted the DC which in turn had appointed her to enquire into the charges and therefore, he should now attend the enquiry on 27th September 1993. The Petitioner then raised allegations of bias against Mrs. Upadhyaya stating that she had been working under Mrs. U. Menon, Deputy Director (South), who according to the Petitioner was showing "undue interest in the matter relating to charge sheet issued against me". This clearly is a baseless allegation and was rightly ignored by the EO.

13. The record of the School in relation to the entire enquiry has been placed before the Court and has been perused. It contains the originals of the documents relied upon by the MC of the School. There is no basis to doubt the various notings made by the persons who were authorised to serve the copies of the notices and the reports on the Petitioner. There is confirmation from the Post Master, Lodhi Road that the letter dated 20th October 1993 sent to the Petitioner at the address in Madangir was in fact delivered on 21st October 1993.

14. This Court is not convinced by the submissions on behalf of the Petitioner about his not having been given a fair opportunity of participating in the enquiry. The allegations of bias made sweepingly against Mrs. Upadhyaya and Mrs. U. Menon were entirely without any basis. There was no justifiable reason for the Petitioner to stay away from the enquiry proceedings. It was not that the Petitioner was not aware of the dates of enquiry. He was finding excuses to not attend them. He cannot now be heard to complain that the enquiry was in violation of the principles of natural justice.

15. As regards the report of the enquiry itself, it is an exhaustive one which has examined every piece of evidence in great detail. While it is correct that some of the articles of charge relate back to the year 1968 and many to the year 1982, it cannot be said that they are entirely without any basis whatsoever or that the findings on these articles of charge are based on no evidence. Had the Petitioner chosen to participate in the enquiry proceedings, he could have sought to cross-examine the witnesses on behalf of the School management; he could have questioned the veracity of the documents placed on record by the School; he could have examined his own witnesses and exhibited documents to substantiate his defence. With the Petitioner choosing not to participate in the enquiry, it is difficult to doubt the sanctity of the procedure adopted in the enquiry and the conclusions arrived at by the EO. All the charges cannot be dismissed as being vague and unsubstantiated. Some of them relate to the period of 1986-87 and some even to 1989-90. In any event, in exercise of its jurisdiction under Article 226 of the Constitution, this Court is not expected to minutely examine each and every finding arrived at by the EO by re-appreciating the evidence.

16. It is submitted that the non-participation of the teacher representative in the proceedings of the DC vitiates the entire proceedings. Reliance is placed on the decision of this Court in *Managing Committee DC Arya Sr. Sec School v. Administrator, Delhi* 1996 Lab IC 1999. The original file of the case with the School has been produced before the Court. It shows that the proceedings of the DC of 18 October 1993 where the report of the EO was accepted and the major penalty of dismissal was proposed was attended by the staff representative and the minutes were signed by him. As regards the subsequent meeting of the DC held on 23rd December 1993 it was in confirmation of the decision taken on 18th October 1993. Although the staff representative was not present on that date he accorded his approval the very next day. There is therefore no merit in this objection.

17. It is submitted that the Petitioner is a victim of harassment by the management of the School. Reference is made to the fact that for grant of selection grade the Petitioner had to file CW No. 2121 of 1986 in this Court. The said writ petition came to be allowed after contest by an order dated 16th February 1987. This Court is unable to perceive any link between the said proceedings and the disciplinary proceedings which commenced nearly three years thereafter. It is not possible to hold that they were a counterblast to the

Petitioner succeeding in getting his selection grade through court proceedings.

18. The next point urged on behalf of the Petitioner has been recorded in the order dated 4th February 2010 of this Court and reads as under:

W. P. (C) No. 2869/1994

Mr. Kailash Vasudev, Senior Advocate appearing for the Petitioner at the outset has submitted that the necessary approval to the decision of the Management to compulsory retire the Petitioner was not accorded by the Director of Education in terms of Rule 120 of the Delhi School Education Rules. Counsel has drawn attention of this Court to the letter dated 09.03.1994 whereby the said approval was conveyed by one Mr. R.G. Tupta (sic "Gupta"), the then Deputy Education Officer, to the Chairman of the D.C. Arya Senior Secondary School but just after a gap of two days the same very officer conveyed to the Chairman of the School that the said letter according approval stands withdrawn due to some procedural deficiencies. Again the same very officer vide letter dated 21.04.1994 wrote back to the Chairman of the School not to give any cognizance to the letter dated 11.3.1994 and the same be treated as null void. Ms. Meenakshi, counsel appearing for the Respondent Nos. 1 to 3 submits that Mr. R.G. Gupta was not the competent authority to have withdrawn the said approval which was granted by the Director Education. If that is the situation then let the counsel on instructions explain as to whether any action against the said officer was taken by the Director of Education or not. Let an affidavit in this regard be filed by the Respondent Nos. 1 to 3 within a period of two weeks.

19. Pursuant to the above order, an affidavit has been filed by Mrs. Anita Setia, Deputy Director of Education, on 11th March 2010 placing on record the fact of the approval granted by the DoE regarding the withdrawal and restoration of the approval of the award of major penalty. However, since the documents enclosed with this affidavit were incomplete this Court asked to be shown the original file. The file of the DoE contains a detailed note dated 3 January 1994 prepared by Mr. R.G. Gupta on the case without expressing any opinion of his own. The matter was then placed before the DoE, Mr. Shakti Sinha who then decided to place it before the OSD who prepared a very detailed note dated 7th February 1994 raising certain queries. Mr. Gupta then prepared a further detailed note on 9th February 1994. The ALA then prepared a note on 17th February 1994 in which he proposed alternative courses of action. It is not, therefore, that Mr. R.G. Gupta himself has played any role in causing the ultimate decision of the DoE regarding the penalty to be imposed. It is apparent that the DoE did concur with the proposal for imposing the penalty of compulsory retirement. Accordingly, on 9th March 1994 the approval was communicated to the School. There is a noting of 11th March 1994 of Mr. R.G. Gupta referring to a telephonic message received from the DoE asking him to withdraw the approval granted on 9th March 1994 regarding the award of major penalty. There is also a separate noting of DoE enquiring whether the legal requirement of having to furnish a copy of the enquiry report to the Petitioner, giving him a notice about the proposed action

and calling upon him to submit his response was complied with. On 16th March 1994 there is a noting to the effect that there were two registered letters sent to the charged official and the postal authorities had given a certificate confirming service of the said notices. This Court has also examined the documents placed on record including the certificate issued by the postal authorities.

20. The sequence of events as can be reconstructed from the notings on the file of the DoE is that after detailed deliberations, the Chairman of the School was informed on 9th March 1994 that the DoE had granted approval to the imposition of the penalty of compulsory retirement under Rule 117 (b) (ii) DSER. Then came the telephonic conversation between the DoE and Mr. Gupta which was as a result of the verbal representation made by the Petitioner. This led to the letter dated 11th March 1994 written by the DoE to the School stating that the earlier letter stood withdrawn. The School then made a detailed representation on 24 March 1994 pointing out that there was no provision in law to withdraw an approval already granted. This was, in fact, the correct legal position. The matter was then once again examined exhaustively. The file went up to the Minister of Education. The noting on file is that he was of the view: "let the justice takes its course". The DoE was informed that the steps of furnishing the Petitioner with a copy of the enquiry report and providing him an opportunity to represent against the proposed action had indeed been taken. Accordingly, it was finally concluded that the punishment of compulsory retirement would stand. It was on this basis that on 21st pril 1994 a letter was written to the School stating that the earlier approval granted on 19th pril 1993 will stand and the subsequent letter dated 11th March 1994 stood withdrawn. The confusion created by the withdrawal of the approval on 11th March 1994 was avoidable. Clearly, it was without the authority of law. The detailed notings on file make it clear that the procedure followed was in accordance with law. It was out of abundant caution that the letter dated 11th March 1994, followed by the further letter dated 21th April 1994, came to be issued. Consequently, even as regards the imposition of major penalty of compulsory retirement on the Petitioner, the procedure in accordance with law has been duly followed.

21. Consequently, this Court is satisfied that there is no merit in the contentions of the Petitioner about any procedural irregularity or illegality having been committed in the conduct of the enquiry proceedings or the award of punishment to the Petitioner. As regards the non-payment of the PF dues there is a dispute as to whether the Petitioner refused it when offered. Be that as it may, if there are still any PF dues owing to the Petitioner then the DoE should help him to recover the same in accordance with law if he makes a request in that regard.

22. The writ petition is dismissed, but in the circumstances, with no order as to costs. All pending applications are disposed of.