

(2009) 09 DEL CK 0423**Delhi High Court****Case No:** OMP No. 267 of 2006

Dr. Ram Avtar Sharma

APPELLANT

Vs

Maharaja Agrasen College

RESPONDENT

Date of Decision: Sept. 4, 2009**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 34
- Specific Relief Act, 1963 - Section 21

Citation: (2010) 1 ILR Delhi 556

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: Prem Kumar, for the Appellant; Raman Kapur and Munish Kumar and Amit Kumar, for the Respondent

Final Decision: Dismissed

Judgement

Shiv Narayan Dhingra, J.

By this petition u/s 34 of the Arbitration & Conciliation Act, 1996 the petitioner has assailed an award dated 21st April, 2006 passed by an Appeal Committee, constituted by the Vice President of India acting in his capacity as Chancellor, Delhi University under Ordinance XII Clause 9(i) University Calendar. The Appeal Committee consisted of three members.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner was working as Principal of Maharaja Agrasen College, Delhi. The Governing Body found various irregularities and misconducts having been done by the Principal/Petitioner and he was given a charge-sheet of 23 charges. Inquiry was initiated against the petitioner. The Inquiry was assigned to a retired Judge of High Court of Delhi. The Inquiry Report submitted by the retired Judge held that 22 out of 23 charges against the petitioner were not proved. 23rd charge had various sub-heads consisting of 177 charges. The Presenting Officer of College pressed only

69 charges. Of these 69 charges, the Enquiry Officer gave a finding that 28 charges were not proved and of the remaining 41 charges, the Enquiry Officer found as under:

17 charges were found proved to the extent that Open Tender Inquiry was essential to make those purchases referred to in these charges or to have the civil works executed, as referred to in these charges but they were not advertised. In fact, with respect to Charge 3.5.4, it is noted that there was no open tender inquiry and also the limited quotations called were only a showpiece.

9 cases were found proved to the extent that the purchases were made or civil works ordered, without calling for any quotation whatsoever.

In 15 cases of purchases / orders for civil works quotations were called but not at all considered. Purchase was made or civil work was got done even before the quotations were opened for consideration. The Inquiry Authority observed that Quotations were introduced as a showpiece or hoax as a cover up.

3. The Inquiry Officer proposed a penalty of removal/dismissal of the petitioner from the service and the petitioner was removed from service. The petitioner assailed his removal from service by the Management Committee on the basis of Inquiry Report. Under Ordinance XII of University Calendar an Appeal Committee was constituted by the Chancellor. Before the Appeal Committee, the petitioner had taken almost the same stand which the petitioner had taken before this Court for challenging the award of the Appeal Committee. The Appeal Committee after considering various contentions of the petitioner at length had come to the conclusion that the charges against the petitioner in case of 41 sub heads were rightly held proved. on the basis of evidence and material before the Inquiry Officer and the punishment awarded was in consonance with the conduct of the petitioner.

4. The petitioner has assailed the award of the Appeal Committee on following grounds:

i) The Inquiry was vitiated since it was not made clear to the petitioner as to under which Rule/Ordinance enquiry was being conducted and action proposed was to be taken. Thus, there was violation of rules of natural justice.

ii) The petitioner was not made clear whether CCS (CCA) Conduct Rules applied to the petitioner or not.

iii) The charges framed against the petitioner were vague in nature and did not contain necessary material particulars with the result that the petitioner did not know what charges he had to meet.

iv) The case proved against the petitioner during Inquiry was of procedural irregularities and not of illegalities therefore, major penalty of removal of service was not desirable and only a minor penalty could have been given to the petitioner.

v) The Inquiry Report as accepted by the Governing Body show that college had not been put to any loss on account of purchases made under the charge- sheet and there was no mala fide proved on the part of the petitioner. The quality of material procured was not found to be inferior or excess of the actual requirement. Thus, the acts of the petitioner were bona fide and in the overall interest of the college. Removal of petitioner from the post of Principal on the basis of Inquiry Report was unwarranted.

vi) Fact Finding Committee Report, a basis of initiating Inquiry, was not supplied to the petitioner.

vii) It was the function of Purchase Committee to observe due procedure in the purchases to be made for the college. The petitioner being Principal could not be held solely responsible for the acts and deeds of the Purchase Committee. It is the members of the Purchase Committee who should have made their conduct clear rather than the petitioner.

viii) It was the Purchase Committee who was to issue Urgency Certificate and not the Principal as is the conclusion arrived at by the Inquiry Officer and the Appeal Committee.

ix) There was no charge framed against the petitioner of having committed financial irregularity therefore, the petitioner cannot be said to have committed any misconduct.

x) The Inquiry Report despite holding of 41 sub charges proved under Charge No. 3, against the petitioner, did not say that the petitioner had violated the provisions of General Financial Rules.

xi) Charge No. 3 as framed against the petitioner was very vague and silent as to which rules, procedures and regulations prevalent in University of Delhi were violated by the petitioner. There was no mention of General Financial Rules in Charge No. 3, the Inquiry Authority therefore could not return a finding under sub-heads of Charge No. 3 of 41 charges having been proved.

xii) There were many defects and anomalies in the Charges regarding amounts, dates and parties and there was no co-relation between the charges and documents supplied. The Inquiry was therefore vitiated for vagueness of charges. The Appeal Committee ignored the fact that the charge-sheet was defective. The Appeal Committee failed to consider the defects in the charge-sheet and rather skirted the issue by placing the burden on petitioner to show if such defects had led to any prejudice or wrong proving of charges.

xiii) The Appeal Committee ignored the fact that Ordinance XII of the University Calendar was not applicable in case of the petitioner and Ordinance XVIII was applicable in this case. Ordinance XVIII specifically provided that the engagement of the Principal may be determined by the Governing Body for Misconduct, but shall

not be determined except for Good Cause. The Governing Body ignored these two basic ingredients of Ordinance XVIII and the Appeal Committee also ignored this. There was no adequate or proper reason justifying removal of the petitioner from the post of Principal.

xiv) The Appeal Committee as well as Inquiry Officer acted contrary to Delhi University Act 1922. Under Delhi University Act, it is the Vice Chancellor, being the Principal Executive and Academic Officer of the University and ex officio Chairman of the Executive Council, the Academic Council and the Finance Committee, who has a duty to see that Ordinance or Regulations were duly observed and it is the Vice Chancellor who can take the actions against the Principal. The petitioner was wrongly dealt under Ordinance XII. The petitioner was required to be dealt under Ordinance XVIII which provided colleges other than those maintained by Government of India, since Maharaja Agrasen College was not maintained by Government of India, only Ordinance XVIII would have been applicable and not Ordinance XII. No power of suspension or termination vested in the Governing Body of College under Ordinance XVIII.

xv) The Governing Body could appoint Principal subject to approval of Executive Council under Ordinance XVIII thus, as a corollary, Principal could be removed only with the approval of Executive Council and Governing Body had no power to terminate the services of Principal on its own.

xvi) The Appeal Committee fell in grave error of misconducting itself and not considering fundamental issue whether the provisions of General Financial Rules had been adopted by University of Delhi or not.

xvii) Reliance on Circular No. F-DE-27(45)96-97/CB/Edn./1438-49 dated 06.06.1997 issued by Government of NCT of Delhi putting responsibilities on the college Principal of strictly observing codal formalities, abiding of provisions of the General Financial Rules as the term and condition of the grant and the direction/advice of the Delhi Government regarding utilizing the grant was wrongly relied upon by the Appeal Committee to the prejudice of the petitioner resulting in grave injustice to the petitioner. There was no legal sanction of such a circular. Since, it was not held that the petitioner had acted for personal gains or caused financial loss to the institution, non-observance of Financial Rules cannot be construed as a misconduct.

xviii) The contravention of the provisions of General Financial Rules could not be the basis of holding the petitioner guilty of misconduct. The General Financial Rules were never treated as part of service conditions of petitioner, any infraction of provisions of General Financial Rules cannot attract misconduct. Delhi University was an autonomous institution and no rules of Government of India were applicable to Delhi University and its affiliated college. General Financial Rules could not be imposed on Maharaj Agrasen College Society. The College had its own purchase procedure which was duly accepted by the Governing Body.

xix) The Appeal Committee acted in a hyper technical and legalistic manner. Since no loss to the college or misutilization of funds was proved against the petition the irregularities in following procedure could not be construed as misconduct. Moreover, the petitioner was only one of the signatories to the issuance of cheques the other signatories were Bursar of the College.

xx) There was no specific evidence about undue influence on record as was observed by Inquiry Authority. The Principal could not be held responsible for Open Tender Inquiry and it was the responsibility of Section Officer (Accounts), the technical error, if any, was due to negligence of SO (Accounts) and Bursar. The petitioner could not be held responsible for the same. The Appeal Committee ignored this fact and also ignored that SO (Accounts), who was the custodian of record and had tampered with the records by putting false and imaginary dates to save his own skin.

xxi) The Appeal Committee could not have ignored the fact that Principal had to be guided by SO (Accounts) and Bursar and the petitioner could not be penalized by passing on buck to him for acts/omissions of SO (Accounts)/Bursar.

xxii) The Enquiry Committee went wrong in observing that there had been repeated and persistent deviations and omissions in complying with the rules. The Inquiry Committee took totally disproportionate view of the punishment imposed on the petitioner by holding the removal of the petitioner.

xxiii) The Vice Chancellor accorded his approval to the removal of the petitioner as Principal without defining the misconduct which was the central issue. There was non application of mind by the Vice Chancellor, who misconstrued infraction of procedural rules as misconduct without defining as to what constitutes misconduct.

xxiv) The award was vitiated being against the Public Policy of India and the law of service juris prudence as applicable in India.

5. In order to consider the various grounds taken by the petitioner for challenging the award of the Appeal Committee it would be necessary to see what charges were proved against the petitioner in Inquiry. In brief, the various sub-heads of the charges and the holding of the Inquiry Committee are as under:

Charge No. 3.3.3 This charge was regarding construction of class room by M/s Bhardwaj and Associates on a price of Rs. 1,18,108/- . The accusation against the petitioner was that no quotations were called for, Building Committee was not involved in ordering this work to the firm and there was no approval of the Governing Body of the College. The Inquiry Committee held that the said charge was proved against the petitioner as the requirement for calling up for tender/quotations even by way of limited inquiry was not called for by the petitioner.

Charge No. 3.3.7

This charge pertains to electrical work carried out by M/s Bhardwaj and Associates for Rs. 16,335/- . The charge was that no quotations were invited for this work, the Purchase Committee was also not involved and the work was got done without the approval of the Governing Body. Also the Contractor had no experience nor was the verification of the work done. This charge was also established as quotation should have been invited and the same should have been routed through the Purchase Committee. There was an infraction of financial procedure of purchase.

Charge No. 3.4.1

This charge related to work of wall blackboards. Accusation in the charge was that no quotations were obtained nor any recommendation from the Building Committee was obtained and work was awarded without the approval of the Governing Body and the verification of the work was not done.

It was found that there was infraction of procedure prescribed by the Financial Rules in not calling the quotations at all. The said charge was proved to the said limited extent.

Charge No. 3.4.2

This charge pertained to civil work done by M/s Bhardwaj and Associates. The accusation was that two out of three quotations were not genuine, no verification was made, Building Committee was not involved in recommendation of the work and also the work was got done without approval of the Governing Body. The accusation related to not inviting an Open Tender..

It was held that there was violation of financial procedure in not obtaining quotations. The responsibility of the petitioner being the Head of the Institution was to enforce and follow the financial procedures, which was not done and there had been a lapse.

Charge No. 3.4.4

This charge pertained to repairs in the College. Allegations are that two out of three quotations received were not genuine and Building Committee was not consulted. It was found that bills were of earlier date than the recommendation of the name of the Contractor and opening of quotations. This clearly showed that procedure for considering quotation was not followed and the petitioner was responsible for infraction of procedure.

Charge No. 3.4.5

This charge pertained to purchase of computers. Accusation is that the Purchase Committee was not involved and two out of three quotations were not genuine. It was held that procedural irregularity was committed in the purchase and the petitioner was under a duty to have known that quotations were not given any consideration and the supply order was given without following the purchase

procedure.

Charge No. 3.4.10

This charge related to construction work in the College. Accusation is that the Purchase Committee was not involved and two out of three quotations were not genuine. It was held that the work was done without quotations and the payments were clubbed with other bills. Non-calling of quotations was a violation of prescribed procedure in the General Financial Rules. This charge was established to this extent.

Charge No. 3.4.15

This Charge pertained to purchase of books from Printmen. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine. It was established that there was clear infraction of prescribed financial procedure in purchasing books. Responsibility of the petitioner was to see that the quotations were considered prior to ordering supply.

Charge No. 3.5.1

The charge related to purchase of computers and other parts from M/s COMCAT. Accusation was that no quotations were called, purchase was not routed through the Purchase Committee. It was held that the petitioner sanctioned the bills without recommendation by Bursar. The responsibility of the petitioner for violation of GFR about these purchases was established.

Charge No. 3.5.3

This Charge was regarding purchase of Oscilloscope etc. Accusation was that no open tender inquiry was invited as required and the tenders were not considered by the Purchase Committee. It was held that the urgency as pleaded by the petitioner could not be justified as no certificate was recorded about the said urgency and in the absence of the same, open tender inquiry was imperative. The violation of procedure was established.

Charge No. 3.5.4

This charge was regarding purchase of tables and chairs. Accusation was that no open tender inquiry system was followed, two out of three quotations were not genuine and the purchases were not made through the Purchase Committee. It was held that open tender inquiry was required to be issued but was not issued. There was violation of procedure and the petitioner was responsible for the same.

Charge No. 3.6.2

This charge was regarding purchase of computer stationery. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine. Charge was established to a limited extent that the Purchase Committee was not involved in the purchaser before the purchase was made.

Charge No. 3.7.1

The charge was regarding printing of hard bound register from ABC Enterprises. Accusation was that two out of three quotations were not genuine. It was held that quotations were obtained after the goods were supplied only to make up the default as fake quotations. The charge was held proved.

Charge No. 3.8.7

It pertained to purchase of book cases. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine and there was no approval from the Governing Body. It was found that purchases were made without consideration of quotations and recommendation of the Purchase Committee and there was violation of procedure of General Financial Rules.

Charge No. 3.8.15

This charge pertained to purchase of water coolers. Accusation was that Purchase Committee was not involved and three out of four quotations were not genuine. The Appeal Committee noted that invoice for supply of water cooler as well as cheque of payment was bearing dates prior to the date of quotations. The quotations were thus considered a cover up.

Charge No. 3.9.5

This charge pertained to purchase of tables and chairs. Accusation was that the Purchase Committee was not involved and two out of three quotations were not genuine and quotations were not even opened prior to placing of orders and no open tender inquiry system was followed and no approval from the Governing Body was taken. The charge was proved to the limited extent that the purchase was made through Limited Tender Inquiry. whereas it should have been made on the basis of Open Tender Inquiry.

Charge No. 3.10.2

This charge pertained to purchase of steel almirahs. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine and there was no approval of the Governing Body. It was held that calling of quotations were meaningless as the purchase was made without looking into the quotations at all.

Charge No. 3.10.3

This charge pertained to purchase of lab instruments. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine and there was no approval of the Governing Body and also that no open tender inquiry was called, though mandatory. It was held that the purchases were made for more than Rs. 50,000/- and an open tender inquiry must have been made, however, only a

limited tender inquiry was made. There was violation of GFR to this extent. The petitioner was held responsible for infraction of GFR.

Charge No. 3.10.4

This charge pertained to purchase of laboratory table. Accusation was that Purchase Committee was not involved and three out of four quotations were not genuine and there was no approval of the Governing Body and there was no open tender inquiry. The charge was proved to the extent that the no open tender inquiry was followed and the purchases were made without consideration of even limited quotations by Purchase Committee or anybody.

Charge No. 3.10.7

This charge pertained to purchase of chairs. Accusation was that Purchase Committee was not involved and three out of four quotations were not genuine and there was no approval of the Governing Body and there was no open tender inquiry. It was held that open tender inquiry was imperative. This was not advertised as required under the GFR. There was a clear violation of GFR to this extent.

Charge No. 3.10.9

This charge pertained to purchase of resistance boxes and laboratory equipments. Accusation was that Purchase Committee was not involved and no quotations were called for and there was no approval of the Governing Body. This charge was established to the extent that the procedure laid down in the GFR was not followed in the purchase and the petitioner had committed lapses in this respect.

Charge No. 3.10.10

This charge pertained to purchase of Cathode Ray Oscilloscopes. Accusation was that Purchase Committee was not involved and three out of four quotations were not genuine and there was no open tender inquiry. It was held that there was violation of procedure and open tender inquiry must have been called for. The Petitioner was responsible to see that the purchases were as per GFR and was held responsible for the lapses.

Charge No. 3.11.3

This charge pertained to purchase of printer. Accusation was that Purchase Committee was not involved and no quotations were invited. The charge was established to the extent that no quotations were called for the purchases and there was violation of procedure laid down in the GFR.

Charge No. 3.11.5

This charge pertained to purchase of Generator. Accusation was that Purchase Committee was not involved and three out of four quotations were not genuine and there was no approval of the Governing Body and there was no open tender inquiry.

The letter ordering the supply and bill and the payment are of the same date. It was held that open tender inquiry should have been floated and there was a lapse on the part of the petitioner.

Charge No. 3.11.6

This charge pertained to purchase of micro processor kit. Accusation was that Purchase Committee was not involved and three out of four quotations were not genuine and there was no approval of the Governing Body. It was held that since the purchase of articles was of more than Rs. 50,000/-, an open tender inquiry should have been invited, which was not done and there was violation of GFR.

Charge No. 3.11.11

This charge pertained to purchase of round table for Conference Room. Accusation was that Purchase Committee was not involved and three out of four quotations were not genuine and there was no approval of the Governing Body and there was no open tender inquiry. It was held that open tender inquiry should have been made which was not done. The petitioner was held responsible.

Charge No. 3.11.13

This charge pertained to purchase of air conditioner. Accusation is that Purchase Committee was not involved and three out of four quotations were not genuine and there was no approval of the Governing Body and there was no open tender inquiry. The petitioner pleaded urgency. However, no certificate of urgency was there nor placed on record. The purchases being of more than Rs. 50,000/-, open tender inquiry was must, which was not done. The petitioner was held responsible for violation of GFR.

Charge No. 3.12.4

This charge pertained to printing of office stationery. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine and there was no approval of the Governing Body and there was no open tender inquiry. Standard purchase procedure was violated and none of the quotations were proved to be genuine.

Charge No. 3.12.5

This charge pertained to purchase of steel racks. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine. There was a violation of purchase procedure of GFR. There was no prior recommendation of the Purchase Committee. The petitioner was found to be in violation of GFR to this extent.

Charge No. 3.16.1

This charge pertained to expenditure done from the development fund during the year 1996-97 for miscellaneous works got done through M/s Bhardwaj and Associates. Accusation was that Purchase Committee was not involved and there was no quotation called. There was a violation of purchase procedure of GFR. There was a need for quotation/tender being called for by limited tender inquiry however, the same was not followed.

Charge No. 3.18.2

This charge pertained to purchase of various items from M/s Sanjay Diesels. It was held that the procedure of purchase after proper consideration and comparison of quotations by the Purchase Committee and by the Principal was not even followed. There was no approval from the Purchase Committee.

Charge No. 3.18.5

This charge pertained to fixing of false ceiling. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine and there was no approval of the Governing Body. The contract was given without any reference to the quotations. It was held that there was violation of the GFR by the petitioner.

Charge No. 3.18.6

This charge pertained to miscellaneous work carried out by M/s Bhardwaj Servicing. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine and there was no approval of the Governing Body and there was no open tender inquiry. It was held that there was violation of the GFR by the petitioner as there was no open tender inquiry made, even though the purchase was more than Rs. 50,000/. The petitioner was held responsible to this extent.

Charge No. 3.18.7

This charge pertained to purchase of server for computers and printer. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine and there was no open tender inquiry. It was held that there was violation of the GFR by the petitioner as there was no open tender inquiry made, even though the purchase was of more than Rs. 50,000/. The petitioner who had pleaded urgency for not floating open tender inquiry did not place or recorded any certificate or urgency and was held responsible for violation.

Charges No. 3.19.2 & 3.19.5

These charges pertained to gardening and development work. Accusation was that there was no recommendation by the Gardening Committee/Purchase Committee and no quotations were obtained and open tender inquiry was not called for. It was held as a violation of GFR by the petitioner by not inviting quotations or tenders when an open tender inquiry was essential.

Charge No. 3.19.6

This charge pertained to purchase of computer and its parts. Accusation was that Purchase Committee was not involved and two out of three quotations were not genuine and there was no approval of the Governing Body and there was no open tender inquiry. It was held that there was a violation of the GFR by the petitioner as there was no open tender inquiry made, even though the purchase was of more than Rs. 2,00,000/-. The petitioner was held responsible to this extent.

Charge No. 3.20.1

This charge pertained to construction of two rooms and toilet at the new site of college. Accusation was that there was no date of opening of quotations nor any order was placed and there was no approval of the Governing body and also Government of NCT of Delhi and two out of three quotations were not genuine. Also the payment was made in excess of the quotations. It was held that the open tender inquiry was necessary as the work was of more than Rs. 2,00,000/- and there was an infraction of financial procedure of civil work.

6. The Appeal Committee/Tribunal as constituted by the Vice President of India after considering the arguments of the petitioner and the entire material came to the following conclusions

a) That non-supply of Fact Finding Committee Report was not material in this case since all the ELFA reports forming the basis of the Fact Finding Committee Report had been provided to the petitioner. The petitioner was not able to show that the Fact Finding Report was relied upon in proving any of the charges - considered proved. The charges (as proved) had been proved on the basis of other documentation and admissions and not on the basis of Fact Finding Committee Report. Thus, the non supply of Fact Finding Committee Report did not vitiate the Enquiry.

b) The petitioner, being a College Appointed Teacher was governed by Ordinance XII. Ordinance XII deals with College Appointed Teachers and it provides that the teacher includes a Principal of college. Clause 3 of Ordinance XII refers to retirement age of a person appointed permanently as a Principal of the College. Clause 6 refers both to a Principal. or a Teacher. placed under suspension and Clause 9 refers to Arbitration of an Appeal Committee in respect of dispute in connection with termination of services of College Appointed Teachers (including Principal). The Appeal Committee before whom the petitioner had the appeal was itself constituted under Clause 9 of Ordinance XII. There was considerable overlapping between the provisions of Ordinances XII and XVIII. The Appeal Committee came to the conclusion that the real issue was not applicability of Ordinance XII or Ordinance XVIII but whether the penalty imposed on the appellant (petitioner herein) was excessive and whether there were options available to the Governing Body to consider imposition of other penalties. It held that Ordinance XII was very much

applicable to the petitioner since Ordinance XII was applicable in respect of College Appointed Teacher including a Principal and the petitioner was one such Principal.

c) Regarding applicability of CCS (CCA) Rules the Appeal Committee observed that the rules were only an enunciation of principles of natural justice as applicable to domestic inquiries and as long as the procedure followed in inquiry could be considered to be broadly in line with these rules there was no ground to come to the conclusion that due opportunity had been denied to the Petitioner.

d) Regarding vagueness and defective charges, the Appeal Committee came to the conclusion that the alleged defects and vagueness was misconceived and not there. All charges proved against the petitioner were very clear. The Appeal Committee observed that there was not only a violation of General Financial Rules on the occasions proved in Charges but in case of petitioner habitual violation of financial procedures over many years had been established and the same could not be ignored. There could not be a situation for emergent purchases and placing of work orders throughout the life of the college. Not a single open tender was invited despite there being no certificate of urgency issued by the petitioner, who was Principal of the College authorized to issue such certificate under the rules. Delhi Government vide circular no F-DE-27(45)/96-97/CB/Edn./1438-49 dated 6.6.1997 issued by the Directorate of Higher Education College Branch Government of National Capital Territory, Delhi had informed the Principals including petitioner that the General Financial Rules had to be observed. This was during the tenure of the petitioner. Habitual violation of the financial procedures involving public funds itself constituted misconduct, even if the charge-sheet did not specifically use the word misconduct. The Governing Body had no power to amend the purchase procedure as prescribed by Delhi Government since Delhi Government was the fund provider. A copy of the circular of Delhi Government regarding compliance of financial rules was specifically endorsed to the petitioner. The applicability of these rules would have been obvious to the petitioner. The Circular specifically provided that the Principal of the College would be responsible for strict compliance of all codal formalities, the provisions of General Financial Rules, the terms and conditions of the grant and the directions/advice of Delhi Government while utilizing the grant. Principals were supposed to utilize the grant only for the specified and approved expenditure and were to be personally liable for any deviation. The college, in question, was 100% Delhi Government aided/sponsored college at the time when petitioner was the Principal. The petitioner was therefore bound by this circular which was a public document. There was no doubt about the applicability of General Financial Rules to the financial transactions by the college functionaries. Deviations from the open tender procedure could be made only by following the provisions laid down in the General Financial Rules relating to recording of certificate of urgency. Such certificate could not be challenged unless there was a proof of mala fide. However, in this case there was no issuance of certificate of urgency by the petitioner at any stage for any of the purchases and despite that all codal formalities

as required under the General Financial Rules in respect of the 41 heads of charges were thrown to winds.

e) The Appeal Committee observed that the Enquiry was not instituted to test the financial loss or the quantum of loss to the college. Charges were made in respect of serious lapses in purchase procedure and these had been established both on the basis of documentary proof as well on the basis of admission of the appellant (petitioner herein). The Appeal Committee noted that the Inquiry Authority had considered the charge in respect of 15 sub heads (proved) wherein the purchases were made or civil works were got done without considering the quotations called. In all these cases, purchases were made or the civil work was got done even before the quotations were opened for consideration. The Appeal Committee went through the material considered by Inquiry Authority and observed that the conclusions arrived at by the Inquiry Authority that the quotations had been introduced as showpiece or a hoax. to cover up the irregularities was just and right.. The appellant/petitioner, who was Principal, could give no explanation or cogent reason to the Inquiry Authority for not putting date below his signatures on the bills approved by him or on any of the purchase documents. The Appeal Committee considered that this was a grave situation conclusion regarding non-genuineness of the quotations arrived at by the Inquiry Authority were in order. The aspect of non-observance of codal formalities and procedure was re-examined by the Appeal Committee in respect of all proved charges - the Appeal Committee noted that there was an element of admission on the part of petitioner with respect to awarding 05 out of 06 contracts to M/s Bhardwaj Associates without involving even the Building Committee in the building works and the charges against the petitioner were duly proved on the basis of admission and other documents.

f) The Appeal Committee considered the arguments of petitioner that he alone should not be held responsible and observed that the appellant could not evade his responsibility regarding the involvement in the violations by pointing out that his subordinates were also involved in the decisions to deviate from the normal purchase procedure without certifying the urgency as laid down in the Rules. The General Financial Rules were mandatory and the manner the purchases were made by the petitioner was unprecedented. No purchase procedure could allow placing orders even before quotations having been received. In this case, the petitioner had placed orders and goods were purchased even before the quotations were received. The Committee noted that since the college was dependent on grants in aid received from Government and the specific circular from Delhi Government made clear the manner in which the grants were to be utilized and that no authority in the college would be authorized or have power to device its own procedure other than one laid down in General Financial Rules. The Committee observed that the petitioner had not been able to justify repeated and persistent deviations and omissions in complying with the Rules and codal formalities for purchases wherein the purchases were made by the petitioner as Principal of the college without even

quotations having been called.

g) The Appeal Committee considered the specific instances of defective/vague charges as pointed out by the petitioner and found that in one case the date given in charge-sheet mentioned was 15th November, 1996 whereas the documents showed the date as 6th November, 1996. The Committee found that Inquiry Committee had acknowledged the correct date as 6th November, 1996 and this mistake in the charge-sheet was not material since the documents supplied to the petitioner contained the correct date. In another case the charge showed an amount of Rs. 3472/- as paid whereas the actual amount paid was Rs. 34720/- . The inquiry record was perused and found that the mistake was merely a typographical mistake and did not prejudice the petitioner. Even otherwise, the documents and the cheques by which payments were made bore the date and amount. However, it was found that in this case the charge proved was that invoice of supply of water coolers as well as the cheques for payment bore the date prior to the date of issue of quotations and the Inquiry Authority found that the quotations were put as a cover-up and in fact the order had been placed before the quotations were even called. The Appeal Committee noted that the alleged defects had no effect on the conclusions arrived at by the Inquiry Authority nor the error in the value had effect of exaggerating the seriousness of the violation. Similarly, in respect of other defects pointed out by the petitioner the Appeal Committee came to the conclusion that the defects pointed out were superficial and did not affect the result of the inquiry. In one case, the bill amount was Rs. 32450/- whereas in the charge-sheet it was shown as Rs. 1,32,450/-. The Inquiry Authority itself had noticed and alluded to this mistake and considered the charge in correct perspective only. In fact, the charges against the petitioner were not in respect of amounts but were in respect of the deviations from the General Financial Rules of making purchases without calling quotations and without opening tender/quotations or without involvement of Purchase Committee. The Appeal Committee therefore concluded that the defense of petitioner regarding defects in Charges was false and the petitioner was not prejudiced in any way by the so-called defects in the charges.

h) Regarding argument of the petitioner about applicability of the University Ordinance or relevant Rules of the Government, the Appeal Committee observed that wherever a University Ordinances or Rules are silent, Government Rules and Instructions would be applicable in spirit both in regard to the General Financial Rules, as also the CCS (CCA) Rules with regard to different types of penalties that could be imposed. Ordinance XII merely laid down the safeguards to prevent arbitrary determination of the engagement of a teacher or Principal. The Ordinance nowhere provided that other penalties could not be imposed for valid reasons.

i) Regarding validity of the Inquiry Report and evidence, the Appeal Committee came to the conclusion that the Inquiry Authority had discounted the evidence of the witnesses, except to the extent of documents proved and had almost wholly relied

on documentary evidence, with regard to proved charges and had only relied on the evidence of the witnesses when it was fully corroborated by documentary evidence. The Appeal Committee discussed some of the Charges as examples. Charge No. 3.9.5 related to purchase of tables and chairs costing over Rs. 2 lac where the main allegation was that three out of four quotations were not genuine. The bill of the goods as found on record was dated 20th October, 1995, whereas quotations were opened later on 8th November 1995 i.e. after the goods had already been purchased. There was no approval of Purchase Committee or Governing Body and mandatory open tender procedure was not followed. This charge was held proved by the Inquiry Authority and Appeal Committee concluded that there was nothing arbitrary about the conclusion reached by the Inquiry Authority. In case of Charge No. 3.11.5, the charge related to purchase of a generator set for Rs. 2 lac from M/s Sanjay Diesels, the main allegation was that two out of three quotations were not genuine and no open tender procedure was followed, no Purchase Committee's approval was taken. The Inquiry report showed that the bill for these goods was dated 31st March, 1998 and was sanctioned on the same day and the goods were received in the stock on the same day and the quotations from the supplier were dated 27th March, 1998. The Inquiry Authority concluded that the purchases had been made without inviting quotations. The open tender enquiry was required in this case under the rules, since the purchase was of the value above Rs. 50,000/- and the charge against the petitioner stood proved to the extent of this infringement of rules and making purchases without complying with codal formalities. The Appeal Committee also found that there was no certificate of urgency issued by the Principal. Irrespective of involvement of Purchase Committee, the responsibility of lapses could not be shifted from Head of the institution i.e. Principal unless it was apparent on the face of the record of the proceedings that he had been misled, there was no such record available. In case of Charge No. 3.11.6, the charge related to purchase of micro processor kit for Rs. 98,872/-, the payment was made on 31st March, 1998, two out of three quotations were found not genuine, no Purchase Committee was involved, no open tender procedure was followed, there was no approval of the Governing Body. The Inquiry Authority had concluded that the codal formalities as required under General Financial Rules for purchase of above Rs. 50,000/- were not followed. The plea of the petitioner that these formalities could not be resorted to since funds had to be utilized before 31st March, 1998 was found untenable. Similarly in case of charge No. 3.11.13 purchase of air conditioners was made from M/s Snow Cool Air Conditioning Company for Rs. 1,09,664/- The Inquiry Authority had come to the conclusion that open tender procedure was not followed and only limited tender enquiry was made. There was no certificate of urgency for deviating from the requirement of open tender enquiry and the Principal could not be absolved of his responsibility. The Appeal Committee similarly discussed other charges which for the sake of brevity, are not being discussed here and the Appeal Committee found all charges considered proved by the Inquiry Authority to have been rightly established and it concurred with the report of Inquiry Authority. The

Appeal Committee found that the Inquiry Authority had evaluated the evidence meticulously and had given fair and just conclusion. The appellant/petitioner had not put date below his signatures on purchase orders and put the blame on his subordinates. The onus of proving tampering of records maintained in the official course of business was on the petitioner since he made these allegations. The Appeal Committee found that he was not able to provide any cogent evidence in support of alleged tampering. The Appeal Committee found nothing wrong in the conclusions of the Inquiry Authority and observed as under:

- a. The inquiry was conducted in a scrupulously fair manner, the evidence has been evaluated with greater care and wherever possible, benefit of doubt has been given to the Charged Officer.
- b. The defects in the charge sheet were taken note of by the Inquiry Authority and they did not affect the defence of the Appellant adversely with respect to the extent to which the charges were considered proved.
- c. There are no contradictions in the Inquiry Report, which would warrant a different set of conclusions regarding the proving of the charges. The Charges held proved were rightly held proved.

7. The Appeal Committee upheld removal of the petitioner from the position of Principal of College.

8. The petitioner has argued that the inquiry conducted against the petitioner did not specify under which Rules the inquiry was conducted, the petitioner was being governed only by the Service Contract and Delhi University Rules the applicability of General Financial Rules was not part of his service conditions and holding him guilty of violation of General Financial Rules would not amount to misconduct. The petitioner relied upon *Rajeshwar Singh v. Union of India and Ors.* 1990(1) SLR 24 wherein this Court had held that the holding of inquiry under CCS(CCA) Rules, 1965 against the appellant, who was governed by CISF Rules was violative of principles of natural justice and finding based on such inquiry and punishment imposed was illegal.

9. I consider that this judgment is of no help to the petitioner. The petitioner/appellant in *Rajeshwar Singh* case was a member of Central Industry Security Force (CISF) and was governed by CISF Rules. The inquiry was held under CCS(CCA) Rules and the Court had held that prejudice had already been occasioned to the petitioner by serving charge-sheet and holding an inquiry under CCS(CCA) Rules.

10. It is settled law that mere wrong nomenclature of the Rules or the Act would not vitiate an order or an inquiry. What is to be seen is - whether the wrong nomenclature of the Act or the Rules caused any prejudice to the person concerned. In the present case, the inquiry against the petitioner was not held in respect of

violation of CCS(CCA) Rules rather CCS(CCA) Rules procedure was followed to ensure that a fair inquiry was conducted against the petitioner. The inquiry was in fact conducted against the petitioner for violation of codal formalities and not following the General Financial Rules in purchases made for the College over the years. The petitioner being the Principal was considered responsible for following the procedure for making the purchases as laid down under the relevant Rules and this violation was sought to be proved before the Inquiry Authority on the basis of documents and evidence. Mere stating of CCS(CCA) Rules under no circumstances could have prejudiced the petitioner, who was only to show that he acted in accordance with the Rules.

11. The contention of petitioner that General Financial Rules were not part of the service conditions of the petitioner and the petitioner was governed only by his service contract is again a fallacious argument. The service contract of the petitioner did not enunciate that while performing his different duties as Principal, no Rules shall be followed. Any employee/Executive Officer/Principal or Administrative Officer appointed at a post, apart from being governed by his service contract, is also bound to follow the rules and regulations of the business which he is supposed to conduct. If a Principal is head of the college, he is bound by the different rules and regulations meant for administration of the college. These rules and regulations can be different for different nature of job. If he is involved in purchases, he is bound by the rules and regulations of General Financial Rules and codal formalities as enunciated by the Delhi Government for purchase of the material. He cannot take a plea that since these General Financial Rules were not part of his service contract he was not bound by the General Financial Rules. If this argument is allowed to prevail perhaps no employee can be booked for misconduct or violation of rules because the appointment letters which are issued to the employees only provide his service conditions specific to the job. The appointment letters do not give the rules applicable in respect of each administrative responsibility which a person has to discharge. A person may then even take a plea that in his service conditions it is not written that he would be bound by Indian Penal Code (IPC) or other penal laws and may say that he was at liberty to be corrupt and tyrannical and was at liberty to inflict injuries on students because it was not part of his service conditions that he was bound by IPC. I, therefore, consider that this argument that he was not bound by the General Financial Rules or he was not bound to observe codal formalities for making purchases or that Delhi Government had no authority to prescribe that the grant given by Delhi Government shall be used in accordance with General Financial Rules is a fallacious argument and has to be turned down.

12. The petitioner relied upon Sawai Singh Vs. State of Rajasthan, to press the argument that charges framed against him were vague and it was difficult to meet the charges fairly and therefore the inquiry based on these charges stood vitiated. He also relied on The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu, wherein Supreme Court observed as under:

9. We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In Charge 1, what is mentioned is that the respondent violated the orders issued by the Government. However, no details of these orders have been mentioned in Charge I. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the GO etc. but that was not done. Copies of the said GOs or directions of the Government were not even placed before the enquiry officer. Hence, Charge I was not specific and hence no finding of guilt can be fixed on the basis of that charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessors. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged.

13. This judgment is no help to the petitioner. The Appeal Committee had examined each and every charge about which the petitioner made contention that the charge was vague. In this order in preceding paras, the conclusions arrived at by the Appeal Committee on his contention have been reproduced giving the nature of vagueness urged by the petitioner. It is apparent that the petitioner is raising this plea unnecessarily. The petitioner has failed to address the issue how he had been prejudiced because of typographical error in the date or in the amount mentioned in the charge-sheet when the documents supplied to him contained the correct date and correct amount and more so when the charge was not in respect of misappropriation of any amount but the charge was that the purchases were made by him without inviting open tenders and even opening the limited tenders at all or without inviting even the limited tender or that he subsequently manipulated the tenders. The charge-sheet against the petitioner in respect of the allegations regarding non-compliance of the codal formalities and non-compliance of the General Financial Rules were more specific. The conclusion arrived at by the Appeal Committee is based on sound footings and cannot be considered to be contrary to the law laid down by the Supreme Court.

14. The petitioner has argued that misconduct for which he was removed from the service has not been defined either by the Appeal Committee or by the Inquiry Authority. He submitted that the misconduct has to be construed in accordance with the Rules. The Appeal Committee had not defined the misconduct. and has not ruled as to whether the conduct of the petitioner fitted in that definition of misconduct.. The petitioner relied on State of Punjab and Others Vs. Ram Singh Ex. Constable, wherein the Supreme Court had observed as under:

4. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999 thus:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong

behavior, its synonyms or misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness. Misconduct in office has been defined as:

Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act. P. Ramanatha Aiyar's the Lax Lexicon, Reprint Edition 1987 at p. 821 misconduct. defines thus:

The term misconduct implies a wrongful intention and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the content wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined an unlawful behavior or neglect by a public officer, by which the rights of a party have been affected.

5. Thus it could be seen that the word misconduct. though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behavior; unlawful behavior, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

15. It is apparent from this judgment of Supreme Court that the term misconduct. embraces Acts which the office holder had no authority to perform or the act are performed improperly or the Officer fails to act in the face of an affirmative duty to act in accordance with rules. In the present case, the petitioner was Principal of the College. The circular of Delhi Government made it a personal responsibility of the Principal of College to see that the grant given by the Government was spent in

accordance with provisions of General Financial Rules. Presuming that there was no General Financial Rules and the Principal of College had to make purchases according to a procedure which would be fair and equitable, does that give a right to the Principal of the College to make all purchases without calling any quotation from anyone arbitrarily at his own discretion? Even if no procedure is prescribed by General Financial Rules, any sane person, at the helm of affairs for purchases, if had concern for the fairness would call for fairly good number of quotations to ensure that he was getting purchases for the college at a competitive price. The method of calling quotation is followed so that a record is maintained as to what was the price quoted by different dealers and at what price the goods have been purchased. The petitioner in this case throughout his career as Principal of this College did not follow the procedure for purchases. In some cases he purchased the goods first and the quotations were opened later on, in some cases, no quotations at all were called and in some cases in order to camouflage that quotations were being called the goods were purchased, the bills were paid, entries of goods were made in Stock Register and thereafter to show that quotations had been called. The quotations were opened. The Principal had been wise enough not to put date under his signatures. If the petitioner was such an upright person and so caring as he claims to be, for the College and for the students, one would fail to understand why he did not put date under his signatures on all documents relating to purchases. It cannot be said that the Principal was not aware that putting date under signature was a material factor. It only shows that the Principal was not putting date under his signatures deliberately as he knew that what was being done by him and by the persons under him, was not in accordance with Rules and keeping the things vague (by not putting date under signatures) may help him otherwise. One fails to understand why he was doing so. Why the goods had been purchased and bills paid even before the quotations had been called. All this has not been explained by the petitioner at all, either before the Appeal Committee or before this Court or before the Inquiry Authority. The petitioner has been only arguing that he acted in the best interest of the College. One fails to understand how the best interest of College could be served by not calling quotations from the various dealers before making purchases, how the best interest was served by not utilizing the budget throughout the year and making the purchases only within the last week of the financial year without following any formality and how the best interest of the college was served by not issuing Urgency Certificate by the Principal, if the goods were urgently required and the formalities were to be given a go-by. All these violations of provisions of General Financial Rules and violations of basic principles of fairness on the part of the Principal amounted to misconduct in the exigencies of circumstances and in view of the judgment relied upon by the petitioner. Even if the Appeal Committee has not defined misconduct, the misconduct is writ large on the findings of the Appeal Committee and findings of the Inquiry Authority.

16. The Counsel urged that the petitioner had no wrong intention and the misconduct implies a wrongful and mala fide intention and not merely an error of judgment. The Inquiry Authority has not held the petitioner guilty of misappropriation of any amount or of deriving any wrongful benefit of money and the petitioner was held guilty of merely non-compliance of the formalities and this was a technical matter and for that the petitioner should not have been held responsible since there was Bursar. and other persons of the Purchase Committee, who were also looking after the purchases.

17. I consider that this argument must fail. Wrongful intention of a person has always to be inferred from the acts of the person and not from the words of the person. The Inquiry Authority had not gone into allegation of misappropriation of funds or purchases having been made at higher rates or the goods of being inferior quality or whether the goods were purchased in the best interest of the college or not because there were no charges framed against the petitioner on these counts. The Inquiry Authority had gone into only those charges which were framed against the petitioner. The charges against the petitioner were in respect of the petitioner acting in contravention of the General Financial Rules in the matter of awarding works and goods purchased for the College and these charges have been proved. The wrongful intention of the petitioner can be inferred from the very fact that the petitioner despite being the last signatory on all approvals did not deliberately put dates under his signatures so as to keep the date of approval of the purchases as vague. I, therefore consider that this argument of the petitioner must fail.

18. It is settled law that the scope of judicial review is very limited. This Court cannot act as a court of appeal against the order of the Tribunal/Appeal Committee. All the arguments of the petitioner are in the nature of appeal against the order of the Appeal Committee and I consider that this Court cannot re-write the award passed by the Appeal Committee after reconsidering the entire material. Suffice it to say that in this case the principles of natural justice were meticulously followed, the Inquiry was conducted in a total impartial manner, the Inquiry Authority and the Appeal Committee acted in a total impartial and fair manner. The petitioner was given ample opportunity to present his case and defend himself.

19. The argument of the petitioner is that the punishment of removal given to him was totally disproportionate to the charges proved against him. The charges proved against him were of technical breach of the General Financial Rules and the punishment of his removal was a very harsh punishment.

20. The post of Principal is a post of trust. Principal being head of the Institution is supposed to act in a fair responsible and trustworthy manner and if the trust of the Governing Body evaporates in the Principal because of the acts and deeds of the Principal and the Governing Body has removed the Principal after conducting an inquiry and following due process, the Court cannot sit in judgment over the punishment awarded to the Principal and cannot thrust the services of the Principal

on the Governing Body. In [S.B. Dutt Vs. University of Delhi](#), the High Court had set aside an award of the Arbitrator observing that the award declaring that Mr. Dutt was still a professor in University of Delhi was contrary to law since no Court could or would have given him such relief. The High Court felt that this declaration amounted to a specific enforcement of a contract of personal service which was forbidden by Section 21 of the Specific Relief Act and therefore disclosed an error on the face of the award. This judgment of the High Court was challenged before the Supreme Court and Supreme Court upheld the order of High Court observing that it was in the entire agreement with the view expressed of the High Court and the contract of personal service cannot be specifically enforced in Section 21 Clause (b) of Specific Relief Act.

21. In [Chairman-cum-M.D., T.N.C.S. Corp. Ltd. and Others Vs. K. Meerabai](#), the Supreme Court observed that scope of judicial review was very limited. Sympathy or generosity as a factor is impermissible. Loss of confidence was the primary factor and not the amount of money misappropriated. Since the respondent employee was found guilty of misappropriation of Corporation's funds there was nothing wrong in Corporation losing confidence or faith in such an employee.

22. In [Canara Bank Vs. V.K. Awasthy](#), Supreme Court observed that inference with the quantum of punishment cannot be a matter of routine. In this case, the Supreme Court observed that the proved charges clearly established that the respondent employee failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the interest of the Bank. The decision of the bank to dismiss the employee did not suffer from any infirmity. The Supreme Court set aside the order of Single Judge and Division Bench on the quantum of punishment while upholding the dismissal of the employee. In [Janatha Bazar \(South Kanara Central Co-operative Whole Sale Stores Limited\) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc.](#), the Supreme Court held that even if a financial irregularity is of a very small amount the only punishment is dismissal.

23. In light of above judgments I consider that the punishment awarded to the petitioner cannot be held to be disproportionate to the misconduct proved against the petitioner. I find no force in the petition. The petition is hereby dismissed.