ORDER

Whereas Sh. Liyakat Ali, Yoga Teacher was charge sheeted u/r 14 of CCS (CCA) Rules vide Memorandum No. F1/DNWA/Vig./DP/2009/14 dated 07.04.2011 on the following articles of charge –

"ARTICLE-I

That the said Sh. Liyakat Ali, Yoga Teacher, working in Govt. SKV, Vijay Nagar, Delhi left the country for Pakistan on 30.10.2008 without prior approval/permission of the competent authority. Which is in violation of CCS (Leave) Rules, 1972.

Thus, Sh. Liyakat Ali, Yoga Teacher acted in a manner unbecoming of a Govt. official/teacher thereby contravening the provision contained in clause (iii) of sub rule 3 of CCS (Conduct) Rule, 1964.

ARTICLE –II

That the said Sh. Liyakat Ali, Yoga Teacher did not obtain the permission/NOC for going abroad by the competent authority and, left the country for Pakistan on 30.10.2008 which is undesirable on the part of Sh. Liyakat Ali, being a Govt. teacher and is in violation of CCS (Leave) Rules, 1972."

And whereas, on denial of charges, Smt. Richa Kalra, Principal, GGSSS, AP Block, Shalimar Bagh, Delhi was appointed as Inquiry Officer vide order dated 30.05.2011 to enquire into the matter. The Inquiry Officer submitted the inquiry report dated 14.05.2012 concluding the charges as proved. However, some discrepancies were observed in the inquiry report dated 14.05.2012 submitted by the Inquiry Officer, therefore the same was remitted back vide order dated 22.08.2012 for de-novo inquiry from the stage of general examination of the charge official. The Inquiry Officer again submitted inquiry report dated 15.10.2013 concluding that Article I & II leveled against the CO stand not proved.
And whereas, from the perusal of the available record, it was observed that the I.O. had failed to evaluate the material evidences properly and the charges against the C.O. appeared to be proved on the basis of the available documents/evidence. Accordingly a disagreement note dated 18/12/2013 was issued to the Charged Officer.

And whereas, the Charged Officer has submitted his reply vide letter dated 20/01/2014 wherein he has submitted that in the absence of the explanation of Sh. Ramesh Chand the then Head of School of Government Co-ed Vidyalaya, Vijay Nagar who permitted the CO to visit Pakistan in connection with the marriage ceremony of his maternal sister, it cannot easily be assumed that the CO left for Pakistan on his own.

And whereas, it is observed that the Inquiry Officer vide the initial report dated 14.05.2012 had held the charges under Article-I to be proved on the grounds that the CO had left the country for Pakistan on 30.10.2008 by giving two simple applications i.e. 01.11.2008 to 10.11.2008 (EL) and 31.10.2008 (CL/EL) on 27.10.2008 which were addressed to the then HoS and the HoS allowed him whereas HoS was not the competent authority for the same. Moreover, the aforesaid applications were not in prescribed format (Form I). Further, charges under Article II were also held to be proved on the grounds that the CO had given only a written intimation to HoS on 17.10.2008 for obtaining visa and had not obtained NOC to get visa from competent authority.

And whereas, it is seen that vide inquiry report dated 15.10.2013 the I.O. has held both the charges in Article I & II as “not proved”. The IO vide the fresh inquiry report has observed the charges under Article-I as not proved on the grounds that Sh. Liyakat Ali, CO had submitted two applications on 27.10.2008 to the then Head of School Sh. Ramesh Chander- (I) EL application w.e.f. 01.11.2008 to 10.11.2008 (D-1) and (II) CL/EL application for the date 31.10.2008 and permission to leave the country to go to Pakistan on 30.10.2008 (D-2) which have been allowed by the HoS. The IO has observed that Sh. Liyakat Ali, CO, should be aware of his acts being a government servant. However, since the CO could not forward his application directly to the competent authority, the charge leveled against Sh. Liyakat Ali is not proved.

And whereas, regarding charge under Article-II the IO has observed that the CO had submitted two applications for leave and permission to leave the country to go to Pakistan on 27.10.2008 to then HoS. Further action on the application was required to be taken by the HoS and not CO. Therefore, the IO has concluded, that the documents brought before her do not hold the CO directly responsible for the violation of CCS (Leave) Rules, 1972 and accordingly the said charge
has been held to be not proved. The IO has also referred to Leave Rule 17 (2) in support of her findings.

And whereas, as already observed while issuing the Disagreement Note, it is seen that the CO had left the country for Pakistan on 30.10.2008 by giving two simple applications – one for EL w.e.f. 01.11.2008 to 10.11.2008 and another for CL on 31.10.2008 with station leave on 30.10.2008. Both the applications are dated 27.10.2008. In the first instance, it is worth mentioning that Casual Leave cannot be combined with Earned Leave. Further, leave has to be applied on the proper proforma, giving sufficient time to the competent authority to either sanction or reject the application. In this case, the application was given merely three days prior to leaving station. It is also seen that while issuing 'No Objection Certificate' one of the conditions is that applicant will apply separately for permission to go abroad and obtaining visa well before the time of leaving. This has not been done in the present case. Further, the Directorate vide circular No. F.4(35)/07-08/Edn./GOC/59 dated 03.01.2008 has clearly enunciated as under: -

“Now, therefore, it has been decided that the requests for grant of NOC for going abroad and grant of Ex-India leave for the purpose, shall be processed simultaneously. The applications for obtaining grant of NOC for going abroad along with leave application, duly recommended by the DDE/ADE/HOO concerned must be forwarded at least four weeks before the date of departure of the applicant to the Competent Authorities DE, Addl. DE (Admin), RD with following details:

a. Application for grant of NOC.
b. Kind of leave applied for and duration of leave by the applicant, duly recommended by the DDE/ADE/HOO concerned.
c. Amount of leave at credit in the leave account of the applicant, duly certified by HOO/DDE concerned.

The above arrangement will be applicable only in cases for grant of No Objection Certificate for going abroad and sanction of Ex-India leave for the purpose.”

A plain reading of the above orders clearly shows that the applicant has to submit an application for seeking NOC to go abroad at least four weeks before the date of departure which after due recommendation of the DDE/ADE/HOO has to be forwarded for sanction to the competent authority i.e. DE/Addl.D.E(Admin.)/RDE. The C.O. in
the present case has not followed the above instructions and has, infact, just submitted an intimation for applying for visa that too just two weeks before leaving. No permission/NOC for going abroad was sought by him.

And whereas it is also observed that the I.O in her inquiry report has observed in the para regarding conclusion that “He was sanctioned C.L. for date 31.10.2008 and on date 30.10.2008 there was vacation.”. In the first instance it is clearly seen that C.L cannot be sanctioned along with Earned Leave which is the case in the present matter. Further a perusal of the school calendar for the year 2008-09 shows that the autumn break was from 01.10.2008 to 08.10.2008 and therefore there was no vacation or gazetted holiday on 30.10.2008. Further from the exhibit no. 4 attached in the inquiry folder which is copy of the passport of the C.O on which visa and immigration entry has been stamped, it is observed that the immigration entry date is stamped as 30.10.2008. As per the train chart the train to Pakistan i.e Samjhauta Express leaves Delhi on the evening of Wednesdays and Sundays only. It reaches Wagah station the next morning and comes back to Atari in the evening. As per the calendar 30.10.2008 was Thursday which implies that the C.O. left the station on 29.10.2008 itself and was in Pakistan on 30.10.2008 for which no leave was applied by him, leave aside the question of sanction.

And whereas the Charged Officer vide his reply dated 20/01/2014 has only submitted that his leave was sanctioned by the then Head of School and the reply to the Show Cause Notice issued to him should be taken into consideration for arriving at appropriate decision in the matter. He has not made any submissions or produced any facts/documents/evidence to refute the observations made in the Disagreement note served to him as brought out in the proceeding paras. He has also not made any submission about not being aware of the rule position and OMs/Curculars issued by the Directorate which imply that he willingly and knowingly violated the rules.

And whereas, in view of the forgoing paras, I am of the opinion that the charges under Article-I & II of charge memorandum dated 07.04.2011 regarding leaving the country without prior approval/permission of the Competent Authority as well as going abroad without obtaining the NOC is conclusively proved.

Now, therefore, I, Padmini Singla, Director (Education), being Disciplinary Authority in this case, after going through the facts and circumstances of the case, the report of the Inquiry Officer and the reply of the Charge Officer, have come to the conclusion that the
charges against Sh. Liyakat Ali, Yoga Teacher are proved conclusively. However, in view of the fact that the Charged Officer is going to retire soon, taking a lenient view, I hereby impose the penalty of reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding one year, without cumulative effect and not adversely affecting his pension.

(PADMINI SINGLA)
DIRECTOR (EDUCATION)

Sh. Liyakat Ali, Yoga Teacher
SKV, Vijay Nagar, Delhi
Through DDE (NW-A).

No. DE.7/588/DP/Yoga Tr./Vig/HQ/11/1069

Copy for information and necessary action to:-

2. The ADE (E-IV), Dte. Of Education, Old Sectt., Delhi.
3. HOS/OS/DDO/PAO concerned through DDE (NW-A).
4. OS (IT), Dte. Of Education, Delhi.
5. Guard File.

DIRECTOR OF EDN. (VIG)