

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No.30 of 2020 & OA No. 34 of 2020

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

OA No. 30 of 2020

Preeti Suman, aged about 23 years, D/o Krishna Nandan Prasad Sing, At-Behind High School, Dinkarnagar, Barbiga, Dist-Sheikhpura, Bihar-811101.

.....Applicant

VERSUS

1. Union of India represented through its Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi – 110016.
2. Assistant Commissioner (ACad & RPS), KVS (HQ), New Delhi-110016.
3. Deputy Commissioner, KVS, Regional Office, Bhubaneswar, Pragati Vihar Colony, Mancheswar, Bhubaneswar-751017, Dist.-Khordha, Odisha.
4. Principal, Kendriya Vidyalaya No.6, Pokhariput, Bhubaneswar – 751020, Dist.-Khordha, Odisha.
- 5.

.....Respondents

OA No.34 of 2020

Aastha Priya, aged about 24 years, D/o Mritunjay Kumar Jha, at present residing at Tulsi Mishra Lane, Champanagar Police Station – Nathnagar, Bhagalpur, Bihar.

.....Applicant

VERSUS

1. Union of India represented through its Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi – 110016.
2. Assistant Commissioner (ACad & RPS), KVS (HQ), New Delhi-110016.
3. Deputy Commissioner, KVS, Regional Office, Bhubaneswar, Pragati Vihar Colony, Mancheswar, Bhubaneswar-751017, Dist.-Khordha, Odisha.
4. Principal, Kendriya Vidyalaya No.1, Baripada, Laxmiposi, Mayurbhanj-757001.

.....Respondents

For the applicant : Ms. S.Mohapatra, counsel (for both the OAs)

For the respondents: Mr.H.K.Tripathy, counsel (for both the OAs)

Heard & reserved for both the OAs on : 27.2.2020 Order on : 13.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the OA No. 30/2020, seeking the following relief :

- “(i) quash the impugned Order, dated 17.12.2019 under Annexure A/9 by concurrently holding the same as bad, illegal and thereby reinstate the Applicant with all consequential and money benefits;
- (ii) pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bonafide interest of justice.”

The applicant has filed the OA No. 34/2020, seeking the following relief :

- “(i) quash the impugned Order, dated 17.12.2019 under Annexure A/7 by concurrently holding the same as bad, illegal and thereby reinstate the Applicant with all consequential and money benefits;
- (ii) pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bonafide interest of justice.”

2. We heard both the learned counsels for both the parties on the issue of jurisdiction in both the OAs in view of the preliminary objection filed by the respondents questioning the territorial jurisdiction of this Tribunal to adjudicate the dispute. Both the matters were heard together on the issue of jurisdiction only and as the issues involved in both are identical, the issue is being decided by this common order. For the purpose of this order, we consider the facts and circumstances of the OA No. 30/2020, which are similar to the OA No. 34/2020. Learned counsel for the respondents submitted that in view of the clause 10 of the appointment order issued to the applicant in both the OAs vide order dated 22.8.2019 (Annexure-A/6 of the OA No. 30/2020 & Annexure-A/8 in OA No. 34/2020), this Bench of the Tribunal does not have the jurisdiction. He has also cited two orders of Jodhpur Bench of the Tribunal in the case of Hariom Meena v. M/O Railways and Takdir Yadav vs. Navodaya Vidyalaya Samiti and a memo of citation listing a number of judgments. Learned counsel for the applicant on the other hand submits that there are case laws to establish that this Tribunal has the jurisdiction.

3. Briefly stated, the facts of the matter leading to the present dispute in OA No. 30/2020 are that the applicant had participated in the advertisement dated 14.8.2018 (Annexure-A/1) issued by Kendriya Vidyalaya Sangathan (in short KVS) for recruitment of Trained Graduate Teachers (in short TGT) for Social Studies and had been selected after qualifying in the written test and interview. He was appointed as TGT-Social Studies and posted in Pokhariput KV No. 6 where he joined on 5.9.2019. In the meantime, the order dated 17.12.2019 (Annexure-A/7 of OA No. 30/2020) has been issued terminating the services of the applicant and being aggrieved by the said order of termination, the

applicant has filed this OA challenging the said termination order. In OA No. 34/2020, the applicant was appointed after her selection as per the same advertisement at Annexure-A/1, as TGT-Socila Studies and was posted in KV No. 1 Baripada. She was also issued termination order dated 17.12.2019 (Annexure-A/9 of OA No. 34/2020), which is impugned in the OA No. 34/2020.

OA No. 30 of 2020

4. It is stated in the preliminary counter filed by the respondents that as per the advertisement, the applicant had applied for the temporary post of the TGT (SOST) and appointment order dated 22.8.2019 was issued. As per the clause-33 of the advertisement, any dispute relating to the recruitment will be subject to the Court having jurisdiction in Delhi only. It is further stated that in the appointment order dated 22.8.2019 (A/6), the clause 10 clearly stipulates that for any dispute or claim against the KVS relating to the service or contract flowing from the appointment order, only the courts in Delhi will have jurisdiction. It is stated that since the applicant has accepted the appointment order and agreed to the terms and conditions of the said order and in view of the jurisdiction clause in the advertisement at Annexure-A/1, it is clear that agreement has been reached between the parties about jurisdiction. It is also stated that under the clause 5 of the order dated 22.8.2019 (A/6), the employer will have the right to discharge the services of the applicant during probation period without any notice. The applicant was on probation for 2 years and she was to be confirmed after completion of the probation period.

5. The applicant has filed a reply to the objection filed by the respondents, stating that the service of the applicant is contractual and that after the applicant joins service, the terms and condition will be governed by the statute or rules and not by the agreement between the parties. It is stated that under the rule 6 of the CAT (Procedure) Rules, 1987, the applicant can file the OA within the jurisdiction of Cuttack Bench. The applicant has cited the judgment of Hon'ble Apex Court in the case of Roshan Lal Tandon vs. UOI, AIR 1967 SC 1889 and Central Inland Water Transport Corporation Ltd. & Another vs. Broj Nath Ganguly in Civil Appeal Nos. 4412-4413 of 1985 in his reply.

6. We take note of the fact that the present dispute arises after issue of the termination order dated 17.12.2019 (A/7 of the OA) to the applicant, terminating her from service as a TGT and it is not a dispute pertaining to the recruitment arising out of the advertisement at Annexure-A/1. Hence, the stipulations in the advertisement regarding jurisdiction of Courts in case of any dispute, will not be relevant to decide the jurisdiction to adjudicate the present dispute. If we take note of the rule 6 of the CAT (Procedure) Rules, 1987, it is clear that this Bench has jurisdiction for adjudicating any dispute between the

applicant and the respondents relating to her service, since she was posted within the jurisdiction of this Bench of the Tribunal.

7. In this factual background, the relevant issue for decision in this case is whether the stipulation in clause 10 of the appointment order at Annexure-A/6 regarding jurisdiction of this Bench of the Tribunal will override the provisions under the rule 6 of the CAT (Procedure) Rules, 1987.

8. Learned counsel for the respondents has cited the judgment of Hon'ble Delhi High Court in the case of Dr. Mukesh Aghi vs. Steria Ltd. & others, passed in IA No. 9780/2014 in C.S. (OS) 181/2014. The dispute in that case related to a commercial/civil dispute arising out of non-allotment of share by the defendant company. The dispute in the cited case was adjudicated as per the provisions of the Indian Contract Act. The implication of having specific provision in the rule 6 of the CAT (Procedure) Rules, 1987 regarding jurisdiction of the service dispute pertaining to a public sector employee was not considered in the cited judgment. Hence, the judgment cited is factually distinguishable.

9. Learned counsel has also cited the judgment of Hon'ble Apex Court in the case of KVS vs. Arun Kumar Madhurao Sindhaye & another, AIR 2007 SC 192 in justification of the order of termination against the applicant. Since we are considering the question of jurisdiction in this order, the judgments cited by learned counsel in support of the termination order will not be useful for the present. Learned counsel for the respondents also enclosed a copy of the order dated 7.2.2017 of Hon'ble Delhi High Court in WP(S) No. 1 of 2017, in which the prayer for interim relief was considered on the basis of a provision in the contract of the petitioner regarding retirement/retirement benefits and such a term was held to be binding. The ratio of the aforesaid interim order dated 7.2.2017 will not be helpful for answering the relevant issue in this case as formulated in paragraph 6 of this order.

10. Learned counsel has cited two orders of Jabalpur Bench of this Tribunal. In both the cases, the dispute arose out of the advertisement for recruitment in which a specific clause was there specifying the jurisdiction of the Court of a particular location in case of any dispute. The argument on behalf of the applicants was that a part of the cause of action has arisen within the jurisdiction since the applicant is normally residing within the jurisdiction of Jabalpur Bench. But that argument was not accepted by the Tribunal after discussing different case laws relating to the jurisdiction based on the cause of action. The argument of part of the cause of action because of residence of the applicant was not accepted by the Tribunal. In the present OA, the fact that the cause of action has arisen completely within the jurisdiction of this Bench is

not disputed. The only ground of the respondents in this regard is the clause 10 of the appointment order of the applicant and it does not pertain to the dispute relating to recruitment as per the advertisement at Annexure-A/1. Hence, the present OA is factually different from the both the matters before Jabalpur Bench cited by learned counsel for the respondents.

11. The applicant has cited the judgment of Hon'ble Apex Court in the case of Brajo Nath Ganguly (supra), in which the validity of a provision in the contract of permanent employees was considered. In this order we are considering the issue of jurisdiction by resolving the issue stated in paragraph 6 of this order, for which, the cited judgment will not be helpful.

12. In view of the discussions above, there is nothing on record furnished by the respondents to justify their contention that the clause 10 of the appointment order dated 22.8.2019 (Annexure-A/6) will have an overriding effect on the rule 6 of the CAT (Procedure) Rules, 1987. The said rule 6 states as under:-

“6. Place of filing applications.—

(1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction—

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen :

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.”

13. From the provisions of the rule 6 as extracted above, it is clear that since the applicant was posted at Pokhariput KV No. 6 and her service has been terminated there, which is under the territorial jurisdiction of this Bench, the cause of action has arisen within the jurisdiction of this Bench under the rule 6(1) of the CAT (Procedure) Rules, 1987 and no authority has been produced by the respondents to show that by virtue of the clause 10 of the appointment

order issued to the applicant, the rule 6 will not be applicable to decide the jurisdiction.

14. In the circumstances as discussed above, we are unable to agree with the respondents that this Bench of the Tribunal does not have jurisdiction to adjudicate the present OA and hold that this Bench has jurisdiction to entertain the OA No. 30/2020. As a result, the issue at paragraph 6 is decided in negative against the respondents. Therefore, we admit the OA and direct the respondents to file Counter to the OA in 4 weeks time giving a copy to the applicant's counsel who may file Rejoinder in 2 weeks thereafter.

OA No. 34 of 2020

15. The facts and circumstances in OA No. 34/2020 being same as the OA No. 30/2020, the decision in respect of the OA No. 30/2020 in the preceding paragraph of this order will also be applicable for OA No. 34/2020.

16. List both the OAs for orders. Urgent copy of this order is to be handed over to learned counsels for both the parties.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)