

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.040/0000234 of 2014

Date of Order: This the Day of August 2016

HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER

HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER

Shri Bishnu Prasad Rbha
Presently working as Upper Division Clerk,
(Under Suspension)
Kendriya Vidyalaya, ,NEIST(RRL)Jorhat,

Jorhat-785006 (Assam) Applicant

By Advocate Mr.S.Dutta,

-Versus-

1. Kendriya Vidyalaya Sangathan, through the Joint commissioner (Administration)
18 Institutional Area,
Saheed Jeet Singh Marg
New Delhi-110016
2. The Deputy Commissioner,
Kendriya Vidyalaya Sangathan
Regional Office, Tinsukia
Campus of Kendriya Vidyalaya, Duliajan
P.O.Duliajan, District:Dibrugarh (Assam)
PIN:786602
3. Shri Ajay Pant, Deputy Commissioner,
Kendriya Vidyalaya Sangathan
Regional Office, Tinsukia
Campus of Kendriya Vidyalaya, Duliajan,
P.O.Duliajan, District:Dibrugarh(Assam)
PIN:786602

4. The Principal,
 Kendriya Vidyalaya NEIST(RRL), Jorhat
 Jorhat-785006(Assam)

5. Shri M.Manohara, Principal
 Kendriya Vidyalaya NEIST (RRL) Jorhat,
 Jorhat-785006 (Assam)

Respondents

By Advocate Mr.M.K.Mazumdar, KVS

ORDER

(Per Mohd Haleem Khan, Member(A):

Shri Bishnu Prasad Rabha, who is presently working as Upper Division Clerk at Kendriya Vidyalaya , NEIST (RRL) Jorhat has filed this Application under Section 19 of the Administrative Tribunals Act 1985 seeking following reliefs:-

“ 8.1 That the impugned order dated 10.07.2014 be declared illegal , without any authority of law and accordingly be set aside and quashed.

The applicant also prayed for interim order as follows:-

“The applicant prays that pending disposal of the Original Application the Hon'ble Tribunal may be pleased to observe that the respondents shall not pass any order to precipitate the cause save and except cancellation/ recalling/withdrawal of the impugned order dated 10.07.2014.”

2. The applicant's case is that he is working as Upper Division Clerk at Kendriya Vidyalaya, NEIST (RRL) Jorhat. According

to the applicant he made complaints against the Principal (Respondent No.4/5) to the Chairman of Vidyalaya Management Committee with regard to contractual appointment of teachers as well as admission of students. He was issued Memorandum dated 1st July 2014 by the Principal i.e Respondent No.4, calling for an explanation against a purported allegation of misbehaviour with some lady teachers. The applicant replied the memo on 02.07.2014 denying the allegation which was accepted and the respondent took back the memo dated 1st July, 2016.

The applicant put up official note dated 04.07.2014 and 07.07.2014 in File No.3-4/KVRRL/Jorhat against the Principal as he was not stopping from his illegal activities.

3. According to the applicant on 10.7.2014 the respondents No.2 and 3 issued orders of his suspension and transferred the applicant from Kendriya Vidyalaya , NEIST (RRL), Jorhat (Assam) to Kendriya Vidyalaya Roing (Arunachal Pradesh) under Rule 10 of the Central Civil Services (Classification , Control and Appeal) Rule, 1965. The applicant was also directed not to leave Headquarter without prior permission of the Deputy Commissioner. According to the applicant, his suspension/transfer order dated 10.7.2014 is of

punitive nature as a consequence of his complaints lodged against the Principal to the Chairman of Vidyalaya Management Committee NEIST, (RRL) Jorhat.

4. On 22nd July 2014 this Court took cognizance of the application and issued following orders.

“In view of the above, issue notice on the respondents, returnable within four weeks. Mr. M.K.Mazumdar, learned counsel for the respondents accepts notice on behalf of the respondents No.1, 2 & 4 .

Learned counsel for the applicant also prayed for an interim order staying the suspension and transfer of headquarter of the applicant from Jorhat to Roing. Learned counsel for the respondents vehemently objected to the prayer of the applicant and submitted that during the contemplation of the disciplinary proceeding against the applicant, it will not be proper and in the interest of the school to stay the suspension and transfer of the applicant. This Court however, passed following orders:-

“ Heard both the parties. Perused the pleadings and material placed before me. Presently, I am of the view that suspension and transfer of the headquarter of the applicant are seems to be consequence of the complaint lodged by the applicant before the Chairman,

VMC. Accordingly, the impugned order dated 10.7.2014 is hereby stayed till next date. However, respondents will be at liberty to seek alteration, modification or cancellation of the stay order well before the next date.”

Respondents filed written statement on 15.12.2014 and denied all the averments made by the applicant in the O.A. which are not specifically admitted or borne out of records. The Respondents further submitted that the KVS is an autonomous body formed under the Ministry of Human Resource Development registered under the Societies Registration Act 1860. The authorities of the Sangathan are Board of Governors, the Chairman, Deputy Chairman and Vice Chairman. The officers of the Sangathan are the Commissioner, Joint Commissioner, Deputy Commissioners and Assistant Commissioners. There are around 1903 Kendriya Vidyalayas all over the country including abroad. For the control of these Vidyalayas 25 Regional Offices have been established. Each regional office is under the control of the Deputy Commissioner, who looks after the management and administration of the Kendriya Vidyalayas under his/her control. The Principal is the head of a Kendriya Vidyalaya who manages financial, administrative and academic affairs of the Vidyalaya.

5. For smooth functioning of the KVS, the accounts code and the Education code duly approved by the Board of Governors are in place. Article 80 of the education code provides for the application of the CCS(CCA) Rules, 1965 in the Sangathan. These rules are applicable to KVS mutatis-mutandis.

6. According to the respondents the KVS , NEIST (RRL) Jorhat (Assam) received complaints dated 23.06.2014 and 26.06.2014 regarding sexual harassment from two lady teachers, namely, Mrs.Nidhi Mishra, Ex-PRT Music and Ms.Rima Paul, Contractual Teacher against Shri Bishnu Prasad Rabha UDC, Kendriya Vidyalaya, NEIST (RRL), Jorhat. The same was forwarded to the Deputy Commissioner, KVS (RO), Tinsukia vide letter No.F-2-20/KVRRL/2014-15 dated 30th June 2014. The disciplinary authority i.e the Deputy Commissioner, KVS (RO), Tinsukia (Assam) decided to initiate disciplinary proceedings against the employee vide order dated 10th July 2014.

7. Mr.Rabha did not report to his changed headquarter i.e. KVS, Roing (Arunachal Pradesh as informed by the Principal ,KVS, Roing (AP) vide letter dated 30.07.2014. However, aggrieved by the said order dated 10.7.2014, the applicant filed O.A.No.234 of 2014

in Hon'ble CAT,Guwahati Bench. The Hon'ble CAT, Guwahati Bench, Guwahati passed an interim order dated 22.07.2014. In compliance to the Hon'ble CAT order dated 22.7.2014 the applicant reported back at KVS, NEIST (RRL), Jorhat on 24.7.2014.

8. In parawise comments the respondents categorically denied all the averments made by the applicant with regards to complaint of pressurizing Shri Bishnu Prasad Rabha for issue of appointment of teacher on contract and also that relating to illegality in admissions. The Respondents further submitted that Mr.Rabha , UDC did not furnish any complaint to the Principal, Kendriya Vidyalaya, NEIST (RRL), Jorhat (Assam) on 26.06.2014. The same was also not received by the Chairman, VMC, KVS, NEIST (RRL), Jorhat (Assam). The Principal, Kendriya Vidyalaya, NEIST (RRL), Jorhat (Assam) has come to know about the complaint only after receiving the O.A. from the Hon'ble CAT, Guwahati. Accordingly, submitted that the allegations against the Principal are baseless. The respondents also submitted that no Memorandum was issued to Mr.Rabha, UDC on 1st July 2014, therefore, the applicant's contention of taking it back on receiving the reply of the applicant on 02.07.2014 does not arise.

9. Principal, NEIST (RRL), Jorhat also denied having received any official note put up to him by Mr.Rabha on 04.7.2014 and 07.07.2014. The averments made by the applicant with regard to being pressurized to issue appointment letter on 10.07.2014 was also denied. The respondents also clarified that the teachers were issued appointment letters in the month of June 2014. Therefore, all averments made by the applicant relating to the same on 10th July 2014 is not correct. According to the respondents the applicant instructed Mr. M.C. Nath to leave three dispatch number 2462, 2463 and 2464 vacant.

10. The submission made by the applicant with regard to exhausting all the remedies in para 6 of the O.A was also controverted as not correct. Rule 23 of CCS (CCA) Rules, 1965 provides for appeal against an order of suspension made or deemed to have been made under Rule 10. But the applicant has not preferred an appeal to the competent authority and have mislead the Hon'ble Court by false submission. In view of the above background as well as complaint of sexual harassment against the applicant, the action taken by the respondents is fully justified and

accordingly, the respondents vehemently prayed for dismissal of the application.

11. The applicant filed rejoinder. The applicant took a technical plea that Shri K.K.Subba who has signed the written statement is a stranger to the present proceedings and has no legal authority to file the Written statement on behalf of the respondents. The applicant controverted the submissions made with regard to the complaint of sexual harassment on 23.6.2014 and 27.6.2014, as according to the applicant the respondents have not annexed the same with the written statement. The applicant also denied the averment made in the written statement with regards to Dispatch Register .In reply to the statements in para 4.7 and 4.8 of the written statement the applicant sought to clarify the contention on the basis of the written statement filed by the respondents in O.A No.28 of 2015 (B.P.Rabha Vs. K.V.Sangathan and others) wherein they have mentioned that the complaint lodged by Smti Nidhi Mishra was withdrawn and she was relieved on 01.07.2015 from KVS, NEIST(RRL), Jorhat and prayed that the written statement filed in O.A.No.28 of 2015 be taken in for consideration by the Hon'ble Tribunal in support of the applicant. The applicant also contested the

submissions made in the written statement in regard to CCS(CCA) Rules 1965 that the Rule 10 in the order quoted does not provide for transfer.

12. Pleadings being complete. The case was fixed for hearing. The case was heard on 5.5.2016 and the learned Standing Counsel of the Railway was directed to put up relevant records. On 13.5.2016 the following records were submitted by the learned counsel.

File Number	No.of Pages	Remarks
1.	1-182 (In original)	Pages from 27 to 156 have been retained at this office.
4.	1-121	(In Original)
5.	1-178	(In Original)
6.	1-58	(In Original)

13. The learned counsel for the applicant argued on the lines of submissions made in the O.A as well as the rejoinder. The learned counsel for the applicant emphasised that the written statement has been filed by unrelated person, therefore, the same could not be taken into account by the Court while adjudicating the O.A. The learned counsel for the applicant also emphasised that the Rule 10 of CCS (CCA) Rules 1965 does not cover transfer with suspension provision and therefore, the impugned order suffers from malice in law. The learned counsel also submitted that the applicant is engaged in a criminal litigation with the Deputy Commissioner

Respondent No.2 and therefore, also he is biased against the applicant. The impugned order therefore, also suffers from bias against the applicant.

14. The learned counsel for the respondents however, drew the attention of the Court to the complaints of sexual harassment of School Teachers and submitted that the same are behind the orders of suspension. According to the learned counsel of KVS the applicant has tried to mis-lead the Court by relating the impugned order to the so called complaint filed by the applicant against the Principal. Learned counsel for the respondents also highlighted that in view of the complaint of sexual harassment of lady teachers, the if applicant is allowed to stay at the same place it may seriously vitiate the atmosphere. The learned Counsel for the respondents, however, emphasised that signatory of the written statement has been properly authorised by the competent authority, however, the same has not been explicitly mentioned in the written statement and, therefore, at best is a technical lapse on the part of the lawyer, not the respondents.

15. The File (1) No.42061/2014-15/KVS(RO)TSK/Admn Complaints reg .Sexual Harassment against Sh.B.P.Rabha, UDC KV

RRL(NEIST) Jorhat, (2) Case File pertaining to Sh.B.P.Rabha, UDC KV NEIST (RRL), Jorhat, (3) O.A.No.040/0000234 filed by Sh. B.P.Rabha UDC,KV,NEIST (RRL) Jorhat in CAT Hon'ble Bench, Guwahati , were made available to the Court by the respondents. This file contained a letter dated 28.08.2014 addressed to the Officer in Charge, Police Station Pulibor, Jorhat by Deputy Commissioner, KVS filed at 12-30 P.M. It shows that there was an alteration between the Deputy Commissioner and Mr.B.P.Rabha and the Dy.Commissioner has filed FIR in the Police Station. The Deputy Commissioner has also written a letter No.F.42061/2014-15/KVS(RO)/TSK/Admn/3960 dated 05.9.2014 to the Deputy Commissioner, relating to the complaint of sexual harassment against Shri Rabha dated 23.6.2014 and 26.6.2014. From the above letter it is made clear that a Committee comprising as follows:-

1. Dr.A.K.Sharma, Assistant Commissioner, KVS RO Tinsukia, Assam.
2. Ms.Sayera Rehman, NGO, Prerna Pratibandhu Shishu Bikas Kendra, Jorhat
3. Dr.(Mrs.) Bina BAruah, NGO, Heritage, C/O Muktijujaru Bhawan, Jorhat
4. Ms.Shyamaleema Deka, Principal, KV, OIL, Duliajan.
5. Shri Pushpendra Kumar, Administrative Officer, KVS RO Tinsukia

was constituted for the purpose of enquiry of complaint of sexual harassment vide order No.F.42061/201415/KVS (RO)/TSK/Admn/3960 dated 26.07.2014. The Committee conducted the enquiry from 04.08.2014 to 05.08.2014 and submitted its report dated 06.08.2014. According to the Committee , the complaint of sexual harassment against Smti. Nidhi Mishra, Ex-PRT(Music) of KV NEIST (RRL) could not be proved because Smti Nidhi Mishra Jorhat, now working at KVS Patna withdrew her complaint against Shri B.P.Rabha. She also requested in writing not to take any action on her complaint dated 23.06.2014. The Committee however, found the charges as complained by Ms.Rima Paul , TGT (Eng) contractual teacher, KVS NEIST (RRL), Jorhat proved.

16. Vide letter No.42061/2014-15/KVS(RO)/TSK/Admn/ dated 01.09.2014 the Deputy Commissioner, KVS, Tinsukia apprised the District Magistrate, Jorhat District how Shri Rabha , UDC, (RRL) Jorhat who is under investigation for the complaint of sexual harassment is taking advantage of the interim order of the Hon'ble CAT and requested him to do the needful. The letter of the Deputy Commissioner is extracted below:-

“F.42061/2014-15/KVS(RO)/TSK/Admn/

To the District Magistrate,

Jorhat District, Jorhat,

Sub:- Physical assault attempt and misbehaviour by
Shri Bishnu Prasad Rabha, UDC, Kendriya Vidyalaya,
NEIST (RRL), Jorhat-reg.

Sir,

With reference to subject mentioned above, the following facts are submitted herewith.

That the Principal, Kendriya Vidyalaya, NEIST (RRL), Jorhat (Assam) received complaints dated 23.06.2014 and 26.06.2014 regarding sexual harassment with two lady teachers pertaining to Shri Bishnu Prasad Rabha, UDC, Kendriya Vidyalaya, NEIST (RRL), Jorhat

The Principal, Kendriya Vidyalaya, NEIST (RRL), Jorhat (Assam) forwarded the above complaints to the Deputy Commissioner, KVS (RO), Tinsukia for necessary action vide letter No.F.2-20/KVRRL/2014-15 dated 30.06.2014.

The said complaints were referred to the sexual harassment redressal committee for conducting inquiry vide Deputy Commissioner, KVS RO Tinsukia office order No.F.42061/2014-15/KVS(RO)/TSK/Admn/2693-99 dated 09.07.2014 (copy enclosed). The committee has been constituted for the purpose of redressal of complaints of sexual harassment to women employees of Kendriya Vidyalaya & Regional Office, Tinsukia in terms of the guidelines and norms laid down by the Hon'ble Supreme Court of India's decision No.25 under rules 3(C) CCS (Conduct) Rules, 1964, as applicable to the employees of Kendriya Vidyalaya Sangathan. The Committee consists of the following officers/officials:-

1. Dr. A.K., Sharma, Assistant Commissioner, KVS RO Tinsukia, Assam.
2. Ms. Sayera Rehman, NGO, Prerna Pratibandhu Shishu Bikas Kendra, Jorhat
3. Dr. Dr.(Mrs.) Bina Baruah, NGO, Heritage, C/O Muktijujaru Bhawan, Jorhat
4. Ms. Shyamaleema Deka, Principal, KV, OIL, Duliajan.
5. Shri Pushpendra Kumar, Administrative Officer, KVS RO Tinsukia.

In the meantime, considering the factors and gravity of the complaints, the undersigned, being the disciplinary authority, suspended Mr. Rabha, UDC changing his head quarter from Kendriya Vidyalaya, NEIST (RRL), Jorhat to Kendriya Vidyalaya, Roing (Arunachal Pradesh) vide order No.F.42061/2014-15/KVS (TSK)/Admn/2549-52 dated 10.7.2014 (copy enclosed)

Shri Bishnu Prasad Rabha, did not report to his changed headquarter i.e Kendriya Vidyalaya, Roing (Arunachal Pradesh) and filed O.A.No.040/0000234/2014 in the Hon'ble CAT, Guwahati Bench, Guwahati. The Hon'ble CAT Guwahati Bench passed an interim order dated 22.07.2014. The operative part of the Hon'ble CAT order dated 22.07.2014 is as under:-

"Heard both the parties. Perused the pleadings and material placed before me. Presently, I am of the view that suspension and transfer of the headquarter of the applicant are seems to be consequence of the

complaint lodged by the applicant before the Chairman, VMC. Accordingly, the impugned order dated 10.07.2014 is hereby stayed till next date. However, respondents will be at liberty to seek alteration, modification or cancellation of the stay order well before the next date. List on 26.8.2014. “

In compliance to the Hon'ble CAT order dated 22.7.2014, Shri Bishnu Prasad Rabha, UDC reported back at Kendriya Vidyalaya, NEIST (RRL), Jorhat on 24.07.2014.

Shri B.P. Rabha, UDC submitted an application dated 11.08.2014 for release of salary for the period of suspension. The application was attended too. However, it is significant to note that a portion of the application was worded as follows:

“Therefore, my 20 days salary of 2014 may be released today itself, otherwise I will go for a hunger strike from to-morrow onwards.

Salary was also accordingly released by the Principal, Kendriya Vidyalaya, NEIST (RRL) Jorhat.

The undersigned visited Kendriya Vidyalaya, NEIST (RRL), Jorhat on 28.08.2014 at 11.30 AM. During the round I went to the Vidyalaya office along with Shri M. Manoharan, Principal, Kendriya Vidyalaya, NEIST (RRL), Jorhat where Shri Bishnu Prasad Rabha, UDC, Kendriya Vidyalaya, NEIST(RRL), Jorhat was sitting alongwith Shri M.C. Nath, Sub-staff, Kendriya Vidyalaya, NEIST (RRL), Jorhat.

I asked about the submission of Annual Budget for the year 2014-15, I was told by Shri Rabha , UDC that the Budget had been submitted. I asked Shri M.Manoharan, Principal, Kendriya Vidyalaya, NEIST (RRL), Jorhat who was handling the accounts? The Principal apprised me that the accounts/cash charge had been handed over to Shri M.H.Mazumdar.WET,Kendriya Vidyalaya, NEIST (RRL), Jorhat. I asked Shri M.C.Nath, Sub-staff to call Shri M.H.Mazumdar, WET. Subsequently, Shri B.P. Rabha asked me why he was not being given the cash Handling and accounts work etc. in spite of the CAT orders.

.....(Hindi)

Then Shri B.P. Rabha picked up the paper weight and aimed it at me. I told him not to do it. He caught hold of my shirt sleeve and scratched me on the hand. I asked the Principal to come out of the room. Since Mr.Rabha was getting aggressive shouting.....(Hindi

I went out of the room in hurry since Mr. Rabha was charging towards me. Since he was about to hit me I closed the door on him and come out of the office into the corridor, by which time the Principal and other teachers/staff of the Vidyalaya came to the area.

I lodged the FIR with the Police Station, Pulibar Police Station, Jorhat on the same day i.e 28.08.2014 at 12.32 PM (Case No.199/14 for which it was verbally told that the case has booked under section 353/323).

I was sent by the Pulibar police station officials for medical examination to the Jorhat Medical College, Jorhat, where the medical examination was conducted.

Shri B.P.Rabha, UDC also came to the Police Station after we arrived and filed an FIR against me (Case No.200/14 dated 28.08.2014) Subsequently, Shri M.Monoharan, Principal KV NEIST (RRL), Jorhat provided my bail, after which I went to Kendriya Vidyalaya, Missamari for the KVS Regional Youth Parliament and subsequently I have returned to KVS Regional Office, OIL Campus, Duliajan, District Dibrugarh on 31.08.2014.

It is also mentioned that the Officer-in-Charge (Shri Deepak Borah) at Pulibar Police Station let us go from the Police Station, Pulibor at 6 PM on 28.08.2014.

Shri B.P.Rabha seems to be well aware that he is at a backfoot in the alleged molestation case of teachers and has been found to do anything including desperate measures, like attacking verbally and physically to divert the attention and by accusing senior officials or corruption and bias.

The KVS is in due process of its departmental proceedings and will be bringing the case to a conclusion as per KVS norms/guidelines.

It is mentioned that the presence of Shri B.P. Rabha, UDC is proving seriously detrimental to the day to day functioning of Kendriya Vidyalaya , NEIST (RRL), Jorhat

The above is for your kind information and with a request to do the needful in this regard.

Yours faithfully,

(Ajay Pant)

Deputy Commissioner

17. The applicant has not been able to satisfy the Court that the impugned order of suspension and change of headquarters is an arbitrary and coloured exercise of powers by the competent authority i.e. the Deputy Commissioner, Ajay Pant.

18. This Court does not find any merit in the O.A. of the applicant. Accordingly, the same is dismissed.

The rule position relating to Headquarter of an employee during suspension is extracted below:-

“16. Headquarter during suspension

1. An officer under suspension is regarded as subject to all other conditions of service applicable to Government servants and cannot, therefore, leave his headquarters without prior permission. The station of posting immediately before his suspension will be the headquarters of the suspended officer. The form of order of suspension provides for prescribing the headquarters of a Government servant during suspension.

2. The competent authority can change the headquarters of a Government servant under suspension if it is in public interest.

3. When an individual under suspension requests for a change of headquarters, there is

4. no objection to the competent authority changing it if it is satisfied that such a course will not put Government to any extra expenditure like grant of travelling allowance, etc. or other complications like creating difficulty in investigation or in processing the disciplinary proceedings.

5. The fixing of headquarters during suspension of a Government servant enlarged on bail will be subject to any restriction the Court may impose on his movement while granting the bail."

(emphasised supplied)

19. In view of the nature of complaint and behaviour of the applicant the change in Headquarters of the applicant during suspension cannot be considered arbitrary and the same is found to be as per law.

20. This Court therefore, does not find any merit in the case of the applicant. The Departmental proceedings which are under

stay because of the intervention of this Court may be concluded as per law giving adequate opportunity to the applicant.

Application is dismissed. No order as to costs.

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER
Im

(MRS. MANJULA DAS)
JUDICIAL MEMBER