

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

**HON'BLE MR.A.K. GAUR , MEMBER (J).
HON'BLE MR. S.N. Shukla, MEMBER (A).**

Original Application Number. 957 (U) OF 2004.

ALLAHABAD this the 16 day of 9, 2009.

Narendra Singh Rautela, Son of Late Sri P.S. Rautela, T.G.T (English),
Jawahar Navodaya Vidyalaya, Pokhal, District- Tehari Garhwal.
.....Applicant.

VERSUS

1. Union of India through Ministry of Human Resource Development
(Department of Education), Govt. of India, New Delhi.
2. Commissioner, Navodaya Vidyalaya Samiti, Indira Gandhi
Stadium, Idnra Prasth Estate, New Delhi, Pin- 110002.
3. Deputy Director, Naovdaya Vidyalaya Samiti, Regional Office at B-
10, Sector (C), Aliganj, Lucknow, Pin- 226024.
.....Respondents

Advocate for the applicant: Sri S.K. Shukla
Advocate for the Respondents : Sri N.P. Singh

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M)

By this Original Application filed under section 19 of
Administrative Tribunals Act, 1985, the applicant has prayed for
following main relief/s :-

*"(A). to issue an order or a direction to absorb the applicant with
retrospective effect i.e. from 01.05.1989 (vide Annexure (2) to this
Original Application) following the Absorption Rules, 1989.*

*(B). to issue an order or direction to promote the applicant as PGT
on 6.8.1993 by implementing the Notification dated 3.9.1992 vide
Annexure No. 3 to this Original Application.*

*(C). to issue fresh direction to the respondent No. 2 taking the
complete representation dated 19.7.2000 with the supplementary
representation dated 01.11.2001 and 19.04.2002 into consideration*

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while deciding the grievances regarding the protection of the seniority with the retrospective absorption like the first batch of the deputationists absorbed on 01.05.89."

2. The facts of the case, in brief, are that the applicant was selected and initially joined in August 1984, as Trained Graduate Teacher (Primary Section) in Kendriya Vidyalaya Sangathan (K.V. S for short). Subsequently, he went on deputation after taking permission from K.V.S for two years and joined Jawahar Navodaya Vidyalaya (J.N.V for short) on 07.08.1988 as T.G.T (English). In the year 1989, J.N.V started process for direct recruitment of the staff including the teachers and the absorption of the staff on deputation. According to the applicant, the Navodaya Vidyalaya Samiti, M/o Human Resources and Development issued Circular dated 05.09.1989/Annexure- 2 of O.A protecting the seniority of the staff on deputation in accordance with clause mentioned in the Absorption Rules, 1989 with effect from 01.05.1989. In the said Circular, it has further been provided in paragraph 7 and 8 that those teachers/staff, who had completed two or three years on 31.12.1989, will be absorbed with retrospective effect i.e. with effect from 01.05.1989. The applicant on 01.08.1990 gave his consent for his permanent absorption. The grievance of the applicant is that as the applicant joined on 07.08.1988 on deputation to the N.V.S, he ought to have been absorbed w.e.f. 01.05.1989 protecting his seniority over the employees recruited vide Circular dated 05.09.1989. Aggrieved, the applicant preferred several representations to the respondent No. 3 but having no response, he filed Writ Petition No. 8682/2000 before Hon'ble High Court, Allahabad, which was disposed of vide judgment dated 22.02.2000/Annexure-8 of O.A with direction to the respondent No. 3 to decide his last representation dated 12.03.1999. The respondent No. 3, in compliance

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of direction of Hon'ble High Court, Allahabad, decided the representation of the applicant vide order dated 29.05.2000/Annexure-9 of O.A and rejected his request for absorption w.e.f. 01.05.1989 on the ground of non-completion of requisite tenure of two years from the date of his joining on deputation on 07.08.1988. The applicant, against the order dated 29.05.2000, preferred an Appeal dated 19.07.2000 followed by supplementary reminders dated 01.11.2001 and 19.04.2002 before the then Director but as no heed was paid, he filed O.A No. 1343/2003 before C.A.T, which was disposed of vide judgment dated 29.10.2003/annexure- 14 of O.A with direction to the Commissioner, N.V.S to decide the representation dated 19.07.2000 by a detailed and reasoned order, who vide order dated 03.03.2004/Annexure-15 of O.A, decided the representation dated 19.07.2000 and two other representations, which are also the part of appeal, were not considered.

3. Learned counsel for the applicant invited our attention to the order dated 03.03.2004/Annexure-15 of O.A and submitted that the order passed by the Commissioner, N.V.S is not a detailed and reasoned order. Learned counsel for the applicant further submitted that the applicant was given promotion from prospective date i.e. 01.05.1991 though his deputation period of two years was completed on 06.08.1990. Learned counsel for the applicant would contend that the action of the respondents in not promoting the applicant from 01.05.189 is arbitrary, discriminatory and contrary to the circular dated 05.09.1989, wherein it is clearly provided no one will be put in disadvantageous position. In support of his contention, learned counsel for the applicant placed reliance on decisions rendered by Hon'ble Supreme Court reported in AIR 1979 SC 621 - M.P. Sugar Mills

Vs. State of U.P, AIR 1980 SC 768- Bhim Singh and others Vs. State of Haryana and others and AIR 1974 SC 1755- G.M., S.C. Rly. Vs. A.B.R Siddhanti and Ors, and submitted that the applicant is fully entitled for the benefit of Circular dated 05.09.1989.

3. On notice, the respondents filed Counter Affidavit stating therein that the absorption of the applicant has been made in accordance with the rules and policies and after taking into account his consent for absorption w.e.f. 01.05.1991. Learned counsel for the respondents invited our attention towards the consent given by the applicant/Annexure CA-1 and submitted that the applicant was already made aware of his absorption w.e.f. 01.05.1991. Learned counsel for the respondents further submitted that the applicant joined N.V.S as TGT (English), J.N.V, Rudrapur on deputation. The permanent absorption in the Samiti was Notified vide Circular dated 04.07.1989 and subsequently Deputy Director (Admn.), N.V.S, H.Q, New Delhi vide Circular dated 05.09.1989 clarified that the person, who was on the strength of the Samiti on 04.07.1989, (date of adoption of permanent absorption rules) and is going to complete his normal deputation period of two/three years by 31.12.1989, will be considered for absorption w.e.f. 01.05.1989, Learned counsel for the respondents would contend that as the applicant could not complete the normal deputation period of two years as on 31.12.1989, therefore, his case for permanent absorption in the Samiti w.e.f. 01.05.1989 was not considered because of his joining in the Samiti on 07.08.1988.

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4. Learned counsel for the applicant filed Rejoinder Affidavit reiterating the contents stated in the O.A and nothing new has been added therein.

5. We have heard learned counsel for either sides, perused the pleadings and the Written Arguments filed by them.

6. The sole controversy involved in the instant case is that whether the applicant is entitled for the benefit of the circular dated 05.09.1989 in the matter of permanent absorption w.e.f. 01.05.1989 or not. For better appraisal of the controversy, we may refer relevant Claus 7 and 8 of the Circular dated 05.09.1989, which are as under:

7. Effective date of absorption should be the date of commencement of deputation in the Samiti and not from the date of absorption	It has been decided that the person who was on the strength of the Samiti on 4 th July, 1989 (the date of adoption of the permanent absorption rules) and is going to complete his normal deputation period of two/three years by the end of this year (31.12.1989) will be considered for absorption with effect from 1 st May 1989 (the date prior to the date of direct appointment in the post of teaching staff). It may not be possible to consider the date of absorption from the date of joining in the Samiti on deputation basis.
8. On absorption the deputationist will	The seniority of the deputationist will be fixed in accordance with the clause of the

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become junior to the persons appointed on direct recruitment basis. By giving date of absorption	permanent absorption rules with effect from 1 st May 1989, no deputationist will be put on disadvantageous position. Further the services rendered by the deputationist in their parent department/organization will not be counted for seniority purposes. All deputationists will be considered at par for the purposes of fixation of seniority in the Navodaya Vidyalaya Samiti. However, the seniority will be fixed as discussed in provision 5 of the Permanent Absorption Rules.
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7. The applicant in reference to appointment letter dated 22.07.1988, joined the J.N.V.S on 07.08.1988 and two years tenure has been completed on 08.08.1990. As per Annexure CA-1, the applicant in respect to the Permanent Absorption Rules dated 04.07.1989, agreeing with the terms and conditions laid down therein, tendered his resignation from parent department only on 01.05.1991 to enable him to be absorbed permanently in N.V.S. According to the Circular (quoted above), the applicant did not complete his two years tenure as on 31.12.1989, as has been required in Clause 7 of the Circular, therefore, he could not be considered for being absorbed w.e.f. 01.05.1989. The judgments relied on by the learned counsel for the applicant have no application with the controversy involved in the instant case because, as per the clear and specific stipulation in the Circular dated 05.09.1989, the applicant on completion of two years services, and after his resignation w.e.f. 01.05.1991 from the parent department for being permanent

absorption in N.V.S, was promoted w.e.f. 01.05.1991. The applicant cannot claim parity with the employees, who have been recruited through direct recruitment because as per Clause 8 of the Circular dated 05.09.1989, the services rendered by the deputationist in their parent department/organization will not be counted for seniority purposes.

8. In view of the observations made above, we find no ground for interference. The O.A is accordingly dismissed.

9. There will be no order as to costs.



MEMBER- A.



MEMBER- J.

/Anand/