

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

O.A.NO. 567 OF 2000

Cuttack, this the 20th September, 2004

Sri Jagai Karta Behera

Applicant

Vrs.

Union of India and others 1

Respondents

FOR INSTRUCTIONS

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1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 113

(M.R.MOHANTY)
MEMBER(JUDICIAL.)

(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)

Sri Jagatkarta Behera, aged about 52 years, son of Narendra Kumar Behera, of
village Laimunda, P.O.Kothabhui, Via Kishore Ganj, Dist.Angul, at present
working as Laboratory Assistant, Kendriya Vidyalaya, FCI, Talcher, At
Vikrampur, Dist. Angul Applicant

Vrs.

- 1) Union of India, represented by Secretary, Ministry of Human Resource Development, Department of Education, Government of India, New Delhi.
- 2) Kendriya Vidyalaya Sangathan, represented by Joint Commissioner (Admn.), 18 Institution Area, Shaheed Jeet Singh Marg, New Delhi 110 016
- 3) Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bhubaneswar Region, H.P. 7, B.D.A.Locality, Laxmi Sagar, Bhubaneswar 751 007 (Orissa)
- 4) Principal, Kendriya Vidyalaya, F.C.I.Talcher, P.O.Vikrampur, Dist.Angul 750106 Respondents

Advocates for the applicant - M/s P.C.Kar, J.Gupta, S.C.Mekam

Advocates for the Respondents - Mr. Ashok Mohanty.

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Jagatkarta Behera, presently working as Laboratory Assistant, Kendriya Vidyalaya, F.C.I.Talcher, At-Vikrampur, Dist.Angul, has filed this O.A. to quash the

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order passed by the Joint Commissioner (Administration), dated 24.3.1999 (Annexure 7) and to direct the Respondents to give him promotion to the cadre of Primary Teacher.

2. The case of the applicant is that after he was recruited as Laboratory Assistant at Puri on 3.1.1968, he acquired some higher academic qualification, because of which from July 1977 to April 1981, while he was working at Kendriya Vidyalaya, Talcher, he was asked to teach Mathematics and Science to the primary school students. He was also entrusted with various other duties. Having gained such experience, she has been representing to the authorities to give him promotion as Primary Teacher, especially after Laboratory Assistants were granted teaching allowance. His grievance is also that there is no avenue of promotion so far as Laboratory Assistants are concerned. He had taken up the matter in writ petition before the Hon'ble High Court and his writ petition (OJC No. 8042 of 1995) was finally disposed of on 16.10.1998 by the Hon'ble High Court directing the Opposite Parties to find out whether any post other than in teaching cadre can be created to cause promotional avenue for the Laboratory Assistants by suitably amending the Rules.

3. The grievance of the applicant is that by passing the order at Annexure 7, the Respondents have not only not complied with the direction of the Hon'ble High Court, they have in effect ignored the direction.

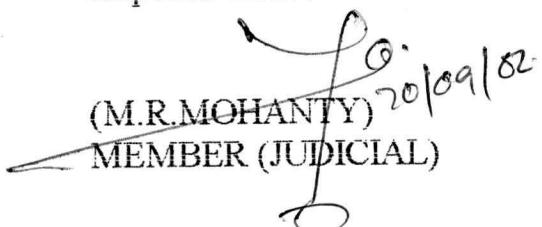
4. The Respondents have opposed the O.A. by filing counter affidavit. They have submitted that the duties of Laboratory Assistant are to assist the Post Graduate Teacher of the subject and therefore, the applicant's duties cannot be equated with that

of the teaching posts. Further, the Laboratory Assistant has been categorised as non-teaching staff and hence there is no question of creating avenue of promotion for Laboratory Assistants in the teaching cadre. However, they have submitted that on the basis of the recommendation of the Fifth Central Pay Commission, a scheme of Assured Career Progression has been made applicable to the employees of Kendriya Vidyalaya Sangathan who do not have future promotional avenue in the service career. They have also disclosed that the case of the applicant has been forwarded to Kendriya Vidyalaya Sangathan headquarters for grant of A.C.P. as due and admissible to him.

5. We have heard the learned counsel for both the parties and have also perused the records placed before us.

6. The main grievance of the applicant is that he having acquired some experience in teaching primary school students and having also possessed the necessary academic qualification, he should be considered for promotion to the post of Primary Teacher. The Respondents, on the other hand, have stated in their counter that there is no provision for departmental promotion to the post of Primary Teacher, a cadre which is maintained exclusively through direct recruitment. They have, therefore, stated that there is no merit in the claim made by the applicant. We also see force in the argument of the Respondents and we wonder why if the applicant is academically qualified for the post of Primary Teacher he did not apply for the same post for appointment through direct recruitment. Direct recruitment is also one of the methods available to any official for making further progress in service within the same organization. Be that as it may, the question of lack of

adequate promotional prospect has been the corner stone of his grievance. That is why the Hon'ble High Court also called upon the Respondents to look into this aspect of the matter. The Respondents have now disclosed before us by submitting a copy of the ACP Scheme that they have introduced the benefit of the scheme which allows Central Government employees to have two financial upgradations in lieu of promotion to higher post, one after 12 years and the second after 24 years of service, and the said Scheme having now been made available to the non-teaching employees of Kendriya Vidyalaya Sangathan, the grievance of the applicant has been met squarely and fully. In the aforesaid facts of the matter, this O.A. has become infructuous which is accordingly disposed of. No costs.


(M.R.MOHANTY)
MEMBER (JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN