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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**O.A.NO.246 of 2011**

Cuttack this the 6<sup>th</sup> day of February, 2013

**CORAM**

**HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)  
HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)**

Bhabagrahi Sanibigraha,  
Aged about 44 years,  
S/o. Late Biswanath Sanibigraha,  
AT-Ohada Sasan,  
PO- Achyutapur, Via-Turigadia,  
Dist-Balasore,  
Presently working as Primary Teacher,  
Kendriya Vidyalaya No.1 Cuttack,  
C.D.A. Bidanasi, Sec-1, Cuttack-753014.

...Applicant

(By Advocates:M/s D.P. Dhalasamant, N.M. Rout )

-VERSUS-

Union of India represented through

1. **Commissionr,**  
**Kendriya Vidyalaya Sangathan,(HQ)**  
**18, Institutional Area,**  
**Saheed Jeet Singh Marg,**  
**New Delhi-110 610.**
2. **Asst. Commissioner,**  
**Kendriya Vidyalaya Sangathan,**  
**Regional Office at Pragati Vihar,**  
**Mancheswar,**  
**Bhubaneswar, Dist-Khurda,**  
**Orissa-751017.**
3. **Principal,**  
**Kendriya Vidyalaya No.1,**  
**C.D.A. Bidanasi, Sec-1,**  
**Cuttack-753014.**



4. **Superintendent of Police,  
Central Bureau of Investigation,  
Nayapalli, Unit-8,  
Orissa Branch,  
Bhubaneswar,  
Dist-Khurda.**

..... Respondents  
( By Advocates: Mr. U.B. Mohapatra, SCGSC & Mr. H.K. Tripathy )

### **O R D E R (oral)**

**MR. R. C. MISRA, MEMBER (A):**

One Sri Bhabagrahi Sanibigraha who is working as Primary Teacher **Kendriya Vidyalaya No.1**, C.D.A. Bidanasi, Sec-1, at Cuttack has approached this Tribunal with the prayer that the Respondent Nos.1-3 i.e., the authorities of the Kendriya Vidyalaya Sangathan may be directed to give promotion to him to the post of TGT(Sc) from the date from which the incumbents placed below in the merit list were given promotion, with all consequential benefits. He also makes a prayer that the communication sent by the Education Officer Kendriya Vidyalaya Sangathan, New Delhi sent to the Asst. Commissioner, Kendriya Vidyalaya Sangathan, Bhubaneswar Region on 04/10.03.2011 enclosed to the O.A. as Annexure-A/11 should be quashed.

2. The short facts of the matter are that on the basis of information regarding nefarious activities of the Selection Board in connection with manipulation of marks in respect of the candidates for the post of PRT in KVS in the year 1993, The Central Bureau of Investigation (CBI) registered a case vide case No.R.C-36(A)/96 against Sri K.C. Panda,



Ex-Principal of Regional College of Education, Bhubaneswar and Sri P.K. Tewari, Ex-Assistant Commissioner KVS, Bhubaneswar who were acting as Chairman and Member Secretary respectively, of the Selection Board and also against 22 (Twenty Two) teachers including the present applicant. The CBI after completing the process of investigation has lodged prosecution against Sri K.C. Panda (A-1) and Sri P.K. Tewari (A-2) to stand trial in the Court of law on the charge of gross abuse of official position. In case of A-6 to A-27 who are teachers and appointees who benefited out of the manipulation of marks, the matter was referred to the Ministry/Department for such action as may be considered appropriate. It has been placed before us by the Respondents that the matter was referred to KVS Headquarters New Delhi in connection with taking action against the teachers (A-6 to A-27) as proposed by the CBI. The KVS Headquarters vide communication dated 07.08.2007 has informed the Assistant Commissioner, KVS, Bhubaneswar, that the competent authority has directed to wait till the outcome of the CBI case filed in the Court of law against the Chairman and Member Secretary of the Selection Committee which is till subjudice. Further, it was informed that any further action in the matter of charge of gaining employment through nefarious means will be considered by the competent authority after the Court's verdict. On this ground, the KVS is ~~has~~ <sup>R</sup> not granted promotion to the post of TGT to the present applicant in the O.A. along with other successful candidates who were given promotion.

3. The Respondents have submitted a copy of the report of CBI before the Tribunal for our perusal. It is clear from this report that while prosecution was launched against Sri K.C. Panda (A-1) and Sri P.K. Tewari



★ (A-2) to stand trial in the Court of law in respect of all the Teachers (A-6 to A-27) who are the appointees benefiting out of the manipulation of marks, the matter has been referred to the Ministry/Department for such action as may be considered appropriate. It is seen that the applicant is (A-14) in the report of the CBI.

4. We have heard the Ld. Counsel for both parties and perused the documents placed on record. Sri D.P. Dhalsamant, Ld. Counsel for the applicant has submitted that though the applicant was named in the report, charge sheet has not been filed against applicant. The applicant's juniors having been promoted, and there is no impediment in the promotion of the applicant. Further, the non promotion of the applicant cannot be sustained in the eyes of law since there is no criminal case or departmental proceeding pending against the applicant.

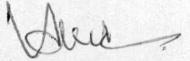
5. Sri U.B. Mohapatra, Ld. Sr. CGSC appearing for Respondent No.4 has drawn the attention of this Tribunal to Paragraph-4 of his counter where it is stated that since the applicant is one of the accused in the CBI case the KVS has not given promotion to him on this ground. It is very clear that the applicant is an accused in the CBI report, but no case has been filed in the Court of law against him. In respect of his case as well as the other teachers the matter has been referred to the Ministry/Department for taking such action as may be considered appropriate. The KVS authorities in their communication dated 07.08.2007 have informed the Assistant Commissioner, KVS, Bhubaneswar that the Competent Authority ~~is has~~ directed to wait till the outcome of the CBI case filed in the Court of law



against the Chairman and Member Secretary of the Selection Committee which is still sub-judice. In a subsequent communication dated 4/10.03.2011 they have informed that the request of the applicant for promotion through Limited Departmental Examination has been considered sympathetically but the same could not be acceded to as CBI case regarding his appointment as PRT in KVS is pending. However, it is quite clear from the facts as stated above that no departmental action has been initiated or is pending against the applicant as on today and there is also no pending criminal case. Therefore, there is no impediment for considering the request of the applicant for promotion if he is otherwise eligible and also fulfills the required conditions for promotion. We would of course make it very clear that if the applicant would be found guilty of certain alleged misconduct, the charge could be framed against him even in a promotional post.

6. Basing on these observations we would allow the prayer of the applicant to the extent as mention above. No costs.

  
(R.C. MISRA)  
MEMBER(ADMN.)

  
(A.K. PATNAIK)  
MEMBER(JUDL.)