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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.941 OF 2012
Cuttack, this the 23rd Day of July, 2015

Sri Birendra Kumar Das Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.941 OF 2012

Cuttack, this the 23rd Day of July, 2015

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HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

Sri Birendra Kumar Das,
Aged about 46 years,
S/o. Late Sibaprasad Das,
At/Po-Gandasthapur, Via-Bahanaga,
Dist-Balasore,
Presently working as Primary Teacher,
Kendriya Vidyalaya, Paradip Port,
At/PO-Paradip, Dist-Jagatsinghpur-754142

...Applicant

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

-VERSUS-

Union of India represented through

1. **Commissionr,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi-110016.**
2. **Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office at Pragati Vihar,
Mancheswar,
Bhubaneswar, Dist-Khurda,
Orissa-751017.**
3. **Principal,
Kendriya Vidyalaya , Paradip Port,
At/PO-Paradip, Dist-Jagatsinghpur-754142.**
4. **Principal,
Kendriya Vidyalaya ,
Ordinance Factory, At/PO Badmal,
Dist-Balangir**
5. **Superintendent of Police,
Central Bureau of Investigation,
Nayapalli, Unit-8,
Bhubaneswar, Dist-Khurda.**

..... Respondents

(By Advocates: Mr. U.B. Mohapatra, Mr. H.K. Tripathy, Mr. S. Behera)



O R D E R

A.K. PATNAIK, MEMBER (J):

Applicant, Sri Birendra Kumar Das, presently working as Primary Teacher, Kendriya Vidyalaya, Paradip has approached this Tribunal seeking the following relief :

- “(i) Direction be issued to respondents particularly Respondent No.2 to grant senior scale of pay to the applicant w.e.f. 13.12.2005 with all consequential benefits.
- (ii) Direction be issued to respondent No.5 to return all the documents including service book of the applicant to respondent No.2.

2. Shorn of unnecessary details, it would suffice to note that initially the applicant joined as PRT, Kendriya Vidyalaya in the year 1993. His grievance is that although he joined as PRT in the year 1993, his services have neither been confirmed nor has he been granted Senior scale of pay as due and admissible to him, on the ground that a C.B.I case bearing No.36(A)/96 is pending against him. The Departmental Screening Committee, as it appears from Annexure-A/9 and A/10 although considered the case of the applicant for grant of senior scale, but the same could not be acceded to due to the fact that the afore- mentioned CBI case is pending against him. Representations filed by the applicant from time to time having not yielded any fruitful result, Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the AT Act seeking relief as referred to above.

3. On being noticed, Respondent-KVS including the Superintendent of Police, CBI, have filed their counters independently.



4. In the counter filed by the Respondents KVS, it has been mentioned that on the basis of information regarding ~~nepharious~~ ^{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 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 the appointees and 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 pointed that the matter was referred to KVS Headquarters New Delhi for taking action against the teachers (A-6 to A-27) as proposed by the CBI. The KVS Headquarters vide communication dated 07.08.2007 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 still subjudice. Further, it has been directed 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.

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5. Based on the above, it has been submitted that since disciplinary case is pending against the applicant, confirmation in service as Primary Teacher was not considered and consequently, the question of grant of senior scale of pay to the applicant does not arise. On these grounds, Ld. Counsel for the KVS stated that the applicant is not entitled to any relief and therefore, the O.A. is liable to be dismissed being devoid of merit.

6. In the counter filed by the Superintendent of Police, CBI (Respondent No.5), it has been mentioned that the service book of the applicant which was seized during the course of investigation has already been returned to one D. Ghadei, Asst. Superintendent on 17.05.2004 on Zimmanama. That the applicant was named in the F.I.R. filed before C.B.I. Bhubaneswar Branch, bearing No.CBI(BBS) RC.36(A)/96. After completing the investigation, the C.B.I has filed charge sheet before the C.B.I. Court, Bhubaneswar on 30.12.1996. ***The applicant has not been charge sheeted in said case.*** It is further submitted that the appointment in the substantive capacity, confirmation and grant of senior scale in favour of the applicant are all the affairs of the KVS and in this regard CBI has no role to play.

7. We have heard the Ld. Counsel for both the sides and perused the materials available on record. We have also gone through the written notes of submissions filed by the Counsels for the parties.

8. During the course of hearing, Mr. D.P. Dhalsamant, Ld. Counsel for the applicant brought to our notice, orders of this Tribunal dated 06.02.2013 passed in O.A. No. 246/11 and submitted that the principle

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decided based on the facts therein are fully covered by the facts and circumstances of the present O.A. and therefore, the applicant in the instant O.A. being similarly situated as that of the applicant in O.A. No.246/11, the Tribunal should grant relief as sought for.

9. We have considered the submissions in the light of the pleadings of the parties as well as the applicability of ratio decided by this Tribunal in O.A. No. 246/11.

10. It is an admitted position that the DPC held from time to time did not consider the case of the applicant for grant of senior scale on the ground that the CBI case is pending against him. This finding of the DPC, in our considered view, is not in ^{consonance} ~~countenance~~ with the statements made by the CBI (Respondent No.5) in their counter which **unequivocally states that applicant has not been charge sheeted.** Law is well settled that unless an allegation made against a Government servant is established after following the due procedure of law, he can not be held guilty. However, in instant case, the position is diametrically opposite since the applicant herein has not at all been chargesheeted by the CBI on any allegation whatsoever. From the above, it appears that since applicant's appointment as Primary Teacher in K.V. in the year, 1993 has not been tainted with any dubious means, he has not been chargesheeted by the CBI. Decided from the above view point, it was wholly irrational and unreasonable on the part of the KVS authorities to withhold grant of senior scale in favour of the applicant, if he was otherwise eligible. This view of ours gains support of the decision of this Tribunal in O.A. No.246/11, which is unalterable. In the circumstances, applicant has an indefeasible

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right to be considered for grant of senior scale with effect from the date that was due and admissible to him. Accordingly, we direct Respondent No.2 i.e., Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office at Pragati Vihar, Bhubaneswar in the following terms:-

- (1) Take expeditious steps for getting the services of the applicant confirmed after following the due procedure of rules.
- (2) Consider grant of senior scale by convening a Review DPC and if in the process applicant is considered eligible he be so granted with effect from the date the same is due and admissible.
- (3) In such eventuality, applicant shall be entitled to consequential financial and service benefits.

11. The above exercise shall be completed by the Respondent-KVS within a period of 120 days from the date of receipt of this order.

12. Last but not the least, with regard to the prayer of the applicant for direction to Respondent No.5 to return the Service Book to Respondent-KVS, we would observe that since the DPC had met consecutively in the years 2006, 2009 & 2010 for considering grant of senior scale wherein the case of the applicant had admittedly been considered but the same was rejected on the ground that CBI case is pending against him, it is quite axiomatic that the Service Book of the applicant is very much available with the Respondents-KVS. Therefore, no direction in this regard by the Tribunal is warranted.

13. In the result, the O.A. is allowed to the extent indicated above.

However, there shall be no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)