

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.395/09

Thursday this the 15<sup>th</sup> day of July 2010

**C O R A M :**

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. Kendriya Vidyalaya Non Teaching Staff Association  
represented by its General Secretary C.S.Prem,  
S/o.late C.G.Stephen, residing at Chiramel House,  
Thoppumpady, Kochi – 682 005.

2. S.Sivasankar,  
S/o.late S.S.Pillai,  
Assistant, Kendriya Vidyalaya,  
Port Trust, Cochin – 682 003.  
Residing at 'Aiswarya', House No.31/1476-C,  
LPS Road, Ponnurunni, Vyttila P.O.,  
Cochin – 682 019.

...Applicants

(By Advocate Mr.T.C.Govindaswamy)

**V e r s u s**

1. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18 – Institutional Area, Shahid Jeet Singh Marg,  
New Delhi - 110 016.

2. The Deputy Commissioner (Pers.),  
Kendriya Vidyalaya Sangathan,  
18 – Institutional Area, Shahid Jeet Singh Marg,  
New Delhi - 110 016.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 15<sup>th</sup> July 2010 this Tribunal on  
the same day delivered the following :-

**ORDER**

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

The 1<sup>st</sup> applicant herein is the Kendriya Vidyalaya Non Teaching  
Staff Association recognised by the Kendriya Vidyalaya Sangathan

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represented by its General Secretary and the 2<sup>nd</sup> applicant is an aggrieved person. They have impugned the Annexure A-1 letter bearing No.F.11057-02/2008-KVS (Admn.II)460 dated 4.5.2009 issued by the 2<sup>nd</sup> respondent, namely, the Deputy Commissioner (Pers.), Kendriya Vidyalaya Sangathan, New Delhi, enclosing therewith the provisional common All India Seniority List of Assistant Superintendents as on 1.1.2008 drawn on the basis of the following criteria :-

- (a) The seniority list has been drawn in accordance with the Recruitment Rules for the above mentioned post.
- (b) The Seniority has been determined by combining the select panels of departmental examinees and promotees according to the position of individual concerned in the select panel concerned of this category. Where there is no select panel, the date of regular appointment to the grade has been taken as the basis of determining the seniority.
- (c) Adhoc service has not been counted for fixation of seniority and the seniority in the grade/cadre has been counted only with effect from the date of regular appointment, if any.
- (d) The Government of India instructions issued by the DP&AR vide OM No.22011/7/86-Estt.(D) dated 3.7.1986 have also been taken into account in deciding relative seniority.
- (e) The provisional seniority list of the above mentioned post contains the name of the existing incumbents only.
- (f) As per the Fundamental Rule of Seniority it is stated that the persons working in the lower scale merged with higher scale should be placed en block below the persons working under higher scale from the date of merger of the pay and scale.

Their grievance is against the stipulations of the respondents contained in the said letter restricting their right to make representation only to the limited extent of errors/omissions, if any, occurred in the said list but specifically barring them from making any representation on the aforesaid

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criteria for determining the seniority. The learned counsel for the applicant, Shri.T.C.Govindaswamy has submitted that the criterion no.(f) above is the main offending clause.

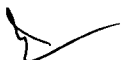
2. In this regard, Shri Govindaswamy has invited our attention to the Annexure A-7 O.M.No.F.10-1/2001-KVS(PR-II) dated 4.4.2002 forwarding therewith the provisional common All India Seniority List of Assistant Superintendents up to 2001 prepared on the basis of the following criteria :-

(a) Have been broken up in blocks of each year. Blocks of each year of three cadres have been merged separately.

(b) In the block of a year, the persons who are first in the seniority list of their respective cadres have been bracketed together. Amongst themselves they have been given an inter se seniority on the basis of their respective dates of birth. The same exercise has then been repeated for those on the second rank and thereafter, until all employees in the block of that year of all merging cadres have been ranked. This process is repeated for the next block of year in the same manner.

(c) While doing this exercise, whichever of the earlier cadres has nobody left in the block of any year has been left out while continuing the merger of the lists of the remaining cadres for that year, thereby completing the merger of the block of an year, before proceeding to the next year.

With the aforesaid revised criteria No.(f) incorporated in the impugned Annexure A-1 letter, the immediate impact on the 2<sup>nd</sup> applicant was that he was pushed down from Sl.No.110 in the Annexure A-7 seniority list up to 2001 and at Sl.No.93 in the Annexure A-8 seniority list as on 1.1.2004 to Sl.No.182 in the impugned Annexure A-1 seniority list. He has, therefore, submitted that finalising the aforesaid seniority list precluding the



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applicants from making representations on the criteria followed by the respondent department is totally arbitrary and illegal and the same was adopted by them without the authority of the Board of Governors or the Chairman of the Board.

3. The respondents in their reply has submitted that they are following the guidelines issued by the Department of Personnel and Training contained in their letter dated 12.12.1998 as well as Appendix '3' of the Education Code. They have further submitted that the Fundamental Rule for preparation of seniority is that the persons working in the lower scale merged with higher scale should be placed en-block below the person working under higher scale from the date of merger of the pay and scale.

4. We have considered the submissions made by the counsel for the applicant Shri.TC Govindaswamy and counsel for the respondents Shri.Thomas Mathew Nellimoottil. It is well settled position of law that the affected persons are entitled to make representations against the provisional seniority list and they are to be considered by the respondents in accordance with the rules. While making such representations, restricting their scope and holding that the criteria being followed by the respondents are beyond the reach of the affected persons are totally arbitrary and hence illegal. It is one thing that the representation made by an affected party is considered but it is a different thing that it was rejected, if the same was not covered under the rules, as the right of consideration of the representation cannot be denied to the applicants. We, therefore, consider that the Annexure A-1 order is absolutely arbitrary and illegal and



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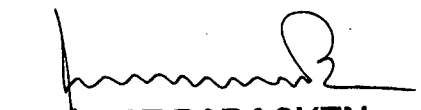
the same is accordingly quashed and set aside. Further, we direct the respondents to re-circulate the aforesaid provisional common All India seniority list of Assistant Superintendents as on 1.1.2008 inviting objections, if any, from the persons concerned in the aforesaid provisional seniority list granting them a further period of 45 days without restricting their right for making representation even on the criteria for determining the seniority for preparing the provisional common All India seniority list. Consequently, we also direct that the respondents shall not make any regular appointment on the basis of the impugned Annexure A-1 seniority list till the representations received from the affected persons are considered and the required necessary changes, if any, are made in the seniority list and finalise them. As and when the seniority list is finalised the respondents shall also furnish a copy of the same to the 1<sup>st</sup> applicant in this case, being the Association representing the Non Teaching Staff.

5. There shall be no order as to costs.

(Dated this the 15<sup>th</sup> day of July 2010)



**K. GEORGE JOSEPH**  
**ADMINISTRATIVE MEMBER**



**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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