

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW

O.A. NO. 84 OF 2005 AND 85 OF 2005

THIS THE 7th DAY OF JULY, 2005

HON'BLE SHRI S.P. ARYA, MEMBER (A)

HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

O.A. NO. 84/2005

Sooraj mal Garg aged about 52 years son of Sri B.M. Garg, R/o Type IV Quarters, Kendriya Vidyalaya Campus, Kendriya Vidyalaya, Rae Bareli.

Applicant

By Advocate: Sri A.K.Chaturvedi and Sri Raj Singh

Versus

1. Kendriya Vidyalaya Sangathan, Headquarters 18, Institutional Area, Shaheed Jeed Singh Marg, New Delhi through its Chairman, Board of Governors/ Chairman, Kendriya Vidyalaya Sangathan.

2. Commissioner, Kendriya Vidyalaya Sangathan, Headquarters 18, Institutional Area, Shaheed Jeed Singh Marg, New Delhi.

3. Jt. Commissioner (Administration), Kendriya Vidyalaya Sangathan, Headquarters 18, Institutional Area, Shaheed Jeed Singh Marg, New Delhi.

4. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow Region, Sector J, Aliganj, Lucknow.

5. Chairman, Vidyalaya Management Committee, Kendriya Vidyalaya, Rae Bareli.

Respondents

By Advocate: Sri M.G. Mishra

O.A. NO. 85/2005

Ms. P. Subhashini aged about 47 years w/o Shri I.P. Kutty, r/o Type IV, Quarters, Kendriya Vidyalaya Campus, Kendriya Vidyalaya, Indian Institute of Management, Prabandh Nagar, Off. Sitapur road, Lucknow. Applicant

By Advocate: Sri A.K.Chaturvedi and Sri Raj Singh

Versus

1. Kendriya Vidyalaya Sangathan, Headquarters 18, Institutional Area, Shaheed Jeed Singh Marg, New Delhi through its Chairman, Board of Governors/ Chairman, Kendriya Vidyalaya Sangathan.
2. Commissioner, Kendriya Vidyalaya Sangathan, Headquarters 18, Institutional Area, Shaheed Jeed Singh Marg, New Delhi.
3. Jt. Commissioner (Administration), Kendriya Vidyalaya Sangathan, Headquarters 18, Institutional Area, Shaheed Jeed Singh Marg, New Delhi.
4. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow Region, Sector J, Aliganj, Lucknow.
5. Chairman, Vidyalaya Management Committee, Kendriya Vidyalaya, Indian Institute of Management, Prabandh Nagar, Off. Sitapur Road, Lucknow.

Respondents

By Advocate: Sri M.G. Mishra

ORDER

BY HON'BLE SHRI S.P. ARYA, MEMBER (A)

Applicants by these OAs seek for the following reliefs:-

(O.A. No. 84/2005)

i) to set aside /quash the order dated 7.2.2005 (Annexure No.1 to this Original Application) issued by the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi, Respondent No.2 along with all consequential orders.

ii) to direct the respondents to treat the applicant as deemed regular Principal, Kendriya Vidyalaya, Rae Bareilly, within the direct recruitment quota in accordance with the Kendriya Vidyalaya Sangathan framed Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority etc.) Rules 1971, w.e.f. 30.6.2001, and to include the name of the applicant in the seniority list of Principal, Kendriya Vidyalaya keeping in view the date of appointment as 30.6.2001 as well as the merit list prepared in response to

the recruitment notice published in the employment news 18-24.11.2000 (Annexure No.6 to this Original Application).

iii) to issue direction not to transfer/ repatriate back the applicant to the post of Post Graduate Teacher (Physics).

iv) to issue any other order or direction deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the present case.

v) to allow the Original Application with cost.

(O.A. No. 85/2005)

i) to set aside /quash the order dated 7.2.2005 (Annexure No.1 to this Original Application) issued by the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi, Respondent No.2 along with all consequential orders.

ii) to direct the respondents to treat the applicant as deemed regular Principal , Kendriya Vidyalaya , Indian Instittue of Management , Lucknow , within the direct recruitment quota in accordance with the Kendriya Vidyalaya Sangathan framed Kendriya Vidyalaya Sangathan(Appointment, Promotion, Seniority etc.) Rules 1971 , w.e.f. 12.8.2002, and to include the name of the applicant in the seniority list of Principal, Kendriya Vidyalaya , keeping in view the date of appointment as 12.8.2002 as well as the merit list prepared in response to the recruitment notice published in the employment news -06-12.10.2001 (Annexure No.11 to this Original Application).

iii) to issue direction not to transfer/ repatriate back the applicant to the post of Post Graduate Teacher (Physics).

iv) to issue any other order or direction deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the present case.

v) to allow the Original Application with cost.

2. The impugned orders have been assailed on the following grounds:-

i) The representations made by the applicants has neither been referred to nor considered;

ii) For compliance of Principle of Natural Justice, no opportunity was given;

iii) Orders passed by the Chairman and Commissioner of Kendriya Vidyalaya Sangathan are one and the same with only difference of language.

iv) Order has been passed without application of mind.

v) The feeder category officers who are in direct line of promotion should not be considered for appointment by transfer on deputation as per DOP&T instructions dated 3.10.1989 and therefore, the order dated 12.6.2001 of deputation is in violation thereof;

vi) Deputation is misnomer and the same is mischievous;

vii) The applicant is not eligible for becoming the Principal in the promotion quota;

viii) The correct sanctioned strength of the Principal as on 1.4.98 has not been indicated in the counter reply and the figures shown are incorrect.

ix) The deputation is contrary to Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority, etc.) Rules 1971, either made prior to 5.7.2001 or thereafter and therefore, 'on deputation basis' should be deemed regular from the date of appointment as Principal.

x) After completion of 2 years of service, the applicant should be treated as confirmed ;

xi) The applicants were not maintaining their lien on the post of PGT (Physics) after his appointment as Principal on 30.6.2001;

xii) Principals of various Kendriya Vidyalayas were absorbed in pursuance of the office order dated 29.5.2001 , 12.6.2001 and 28.6.2004.

xiii) The policy of absorption of regularization of alleged deputationist exists in the Kendriya Vidyalaya . The applicant would suffer financial loss if he has to work as PGT.

3. Shri Sooraj Mal Garg (Applicant of O.A. No. 84/2005) was appointed on the post of Principal on deputation basis with the stipulation that his deputation in Kendriya Vidyalaya will be initially for a period of one year or till further orders, whichever is earlier. The period of deputation can be extended on year to year basis for a maximum period of 5 years depending upon his conduct and performance and administrative exigencies. The appointment will be governed

by usual deputation terms. Para 3 of the letter read as under:-

"Shri Sooraj Mal Garg may be informed that this appointment on deputation will not confer on him/her any claim for permanent absorption / regular appointment as Principal in the Kendriya Vidyalaya Sangathan. Moreover, he /she cannot claim for extension of deputation period as a matter of right. It should be clearly understood that the aforesaid period of deputation can be curtailed at the sole discretion of the Commissioner,. KVS On completion / termination of deputation period, he /she will be reverted back to his/her parent office/feeder post."

The endorsement required the acceptance from the applicant within 7 days. Thereafter, the applicant joined as Principal. Extension of deputation was given from time to time.

Smt. P. Shubhasini (Applicant of O.A. No. 85/05) was appointed on the post of Principal , Kendriya Vidyalaya, IIM Lucknow on deputation basis by order dated 25.7.2002 (Annexure No.5) on identical stipulation . She was also granted extension of deputation from time to time.

On termination of deputation , O.A. No. 486/2004 and 487/2004 were filed by the applicants. These were disposed of by common order holding that the action of the respondents were contrary to the Principles of Natural Justice relying on the adjudication of the Principal Bench in O.A. No. 2801/2004.

4. A notice in the employment news 31 January-6 February 1998 issued for filling up the 60 vacancies including 30 unreserved , of Principals. The number of vacancies was subject to change. The selected candidates were to be placed on probation for two years. The selection was to be made on the basis of written test and interview. The Central/ State Govt. / PSU and Autonomous body employees could also apply through proper channel (Annexure -5 to the R.A).

Notice in the employment news 2-8 October, 1999 issued requiring Principals from amongst Central /State/ Semi Government/ Autonomous organization and CSBE affiliated + 2 schools by transfer on deputation basis. It provided that the term of deputation shall be five years and will be governed by the existing instructions of Govt. of India relating to deputation. The KVS reserved the right to repatriate the service of a deputationist at any time even before completion of approved deputation period depending upon their performance without assigning any reason. Further the appointment on deputation basis was not to confer any right on the candidates for permanence absorption in K.V.S. at any time (Anneuxre No. 5).

Notice in the employment news 18-24.11.2000 issued for preparing a panel to fill up the post of Principal in Kendriya Vidyalaya by transfer on deputation basis and also by direct recruitment to fill up back-log vacancy of Principals reserved for SC/ ST. The term of deputation remained the same as in the notification of 2-8.10.99 (Anneuxre -9).

9 ✓

Employment news 06-12 October, 2001 for filling up the vacancies by deputation and also by direct recruitment to fill up the back log of principals reserved for SC/ST (Annexure No.10).

A similar notice issued in the employment news 7-13 December 2002 for filling up the post of Principals by deputation and also direct recruitment for filling up the back-log of SC./ST reserved vacancies (Annexure No.14).

5. It has been contended by the counsel for the applicant that 84 persons working as Principals on deputation basis were absorbed and were placed on probation for a period of 2 years by order dated 29.5.2001 (Annexure -7). Their services were terminable by one month notice by either side without any reason. The appointing authority however, reserved the right to terminate the services before expiry of stipulated period of notice by making payment to the appointees of a sum equivalent to the pay and allowances for the period of notice or unexpired portion thereof. By order dated 12.6.2002 (Annexure 8). 20 Principals working against the general category vacancies on deputation basis were appointed on the temporary post of Principals in Kendriya Vidyalaya on probation with the stipulation that their services are terminable by one month's notice (Annexure 8). By order dated 28.6.2004, 36 persons who were working on deputation basis against the temporary post of Principals in Kendriya Vidyalaya were appointed Principals on regular basis. They were placed on probation. The services was terminable by notice by either side without any reason.

6. The learned counsel for the applicant on the basis of the said appointments having the probation period of 2 years has argued that Kendriya Vidyalaya Sangathan has got a policy of absorbing or regularizing the Principals working on deputation basis in the Kendriya Vidyalaya. The applicant who were similarly placed cannot be denied the same treatment. The counsel for the respondents on the other hand specifically stated that the Kendriya Vidyalaya Sangathan has got no policy of absorption or regularization and the persons who were so absorbed , regularized or appointed are being proceeded against and their services as Principal have also been terminated.

7. The Kendriya Vidyalaya Sangathan has circulated "KVS (Appointment, Promotion, Seniority, etc.) Rules, 1971" incorporating the amendments on 5.7.2001. The schedule I - 10 i.e. Recruitment Rules for the post of Principal include 66.2/3% by direct recruitment on the basis of All India Advertisement and 33.1/3 % by promotion as METHOD OF RECRUITMENT. In case of Recruitment by promotion/ by deputation/transfer grades from which promotion/ deputation /transfer to be made - **By Promotion:** On the principle of merit with due regard to seniority from amongst Vice Principals, who have rendered a minimum of five years' service in the Kendriya Vidyalayas of which at least 3 years should be in the grade of Vice Principals.

If suitable candidates are not available by the procedure, the Commissioner may fill up the vacancies on deputation basis from amongst employees of Govt. of India/ State

Govts./Autonomous Organisations including KVS and CBSE affiliated + 2 school provided the candidate fulfills all the qualifications prescribed for direct recruits.

8. Before circulation of these rules, the revised recruitment rules as approved by Board of Governors of KVS in a 66th meeting were circulated vide letter dated 22.12.99, in which, the Method of Recruitment was as following:-

(i) 66.2/3% by direct recruitment on the basis of all India advertisement. If suitable candidates are not available by this procedure, the Commissioner may fill up the vacancies on deputation basis from amongst the employees of Govt. of India/State Govt./ Union Territories and Autonomous Organisations and CBSE affiliated plus two schools provided the candidate fulfills all the qualifications as prescribed for direct recruits.

ii) 33.1/3% by promotion on the principle of merit with due regard to seniority from amongst Vice Principals who have rendered a minimum of 5 years in the KV of which at least 3 years should be in the grade of Vice Principal. If suitable candidates are not available by this procedure, the Commissioner may fill up the vacancies on deputation basis from amongst the employees of Govt. of India/ State Govt./ Autonomous Organisations and CBSE affiliated + 2 schools provided the candidate fulfills all the qualifications as prescribed for direct recruits.

9. Further amendment to the rules of 5.7.2001 have been made on 26th August, 2003 by reducing the experience in the

Essential Qualifications required for recruitment and the same has been brought down from 10 years to 8 years of regular service for persons holding Group 'B' post of the post of PGTs or lecturers in the pay scale of Rs. 6500-10,500/- or equivalent.

10. It was submitted by the learned counsel for the applicant that the details of sanctioned strength of the post of Principals including permanent and temporarily along with working strength of Unreserved, Scheduled Caste, Scheduled Tribes and other Backward class separately in the case of direct recruitment and promotions separately as on 1.04.98, 1.04.99, 1.4.2000, 1.4.2001, 1.04.2002, 1.04.2003, 1.04.2004 and 1.04.2005 may be called for the adjudication in correct perspective. The necessary information has been furnished in the CA and also separately on 21.6.2005 by the learned counsel for the respondents. We do not intend to go in the detail calculations of the sanctioned and working strength of Principals ~~on~~ belonging to different categories as the question involved in the present O.A. is with regards to the method of recruitment and the appointment on deputation basis to be or not to be treated as regular appointment. However, as made out from the submissions and perusal of the records, the sanctioned strength of Principals was 808 as on 1.4.1998. 79 Principals of general category were working in excess of the quota under direct recruitment quota. 49 Principals in general category were short in the promotion quota. The cadre strength rose to 826 in 2003. The sanctioned strength of Principals as on 1.1.2005 is 875. Out of which 584 are to be filled up by direct recruitment and 291 are to be filled up by promotion. 491 in direct recruitment quota and 127 in

promotion quota were imposition on 1.1.2005. The vacancies in the direct recruitment quota were 93 and in the promotion quota these were 164. List of 491 Principals in position has also been enclosed. In the direct recruitment quota 339 Principals were working against 250 vacancies available for general category and 74 were working against 73 vacancies earmarked for SCs. This means that 89 general category and 1 SC category Principals were working in excess. The position with regards to sanctioned strength filled up vacancies and shortfall or excess goes on changing with death, retirement, resignation and creation of posts etc. It would not be out of place to mention here that it is for the organization to decide the number of posts required for proper functioning of the organization and fill up or not fill up the post. We therefore, need not go to calculate the sanctioned and working strength and the quota for different category and for different modes of recruitment.

11. It has been forcefully argued that the Recruitment Rules do not provide for filling of the vacancies on deputation basis in the direct recruitment quota. Rules notified on 22.12.1999 while making the provision for recruitment by both the methods - direct and promotion - uses the word 'procedure' in both the types of recruitment. This word 'procedure' has been used for the purposes of recruitment for the post of Principals. 'Procedure' does not apply only to promotion quota but it applies to direct recruitment as well. Moreover, a provision for fulfilling of qualifications prescribed for direct recruitment shows that Principals would be appointed on deputation basis in both the quota i.e. direct and promotion. The appointment

on deputation basis can be made in both the modes of recruitment i.e. direct and promotion.

12. The serial 11 of schedule 1 (10) of R.Rs deals with the promotion, deputation, transfer etc. It is not only for recruitment by promotion. The proviso given thereto for filling up of the vacancies on deputation basis accordingly applies to serial 10, which is the Method of Recruitment. However, it cannot be inferred from the Rules that the appointment on deputation basis is a Method of Recruitment, as method of recruitment has clearly been defined at serial 10 and it is direct and promotion only. Deputation for all practical purposes is the officiating arrangement for time being till regular arrangements are made bestowing no right to the persons working on deputation basis to continue as such forever. Appointment 'on deputation basis' therefore, cannot be held to be a appointment on regular' basis or as a Method of Recruitment other than direct recruitment and promotion.

13. It appears that the Vice Principals rendering prescribed minimum years' of service and persons having experience of 10 years as PGT were not available for recruitment, the appointment on deputation basis was resorted to. Essential qualifications have accordingly been reduced and the experience of 10 years of TGTs has been reduced to 8 years now. It may be mentioned here that the prescription of educational qualification and method of recruitment falls within the domain of the executive and it is not for the courts to dictate the qualifications or methods of recruitment.

14. It was also argued by the learned counsel for the applicant that the appointment on deputation basis is not in accordance with the rules and therefore the applicant should be deemed to be regular from the date of appointment. We are not able to appreciate the arguments because in case the appointments were against the recruitment rules, the applicant cannot claim his appointment as regular appointment.

15. Deputation normally is understood to be a time bound appointment on a post of service or cadre other than that of the employee. It has not been argued that the cadre of Principals and the TGTs is one. Normally promotion is made from the post of one cadre to the post of the other cadre. The cadre of TGTs, in the circumstances cannot be treated as the combined cadre of Principals and TGTs. Movement from one cadre to another cadre is either by way of promotion as provided in Recruitment Rules or on deputation basis. The post of Principal is not a direct line promotional post for TGTs. The TGTs can be promoted only to the post of Vice Principals. The cadre of TGTs and Principals being different, the movement /placement of TGTs to the post of Principals ,therefore, can be only on deputation basis. Continuance of more than 2 years on deputation would not confer any right on the applicants to continue on the post of Principal and treat the two years period as probation period resulting in regularization of their services on the post of Principal and conferring them with substantive appointment on the post of Principal.

16. It was argued that there is a policy of absorption/regularization of deputationist in KVS. Orders relating to such substantive appointments of certain incumbents have also been enclosed with the application. Counsel for respondents has specifically contended that there is no policy of absorption or regularization of the persons working on deputation basis. Orders issued in this regard have been cancelled.

17. The appointments on the post of Principals on regular basis by putting the deputationist on probation were cancelled and such cancellation was challenged. Sri S.K.Tyagi who was appointed by order dated 28.6.04 had filed O.A.No. 2801/2004 before Principal Bench of this Tribunal for quashing the order dated 18.11.2004 cancelling his regular appointment. It therefore, cannot be said that there is a policy of absorption or regularization of Principals working on deputation basis. No such provision exists in the Recruitment Rules. The applicants are not entitled to claim parity on the grounds of Equality Principle laid down in the constitution in the circumstances on the basis of orders passed against the rules.

18. The impugned orders are argued to have been passed without application of mind. The representations filed by the applicants was gone into. Though there is no specific mention of the order meeting out all the points raised in the representation, the order cannot be held bad on the grounds that the applicants have not been deemed to be regular appointees as Principals. The terms and conditions of the appointment on deputation basis are clear. Necessary details were gone into. We find that the relevant points

given in the representation were considered and the decision cannot be said to be mechanical or without application of mind.

19. We have carefully perused the law declared by the Apex Court in the cases noted below:-

20. In State of Punjab and Others versus Inder Singh and Others reported in (1997) 8 SCC 372 the Constables in Punjab Police were taken on deputation to Criminal Investigation Department (CID) of Punjab Police and some of them got the promotions and reached the rank of ad hoc Sub-Inspectors. After a long time, they were repatriated to their parent cadre as Constables or Head Constables, depending upon their position in the cadre. The appeal was allowed and it was held that "Concept of 'deputation' is well understood in service law and has a recognized meaning. 'Deputation' has a different connotation in service law. The dictionary meaning of the word 'deputation' is of no help. In simple words, 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation, the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the recruitment rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority, which controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post."

21. In State of Haryana and Others versus Ram Kumar Mann reported in (1997) 3 SCC 321 the respondent while working in the Health Department had tendered his resignation for contesting the election of M.L.A. The resignation was accepted. He filed an application for withdrawing the same. After dismissal of the application, Hon'ble High Court by writ extended the benefit to the respondent on the grounds that three others were allowed to withdraw their resignation. The Hon'ble Supreme Court allowed the appeal and held that "The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e. benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing

misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstances person claim equality under section 14 for reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right. Under these circumstances, the High Court was clearly wrong in directing reinstatement of the respondent by a mandamus with all consequential benefits."

22. The Three Judges Bench of the Hon'ble Supreme Court in **A. Umarani versus Registrar, Cooperative Societies and others reported in 2004 SCC (L&S) 918** held that no appointment can be made in deviation of or departure from the procedure laid down in the statutory rules. It was further held that "Regularization, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed there under. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization."

23. In **Ratilal B. Soni and others, versus State of Gujarat and Others (AIR 1990 Supreme Court 1132)** it was held that "The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. We see no infirmity in the judgment of the High Court and as such we dismiss the appeal. There shall be no order as to costs."

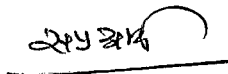
24. Our views given hereinabove are supported by the law laid down by the Hon'ble Supreme Court in the above cited cases.

25. Before parting with the case, we may observe that Principal is necessarily required to be posted in an educational institutions for its proper and smooth functioning. KVS should make efforts to meet the requirement of Principal on a regular basis so that the education to the children in these institutions may not suffer and these can run efficiently.

26. The up shot of the discussion above leads us to inescapable conclusion that the OAs are devoid of any merit and substance. These fail and are dismissed accordingly .

No costs.


(K.B.S. Rajan)


(S.P. Arya)

Member (J)

Member (A)

HLS/-