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4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-252/2001 ordersheet pg-1 to 3 INDEX

Disposed Date- 29/4/02

M.P-255/2001 ordersheet pg-1

Disposed Date- 12/11/2001

O.A.T.A No. 335/2001

R.A/C.P No.

E.P/M.A No. 252/2001

1. Orders Sheet. O.A. 335/2001 Pg. 1 to 3
2. Judgment/Order dtd. 29/04/2002 Pg. 1 to 3 *Dismissed*
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 335/2001 Pg. 1 to 26
5. E.P/M.P. 252/2001 Pg. 1 to 10
6. R.A/C.P. M.P-255/2001 Pg. 1 to 17
7. W.S. Respondents No- 2, 3, 4, 5 Pg. 1 to 8
8. Rejoinder. Pg. to
9. Reply. Pg. to
10. Any other Papers. Pg. to
11. Memo of Appearance.
12. Additional Affidavit.
13. Written Arguments.
14. Amendement Reply by Respondents.
15. Amendment Reply filed by the Applicant.
16. Counter Reply.

SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI.

ORDER SHEET

APPLICATION NO. 335 OF 2001

APPLICANT(S) Shri Tapan Kumar Chakrabarty 2008.

RESPONDENT(S) U.O. 1. 2008.

ADVOCATE FOR APPLICANT(S) Mr B.C. Das, S. Dutta & Smti. U. Dutta

ADVOCATE FOR RESPONDENT(S) Kvs.

Notes of the Registry

dated

Order of the Tribunal

This application is in form
but not in the Convention
Petition is filed under Code
M. P. No. X C.P.
for Rs. 50/- deposited vide
IPO/BS No. 76848578
Dated 13/8/2001

NS
Dy. Registrar 23/8/01

Notice received and sent to
D/S for house the Respondent
No 1 to 5 by Regd AD vide
D/No 3274/01 dated 30/8/01
24/8/01

① Service report are still
awaited.

② No. reply has been filed.

34
19.9.01

23.8.01

The application is admitted. Call for
the records. Returnable by 4 weeks.

Issue notice as to why the interim
order as prayed for shall not be granted.
Returnable by 3 weeks.

List on 20/9/01 for further order.

[Signature]
Vice-Chairman

20.9.01

Heard Mr. B.C. Das learned counsel for the
applicant and also Mr. S. Sarma, learned counsel
for the respondents.

In the interim prayer it is ordered that
the applicant shall be continue to draw same
scale as enjoyed from 18.7.2001 until further
order from this tribunal.

List the matter on 19/10/01 to enable the
respondents to file written statement.

[Signature]
Vice-Chairman

19.10.01

List the matter on 12.11.2001 for
further order.

bb

12.11.01

In view of the order passed in M.P.252 of 2001 the case may be listed on 5.12.2001 for further order.

No. Written statement has been filed.

Member

Vice-Chairman

bb

By
18.10.01

5.12.01

At the request of Mr. Sagma, learned counsel for the respondents, 4 weeks time is allowed to file written statement.

List on 3.1.02 for order.

No. Wts has been filed.

By
2.1.02.

Member(J)

Member(A)

mb

3.1.02

List on 4.2.2002 to enable the respondents to file written statement.

No. Wts has been filed.

By
1.3.02.

Member

Vice-Chairman

mb

4.2.02

List on 6.3.2002 to enable the respondents to file written statement.

Wts filed on 4.3.02.

By
4.3

Member

Vice-Chairman

mb

6.3.02

Written statement has been filed. The applicant may file rejoinder, if any, within ten days from today. The case may now be listed for hearing on 4.4.2002.

8.3.2002

Wts submitted by the Respondent nos. 2, 3, 4 & 5.

mb

4.4.2002

Member

Vice-Chairman

Mr. M. Chanda, learned counsel prays for adjournment on behalf of Mr. B. C. Das & Mr. S. Dutta, learned counsel for the applicant on personal ground.

Considering the facts and circumstances the case is adjourned and listed for hearing on 29.4.2002.

Member

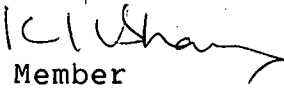
Vice-Chairman

bb

O.A.No.335/2001

29.4.2002

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is dismissed. No order as to costs.


Member


Vice-Chairman

nkm

5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 335 of 2001

Date of Decision. 29.4.2002

Shri Tapan Kumar Chakraborty & 21 others

-----Petitioner(S)

Mr B.C. Das, Mr S. Dutta and Mrs U. Dutta

-----Advocate for the
Petitioner(s)

-Versus-

The Union of India and others

-----Respondent(s)

Mr S. Sarma

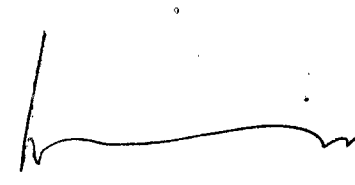
-----Advocate for the
Respondent(s)

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Vice-Chairman



b

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.335 of 2001

Date of decision: This the 29th day of April 2002

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Tapan Kumar Chakraborty and 21 others ...Applicants
By Advocates Mr B.C. Das, Mr S. Dutta
and Mrs U. Dutta.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Department of Education,
New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18 Institutional Area,
New Delhi.
3. The Chairman,
Kendriya Vidyalaya Sangathan,
18 Institutional Area,
New Delhi.
4. The Joint Commissioner (Admn),
Kendriya Vidyalaya Sangathan,
18 Institutional Area,
New Delhi.
5. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Silchar Regional Office,
Silchar.

...Respondents

By Advocate Mr S. Sarma.

.....

O R D E R (ORAL

CHOWDHURY.J. (V.C.)

b

This application under Section 19 of the
Administrative Tribunals Act, 1985 has arisen and is
directed against the action of the respondents in merger
of the posts vis-a-vis the scale of pay consequent to the

amendment of the Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority etc.) Rules, 1971 vide Memorandum dated 5.7.2001 and the consequent order dated 18.7.2001 issued vide Memorandum No. F.6-3/2000-KVS (RP-1) by the respondent No.4.

2. Mr S. Dutta, learned counsel for the applicant contended that the purported amendments are arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution.

3. Mr S. Sarma, learned counsel for the respondents, opposing the application, on the other hand, submitted that the matter is no longer res integra in view of the Judgment and Order passed by the Central Administrative Tribunal, Principal Bench in O.A.No.2244/2001 and M.A. No.2035/2001 dated 1.1.2002.


4. We have heard the learned counsel for the parties at length. The Principal Bench had already adjudicated upon the matter in the aforesaid decision. Mr S. Dutta submitted that all the aspects raised in this application are not squarely covered by the aforesaid decision. We are, however, not inclined to go into those issues, more so in view of the decision rendered by the Principal Bench which is a coordinate Bench. A decision rendered by the coordinate Bench is binding on the other Benches of the Tribunal. In view of the committee of decision we respectfully agree with the decision rendered by the Principal Bench.

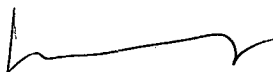
5. The application is accordingly dismissed. In the light of the decision rendered by the Principal Bench, we would observe that the existing persons who are

continuing.....

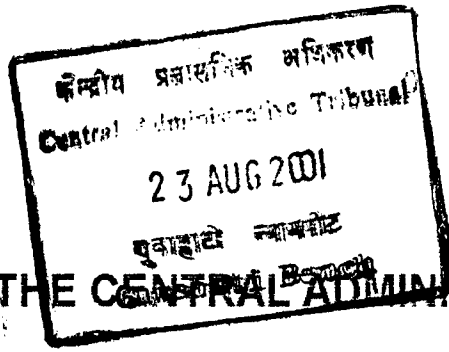
continuing to enjoy the pay scale of Rs.5500-9000 as ordered by the Hon'ble Delhi High Court in CWP-783/92 shall continue till the final decision of the said Court.

No order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkM



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O.A. No. 335/2001

Shri Tapan Kumar Chakraborty & Ors. : Applicants

- Versus -

Union of India & Others : Respondents.

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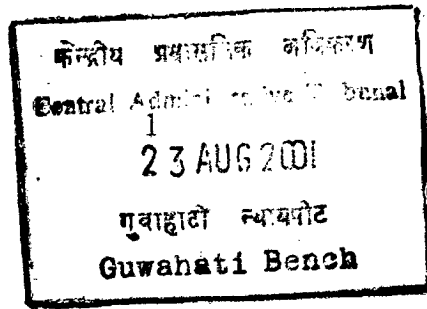
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Date : 17.08.2001

Filed by

Surajit Datta

Advocate



Filed by:-
The Applicant's
Through:-
Swajit Datta
Advocate
17.08.01

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI**

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O.A. No...../2001

BETWEEN

1. Tapan Kumar Chakraborty
S/o Late Motilal Chakraborty
2. Sri Arun Kumar Sharma
Son of late Madhav Chandra Sharma
3. Sri Anupam Bhattacharjee
Son of Sri Kamendra Kumar Bhattacharjee
4. Sri Radhey Shyam Sharma
S/o Sri Shyam Dutt Sharma
5. Sri Nanilal Sen
S/o late Debendra Sen
6. Sri Madan Mohan Prajapati
S/o Sri L.N. Prajapati
7. Sri Biswajit Singha
S/o Late Indrajit Singha

Asst

Asst

✓Tapan Kumar Chakraborty

8. Sri Ram Narayan
S/o Sri Lal Kishan Das
9. Sri Vipin Kumar Chahal
S/o Sri D.K.Chahal
10. Sri Babulal Singh Rawat
S/o Late N.S. Rawat
11. Sri Pratik Kumar Bagchi
S/o Late Pravat Kumar Bagchi
12. Sri Sunil Kanti Chakraborty
S/o Late Upendra Chakraborty
13. Sri Dipankar Dev
S/o Late Naresh Chandra Dev
14. Sri Miss Sipra Bhattacharjee
D/o Late Ashutosh Bhattacharjee
15. Manjur Ahmed Laskar
S/o Late Abdul Razak Laskar
16. Smt. Sagarika Deb
W/o Sri Bidhan Deb
17. Smt. Susmita Pal Chaudhury
W/o Sri Kareen Shekhar Pal Choudhury
18. Sri Rohitaksha Nath
S/o Late Rajendra Nath

Award Assn

Accommodates

UDC

Sr Steno

LDC

Tapen Kumar Chakraborty

19. Sri Amrit Ratan Kashyap
S/o Late Peter Phillip Kashyap
20. Sri Nani Gopal Nath
S/o Late Kokil Mohan Nath
21. Sri Kulendra Chandra Roy
S/o Late Jamini Mohan Roy
22. Sri Niranjana Das
S/o Late Monomohan Das

G D
A

.....Applicants

(..... All are working under the respondents in different posts and are posted at Kendriya Vidyalaya Sangathan, Silchar Regional Office, Hospital Road, Silchar-788001.)

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Department of Education,
New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan
18 Institutional Area
Shahheed Jeet Singh Marg,
New Delhi-110016

Tapan Kumar Chakrabarty

- 13
3. The Chairman
Kendriya Vidyalaya Sangathan
18 Institutional Area
Shahheed Jeet Singh Marg,
New Delhi-110016
4. The Joint Commissioner (Admn.)
Kendriya Vidyalaya Sangathan
18 Institutional Area
Shaheed Jeet Singh Marg,
New Delhi-110016
5. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Silchar Regional Office
Hospital Road, Silchar-1

.....Respondents

DETAILS OF THE APPLICATION

1. **Particulars of order against which this application is made.**

This application is made against the impugned KVS (Appointment, Promotion, Seniority etc.), Rules, 1971 as amended by Memorandum dated 5.7.01 and the consequent Office Memorandum dated 18.07.01 issued under No. F.6-3/2000-KVS (RP-I) by the respondent no.4 whereby various posts have been merged together and new pay scales have been prescribed in an arbitrary manner.

The Chairman

Taban Kumar Chakraborty.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. As the applicants are having common cause of action, they crave leave of this Hon'ble Tribunal to move this application jointly in a single application under Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

4.2 That the applicants are serving in various capacities under the respondents and are posted at the Silchar Regional Office, Silchar. The applicant Nos. 2 and 3 are serving as Superintendent (A/c) and Superintendent (Admn.) respectively. The applicant Nos. 1 and 4 are serving as Assistant whereas the applicant Nos. 5 to 8 are serving as Audit Assistants. The applicant Nos. 9, 10 and 11 have been serving as Accounts Clerk whereas the applicant nos. 12, 13 and 14 are Upper Division clerks. The applicant nos. 15 and 16 are working as Senior Stenographer and Junior Stenographer respectively. The applicant nos. 17 and 18 are Lower Division Clerk whereas the rest are Group D staff.

Taban Kumar Chakraborty

- 4.3 That the applicants state that their service condition is governed by the Education Code, Accounts Code and various Administrative Circulars issued from time to time by the respondents. Besides these, the Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority, etc.) Rules, 1971 and other Recruitment Rules issued from time to time are also applicable to them.
- 4.4 That the applicants state that, the Kendriya Vidyalaya Sangathan (For short KVS) is an autonomous body fully financed by the Government of India and is controlled by the Board the Minister of Human Resource Development as its Chairman. The Sangathan has its own Rules under the Accounts Code, Education Code etc. for smooth running of its affairs. However the Sangathan adopts and implements various rules and guidelines issued by the Government of India from time to time governing the Central Government Employees. Nonetheless, the Rules of the Sangathan may be altered with the consent of the Government of India, at any time on the basis of a resolution passed by the Board of Governors.
- 4.5 That as stated earlier, the Recruitment, promotion etc. of the employees of the Sangathan are governed by the KVS (Appointment, Promotion, etc.) Rule, 1971 and other Recruitment Rules etc. issued from time to time. It is stated that from the very inception of the Sangathan the non-teaching employees have been divided into two distinct cadres, namely, the Administration cadre (consisting of the non-teaching employees of the Headquarters and Regional offices) and the Vidyalaya/School cadre

Tapan Kumar Chakraborty

(consisting of the non-teaching employees of the Schools/Vidyalayas). There are also two distinct recognized associations of these two cadres. For example, the employees of Administration cadre are represented by Kendriya Vidyalaya Sangathan Staff Association whereas that of the school cadre are represented by Kendriya Vidyalaya Non-Teaching Staff Association. Be stated that the seniority lists of the employees belonging to these cadres are maintained separately and promotion to the various posts under the respective cadres are made from amongst the persons of the respective cadre.

The applicants crave leave of this Hon'ble Tribunal to produce the copies of the seniority lists abovementioned at the time of hearing, if need be.

- 4.6 That the applicants state that the posts and promotion avenue under the school cadre and administration cadre are different from each other. The difference in posts and promotional avenue in each cadre is shown below :

Non-Teaching Staff

School Cadre	Administration Cadre	
Group D	Group D	
Lab. Attendant	Daftari	
LDC	LDC	
UDC	UDC	Accounts Clerk
Head Clerk	Assistant	Audit Assistant
Superintendent	Supdt(Admn)	Supdt.(Accounts)
	Section Officer	Internal Audit Officer/ Accounts Officer/ Accounts

Tapam Kumar Chatterjee

	cum Inspecting Officer
Administrative Officer	Sr. Accounts Officer
Sr. Admn. Officer	Asstt. Commr.(Fin)
Asstt. Commissioner (Admn)	
Dy. Commissioner(Admn)	

Be stated that there is also a difference in pay scale prescribed for the above mentioned two cadres.

- 4.7 That the applicants state that the requirement rules for Kendriya Vidyalaya Sangathan were framed depending upon the evaluation of the nature and duties and responsibilities of work in the respective posts under respective cadre and different pay scales were prescribed. It is stated that the instant case the nature and responsibility of work of the clerical staff under the two cadres vary vastly depending upon the secrecy and confidentiality of files and correspondence to be maintained and their safe custody. The school being a field unit, the employees posted in respective post of the vidyalaya cadre have much less responsibility since they are concerned with the work pertaining to that school only whereas the employees of regional offices and headquarters, sitting at the decision making stage, have higher responsibilities and duties of the posts in administration cadre in as much as they have to deal with the administration of all Kendriya Vidyalaya and regional offices respectively under their administrative control.

The applicants beg to annex herewith a comparative statement showing differences in duties and responsibilities of various posts under the abovementioned two cadres and the same is marked as Annexure-1.

Taban Kumar Chakraborty.

4.8 That The need for separate cadres namely, administration and school was judiciously felt by the Board of Governors from the very inception of KVS and different posts under the administration cadre were created as per recommendation of the Internal Work Study Committee, (for short IWSC), of Ministry of HRD and on being sanctioned/approved by the Chairman. It is pertinent to mention here that in KVS, posts under administration cadre are created as per recommendation of the IWSC whenever a necessity is felt. The recommendation is thereafter sanctioned/approved by the Chairman of the Sangathan after necessary consultation with the Govt. of India, Ministry of Finance, in accordance with the instructions of GOI in this regard. On the other hand, as per entry No. 22 in Appendix II(a) of the Education Code, the Commissioner is the competent authority for creation of permanent and temporary posts in respect of teaching and non-teaching staff under the school cadre. Thus it is clear that the authorities empowered to create posts in the above cadres are different.

4.9 That surprisingly on 5.7.2001, the respondent No.2 issued an Office Memorandum and thereby circulated the KVS (Appointment, Promotion, Seniority etc.) Rules, 1971 (hereinafter referred to as Rules) which was purported to have been amended by the competent authority. By the said memorandum, it was notified that the Rules had been amended with immediate effect. It is stated that by the said purported amendment only the Schedule-I and II of the Rules were amended. The various posts under the sangathan are classified under Schedule-I whereas the Schedule II provides the list of appointing authorities, disciplinary authorities and Appellate

Tapen Kumar Ghosh

Authorities etc. in relation to the various posts under the Sangathan. The applicants state that the respondents have quite illegally amended the Rules without adhering to the procedure and due process to be followed in such matter. By the amendments made in the Rules, the respondents have abolished various posts, created new posts and in some cases have prescribed lesser pay scales. The amendments which are detrimental to the interest of the applicants have been made without the sanction/approval of the competent authority as well as Government of India.

The above mentioned Rules being a voluminous one is not annexed with this application. However, the applicants beg leave of the Hon'ble Tribunal to produce the same at the time hearing, if the Hon'ble Tribunal intends to peruse the same.

The copy of the O.M. dated 5.7.2001 is annexed herewith as Annexure-2.

- 4.10 That thereafter, by the impugned memorandum dated 18.5.2001, the respondents have merged various posts belonging to different cadre in an arbitrary manner and quite illegally introduced lesser pay scale. For example, the posts of Assistant, Audit Assistant and Head Clerk have been abolished and a new post of Assistant Superintendent with the scale of payoff Rs. 4500-7000 has been introduced. It may be pertinent to mention here that the pay scale of Assistant and Audit Assistant is Rs. 5500-9000 at present. But by the impugned memorandum dated 18.5.2001 this scale of pay has been quite illegally lowered down and a new scale of Rs. 4500-7000 (commensurating to the post of Head Clerk) has been prescribed. This apart,

Tapan Kumar Chakraborty

the different cadres have been merged together without any justifiable reason or rational or objective criteria.

A copy of the impugned memorandum dated 18.7.2001 is annexed herewith as Annexure-3.

- 4.11 That the applicants state that the effect of the so called amendment and the consequent merger is manifold and far reaching and is detrimental to their interest. In view of abolition of various posts and cadre as shown in the impugned memorandum dated 18.7.01, the applicants will be forced to sustain recurring financial loss apart from the loss of future career opportunity in their respective cadre. Besides this, due to lowering down of pay scales, the employees will be deprived of financial benefits under the Assured Career Promotion scheme (for short ACP). For example, an UDC in administration cadre who enjoys the pay scale of Rs. 4000-6000 would have been given the next higher scale of Assistant of Rs. 5500-9000, but now he would be placed in a much lesser scale of Rs. 4500-7000. Otherwise also, because of the so called amendment and merger, the applicants would be required to work in a cadre to which they were not recruited and the effect is that they would have to work outside their cadre. As a result of so amended recruitment rules and lowering down of pay scales employees of three categories i.e. Assistant, Audit Assistant and Stenographer Gr. II in Administration cadre will suffer the following financial loss.

Sl.No.	Name of Post	Existing Pay scale	Amended pay scale	Scale in ACP Scheme under existing pay scales	Scale in ACP Scheme under Amended pay scale
1	UDC	4000-6000	4000-6000	5500-9000	4500-7000

Tapen Kumar Chakraborty

			6000		
2	Accounts Clerk	-do-	-do-	-do-	-do-
3	Jr. Steno	-do-	-do-	-do-	5000-8000
4	Sr. Steno	5000-9000	5000-8000	6500-10500	5500-9000
5	Asstt./Audit Asstt.	-do-	4500-7000	-do-	-do-

From what have been stated above, it is therefore clear that the amendment of the rules and the consequent merger have been made in a most arbitrary and unfair manner and to the detriment of the interests of the applicants. The amendment and the consequent merging of post are therefore liable to be declared illegal and invalid and liable to be set aside.

4.12 That this application is made bona fide and in the interest of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that the impugned amendment has not been made following the due process of law and as such it is liable to be declared illegal and void-ab-initio and the consequential memorandum dated 18.5.2001 is also liable to be declared bad in law.

5.2 For that, the impugned amendment and the consequent memorandum dated 18.5.2001 has been passed in total disregard to the norms laid down by the law with regard to the abolition / merger of cadre/post.

5.3 For that the applicants having been recruited against the administration cadre in a definite scale of pay, cannot be put to a lower scale of pay that too

Tapen Kumar Anand

without any opportunity of being heard and cannot be compelled to work in a different cadre to which they were not recruited.

- 5.4 For that, the posts in the administration cadre having been created as per recommendation of the Internal Work Study Committee, cannot be abolished without the concurrence/approval obtained the Internal Work Study Committee.
- 5.5 For that, the nature of duty and responsibility of work vastly vary among the posts under the school cadre and administration cadre and therefore the merging of these cadres and posts thereunder has the effect of treating unequals as equals and as such the same is bad in law.
- 5.6 For that, the respondents while merging the different cadre/post consequent to the amendment of the rules, have not taken into consideration the various factors and parameters viz, the nature, and duties of a post, power and responsibility of work etc., qualification prescribed for recruitment and pay scale with regard to the different cadre/post which are necessary in determining the correct equivalence of post and in this view of the matter, the impugned amendment and memorandum dated 18.7.01 are un reasonable and unjustified and therefore liable to be declared illegal and set aside.
- 5.7 For that, the respondents have no authority in determining the equivalence of posts/cadres and in prescribing the pay scale in as much as these are the matters to be left to the expert bodies like Pay Commission, IWSC, Cadre Review Committee, etc.
- 5.8 For that, the amendments made in the rules, if allowed to stand, would curtail the future career opportunity in the matter of promotion and

Tapam Kumar Chakraborty

entitlement of ACP Scheme of the applicants besides putting them to suffer great financial loss.

- 5.9 For that, the posts of Asstt./Audit Asstt. involve higher responsibilities than the Head Clerk while the Accounts Clerk is a technical post involving comparison with the UDC (School) and in that view of the matter the action of the respondents in merging the posts of Asstt./Audit Asstt. with Head Clerk and Accounts Clerk with UDC (School) is highly arbitrary and unreasonable.
- 5.10 For that, in any of the matter, the impugned amendment and the consequent memorandum dated 18.5.2001 are bad in law and liable to be struck down.

6. Details of remedies exhausted.

That the applicant states that he has no other alternative and other efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application, Writ Petition or Suit is pending before any of them.

8. Reliefs sought for :

Under the facts and circumstances stated above, the applicant prays that your Lordships be pleased to issue notice to the respondents to show cause as to why the relief sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after

Taban Kumar Ghosh

hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs :

- 8.1 That the Hon'ble Tribunal be pleased to declare that the impugned amendment is invalid, illegal and void ab initio and without jurisdiction.
- 8.2 That the Hon'ble Tribunal be pleased to declare that the Memorandum dated 8.5.2001 is illegal, arbitrary and further be pleased to set aside and quash the same.
- 8.3 Costs of the application.
- 8.4 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief :-

- 9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned memorandum dated 18.5.2001 till disposal of this application so far as it relates to the applicants.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

- | | | | |
|------|---------------|---|-------------------|
| i) | I.P.O. No. | : | 7G 548578 |
| ii) | Date of issue | : | 13.08.2001 |
| iii) | Issued from | : | G.P.O., Guwahati. |
| iv) | Payable at | : | G.P.O., Guwahati. |

12. List of enclosures.

As stated in the index.

Tapen Kumar Chakraborty

VERIFICATION

I, Shri, Tapan Kumar Chakraborty, Son of late Motilal Chakraborty, aged about 45 years, working as Assistant, one of the applicants in this Original Application and I have been authorised by the other applicants to sign this verification on behalf of them accordingly I do hereby verify and declare that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are the legal advice which I believe to be true and I have not suppressed any material fact.

And I sign this verification on this the 17th day of August, 2001.

✓ Tapan Kumar Chakraborty

DEPONENT

Annexure-1

MODE OF RECRUITMENT/QUALIFICATION/DUTIES & RESPONSIBILITIES
(SCHOOL CADRE)

Name of post	Mode of recruitment	Duties and Responsibilities
1. Superintendent	<p>Direct Recruitment – Nil</p> <p>Limited Departmental – Nil</p> <p>Exam.</p> <p>Promotion by Seniority from Head Clerk – 100%. There is no qualifying test since experience of Head Clerk is taken into consideration</p>	<p>To assist the Principal of a school in School administration.</p> <p>To supervise the work of 03 LDC, 03 LDC. The post of Superintendent is sanctioned in five section K.V. No statutory power. The volume of work is limited to a particular school. Administrative responsibilities lie with the various In charges of Deptt. And Committee of the Vidyalaya.</p>
2. Head Clerk (a)	Direct Recruitment – Nil	To assist the Principal of a school in the functioning of School administration. To counter check the mark of UDC and LDC of a particular School.
(b)	Limited Departmental 33 1/3 Exam.	
(c)	Promotion by Seniority 66 2/3% from UDCs of School Cadre	The Volume of work is limited to a particular school.
3. UDCs (a)	Direct Recruit – 33 1/3%	To maintain cash and Accounts of the Vidyalaya under supervision of the Principal. To counter check the work of LDC of a particular School.
(b)	Promotion by Seniority from LDCs of School Cadre	To prepare draft of routine nature. The volume of work is limited to a particular school.
4. LDCs (a)	Direct Recruitment- 90%	Typing work relating to day to day work of a Vidyalaya. Maintenance of records of the

(b)	Promotion by seniority from Group 'D's of the School	<p>Vidyalaya work. Processing work relating to examination under supervision of Exam. I/c and maintenance of leave Account of Vidyalaya staff.</p> <p>The Volume of work is limited to a particular school</p> <p>NOTE : All the works of confidential nature are directly handled by the Principal of the School. In view of dealing with the academic work, the duties and responsibilities of administrative works in the Vidyalaya are mostly centralized in the hand of Principal.</p>
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**MODE OF RECRUITMENT/QUALIFICATION/DUTIES & RESPONSIBILITIES
(ADMN.CADRE)**

Sl.No.	Name of Post	Mode of Recruitment	Qualification	Duties and responsibilities
01	Superintendent(Admn)	<p>Direct Recruitment - Nil</p> <p>Limited Departmental Exam – 33 1/3 %</p> <p>Promotion by seniority – 66 2/3%</p> <p>Under departmental examination Supdt (Admn) is selected through a competitive qualifying test in relation to requirement/nature of duties of the post</p>	<p>For LDE – Bachelor Degree</p> <p>3 years experience as Asstt/Audit Asstt/Sr. Steno or 8 years regular combined service as UDC/Accts Clerk in Admn. Cadre/School Cadre with above mentioned post.</p>	<p>Supervisory duties to assign the Asstt. Commissioner Controlling 40 KVS in one Region. Responsible for disposing all the matters of Administrative nature at the decision making stage under jurisdiction of Asstt. Commissioner of the Region – Statutory power. Reporting officer Gr. D of Regional Offices. C.L. sanctioning authority upto 04 days for Group C and Gr. D employees Regional Office. These statutory powers are entrusted upon Principal in the School.</p>
02	Superintendent (Accounts)	<p>Direct Recruitment – Nil</p> <p>Promotion by Seniority – 100% From Audit Asstt.</p> <p><u>Eligibility for promotion</u></p>	<p>5 years regular service as Asstt. in R.O./Hqrs.</p>	<p>Supervisory Officer for all the Audit And Accounts work of Regional Office. Responsible for conducting Audit in all the KVS under the Region in the absence of AIO. Responsible for consolidation of budget (Regional) and Annual Accounts (Regional) Statutory powers same as Supdt (Admn) for Admn. Wing.</p>
				<p>Supdt. Accounts, KVS (Hqrs). Responsible for supervisory work of</p>

				Audit and Account at Head quarter level. Responsible for disposal of Accounts and Audit work at policy making stage and executing stage under the control of Dy. Commissioner, Finance, KVS (Hq). Responsible for conducting Internal Audit for all Regional Offices.
03	Assistant	Direct Recruitment – Nil Limited Departmental Exam. 40% Promotion by Seniority 60%	04 years experience as UDC/Accounts Clerk in Admn. Cadre or School Cadre. Degree from a recognized University	Dealing with Court Case, Disciplinary Case, complaint cases mainly in respect of all the KVs (40 approx.) under the Assistant Commissioner of the Region in addition to processing of other complicated nature of work like revision of rules position/framing of new policies/analyzing the comparative merit and demerits of expanding organizational structure/-sanction of creating of posts etc. under administrative control of the Assistant Commissioner of the Region.
04	Audit Asstt	Direct recruitment – Nil Limited Departmental Exam 40% Promotion by Seniority – 60% from UDC/Acctts.Clerk of Admn. Cadre	-do-	Dealing with internal Audit work of all Vidyalayas. Under the administrative Control of the Assistant Commissioner and follow-up action. Preparation consolidated Annual Budget, Annual Accounts, Annual GPF/CPF Accounts and post audit of Monthly statements received from the School. Maintenance of other consolidated Books and records relating to financial

				transaction of all the Vidyalayas
05	UDC/Accts.Clerk	Direct Recruitment - 33 1/3 % Promotion by Seniority from LDC/Hindi Typist of Admn. Cadre..... 66 2/3 %	Graduation with three years essential experience in Govt./Autonomous organisation dealing with Accounts matters	The entire administrative work relating to functioning of all vidyalayas, personal claims of all the employees of Vidyalayas under the Region headed by the Assistant Commissioner, Retirement benefit of the employees of Vidyalayas under a particular region as well as KVS (Hqrs) are done by the UDCs/Accts. Clerk of the Regional Office/KVS (Hqrs.). In short the UDCs/Accounts Clerk of the Regional Office/Headquarter are entrusted with responsibilities of watching monitoring and follow up total works done by all the UDCs (40 approx) of particular Region while 1 UDC is responsible for work for 1 K.V. in Regional Office 1 UDC/A/c clerk is responsible for work pertaining to 10 KVs each.
06	L.D.C.	Direct Rectuitment - Nil Promotion - 60% Limited Deptt. Exam - 40%	Matriculation with Typing with speed 40 wpm in English and 25 wpm in Hindi	The duties and responsibilities of LDCs of admn. Cadre are also much more than that of School Cadre. LDCs of Admn. Cadre are receiving, dispatching, typing of all the communications from all the Vidyalayas of a particular Region. Moreover the Accounts/Correspondences work of Sport Control Board, Bharat Scout Guides,

				NCC, Regional Sport meet, National Sports meet are assigned with them. They are functioning as pinion of the wheel of the Region Controlling approx. 40 Vidyalayas.
07	Section Officer	Direct Recruitment – NIL Promotion – 60% Limited Departmental Examination – 40%	<p>Graduation from a recognized university</p> <p>8 years regular service in the scale of 1400-2600 or five years regular service in the scale of 1640-2900 in C.G./State Govt/PSU/ Autonomous bodies, for the purpose of direct recruitment if vacancies of promotion cannot be filled up.</p> <p>Promotion – Three years regular service as Supdt.(Amdn) in KVS</p> <p>LDE – 40% by departmental Exam. From amongst Asstt/Sr. Steno in KVS (HQ)/R.O. who have completed 4 yrs.</p>	

			Regular service in the scale of 1400-2600 of Supdt(Admn) in KVS (HQ) who have completed 2 years. Regular service in the scale 1640-2900.	
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KENDRIYA VIDYALAYA SANGATHAN

(R.P.I Section)

**18, Institutional Aread
Shaheed Jeet Singh Marg
New Delhi - 110 016.**

No.F.6-3/2000-KVS(RP-I)

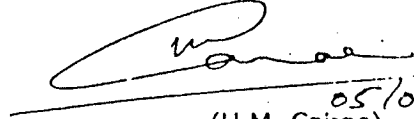
Dated: 05.07.2001

OFFICE MEMORANDUM

**Subject: Amendments in K.V.S.(Appointment, Promotion, Seniority, etc.)
Rules, 1971**

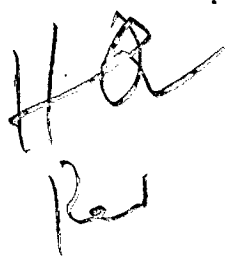
The KVS (Appointment, Promotion, Seniority, etc.) Rules, 1971 have been amended by the competent authority with immediate effect.

2. A copy of the KVS (Appointment, Promotion, Seniority, etc.) Rules, 1971 incorporating all the amendments made, is circulated herewith for general information.


05/07/2001
(H.M. Cairae)
Commissioner

Distribution:

- .. All Assistant Commissioners, KVS Regional Offices.
- .. All officers and Sections in KVS(Hqrs.)
- .. All recognised Associations.



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KENDRIYA VIDYALAYA SANGATHAN
(R.P.I Section)
19, Institutional Area
Shaheed Jeet Singh Marg
New Delhi - 110 016.

Annexure-3

No.F.6-3/2000-KVS(RP-I)

Dated: 18.07.2001

OFFICE MEMORANDUM

Consequent upon amendment in the KVS (Appointment, Promotion, Seniority, etc.) Rules, 1971 and Recruitment Rules for all teaching as well as non-teaching posts in KVS (Hqrs.), Regional Offices and Kendriya Vidyalayas the following posts have been merged and their new names are indicated against each:

	Existing Name of the posts being merged	Existing Scale of Pay	New Name of merged posts	Scale of pay of new posts after merger
A)	AC(Admn.) AC(Finance)	Rs.12000-375-16500/-	AC (Admn. & Finance)	Rs.12000-375-16500/-
B)	Sr. Audit Officer Sr. Accounts Officer	Rs.10000-325-15200/-	Sr. Audit and Accounts Officer	Rs.10000-325-15200/-
C)	Internal Audit Officer Accounts Officer Accounts-cum-Inspecting Officer	Rs.7450-225-11500	Audit and Accounts Officer	Rs.7450-225-11500
D)	Supdt.(Accounts) Supdt.(Admn.) Supdt.(Schools)	Rs.5500-9000/-	Superintendent	Rs.5500-9000/-
E)	Assistant Audit Assistant Head Clerk	*Rs.5000-8000/- *Rs.5000-8000/- Rs.4500-7000/-	Assistant Supdt.	**Rs.4500-7000/-
F)	UDC Accounts Clerk UDC(Schools)	Rs.4000-100-6000/-	Upper Division Clerk	Rs.4000-100-6000

*Attested
S. D. Singh
Advocate*

Integran

G) LDC Rs.3050-4590/- Lower Division Rs.3050-4590/-
LDC(Schools) Clerk

- * However they have been placed in the pay scale of Rs.5500-9000/- in terms of the orders of the Hon'ble Court till the outcome of the Court case.
- ** Existing Asstts. And Audit Asstts. in the K.V.S. Hqrs. and RO will continue to enjoy pay scale of Rs.5500-9000/- as ordered by the Hon'ble Court till the final decision of the Court.

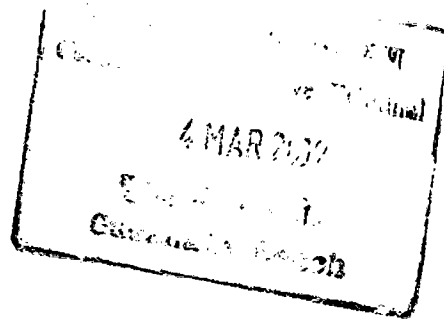
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19/7/2001

(D.S. Bist)
Joint Commissioner(Admn.)

Distribution:

1. All Assistant Commissioners, KVS Regional Offices.
2. All officers and Sections in KVS(Hqrs.)
3. All the recognised Associations.
4. All Principals, Kendriya Vidyalayas.

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Filed by Commissioner,
Assistant Secretary
Kendriya Vidyalaya Sangathan
Thiruvananthapuram
Dipankar Borthakur,
Advocate
4/3/2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

AT GUWAHATI

Original Application No. 335/2001

Sri Tapan Kr. Chakarbarty & Ors

..... Applicants

-VERSUS-

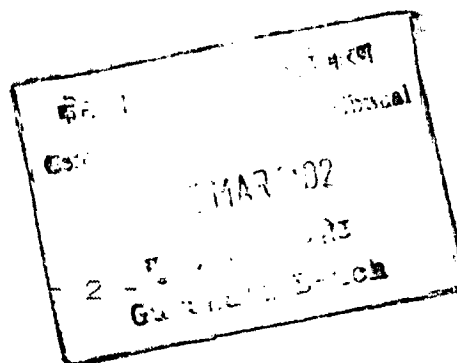
Union of India & Ors

..... Respondents

The Respondents Nos. 2, 3, 4 and 5 above named beg to file their Written Statement as follows :-

1. That all the averments made in the Original Application (hereinafter referred to in short as the application) are denied by the answering respondents save and except what has been specifically admitted herein and what appears from the records of the case.

2. That with regard to the statements made in paragraph 1 of the application the answering respondents begs to submit as follows. In its 69th meeting held on 1st March, 2001 the Board of Governors accorded its approval in principle to the proposal for amendments in Kendriya Vidyalaya .he



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Sangathan (Appointment, promotion, Seniority, etc) Rules 1971 as proposed in the Agenda and subsequent papers. By way of abundant precaution the Board decided that a small sub-group of the Board should scrutinise the proposals once again within a period of one months and submit them to the Chairman (Kendriya Vidyalaya Sangathan) for approval. It was further decided that the amendments in the aforesaid Rules may be given effect to, after obtaining the approval of the Chairman (Kendriya Vidyalaya Sangathan). As per the aforesaid decision of the Board the proposals as placed before the Board of Governors were once again scrutinised by a small group as constituted by the Board. The proposals as scrutinised by the aforesaid group were submitted to the Chairman (Kendriya Vidyalaya Sangathan) for approval. After approval of the Chairman, the amendments were notified through Office Memorandum dated 5.7.2001 and 18.7.2001. It is further submitted that impugned decisions in the matter were taken by the Board of the Governors and the Chairman of the Sangathan in accordance with Kendriya Vidyalaya Sangathan Rules particularly Rule 22 to 26 of the said Rules. Besides that all the officers of the Sangathan as well as the Board of Governors have scrutinised the proposals thoroughly and considered the administrative needs/efficiency, availability of financial resources and all other relevant factors while taking the impugned decisions.

As regard the issue of common cadre and common seniority for certain non-teaching posts, it is submitted that the issue has been receiving the attention of the Sangathan & Board of Governor since 1992. It will be relevant to mention here that non-teaching staff of Kendriya Vidyalaya Sangathan consists of LDCs (Rs. 3050-4590), UDCs (Rs. 4000-6000); Head Clerks (Rs. 4,500-7000) and Supdts (Rs.5,500-9000). Corresponding cadres of the staff at the regional offices/ Head Quaters of Kendriya Vidyalaya Sangathan of LDCs (Rs. 3,050- 4,590); UDCs (Rs. 4000-6000); Assts/Audit Assts (Rs. 5000-8000) but existing Asstts Audit Assts placed in the pay scale of Rs.5,500-9000 under Court orders (but subject to decision in appeal); and Supdt. (Admn)/(Accounts) (Rs. 5,500-9,000). Promotional prospects to all the staff in both the cadre were not uniform through all of them started theirs career in Kendriya Vidyalaya Sangathan with similar qualifications. Lack of uniform promotional prospect amongst similarly placed staff in the same organisation, i.e., the Kendriya Vidyalaya Sangathan created bitterness and heart burning. Such a kind of tight compartmentalisation between staff in Kendriya Vidyalaya on the one hand and those at the Head Quarters/Regional Offices on the other prevented the Sangathan from utilising the services of those in schools who have had first hand knowledge about the problems of the schools that would have helped the Sangathan in streamlining its system in procedures for improving the quality of teaching in the schools. In view of these and all

other relevant factors. it was felt necessary to have common cadre of staff similarly placed in pay-scales. These aspects have been considered carefully from time to time and a conscious decision was taken by the Board of Governors as early as on 7th December, 1999 to introduce common cadre and seniority amongst the staff in Head Quarters/Regional Office and Kendriya Vidyalayas. It is reiterated that the introduction of common cadre/common seniority and revision of Recruitment Rules have not adversely affect the pay scales of applicants or any of the staff existing as on 5.7.2001. As regards the issue of common seniority, the same will be decided objectively and keeping in view the orders on the subject.

3. That with regard to the statements made in paragraph 2, 3, 4.1, 4.2 and 4.3 of the application the answering respondents has no comments.

4. That with regard to the statements made in paragraph 4.4 of the application the answering respondents begs to submit that the Education Code and Accounts Code of the Kendriya Vidyalaya Sangathan prescribes service conditions and instructions for the smooth running of the administration. The rules in Accounts Code and Education Code cannot be equated with the Memorandum of Association and rules of

the Kendriya Vidyalaya Sangathan. The Board of Governors of the Kendriya Sangathan is the competent authority to frame rules and regulations and service conditions for its employees in terms of rule 22 of the KVS.

The rules of the Sangathan are to be altered with the consent of the Government of India on the basis of resolution passed by its Board of Governors.

5. That with regard to the statements made in paragraph 4.5 and 4.6 of the application the answering respondents has no comments.

6. That with regard to the statements made in paragraph 4.7 of the application the answering respondents begs to submit that it is not true that the basic nature of work between the Officers in the schools and Headquarters/Regional Offices is so different that a person working at one place would not be able to work at the other. The non-teaching staff of the Vidyalaya deal with financial, academic as well as personnel/administrative and establishment matters at the school level. The non-teaching staff at the Headquarters/Regional offices of the Kendriya Vidyalaya Sangathan also perform similar functions. All the applicants, in the instant case, perform non-teaching duties, which are generally similar in nature with those in schools.

7. That with regard to the statements made in paragraph 4.8 of the application the answering respondents begs to submit that keeping the interest of the organisation, the Board of Governors can at any stage take a different view looking at the requirements/demands of the organisation. So long as the competent authority does not change the various provisions in the regard the stand to be taken by KVS would ~~be~~ to retain whatever is the existing policy at the particular time. Approval of the Government of India, Ministry of Human Resource Development and Ministry of Finance is required only for the purpose of creation of the post of non-teaching staff working in KVS Headquarters, and its Regional Offices whereas the post of non-teaching staff are created on the basis of the norms approved by the Board of Governors. Board of Governors is the competent authority to frame the terms of appointment, service conditions for all the employees of the Sangathan.

8. That with regard to the statements made in paragraph 4.9 of the application the answering respondents begs to submit as follows. The Board of Governors of the Kendriya Vidyalaya Sangathan which comprises of the Minister of Human Resources Development who is the Chairman of KVS, the Additional Secretary (Education) who is also the Vice-Chairman

of the KVS and several other representatives of the Government, has been entrusted with the management of all affairs and funds of the Sangathan. It has also been conferred the authority to exercise all powers of the Sangathan. The powers and functions of the Board of Governors are laid down in the Memorandum of Association and Rules of the Kendriya Vidyalaya Sangathan. In terms of Rule 22 of the aforesaid rules the Board of Governors has the plenary power to make regulations inter-alia, for regulating the terms and tenure of appointments, emoluments, allowances, rules of discipline and other conditions of service of the officers and staff of the Sangathan, procedure for their appointment, etc. The Board of Governors have also been conferred the plenary power for making regulations on such other matters as may be necessary for the furtherance of the objective of the Sangathan, With regard to the matter covered by office Memorandum dated 05.07.2001 and 18.07.2001, it is submitted that the decisions on these matters has been taken by the Board of Governors which is the competent authority to take such decisions as per the Rules.

9. That with regard to the statements made in paragraphs 4.10, 4.11 and 4.12 of the application the answering respondents beg to submit that the three cadres were of Headquarter, Regional Office and School cadre staff. The merger has taken place at the level of L.D.C. in the school

and Headquarters plus Regional Office in the administrative cadre, at the level of UDC/Accounts clerk in all three cadres, at all these levels except at the level of Assistant, Audit Assistant and Head Clerk, the pay scale is identical. All these fall in line as the promotional channel of the previous cadres will have to be in the same line as the promotional channel of the new merged cadre. At the level of Assistants, Audit Assistants and Head Clerk, since the pay scales were different, all these three posts have been created in the pay scale which was equivalent to the pay scale of Head Clerk. The lowest pay scale of the three posts has been taken because the Government had categorically stated that there could be no financial implication in the merger of those cadres. However, all persons who happened to be working as Assistant and Audit Assistants presently and having the pay scale of Rs. 5500-9000 under the orders of the Hon'ble Delhi High Court will continue to remain in the same pay scale as has been stated in the foot note of the Office Memorandum dated 18th July, 2001 which is the impugned order till the final decision on the LPA filed by the respondents staff. At no stage has there been any intention of bringing down the pay scale of the persons already enjoying it because of the abolition of those post and creation of the new posts of Assistant Superintendent. However, there pay shall remain personal to them and all ~~future~~ entrants against the vacant and sanctioned posts at this level will be placed as Assistant Superintendent in the pay scale that has been prescribed for Assistant Superintendent. The inter-

est of the applicant are in no way affected by doing this because of which it cannot be said that it is punitive in nature and amounts to reduction in rank which cannot be done otherwise by way of a penalty.

10. That with regard to the statements made in paragraphs 5.1 to 5.10 of the application the answering respondents begs to repeat and reiterate what has been stated in the aforesaid paragraphs and state that the grounds are baseless and contrary to law.

11. That with regard to the statements made in paragraphs 6 and 7 of the application the applicant is put to the strictest proof of the correctness of the statements made therein.

12. That with regard to the statements made in paragraph 8 and 9 of the application the answering respondents beg to state that taking into consideration the statements and submissions made by the applicant and statements made by the respondents in the preceding paragraphs as well as in view of the factual and legal aspects involved in the case the present Original Application deserve to be dismissed with cost. Moreover, a similar Original Application (O.A. No. 2244/01), which came up before the C.A.T. Principal Bench, New Delhi was dismissed by the Hon'ble Tribunal vide its order dated 1.1.2002.

V E R I F I C A T I O N

I, Sri Deo Kishan Saini, son of Sri C.L Saini, aged about 53 years, presently working as the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region do hereby verify that the statements made in paragraphs 3, 5, 11, 12 are true to my knowledge and those made in paragraphs 2, 4, 6, 7, 8, 9 are based on records.

And I sign this verification on this the 4th day of ~~March~~; 2002 at Guwahati.

Place : Guwahati

Date 4-3-2002

Sri Deo Kishan Saini
DEPONENT