

30/100

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

OA-143/02 ordersheet Pg-1 to 3 INDEX

Disposal order - 26/5/03

O.A./T.A No. 231/02

R.A./C.P No.

E.P./M.A No. 143/02

1. Orders Sheet OA-231/02 Pg. 1 to 6
2. Judgment/Order dtd. 26/05/2003 Pg. No separate order with the bail.
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 231/02 Pg. 1 to 54
5. E.P./M.P. 143/02 Pg. 1 to 4
6. R.A./C.P. NIL Pg. to
7. W.S. Respondents No-2, 3, 4, 6 and 7. Pg. 1 to 8
8. Rejoinder submitted by the Applicant Pg. 1 to 11
9. Reply Pg. to
10. Any other Papers Pg. to
11. Memo of Appearance
12. Additional Affidavit
13. Written Arguments
14. Amendment Reply by Respondents
15. Amendment Reply filed by the Applicant
16. Counter Reply

Additional statement submitted by the Applicant
Pg- 1 to 3

SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 231/02

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants. D. D. Pathak

-Vs-

Respondant(s) N. O. I. Form

Advocate for the Appleeant(s) M. Chanda, G. N. Chakraborty
H. Dutta

Advocate for the Respondat(s) Case

Notes of the Registry

Date

Order of the Tribunal

25.7.2002

Heard Mr.M.Chanda, learned
counsel for the applicant. The appli-
cation is admitted. Call for the re-
cords.

Issue notice to show cause as
to why the interim order shall not be
granted, returnable by four weeks.
In the meantime the applicant shall
not be repatriated till the returna-
ble date.

List the case for order on
23.8.2002.

Member

Vice-Chairman

bb

No steps taken

An additional statement
submitted by the applicant

2
23.8.02

Mr. I. Choudhury, learned counsel appearing on behalf of the Respondents prays for little accommodation till 26.8.2002. Prayer is allowed.

In the meantime, the order dated 25.7.2002 shall remain operative.

List on 26.8.2002 for orders.

I. Choudhury
Member

[Signature]
Vice-Chairman

mb

26.8.02

Heard Mr. M. Chanda, learned counsel for the applicant and also Mrs. R. Choudhury, learned counsel for the Respondents.

Mrs. R. Choudhury, learned counsel for the Respondents prays for time to file written statement. Prayer is allowed. List on 19.9.2002 for orders.

In the meantime, interim order dated 25.7.2002 shall remain operative.

I. Choudhury
Member

[Signature]
Vice-Chairman

mb

19.9.02

Heard Mr. M. Chanda learned counsel for the applicant and also Mrs. R. Choudhury, learned counsel for the respondents.

Pleadings are completed. The case may now be listed for hearing on 10.10.02. In the meantime, the applicant may file rejoinder if any, within two weeks. The interim order dated 25.7.02 shall continue.

[Signature]
Vice-Chairman

la

Notice prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A/D.

Vide D. No. 2172 to 2178

Dtd- 13.8.02

[Signature]
2.8.02

Copy of the order of 26.8.02 issued to the counsel of the parties.

[Signature]
3.9.02

20.9.2002

W/s submitted by the Respondent Nos. 2, 3, 4, 6 and 7.

[Signature]

7.10.02

Rejoinder submitted by the applicant in reply to W/s.

[Signature]

10.10.02

On the prayer of learned counsel for the respondents, the case is adjourned. List the matter again on 18.11.2002 for hearing.

Notice in No Respondent
No 2 Returned due to left
JLN

ICU Sharma
Member

Vice-Chairman

mb

18.11.02

Heard Mr.M.Chanda learned counsel appearing on behalf of the applicant and Mrs.R.B.Choudhury learned counsel for the respondents at length. Mrs.R.S.Choudhury learned counsel for the Respondents prays for adjournment to produce relevant rules including records. Accordingly, case is adjourned to 10.12.02 for further hearing. List on 10.12.02 for hearing.

ICU Sharma
Member

Vice-Chairman

lm

10.12

Division Bench did not set today. The case is adjourned to 6.1.2003 for hearing.

ML
A.B. Jaz
10/12

6.1.2003 Present: Hon'ble Mr Justice V.S. Aggarwal, Chairman
Hon'ble Mr K.K. Sharma, Administrative Member

At the request of the learned counsel for the applicant the case is adjourned till 9.1.2003 for hearing.

ICU Sharma
Member

CS Ag
Chairman

nkm

9.1.2003

Present: Hon'ble Mr Justice V.S. Aggarwal, Chairman

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

At the request of Mr S. Dutta, learned counsel for the applicant, list it for arguments on 20.2.2003 for hearing, making it clear that no further adjournment shall be granted.

K.K. Sharma
Member

V.S. Aggarwal
Chairman

20.1.2003

Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice Chairman
The Hon'ble Mr. S.K. Hajra
Administrative Member.

It has been stated by Mr. S. Dutta, learned counsel that Mr. M. Chanda, learned counsel for the applicant is undergoing treatment at Kolkata and likely to return by the end of the week.

List the case accordingly on 27.1.2003 for hearing.

S.K. Hajra
Member

D.N. Chowdhury
Vice-Chairman

bb

27.1.2003

On the prayer of learned counsel the respondents the case is adjourned. List the matter again on 4.2.2003 for hearing.

S.K. Hajra
Member

D.N. Chowdhury
Vice-Chairman

mb

4.2.2003. Put up on 4/3/2003.

4.3.2003. Court did not set today. The case is adjourned to 24/3/2003. M/S. Anand

The case is ready for hearing as regard W/S and rejoinder.

3.2.03

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

24.3.2003

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

The Hon'ble Mr. S. Biswas Administrative Member.

Heard Mr. M. Chanda, learned counsel for the applicant and Mrs. R.S. Choudhury, learned counsel appearing for the respondents.

On the prayer made by Mr. M. Chanda, learned counsel for the applicant the case is adjourned and again listed for hearing on 22.4.2003.

S. B. —
Member

—
Vice-Chairman

bb

22.4. Court did not sit today. The case is adjourned to 7/5/2003.

7.5.2003

On the prayer of Mr. M. Chanda, learned counsel for the applicant, the case is adjourned. List on 23.7.2003 for hearing.

S. B. —
Member

—
Vice-Chairman

mb

The case is ready for hearing.

—
6.5.03

231/2002

Notice of the Registry

Date

Original

26.5.2003

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

The Hon'ble Mr. S.K. Hajra,
Administrative Member.

Heard Mr. M. Chanda, learned
counsel for the applicant. Mr. Chanda,
learned counsel for the applicant stated
that he has been instructed
not to press the application. Accord-
ingly, the application is dismissed on
withdrawal. Interim order dated 25.7.02
stands vacated.


Member


Vice-Chairman

mb

27.5.2003

Copy of the order
has been sent to
the office for issuing
the order to the L/Ad.
for the Respondent.

SS

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Filed by:-
Swigile Dutta
Advocate
20.01.03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH: AT GUWAHATI

ORIGINAL APPLICATION NO. 231/2002

DAMBARUDHAR PATHAK

.....Applicant

- VERSUS -

UNION OF INDIA & OTHERS

.....Respondents

LIST OF DATES & SYNOPSIS OF THE CASE

- | | | |
|------------|---|---|
| 1999 | - | Advertisement for filling up of certain posts of Principal on deputation basis was issued by the respondents and interview was notified. 10 years' experience teaching with Post-Graduation and B. Ed. was the requisite qualification. |
| 10.07.1999 | | |
| 26.07.1999 | | |
| 02.08.1999 | - | <p>'A' having been found to possess 13 years' experience along with other requisite qualifications, was selected.</p> <p>.....Pr. 4.4, Anx-1 (P. 23-24)</p> |
| 27.09.1999 | - | <p>'A' reported for duty to 'R'-3 and took over charge of Principal in JNV, Kalaigaon.</p> <p>.....Pr. 4.5, Anx-2 (P. 25-26)</p> |
| 02.05.2000 | - | <p>Order of Repatriation issued before completion of 2 years' tenure which was extendable up to 5 years on the basis of performance.</p> <p>.....Pr. 4.6, Anx-3 (P. 27)</p> |
| 09.11.2000 | - | <p>Order of Repatriation was held to be arbitrary and set aside in OA No. 174/2000.</p> <p>.....Pr. 4.7, Anx-4 (P. 28-37)</p> |
| 21.06.2001 | - | <p>Notification issued providing for consideration of cases for permanent absorption of those persons who had served at least for 2 years' against such posts.</p> <p>.....Pr. 4.14, Anx-14 (P-53)</p> |
| 18.07.2001 | - | <p>Similarly situated persons granted extension for third year.</p> |
| 10.09.2001 | - | <p>'A' submitted willingness for permanent absorption.</p> |

.....Pr. 4.8, Anx-5 & 6 (P. 38 & 39)
Anx-7(Result Sheet of CBSE Final Exam.) P. (40-41)

- 11-19.10.2001- Fresh advertisement issued for 40 posts of Principal to be filled up on deputation basis.
.....Pr. 4.11, Anx-11 (P. 49)
- 14.09.2001 - Impugned Order of Repatriation was passed to repatriate 'A' with effect from 26.09.2001.
- 15.10.2001 - Order passed in super session of order dated 12.10.2001 (which was not handed over to 'A') and 'A' was relieved from duty with effect from 16.10.2001 (A/N).
- 17.10.2001 - Orders dated 14.09.2001 and 15.10.2001 were handed over to 'A' and he handed over the charge being under pressure of Sri B. Singh, Asstt. Director (Admn.).
.....Pr. 4.9 (P. 9-11), Anx-8 & 9 (P. 42-43)
- 09.04.2002 - OA No. 426/2001 was disposed of with a direction to consider absorption of 'A' and impugned orders dated 14.09.2001 and 15.10.2001 were kept in abeyance till such consideration. Direction was also issued for payment of arrear salary and allowances.
.....Pr. 4.10, Anx-10 (P. 44-48) & Pr. 4.13, Anx-13 (P. 53)
- 12.04.2002 - 'A' submitted representation expressing his willingness for permanent absorption.
.....Anx-15 (vide Additional Statement/Rejoinder)
- 10.06.2002 - Impugned Order passed rejecting the claim of 'A'.
.....Pr. 4.12 (P. 14-16), Anx-12 (P. 50-51)

Contentions of the Applicant in OA No. 174/2000:

1. Order of repatriation - malafide, arbitrary and discriminatory inasmuch as similarly situated persons were not disturbed, only the 'A' was chosen.
2. Period of deputation was for 2 years extendable on yearly basis - sudden curtailment thereof was devoid of any ground/reason.
3. Allegations relating to his conduct were raised after passing of the impugned order - no opportunity to rebut or explain those were given prior to passing of the repatriation order - allegations were devoid of any specific details.

Contentions of the Respondents:

1. 'A' could not maintain sanctity of the School - performance was not satisfactory. (Refer Pgs. 33-34)

Findings & Decision of the Tribunal:

1. Allegations were never disclosed prior to issuance of the impugned order. (P. 34)
2. The deviation of the authority from the letter of appointment was inconsistent with the professed norm laid down therein. (P. 35)
3. The stand of 'R' in W/S was merely an attempt to rationalize their decision ex-post facto - no material in support of their stand. (P. 35)
4. The expression in the advertisement regarding reservation of the right of the Samiti to repatriate, was not absolute. (P. 36)
5. The right of repatriation was not absolute and unfettered. (P. 36)
6. 'R'-4 had no rational reason for reaching at the impugned decision. (P. 36)

.....Impugned Order of repatriation - set aside.

Contentions of the Applicant in OA No. 426/2001:

1. Representation dated 18.07.2000 for extension of the period of deputation was not considered on the plea of non availability of vacancy against General & Unreserved Quota - such plea, not tenable.
2. Order of repatriation - malafide, arbitrary and discriminatory inasmuch as similarly situated persons were granted extension but only the 'A' was singled out.
3. Notification dated 22.06.1995 provided for consideration of a person for permanent absorption, if he had worked 2 years on deputation against a post.

Contentions of the Respondents:

1. 'A' did not have any vested right for absorption - No infirmity/illegality in his repatriation - Order of repatriation was lawful and justified.

Findings & Decision of the Tribunal:

1. Recruitment Rules provide for absorption of those who had worked on deputation for at least 2 years in the post. (P. 46-47)
2. The authority considered the cases of similarly situated persons and granted extension. (P. 47)
3. As per recruitment rules, a person was entitled to a fair consideration of his case for absorption. (P. 47)
4. Absorption of a deputationist did not depend on the vacancy in the direct recruit quota. (P. 48)
5. Where a rule for absorption existed, authority was bound to consider absorption there under - (1999) 8 SCC 381 followed.

.....Application disposed of with direction to applicant to submit representation expressing his willingness for absorption and in such an event, the respondents should consider the same and pass a reasoned order thereon.

Applicant's Case in OA No. 231/2002:

1. Ground of rejection is contrary to Records of the Case (Anx-14) and Advertisement (Anx-11).
2. Repatriation before 2 years is bad, illegal and devoid of any ground/reason.
3. Impugned Order is malafide and discriminatory inasmuch as similarly situated persons have been considered and granted extension but only 'A' has been singled out.
4. No prior information, as required under the law, has been given either to 'A' or the lending department before repatriation.
5. Case of 'A' is covered under the Rules (Anx-14).

Respondents' Case:

1. Right of repatriation is reserved with the Samiti.
2. Notification dated 21.06.2002 is yet to be ratified and as such has not been implemented as yet.
3. The performance of the incumbent is relevant only to the right of the Samiti to repatriate.

Contentions of the Applicant in OA No. 231/2001:

1. Notification dated 21.06.2002 does not require any ratification.
2. performance is relevant consideration for absorption.
3. The discretion of the authority to repatriate is not absolute and unfettered.

Before C.A.T. Committee
Banti Acharya

It is Prayed, that the
following case may be
listed for Admission
on 25/7/2002.

① O. A. /2002

D. D. Pathak

- VS -

Union of India & Ors

Mamik Chandra

Advocate

24/7/2002

Attorney

M/s.

4/10/02

24.7.02

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

ORIGINAL APPLICATION NO. 231/02

1. a) Name of the Applicant : D.D. Pathak
b) Respondents : Union of India & Ors.
c) No. of Applicant :
2. Is the applicant in the proper form : YES/NO
3. Whether name & Description and address of all the papers been furnished in cause title : YES/NO.
4. Has the application been duly signed and verified : YES/NO
5. Have the copies duly signed : YES/NO
6. Have sufficient number of copies of the application been filed
YES/NO
7. Whether all the annexures parties are impleaded : YES/NO
8. Whether English translation of documents in the Language: YES/NO
9. Is the application is in time : YES/NO
10. Has the Vakalatnama/MEMO/of Appearance/Authorisation filed:
YES/NO
11. Is the application by IPO/BD/FOR Rs.50/ : 76546394
12. Has the application is maintainable : YES/NO
13. Has the impugned order original duly attested been filed: YES/NO
14. Has the legible copies of the annexures duly attested filed:
YES/NO
15. Has the Index of documents been filed all available : YES/NO.
16. Has the required number of enveloped bearing full address of the respondents been filed : YES/NO
17. Has the declaration as required by item 17 of the form: YES/NO.
18. Whether the relief sought for arises out of the single: YES/NO
19. Whether the interim relief is prayed for : YES/NO
20. In case of condonation of delay is filed is it support: YES/NO
21. Whether this case can be heard by SINGLE BENCH/ JUDICIAL BENCH
22. Any other points :
23. Result of the scrutiny with initial of the scrutiny clerk :

The application is in order.

23/1/02
SECTION OFFICER

DUTY REGISTRAR

[Signature]

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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. 231 /2002

Sri Dambaru Dhar Pathak Applicant

- Versus -

Union of India & Others Respondents

I N D E X

<u>Sl.No.</u>	<u>Annexure</u>	<u>Particulars</u>	<u>Page Nos</u>
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16.	14	Notification dated 21-6-2001	54.

Date : July 2002.

Filed by,

Manik Chouda.

Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

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

O.A. No. 231 /2002

BETWEEN

Sri Dambaru Dhar Pathak

S/o Late Baidyanath Pathak,

Working as Principal,

Jawahar Navodaya Vidyalaya,

Kalaigaon,

District - Darrang, Assam

.... Applicant

- AND -

1. The Union of India

(Represented by the Secretary to the
Government of India,

Ministry of Human Resources Development,
Department of Education, New Delhi).

2. The Director,

Navodaya Vidyalaya Samiti
A- 39, Kailash Colony
New Delhi -110048

3. The Commissioner,

Navodaya Vidyalaya Samiti
I.G.I. Stadium,
Near ITO ,
New Delhi - 110002

contd...p/2

Dambaru Dhar Pathak

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Filed by the applicant
through M. Ghosh - Advocate
23/7/02

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(2)

4. The Deputy Director, (P & E)
Navodaya Vidyalaya Samiti
Indira Gandhi Indoor Stadium,
Near ITO
New Delhi -110002
5. The State of Assam
Through the Director of Secondary Education,
Kahilipara,
Guwahati - 781019
6. Shri S.P. Gaur
Commissioner
Navodaya Vidyalaya Samiti
Indira Gandhi Indoor Stadium,
Near ITO
New Delhi - 110002
7. The Deputy Director (In Charge)
Navodaya Vidyalaya Samiti
North Eastern Regional Office,
Nongrim Hills,
Shillong - 3.

.... Respondents

DETAILS OF THE APPLICATION

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

This application is made against the impugned order dated 10.6.2002 , served on the applicant on 4.7.2002, rejecting the claim of the applicant for consideration for regular absorption to the post of Principal in Jawahar

contd...p/3

Dambardhakar Pathak

Navodaya Vidyalaya in a most arbitrary manner on the alleged non-existent grounds and also in total violation of judgment and order dated 9.4.2002 passed in O.A. No.426/2001 and also praying for a direction for payment of arrear salary with effect from 17.10.2001 till date and also for a further direction upon the Respondents to absorb the applicant to the post of Principal in the existing available vacancy.

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.

4.2. That the Navodaya Vidyalaya Samiti is an Autonomous Organisation of Ministry of Human Resources Development, Department of Education. Moreover, it has adopted all the rules and regulations of the Central Government regarding conditions of service of its employees. As such, all the rules governing the service conditions of other Central

contd....p/4

Dambardhar Pathak

Government employees are applicable to employees of the Navodaya Vidyalaya Samiti (for short NVS).

4.3. That the applicant initially joined the service as a subject teacher (Commerce) in Sarthebari Higher Secondary School, District Barpeta, Assam under the administrative control of the Director of Secondary Education, Assam during the year 1986. The applicant is a post graduate in Commerce discipline and also possesses the degree of Bachelor of Education.

4.4. That in the year 1999, the respondents issued an advertisement dated 10.7.1999 seeking to fill up few posts of Principal lying vacant under their disposal. For that purpose a walk-in-interview was notified to be held on 26.7.1999. The requisite qualification required for the said post was declared as 10 years experience in teaching alongwith degree of post graduation in any discipline with the degree of Bachelor of Education. The applicant having completed 13 years of service in teaching by that time and having the requisite qualifications appeared before the Interview as was scheduled. The applicant fared well in the said interview and consequently was selected for the post of Principal which was communicated to him vide NVS, New Delhi letter No. 13/98-NVS (Pers) dated 2.8.1999. It is relevant to mention here that in the advertisement dated 10.7.1999 there was a specific term to the effect that the initial appointment at the

contd...p/5

Dambardhar Pathak

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(5)

first instance will be for a period of 2 (two) years which is extendable to 5 (five) years. It is further stated in the said advertisement that the Samiti~~is~~ reserves the right to repatriate the service of a deputationist at any time even before the completion of approved deputation period depending upon their performance without assigning any reasons. It is submitted that the applicant in spite of his best effort could not annex a copy of the advertisement dated 10.7.1999. Therefore Hon'ble Tribunal be pleased to direct the respondents to produce a copy of the advertisement dated 10.7.1999. However, the similar terms and conditions would be evident from the recent advertisement issued by the NVS in the Employment News dated 19th October 2001 for filling up of 40 (Forty) vacant post of Principals on deputation basis.

A copy of the said letter dated 2.8.99 is annexed herewith and the same is marked as Annexure-1.

4.5 That the applicant states that as stated earlier, he was duly selected in the interview for the post of Principal by the respondents on transfer on deputation basis. The period of deputation was initially for a period of two years in terms of his offer of appointment dated 2.8.1999. The relevant portion of the same from the offer of appointment letter dated 2.8.99 is quoted below :-

{ The appointment will be on transfer on deputation basis for a period of two years

contd...p/6

Dambardhar Patil

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(6)

in the first instance and is likely to be extended basing on his/her performance. "

However, consequent to his selection the applicant was relieved from his parent department vide relieving order dated 23.9.1999 and accordingly he reported for duty to the office of the respondent No.3 on 27.9.1999. His reporting was accepted by the respondent No.3 and he was directed to take over charge as Principal in JNV, Kalaigaon, Mongaldai, Darrang, Assam.

Copy of the Office order dated 27.9.1999 directing the applicant to take over charge as Principal, JNV, Kalaigaon is annexed herewith as Annexure- 2.

4.6. That the applicant begs to state that in pursuance to the aforesaid order dated 27.9.1999 he immediately joined in the said school, took over charge and started discharging his duties with all sincerity and devotion. But surprisingly on 2.5.2000 the respondent No.4 issued the impugned order repatriating him to his parent Department before completion of his tenure of two years in total violation of the rules as contained in clause 9 of G.I., Deptt. of Per. & Trg. O.M. No.2/29/92 Estt. dated 9.1.1994. The relevant portion of clause 9 is reproduced below from the Swamy's Complete Manual on Establishment and Administration, 1994 Edn :

" 9. Premature reversion of deputationist to parent cadre.

Normally, when an employee is appointed on deputation/foreign service, his services are placed at the disposal of the parent Ministry/

contd...p/7

Dambardhar Pathak

Department at the end of the tenure. However, as an when a situation arises for premature reversion to the parent cadre of the ~~deputationist~~ deputationist, his services could be so returned after giving advance intimation of reasonable period to the lending Ministry/Department and the employee concerned. "

4.7. That in the compelling circumstances your applicant approached this Hon'ble Tribunal, through Original Application No. 174 of 2000 and this Hon'ble Tribunal be pleased to stay the operation of the impugned order of repatriation issued under letter No. PD-22/99-NVS(Pers) dated 2.5.2000 issued by the Joint Director, Admn.NVS., New Delhi. The said original application was contested by the same respondents and some allegations were also brought in the written statement before this Hon'ble Tribunal against the applicant. The said original application is finally decided on 9.11.2000 and the Hon'ble Tribunal after detail scrutiny of the records and on a detail consideration of the facts and grounds raised in the O.A. and written statement was pleased to set aside the impugned order of repatriation dated 2.5.2000.

A copy of the letter dated 2.5.2000, judgment and order dated 9.11.2000 are annexed hereto and the same are marked as Annexures- 3 and 4 respectively.

4.8. That your applicant thereafter continuously discharging his duties as principals, JNV, Kalaigaon, Darrang(Assam) with the expectation that after completion

contd...p/8

Dambanidhar Pathak

(8)

of 2 (Two) years initial deputation period his service will further be extended on deputation basis in terms of clause (ii) of the terms and conditions of the advertisement dated 10.7.1999 as because other similarly situated principals who were appointed alongwith the applicant on similar terms and conditions of deputation have already been granted further extension of deputation for third year namely, Sri Madhav Sharma, Principal, JNV, Barpeta and Sri A.K. Singh, Principal, JNV, West Sikkim. Therefore the applicant cannot be discriminated in the matter of further extension of deputation service on pick and choose basis, inviolation of Article 14. It is relevant to mention here that altogether 25 (twenty five) Principals were appointed along with applicant and so far applicant came to know , third year extension of deputation of service has already been granted by the NVS to other similarly situated Principals, except the applicant. Therefore the action of the applicant for not granting third year extension is highly arbitrary, illegal and unfair.

It is relevant to mention here that the applicant also submitted his willingness to the Director NVS, New Delhi through his letter No. PF/DP/2000-01/JNV(KLG)/208 dated 18.7.2001 and similarly prayed for no objection certificate from the Director of Secondary Education, Assam, through letter dated 10.9.2001.

It is pertinent to mention here that during the tenure of the present applicant there was a tremendous academic achievement so far final result of CBSC

contd...p/9

Dambardhar Pattnaik

(Class X) are concerned, all the 63 (Sixty three) students appeared in the CBSE Final Examination (Class X) came out successfully. This academic achievement is made for the first time in the Kalaigaon School during the tenure of the present applicant. Therefore the allegation if any regarding performance of the applicant is not enable in the eye of law.

Copy of the letters dated 18.7.2001, 10.9.2001 and result sheet of CBSE final examination (Class X) for the year 2001 are annexed hereto and the same are marked as Annexures- 5, 6 and 7 respectively.

4.9. That most surprisingly the applicant while expecting for his further extension of service on deputation basis the Deputy Director (P & E), NVS, New Delhi issued Office Order bearing letter No. F.PD-22/99-NVS(Pers) dated 14.9.2001 delivered to the applicant on 17.10.2001 whereby the applicant is sought to be repatriated consequent upon completion of two 7 years of deputation period with effect from 26.9.2001 and he was further instructed to hand over complete charge of the Vidyalaya to the Vice Principal/Senior most PGT, as per the direction of Regional Office, Shillong. Subsequently, another impugned office order is issued vide letter No. F.11-9/2K-NVS/(SHR)/Admn/2011 dated 15.10.2001 whereby the applicant is sought to be relieved with effect from the afternoon of 16.10.2001 in pursuance of the NVS, New Delhi's order

contd...p/10

Dambardhar Pathak

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bearing No.PD-22/99-NVS(Pers) dated 14.9.2001 with a further direction to report for duty to the Director of Secondary Education, Assam immediately. It is relevant to mention here that in the said impugned letter dated 15.10.2001 it is stated that this office order supersedes the office order bearing No. 11-92-NVS(SHR)/Admn/2043 dated 12.10.2001, the applicant does not know the contention of the said office order dated 12.10.2001 referred in the impugned order dated 15.10.2001. It is pertinent to mention here that both the impugned order dated 14.9.2001 and 15.10.2001 in fact served upon the applicant on 17.10.2001 at about 11 hours. By the Assistant Director (Admn) Sri B. Singh. The applicant was pressurised by Sri Singh to hand over the charge to the Pratha Pratim Nath, PGT (Bio) of the Kallaigaon Jawahar Navodaya Vidyalaya. The applicant repeatedly requested Sri B. Singh to allow him to grant some time for handing over the charge so that he can make an appropriate representation in the meantime for further extension of his deputation period. It is submitted that when all other Principals working on deputation basis have been granted 3rd year of extension of deputation period in terms of clause (ii) of the terms and condition of advertisement. There is no cogent reason to deny the same benefit to the applicant as such the same unfair and illegal and smacks malafide and the said action is also violative of Article 14 of the Constitution. As such the impugned order dated 14.9.2001 and the office order dated 15.10.2001 are liable to be

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Dambardhar Pathak

set aside and quashed.

Copy of the impugned orders dated 14.9.2001 and 15.10.2001 are annexed hereto and the same are annexed as Annexure- 8 and 9 respectively.

4.10. That it is stated in the compelling circumstances circumstances stated above your applicant approached this Hon'ble Tribunal being highly aggrieved with the impugned order of repatriation as well as order relieving the applicant dated 14.9.2001 and 15.10.2001. The said Original Application was registered as O.A. 426/2001. In the aforesaid original application, applicant inter alia prayed for quashing and setting aside of the impugned order of repatriation /relieving orders dated 14.9.2001 and 15.10.2001 and also prayed for a further direction upon the Respondents to consider his case for regular absorption to the post of Principal in the existing vacancy. The present respondents contested the claim of the present applicant before this Hon'ble Tribunal. However, the Hon'ble Tribunal after hearing the arguments of the parties disposed of the O.A. No. 426/2001 on 9.4.2002 with the following direction :

" ... 6. Mr. S. Sarma, learned counsel for the respondents, submitted that the discretion to absorb or not to absorb a deputationist is vested on the authority. However, as we

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Dambardhar Pathak

alluded earlier that when the recruitment rules provide for absorption the authority is duty bound to consider the same in terms of the rules and thereafter pass an order in conformity with law. Where a policy of absorption of a deputationist is laid down there must be some valid and justifiable ~~ex~~ reason for not absorbing a person as was held by the Supreme Court in Rameshwar Prasad Vs. Managing Director, U.P. Rajkiya Nirman Nigam Limited and others, reported in (1999) 8 SCC 381.

7. On consideration of all the aspects of the matter we are of the opinion that ends of justice would be met ~~if a direction is issued to the applicant to submit a detailed representation expressing his willingness for absorption within three ~~xx~~ weeks from today and if such representation is made the respondents shall consider the same fairly and pass a reasoned order thereon as per law.~~ It is expected that the respondents shall pass the order as early as possible, preferably within three months from the date of receipt of the representation. Till the aforesaid exercise is completed the interim order dated 22.10.2001 shall continue to operate and the impugned orders dated 14.9.2001 and 15.10.2001 shall remain in abeyance.

8. The application is allowed to the extent indicated. There shall, however, be no order as to costs. "

It is quite clear from above direction of the Hon'ble Tribunal that in terms of policy of absorption the respondents are duty bound to consider the case of the applicant for absorption.

A copy of the Judgment and Order dated 9.4.2002 is enclosed as Annexure - 10.

Dambardbhar Patil

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4.11. That it is stated that very recently the NVS issued another advertisement inviting applications for the post of Principal to be filled on deputation basis in the JNV which are spread all over the country which would be evident from Employment News dated 11-19 October, 2001. In the said advertisement 40 posts of Principal sought to be filled up in various JNV. It would be further be evident from the aforesaid advertisement that the same terms and conditions have laid down for appointment as indicated in the earlier advertisement dated 10.7.1999. There is a specific mention in clause (ii) of terms and conditions that the candidate selected for appointment on deputation basis will be initially appointed for a period of 2 (two) years extendable to 5 (five) years. The Samity reserved the right to repatriate the service of a deputationist at any time even before the completion of approved deputation period depending upon their performance without assigning any reason. Therefore it appears that the basic terms and conditions for deputationists is five years. As such the question for repatriation of the applicant does not arise in the facts and circumstances stated above, more particularly when the school has made a tremendous achievement during the tenure of the present applicant so far final result of CBSE (Class-X) is concerned. Moreover, there is no apparent reason for repatriation of the applicant on completion of two years of deputation service. More particularly in view of the fact when similarly situated Principals appointed along with the applicant have been granted 3rd year extension of deputation service in terms

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Dambasundhar Pathak

of clause (ii) of advertisement. As such the action of the respondents was highly arbitrary and unfair. It further appears from the terms and conditions stipulated in the advertisement that the respondents is at liberty to repatriate the deputationists at any time without assigning any reason if the performance is not up to the marks but in the instant case it cannot be said that the performance of the applicant is not satisfactory and on that score along the arbitrary action of the respondents in passing the impugned orders dated 14.9.2001 and 15.10.2001 are liable to be set aside and quashed with a direction to the respondents to pass necessary order extending the period of deputation of the applicant as done in the other cases of the similarly situated Principals, till consideration of his case for regular absorption in ~~xxx~~ terms of Judgment and order dated 9.4.2002, passed in O.A. No. 426 of 2001.

Copy of the advertisement is annexed hereto and the same is marked as Annexure - 11.

4.12. Most surprisingly the respondent No.3 vide impugned order bearing letter No. F.PD-22/99-NVS(Pers)/VIP dated 10.6.2002 rejected the claim of the applicant for permanent absorption in total violation of Judgement and order dated 9.4.2002 passed in O.A. No. 426/2001. In the said impugned order it is alleged that in view of the revised recruitment rules notified vide letter No.F.2-29/94 dated 22.6.95 as per clause 2(iii) the case of the applicant cannot be considered for absorption

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being ineligible not having joined the Samity one year before the recruitment rules i.e. 23.6.94.

It is further stated in the said impugned order dated 10.6.2002 that although the earlier recruitment rules dated 22.6.95 has been modified vide Notification No. 1-5/1995-NVS (Admn) dated 21.6.2001, wherein a provision was made to consider person working on deputation for at least 2 (two) years for permanent absorption, but the said notification was not ratified by the Executive Committee and as such above referred Notification dated 21.6.2001 could not come into force, therefore representation of the applicant regarding permanent absorption in the Samity is rejected.

A mere reading of the impugned order dated 10.6.2002 it appears that the grounds now raised by the Respondent No. 3 for rejection of the claim for permanent absorption of the applicant is contrary to their own records and the contentions of the respondents is totally false and misleading. A mere reading of the advertisement Annexure-11 which was issued by the Respondent in the Employment News dated 13-19 October 2001 specifically stated while inviting applications for filling up newly 40(forty) posts of Principal, in clause No.4 that there is a possibility as per rules of the deputationists being absorbed permanently in NVS provided they performed outstandingly. This advertisement is made public in way back in the month of October 2001, as such authority has no jurisdiction to give a further clarification on terms and condition which is made in public in terms of

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the rules of N.V.S. The terms and conditions laid down in the aforesaid advertisement is now a public document and the aforesaid terms and conditions cannot be twisted in a individual case like the applicant at the whims of Respondent No.3. It is needless to mention here that the modified notification dated 21.6.2001 was issued by the NVS long back. Therefore question of approval of Executive Committee does not arise and it would be presumed that the aforesaid notification was issued with the approval of the Executive Committee. It is a settled position of law that recruitment rules always issued with due approval of the competent authorities. Hence the ground raised by the Respondent No. 3 is totally false and misleading regarding statements made in connection with modified recruitment rules dated 21.6.2001. As such the impugned order dated 10.6.2002 which was received by the applicant on 4.7.2002 is liable to be set aside and quashed.

A copy of the impugned order dated 10.6.2002 is enclosed as Annexure- 12.

4.13. That it is stated that the respondent did not take any initiative regarding payment of arrear pay and allowances of the applicant inspite of the Hon'ble Tribunal's order dated 9.4.2002 passed in M.P. No.21/2002 (OA -426/2001). As a result applicant is facing extreme financial hardship with his dependent family members. It is pertinent to mention here that applicant has submitted several representations for payment of his salary, moreover this Hon'ble Tribunal also passed an

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Dambardhwar Pathak

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order to that effect but no result.

A copy of the order dated 9.4.2002 passed by this Hon'ble Tribunal is enclosed herewith and marked as Annexure - 13.

4.14 That your applicant begs to state that he has acquired a valuable and legal right for his absorption to the post of Principal, more so when the recruitment rules dated 21.6.2001 provided such an opportunity for absorption, as such the respondents cannot arbitrarily deny the legitimate benefit of absorption on pick and choose basis.

It is further submitted that the applicant is still working in Kalaigaon Navodaya Vidyalaya but apprehending that he may be relieved by the Respondents at any moment, therefore, the Hon'ble Tribunal be pleased to pass an appropriate interim order directing the Respondents not to release the applicant during the pendency of the application and further be pleased to stay the operation of the impugned orders dated 14.9.2001, 15.10.2001 and 10.6.2002 till disposal of this original application.
copy of the notification dated 21.6.2001 is enclosed as Annexure. 14

4.15. That it is a fit case for the Hon'ble Tribunal to protect the right and interest of the applicant by passing an appropriate direction upon the Respondents to absorb the applicant on permanent basis and further be pleased to pass any other order or orders as deem fit and proper.

4.16. That this application is made bonafide and in the interest of justice.

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5. Grounds for Relief(s) with legal provisions :

5.1. For that the impugned order dated 10.6.2002 has been passed on the alleged ground that there is no provision at present in the recruitment rules for consideration of the case of the applicant for permanent absorption is contrary to their own records inasmuch as there is a modified recruitment rules issued by the NVS on 21.6.2001 as well as in the advertisement issued by the NVS inviting applications for filling up the posts of Principals on deputation basis, wherein a clear clause exists for consideration of permanent absorption, working on deputation basis and who have completed two years of deputation service. Therefore ground of rejection of representation of the applicant is contrary to their own records.

5.2. For that the impugned order dated 14.9.2001 and 15.10.2001 repatriating the applicant to his parent department before completion of his tenure of deputation, is illegal, being contrary to the provision of law.

5.3. For that the impugned order has been issued without due observance of the procedure of law and with malafide intention to accommodate some other interested person on pick and choose basis.

5.4. For that before issuance of the impugned order dated 14.9.2001 and 15.10.2001 without prior information of reasonable period as required under the law as given either to the lending Ministry/department of the applicant.

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Dambardhar Pathak

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5.5. For that the action of the respondents are illegal, arbitrary and malafide and as such violative of Article 14 and 16 of the Constitution of India as well as the principles of Natural Justice.

5.6. For that the respondents have violated the terms and conditions of Advertisement and has reported to unfair practice in repatriating the petitioner/applicant.

5.7. For that in any view of the matter the impugned order is bad in law and deserves to be set aside and quashed.

6. Details of remedies exhausted

That the applicant states that he has no other alternative and efficacious remedy than to file this application. He had no scope to submit any representation against the impugned order dated 14.9.2001, 15.10.2001 and order dated 10.6.2002.

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

The applicant further declares that he had previously filed O.A. No. 426/2001 which was disposed of on 9.4.2002 but at present no 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 humbly prays that Your Lordships be pleased

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Dambardhar Pathak

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to grant the following reliefs :

8.1. That the respondents be directed to consider for permanent absorption of the applicant in the light of Notification dated 21.6.2001.

8.2. That the Hon'ble Tribunal be pleased to set aside and quash the impugned order dated 14.9.2001, 15.10.2001 and 10.6.2002 (Annexures - 8,9 and 12)

8.3. That the respondents be directed to allow the applicant to continue to work till consideration of his case for permanent absorption.

8.4. That the respondents be directed to pass necessary order extending the period of deputation period as per terms and conditions laid down in Advertisement dated 10.7.1999 and in terms of appointment order dated 2.8.1999 (Annexure- 1)

8.5. Costs of the application.

8.6. 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 order dated 14.9.2001, 15.10.2001 & order dated 10.6.2002(Annexure-8,9 & 12), till disposal of this application.

10. This application is filed through Advocates.

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Dambarudhar Patil

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11. Particulars of the I.P.O.

- i) I.P.O. No. :
- ii) Date of issue :
- iii) Issued from : G.P.O., Guwahati.
- iv) Payable ~~mat~~ : G.P.O., Guwahati.

12. List of enclosures.

As stated in the Index.

Dambardhor Pathak

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VERIFICATION

I, Sri Dambaru Dhar Pathak, S/O Late Baidyanath Pathak, aged about 42 years, working as Principal, Jawahar Navodaya Vidyalaya, Kalaigaon, District : Darrang, Assam, applicant in this Original Application do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this Verification on this the 23rd day of July, 2002.

Dambarudhar Pathak

NAVODAYA VIDYALAYA SAMITI
(An autonomous Organisation of Ministry of HRD.,
Dept. of Education)
A-39, Kailash Colony, New Delhi-110048

1-3/98-NVS(Pers)

To

Director
Secondary Education of Assam
Kohilipara, Guwahati,
Assam.

2/8/99

Sub.: APPOINTMENT TO THE POST OF PRINCIPAL IN NAVODAYA
VIDYALAYA SAMITI ON DEPUTATION BASIS.

Sir/Madam,

With reference to his/her application and subsequent
interview for the post of Principal in NVS on transfer on deputa-
tion basis, I am to inform that
Shri/Smt. Dambarudhar Pathak in your Organisation has
working as commerce teacher *
been selected for appointment to the post of Principal on tempo-
rary basis in Navodaya Vidyalaya Samiti on transfer on deputation
basis in the scale of pay of Rs.10000-325-15200 initially for a
period of two years.

* The appointment will be on transfer on deputation basis
for a period of two years in the first instance and is likely to
be extended basing on his/her performance. The Officer would be
entitled to draw dearness allowance and such other allowances at
therate admissible subject to the conditions laid down in the
rules and orders governing the grant of such allowances in force
as amended from time to time. The general terms and conditions of
deputation on foreign service are enclosed.

* Swatibari Higher Secondary School.

certified to be true copy
Sujit Shosh
Advocate

At int. of
Adv.

-15- 24-

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The other terms and conditions of the appointment will be as follows:

i) The appointment will be on transfer on deputation basis initially for a period of two years extendable on yearly basis at a time in consultation with his/her parent organisation. However, the deputation period may be curtailed or extended at the discretion of the competent authority without assigning any reason or notice. There is no scope for permanent absorption to the incumbent who joins on transfer on deputation basis.

ii) Samiti reserves the right to repatriate him/her back to their Parent Department at any time without assigning any reason.

It is requested that the concerned official may be informed accordingly and in case the above conditions are acceptable and if he/she is willing to accept this offer, he/she may be relieved from his/her duties immediately subject to the conditions that there are no vigilance cases pending/contemplated against the individual, with the direction to report to the Chairman, JNV Karimganj under intimation to the Deputy Director, Regional Office at Shillong

Nongrim Hill (Near Nagaland House)
Shillong, Meghalaya.

latest by 16th August 1999 as Principal in the Samiti on transfer on deputation basis, failing which this offer would be treated as withdrawn.

Shri Dambarudhar Pathak,
Commerce Teacher,
Vill-Galla,
P.O.-Bhawanipur, P.S. & District
Barpeta, Assam.

Yours faithfully,


(V. RAMA RAO)
JT. DIRECTOR (ADMN.)

Enclosures :

1. Terms and conditions of deputation
 2. Relieving order proforma
- Copy to:

1. The Dy. Director, NVS Regional Office Shillong the above named officer may please be allowed to join the duties subject to verification of relieving order and other related documents. On his/her joining, the joining report, LPC and the relieving order (as prescribed by the Samiti) in original may be forwarded to the Samiti at an early date.

2. The Distt. Magistrate & Chairman, VMC Distt. Karimganj (Assam)

3. The Principal, JNV Distt. Karimganj (Assam) with a request to handover the charge to the newly posted Principal as per the directions of Dy. Director Regional Office concerned.

क्षेत्रीय कार्यालय
नवोदय विद्यालय समिति
शिलांग
मानव संसाधन विकास मंत्रालय
(शिक्षा विभाग)



Annexure-2
Regional Office
NAVODAYA VIDYALAYA SAMITI
SHILLONG
Ministry of Human Resource Development
(Deptt. of Education)

Dated, 27.09.99.

No. Admn/16-29/75/DP/99/NVS(SHR) 2843

OFFICE ORDER

Consequent upon the selection of Shri Dambarudhar Pathak as Principal vide NVS, New Delhi letter No. 1-3/98-NVS(Pers) dated 2.8.99 and relieving order No. GE-Est/Lien/1/95/12 dated 23.2.99 from the Director of Secondary Education Assam, Kahilipara, Guwahati - 19, Shri Dambarudhar Pathak has physically reported his presence in the office of the Deputy Director, NVS, Regional Office, Shillong in the forenoon of 27th Sept'99 to take over Charge as Principal in the JNV, Mangaldai (Assam).

2. His reporting has been accepted and he is directed to report to the Deputy Commissioner, and Chairman VMC, Mangaldai (Assam) for further orders immediately.

(D. HAZARIKA)
DEPUTY DIRECTOR I/C.

To,

Shri Dambarudhar Pathak
Principal
JNV, Mangaldai (Kalaigaon)
Assam for compliance.

Memo No. Admn/16-29/75/DP/99/NVS(SHR)/

Dated : 27.09.99.

Copy to :

- 1) The Joint Director (Admn), NVS, Hqrs, A-39, Kailash Colony New Delhi for information with reference to his letter No. 1-3/98-NVS(Pers) dated 2.8.99 for information and necessary action with the following documents in original.
(a) Joining Report, (b) Relieving order, (c) sanction of the Governor of Assam as appointment of Principal in NVS, (d) Last Pay Certificate and (e) Exercising option for drawal of Samiti's scale of pay.
2. The Deputy Commissioner, and Chairman VMC, JNV, Mangaldai, Assam (Assam) for information.
3. The Principal, JNV, (Kalaigaon) Mangaldai (Assam) for information and necessary action with a request to handover charge to newly appointed Principal and forward handing/taking over charge report immediately to this Regional Office.

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नॉंगरीम हिल्स, शिलांग - 793 003 (मेघालय) Nongrim Hills, Shillong-793 003 (Meghalaya) ■ Phone : 233361, 233362 (Fax) 233363

Certified to be true copy
Sujitkash
Advocate

Attested
Advocate

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4. The Director of Secondary Education, Assam Kahilipara, Guwahati - 19 for information with reference to his order No. GB-Est/Lien/1/95/12-A dated 23.9.99.

5. The Under Secy. to the Govt. of Assam, Education(s) Department, Dispur, Guwahati(Assam) for information with reference to his letter No. B(3)S-250/99/11 dated 18.9.99.

6. The Principal, Sarthebari H.S. School, Barpeta Dist. Circle, P.O. Barpeta(Assam) for information. He is requested to forward the leave account, details of family history declaration of Home Town and LTC lastly availed by the teacher in the parent deptt at an early date.

3. Office copy.

DEPUTY DIRECTOR I/C.

sp/

9468001 (7 Lines)

विद्यालय समिति

संसाधन विकास मंत्रालय, शिक्षा विभाग
(एक स्वायत्त संस्थान)

A-39, कैलाश कालोनी, नई दिल्ली-110048



NAVODAYA VIDYALAYA SAMITI

(An Autonomous Organisation of Ministry of
Human Resource Development
Department of Education)

A-39, KAILASH COLONY, NEW DELHI-110048

तार : 'नवसम'

Gram : 'NAVSAM'

संख्या PD-22/99-NVS(Pers)

No.

OFFICE ORDER

दिनांक May, 2000
Dated

The services of Shri Dambarudhar Pathak, Principal (on deputation) JNV Darrang (Assam) are repatriated to his parent department i.e. Director, Secondary Education of Assam with immediate effect, on administrative grounds.

Shri D. Pathak is requested to handover the charge of the Vidyalaya to the Vice-Principal/Senior most PGT as per the directions of the Regional Office Shillong.

Shri Pathak is entitled for transfer TA etc. as per the rules of the Samiti.

(V. RAMA PAO)
JOINT DIRECTOR (ADMIN)

✓ Shri Dambarudhar Pathak,
Principal, JNV
Distt. Darrang
ASSAM.

Copy to:

1. The Director, Secondary Education of Assam, Kohilipara, Guwahati, Assam.
2. The Dy. Director, NVS, Regional Office Shillong - with a request to ensure that there are no dues outstanding against Shri D. Pathak at the time of relief. However, while issuing the LPC/Relieving order, the recoveries pointed out in the Internal Audit/AD Audit report against the Principal should specifically be recorded therein and a copy to be sent to the Personnel & Finance Wing of the Samiti's Headquarters.
3. The Distt. Magistrate, VMC, Distt. Darrang (Assam).
4. Office order file/Vig. Unit/Acad. Wing/Fin. Wing.

certified to be true copy
Sujitkumar
Advocate

Attested
Adv.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No.174 of 2000.

Date of decision : This the 9th day of November, 2000.

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

Sri Dmabaru Dhar Pathak
 Son of late Baidyanath Pathak
 Working as Principal,
 Jawahar Navodaya Vidyalaya,
 Kaliagaon,
 District, Darrang, Assam

Applicant

By Advocate Mr. M Chanda.

-versus-

1. Union of India
 Through the Secretary to the
 Government of India, Ministry of
 Human Resoreces, New Delhi-110011.

2. The Director
 Navodaya Vidyalaya Samity
 A-39 Kailash Colony,
 New Delhi-110048

3. The Deputy Director,
 Navodaya Vidyalaya Samity
 Shillong Region,
 Shillong.

4. Sri V.Rama Rao,
 Joint Director(Admn.),
 Navodaya Vidyalaya Samity,
 A-39 Kailash Colony,
 New Delhi-110048.

The State of Assam
 Through the Director, Secondary Education,
 Kahilipara, Guwahati-19.

Respondents

By Advocate Mr. K.N.Choudhury, Sr. counsel.

ORDERCHOWDHURY, J.(V.C.).

The legitimacy of the order dated 2.5.2000
 repatriating the applicant to his parent department is the
 subject matter of adjudication in this proceeding which has
 arisen in the following circumstances;

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 When
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certified to be true copy
 Sujit Ghosh
 Advocate

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The applicant at the relevant time was holding the post of subject teacher in a Higher Secondary School under the administrative control of the Director of Secondary Education in the State of Assam (Respondent No.5). The Novodoya Vidyalaya Samity an autonomous organisation functioning under the Human Resources Development Department of Education. The Respondent No.1 invited applications for the post of Principal of Novodoya Vidyalaya Samity (for short NVS). The applicant also put up his candidature for the post of Principal and applied accordingly. In due course of time the respondents along with others called the applicant for interview, and the applicant was found suitable for the post and accordingly offered him appointment to the post of Principal in NVS on deputation basis. The offer of appointment was accordingly sent to the Director, Secondary Education, Assam in a communication No. 1-3/98-NVS PR(Annexure-I) dated 2.8.1999. The communication inter alia indicated that the appointment would be on transfer on deputation basis for a period of two years and was likely to be extended basing of his/her performance. The applicant responded to the offer and reported for duty on being relieved by the parent department to take over charge. The respondents by office order No. Admn./16-29/75/DP/99/NVS(SHR)/2843 dated 29.9.99 directed the applicant to take over the charge of Principal, JNV (Kaliagoan), Mangaldai, Assam and advised him to report to the Deputy Commissioner and Chairman VMC, Mangaldai for further orders. Consequently the applicant assumed the charge of the office of the Principal of JNV (Kaliagoan) Mangaldai and commended functioning as such. While the applicant was discharging his duties as such he was served with the impugned Office Order No. PD-22/99-NVS (Pers) dated 2.5.2000 under the signature of the respondent No. 4

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repatriating the applicant to his parent department. Hence the application challenging the aforementioned action of the respondents which is arbitrary, discriminatory and unfair.

2. The respondents denied and disputed the assertion and contentions made by the applicant apart from questioning the maintainability of the application and to this effect the written statement was filed on behalf of the respondent no. 2,3 and 4.

3. Heard Mr. M. Chanda learned counsel appearing on behalf of the applicant and Mr. K.N.Choudhury, appearing on behalf of the NVS.

4. Mr. Chanda referring to the materials on records records more particularly, to the terms of the appointment order and the impromptu order of repatriation, submitted that the action of the respondents are per se, arbitrary, discriminatory and suffers from vices, mala fide and improper exercise of power. He further submitted that the order did not indicate any reason or ground for the sudden repatriation thrown the terms of appointment itself provided that the appointment of the applicant was on transfer on deputation basis initially for a period of two years, extendable on yearly basis at a time in consultation with his parent department. Neither any grounds were mentioned in the order for this sudden change of attitude nor he was ever made aware as to reasons for the change of the terms and conditions. Mr. Chanda, learned Advocate further submitted that as per terms and conditions the deputation period of the applicant was fixed for two years which was extendable. The learned counsel further submitted that the deputation period could have been curtailed on good reasons after disclosing those reasons and providing an opportunity to the applicant to state his case. Mr. Chanda referred to the statement of respondents in their written statement wherein it cited about some allegations relating to

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the conduct of the applicant without providing any opportunity to the applicant to rebut or explain. Mr. Chanda, learned counsel further submitted that allegations made contained vague suggestions and irresponsible hints bereft any specific details, that too behind the back of the applicant. He further submitted that the respondents acted in a most unfair and unjust manner to tarnish the reputation of the application. He further submitted that the impugned order is not a genuine order but a mere pretence and the same was passed arbitrarily in a most illegal fashion, requiring interference from the Tribunal. In support of his contentions he referred to the decision rendered by the Supreme Court in the case of K.H. Phadnis vs. State of Maharashtra reported in AIR 1971 (SC) 998 and in the case of K.I. Sephard & Ors. Vs. Union of India reported in 1998 1 (SLJ) 105. On the other hand Mr. K.N.Choudhury, the learned Sr. counsel appearing for the NVS submitted that the order of reversion was passed in consonance with the terms of the appointment and the same was passed bona fide and in the public interest. He further submitted that the applicant was brought on deputation to serve the need of the respondents. When the respondents on evaluation on the materials on record found that the applicant was not in a position to serve the purpose respondents decided to repatriate the applicant to his parent department. Citing to the terms of offer of appointment Mr. Choudhury submitted that the authority is/was within its competence to curtail the deputation period without assigning any reason or notice as per its offer of appointment. The respondent authority reserved the right to repatriate the applicant to his parent department at any time without assigning any reason. The learned Senior Counsel further submitted that the discretion was vested on the

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respondents and the respondents lawfully exercised discretion in the facts and circumstances. In support of his contention he referred to the decision of the Supreme Court in the case of State of Madhya Pradesh Vs. Ashok Deshmukh reported in AIR 1988 SC 1240 and Rotilal B Soni and Ors. Vs. State of Gujarat and others reported in 1990 Supp (SCC) 243. Relying on the aforementioned decision Mr. Choudhury, learned counsel submitted that the applicant being on deputation he can/could be reverted to this parent cadre at any time.

5. Before entering into the respective contention it would be appropriate to take note of terms of appointment communicated vide Memo dated 2.8.1999. The relevant clause contained in the offer of appointment is cited below :

"With reference to his/her application and subsequent interview for the post of Principal in NVS on transfer on deputation basis, I am to inform that Shri/Smt. Dambarudhar Pathak presently working as Commerce Teacher in your organisation has been selected for appointment to the post of Principal on temporary basis in Navodaya Vidyalaya Samiti on transfer on deputation basis in the scale of pay of Rs. 10,000-325-15200 initially for a period of two years.

The appointment will be on transfer on deputation basis for a period of two years in the first instance and is likely to be extended basing on his/her performance. The Officer would be entitled to draw dearness allowance and such other allowances at the rate admissible subject to the conditions laid down in the rules and orders governing the grant of such allowances in force as amended from time to time. The general terms and conditions of deputation on foreign service are enclosed.

The other terms and conditions of the appointment will be as follows :

iii. The appointment will be on transfer on deputation basis initially for a period

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of two years extendable on yearly basis at a time in consultation with his/her parent organisation. However, the deputation period may be curtailed or extended at the discretion of the competent authority without assigning any reason or notice. There is no scope for permanent absorption to the incumbent who joins on transfer on deputation basis.

ii. Samiti reserves the right to repatriate him/her back to their parent department at any time without assigning any reason."

According to the respondents terms of appointment itself indicated that the respondents reserved the right to curtail or extend the period of deputation without assigning any reason or notice. It was also indicated that there is/was no scope for permanent absorption to the incumbent those who joins on transfer on deputation basis. The said letter also contained the clause reserving the right of the Samity right contained the right to repatriate the concerned person back to his parent department at any time without assigning any reason. In otherwords the respondent submitted that it was within the domain of the authority to curtail the period of deputation and the discretion reposed is/was unfettered and absolute. In the case in hand the respondents also referred to certain allegation against the applicant wherein it was mentioned that the applicant failed to maintain the sanctity of the school, stop or check the alleged affairs between two teachers. It was asserted that despite complaint from the students, the applicant failed to respond, the students directly reported the matter to the Regional Officer of the Samity. It was further stated in the affidavit that on an investigation the respondents found that the applicant neither informed the Regional Office nor did he took any action against the teachers. Similar allegations were made in paragraph 7 of the written statement suggesting about negligence in discharge of duties by the applicant. The respondents in their written statement also stated that the

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applicant was intimidated verbally to take steps to improve the state of affairs of the Vidyalaya but to no avail. Under these circumstances the committee was constrained to repatriate the applicant to prevent any further damage to the Institution. The applicant denied those allegation in his rejoinder and stated that some of the guardians made general complaint regarding irregularities of the Management of the school and the said complaint was enquired into by Circle Officer on the direction of the Deputy Commissioner, Darrang, who happened to be Chairman of the Managing Committee. The report of the Circle Officer dated 28.4.2000 was annexed to the rejoinder - The said report did not even remotely evoke any farm reprehensible conduct of the applicant - the officer on the other hand acclaimed the demenour of the applicant in its account.

From the materials as mentioned above, it is clear that none of these allegations were ever disclosed to the applicant prior to issuance of the impugned order. Discretion import a duty to be "Fair, candid, unprejudiced, not arbitrary, capricious and biassed" where relevant material were not disclosed to the applicant at all which is prejudiced to subject, such act and/or order prima facie appears to be unfair. Exercise of public power in the Indian Polity is governed by the Constitutional norms - rule of law is one of the basic feature of the Constitution. Article 14 acts a brake upon exercise of all powers, one of the attribute of the principles of fairness is that no person should be condemned unheard and public power should not be exercise arbitrarily. Procedural propriety envisions that the decision maker in exercising discretion is to act in just fair and reaonable manner. The terms of the appointment itself

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indicated that the tenure at the first instance was for two years, in deviation of the term the authority sought to abort the same which is totally inconsistent with the professed norm laid down in the letter of appointment without taking into confidence the applicant as well as the parent department. The respondents unfairly disregarded the terms and conditions overlooking its duty to act with fairness and consistency in its dealing. When the public authority makes an inconsistent decision unfairly and unjustly it amounts to misuse of power. All powers entrusted to a public authority emanate from trust that it has to be exercised reasonably and in good faith and on proper and fair assessment of all the relevant considerations. All power has a legal limits. Arbitrary and unfair exercise of discretion are what the law refused to countenance. Mr. Choudhury further submitted that even if the authority failed to give reasons the material on record itself speaks for the reasons. As mentioned earlier save and except the bald statement by the respondents, there is no material so far produced in support of the stand of Respondents. No such records were produced by the respondents, reasons assigned in the written statement is merely an attempt to rationalise the decision ex post facto. There is no discernible reason for precipitous reversion of the applicant.

Arbitrary power and unfettered discretion is what the law refuse to endure. As alluded discretionary exercise/power is also subject to legal limitation which is to be exercised reasonably and good faith for proper purposes only in conformity with the spirit as well as the letter of professed norms and/or the empowering statute. Constitution imperatives demand that powers must be exercised reasonably and in good faith. "In good faith" in the context signifies

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use of power "for legitimate reasons" informed by reason and law. The expression used in the offer of appointment likethe deputation period may be curtailed without assigning any reason or notice" ... "Samity reserves the right to repatriate him/her back to their parent department at any time without assigning any reason" are not absolute, but subject to the implied qualification and/or requirement of "good faith" as the Sangathan may bonafide consider" it to be right. Such exercise naturally conceive of due application of mind to the relevant considerations overlooking irrelevant considerations in a just and fair manner. Save and except the ip se dixit and eman d otio adumbrated in the written statement, there is no discernible reason for accelerating to put; an end of the deputation period much ahead of the time stipulated. The appointment was on transfer on deputation basis for a period of two years in the first instance was likely to be extended basing on performance. The performance of the incumbent was to be assessed, before elongating or extending the period of deputation. The right of Repatriation threfore is not absolute and unfettered. The stipulations embodied in the contracts by the public authority for attaining public purpose. The receipt of power must use the same for a lawful purpose and not unreasonably. The offer of appointment in the case in hand aroused a reasonable expectation on the applicant that he will receive and retain the benefit and continue to hold the post as per the arrangement. As stated the reasons for the decision is absent, the facts and circumstances, evident from the materials on record appear to point overwhelmingly in favour of a different decision. The only inference that can in the circumstances be drawn that the Respondent No.4 had no rational reasons for reaching at the impugned decision. The Respondent No.4 is/was not authorised to summarily revert the applicant.

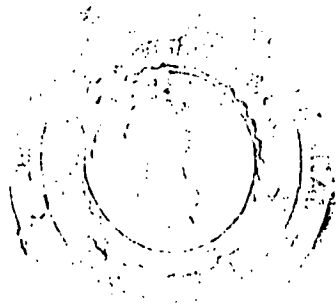
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6. In the circumstances and for all the reasons stated the impugned order is liable to be set aside and accordingly the impugned order No. PD-22/99-NVS(Pers) dated 2.5.2000 passed by the Respondent No. 4 repatriating the applicant to his parent department is thus set aside and quashed.

7. The application is allowed, there shall however, be no order as to costs.

Sd/VICE CHAIRMAN



TRUE COPY

प्रतिलिपि

W. S. Sanyal
14/12/2000

Section Officer (U)

आनुमान अधिकारी (उपस्थिति)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench, Guwahati-8

गुवाहाटी - ब्याच-8, गुवाहाटी-8

HK
14/12/2000

हर नवोदय विद्यालय

(मानव संसाधन विकास विभाग)
मानव संसाधन, शिक्षा विभाग
कलागाँव, मंगलदाई, जयपुर
पिन- 304 525



JAWAHAR NARODAYA VIDYALAYA

(Ministry of Human Resource Development
Govt. of India, Deptt. of Education)

KALAGAON, MANGALDAI

Dist. DAHRANG

Pin- 784 525

☎ 85433

☎ 85433

MAPE/DE/2900-01/JNV(KLG)/_208/

Date: 18.07.01

To

The Director,
NVS(H. Gr.)
A-39, Kailash Colony,
New Delhi-48

Through proper Channel.

Subj:-

Regarding extension of deputation period in rep
respect of the undersigned,/-

Sir,

With reference to the subject cited above, I would like to inform you that I joined on 27.9.99 as Principal in this Institution and has been working successfully till the date. The process of extension for the second year is at almost in final state. During my tenure the Vidyalaya has secured 100% result in AISSE-2001. Next year also the same result is expected from this Vidyalaya.

Therefore, I request your honour to kindly
to extend my deputation for another one year.

This is for favour of your kind information please.

Yours faithfully,

Principal, 18/7/01
JNV, Kalagaon.

certified to be true copy
Sujit Chak
Advocate

Attended
Adv.

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Ministry of Human Resource Development
Govt. of India, Dept. of Education
KALAIYAON, MANGALURU
KALAIYAON, MANGALURU
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Date: 10.09.01

The Director of Secondary Education, Assam,
Kohilipara, Dibrugarh-78
Assam.

Subject: Regarding extension of deputation period in respect
of B. D. Pathak.

Sir,

With reference to the subject cited above I would like to inform you that I have been working as a Principal, JNV, Kalaiyaon, Dibrugarh since 21.02.97 successfully. I am going to complete the two years deputation period on 27.02.2001. I am not agree with the deputation period for two years on 27.02.2001 and one year extension.

So, I request you to kindly to extend further one year, i.e. for third year's deputation service as Principal at JNV, Kalaiyaon, Dibrugarh as deputation.

This is for your kind information and necessary action please.

Yours faithfully,

Principal,
JNV, Kalaiyaon.

Copy to:-

1. The Commissioner & Secretary, to the Govt. of J. N. V. Kalaiyaon Assam Edn. Dept. (R & S) Dibrugarh for Inf. & P. M. A.
2. Office copy.

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certified to be true copy
Sigitphorsh
Advocate

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SUBJECT SUBJECT RES COMPG ADDL GR
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D2 086 049	D2 087 044	C2	PASS
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C1 086 051	C1 087 040	D1	PASS
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A2 086 082	A2 087 077	A2	PASS
C1 086 078	B1 087 039	D1	PASS
B1 086 070	B2 087 068	B1	PASS
C2 086 074	B1 087 053	C1	PASS
B2 086 080	A2 087 040	D1	PASS
C2 086 072	B1 087 056	B2	PASS
C2 086 061	C1 087 046	C2	PASS
B1 086 081	A2 087 047	C2	PASS
A2 086 070	B2 087 073	A2	PASS
B1 086 075	B1 087 072	A2	PASS
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A2 086 063	B2 087 077	A2	PASS
B1 086 061	C1 087 069	B1	PASS
B1 086 058	C1 087 057	S2	PASS

Certified to be true copy
Digitized by
Advocate
A H Azhar
Adv.

NON DATE 31/05/01 TOME ALL INDIA SECONDARY SCHOOL BYAN THA (N) 2001
 ***** (SCHOOL/ROLLNO WISE GAZETTE) *****

ROLL NO	NAME OF CANDIDATE	SUBJECT CD NKS GR	SUBJECT CD NKS GR	SUBJECT CD NKS GR
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SCHOOL 15073 JAWAHAR NAVODAYA VIDYALAYA KALAGAON

3115285	SAFIUR RAHMAN	001 087	B2 085 064	B2 041 073
3115286	SANDEEP MITTAL	001 082	A1 083 080	A1 041 074
3115287	JAMINI BORA	001 074	A2 083 077	A2 041 081
3115288	GUNJAN BORO	001 080	A1 085 079	A2 041 079
3115289	UJJWAL JYOTI SAHARTI	001 076	A2 083 069	B1 041 061
3115290	ANITA RABHA	001 063	B2 083 070	B1 041 032
3115291	ANIRUDHA KONAR BORO	001 073	B1 083 077	A2 041 064
3115292	DIPIKA DEVI	001 076	A2 083 070	B1 041 061
3115293	DIPEEKA BORO	001 071	B1 083 067	B2 041 043

TOTAL NO OF CANDIDATES : 63 PASS : 63 COMPARTMENT : 1

- 92 - Annexure-8
HAYODAYA VIDYALAYA SAMITI
I.G.I. STADIUM, NEAR ITO
NEW DELHI-02

F.PD-22/99-NVS(Pers.)

Dated: 14.9.2001

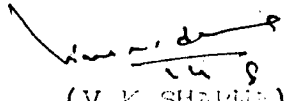
OFFICE ORDER

Consequent upon completion of two years of deputation, the services of Shri Dambaadhar Pathak, Principal, JNV Darrang, (Assam) are repatriated to his parent department i.e. Directorate of Secondary Education, Assam, w.e.f. 26.09.2001.

Shri Pathak is instructed to handover the complete charge of the Vidyalaya to the Vice-Principal/senior most PGT, as per the directions of Regional Office, Shillong.

He is entitled for transfer TA etc. as per the rules of the Samiti.

✓ Shri D. Pathak,
Principal,
JNV Darrang
Assam


(V.K. SHARMA)
DY. DIRECTOR (P&E)

*certified to be true copy
Sujit Ghosh
Advocate*

*AH est-ed
Adv*

Dated 15.10.2001.



F.11-9/2K-NVS(SHR) | Admn/2068

OFFICE ORDER

Consequent upon the repatriation of Sh. Damboradhar Pathak, Principal, vide Navodaya Vidyalaya Samiti, New Delhi order No. PD-22/99-NVS(Pers) dated 14.9.2001, Shri Pathak is hereby stand relieved w.e.f. the afternoon of 16.10.2001. He is hereby directed to report for duty to the Director of Secondary Education, Assam immediately.

This supersedes this office order No.11-9/2K-NVS(SHR)/Admn/2043 dt. 10.10.2001.

(V.S. RAMAWAT)
DEPUTY DIRECTOR I/C.

To,

✓ Sh. Damboradhar Pathak,
Principal,
JNV. Darrang.

Copy to :-

1. The Director, Secondary Education, Guwahati for information.
2. The Deputy Commissioner, Darrang for information.
3. The Deputy Director(P&E) , NVS, New Delhi for information.
4. The Assistant Director(NVS(RO) Shillong.

DEPUTY DIRECTOR I/C.

*certified to be true copy
Sujitkash
Advocate*

*Printed
@
Adv.*

- 44 / Annexure - 10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

5

Original Application No.426 of 2001

Date of decision: This the 9th day of April 2002

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

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

Shri Dambaru Dhar Pathak
Working as Principal,
Jawahar Navodaya Vidyalaya,
Kalaigaon, District- Darrang,
Assam.

.....Applicant

By Advocates Mr M. Chanda, Mr S.K. Ghosh,
and Mr S. Dutta.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Human Resources Development,
Department of Education,
New Delhi.

The Director,
Navodaya Vidyalaya Samiti,
New Delhi.

3. Shri V.S. Ranawat,
The Deputy Director (In charge),
Navodaya Vidyalaya Samiti,
North Eastern Regional Office,
North Eastern Regional Office,
Shillong.

4. The Deputy Director (P&E),
Navodaya Vidyalaya Samiti,
Indira Gandhi Indoor Stadium,
New Delhi.

5. The State of Assam,
Through the Director of Secondary Education,
Kahilipara, Guwahati.

6. The Deputy Director (P&E),
Navodaya Samiti,
Indira Gandhi Indoor Stadium,
New Delhi.

.....Respondents

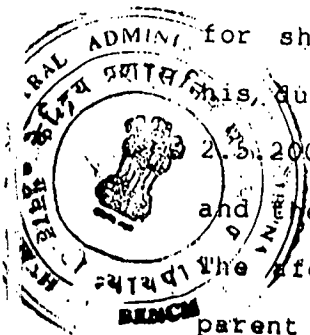
By Advocates Mr K.N. Choudhury, Mr S. Sarma
and Mr B.C. Das.

.....

*Attested
Adv.*

CHOWDHURY.J. (V.C.)

The applicant was appointed to the post of Principal in the Navodaya Vidyalaya Samiti (NVS for short) on transfer on deputation basis vide order dated 2.8.1999. The order itself indicated that the period of two years was likely to be extended basing on his/her performance. The said appointment was made on the basis of a selection. The applicant accordingly reported for duty. The respondents by office order dated 27.9.1999 directed the applicant to take over charge of Principal of Jawahar Navodaya Vidyalaya (JNV for short), Kalaigaon, Mongaldai. The applicant joined in his duty and while he was serving as such, by order dated 2.3.2000 the period of deputation was abruptly put to an end and the applicant was repatriated to his parent department. The aforementioned order repatriating the applicant to his parent department was assailed before the Tribunal in O.A.No.174 of 2000. The order of repatriation dated 2.5.2000 was held to be arbitrary by the Tribunal and by Judgment and order dated 9.11.2000 in the aforementioned O.A. the order of repatriation was set aside and quashed. The applicant submitted a representation dated 18.7.2000 to the Director for extension of his deputation period. In the said representation the applicant also indicated about the first rate performance of the students of the school in the examination during his tenure. The applicant appealed before the authority for extension of his deputation period. However, by the impugned order dated 14.9.2001 the respondents repatriated the applicant to his parent department and the consequent order was passed on 15.10.2001.....



15.10.2001.

2. In this application the applicant contended that as per the terms of the advertisement wherein the respondent authority indicated about the scope of absorption permanently in the NVS depending on their performance. The applicant contended that persons similarly situated like him, namely Shri Madhav Sharma, Principal, JNV, Barpeta and Shri A.K. Singh, Principal, JNV, Sikkim were granted extension of deputation period. It was also contended that the Rules of Navodaya Vidyalaya Samiti, notified vide Notification dated 22.6.1995 provides that persons working on deputation for at least two years in a post in the Samiti may be considered for permanent absorption. It was contended that the authority instead of extending his deputation terminated his period deputation even without considering his case for permanent absorption.

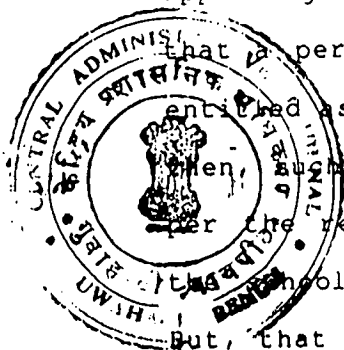


3. The respondents submitted their written statement and contended that the applicant was appointed on deputation as per terms of the Samiti and when his deputation period was over he was repatriated to his parent department. There is no infirmity or illegality in his repatriation.

4. We have heard Mr M. Chanda, learned counsel for the applicant and Mr S. Sarma, learned counsel for the respondents at length. Admittedly, the applicant was appointed on deputation basis and on conclusion of his period of deputation he was repatriated. Mr S. Sarma, learned counsel for the respondents, submitted that the applicant does not have a vested right for absorption. The recruitment rules on which the respondent authority relied upon itself conferred discretion on the authority for absorption of those persons working on deputation at least.....

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least for two years in the post. The applicant worked two years and as per the rules he was at least entitled for consideration for absorption. The applicant had also prayed for extension of the period of his deputation. A discretion conferred on the authority is not an unfettered discretion; the discretion is to be exercised justly, fairly and reasonably. The authority had itself considered the case of other similarly situated persons who were on deputation and at least in the case of two persons extension of deputation was granted. The recruitment rules also reposed a discretion on the authority for regular absorption in the NVS. Mr S. Sarma, the learned counsel appearing on behalf of the NVS is right in his submission



that a person working on deputation for two years is not entitled as a matter of right for permanent absorption. But when such person is entitled for a fair consideration as per the recruitment rules. Seemingly, the performance of the applicant improved during the tenure of the applicant. But, that by itself is not a criteria, as submitted by Mr S. Sarma. It is for the authority to consider the case and that consideration has to be a reasonable, just and fair consideration. Each individual case is to be decided taking into consideration all the relevant factors overlooking irrelevant considerations.

5. We were informed that the applicant, in fact, applied for permanent absorption and we were also informed that his case was turned down by the respondents in January 2002 on the ground that there was no vacancy in the General and Unreserved category as per the recruitment rules. We are, however, of the opinion that the absorption of a deputationist does not depend on the vacancy in the direct recruit.....

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recruit quota. The applicant was already holding a post on deputation. We were also informed that the authority had already advertised for filling up of forty posts of Principal in the JNV and the recruitment process is on.

6. Mr S. Sarma, learned counsel for the respondents, submitted that the discretion to absorb or not to absorb a deputationist is vested on the authority. However, as we alluded earlier that when the recruitment rules provide for absorption the authority is duty bound to consider the same in terms of the rules and thereafter pass an order in conformity with law. Where a policy of absorption of a deputationist is laid down there must be some valid and justifiable reason for not absorbing a person as was held by the Supreme Court in Rameshwar Prasad Vs. Managing Director, U.P. Rajkiya Nirman Nigam Limited and others, reported in (1999) 8 SCC 381.

7. On consideration of all the aspects of the matter we are of the opinion that ends of justice would be served if a direction is issued to the applicant to submit a detailed representation expressing his willingness for absorption within three weeks from today and if such representation is made the respondents shall consider the same fairly and pass a reasoned order thereon as per law. It is expected that the respondents shall pass the order as early as possible, preferably within three months from the date of receipt of the representation. Till the aforesaid exercise is completed the interim order dated 22.10.2001 shall continue to operate and the impugned orders dated 14.9.2001 and 15.10.2001 shall remain in abeyance.

Certified to be true Copy

प्रमाणित प्रतिलिपि.

The application is allowed to the extent indicated. There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN
Sd/ MEMBER (A)

Section Officer (-)

मुख्य अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati
गुवाहाटी न्यायपीठ, गुवाहाटी



NAVODAYA VIDYALAYA SAMITI

(AN AUTONOMOUS ORGANISATION UNDER MINISTRY OF HRD)
INDIRA GANDHI STADIUM, I.P. ESTATE, NEW DELHI-110002

Applications are invited for the post of **Principals** to be filled on **Deputation Basis** in the Jawahar Navodaya Vidyalayas, which are co-educational residential schools spread all over the country.

Number of posts	: 40
Scale of Pay	: Rs.10,000-325-15,200/-
Age Limit	: Between 35 to 45 years

QUALIFICATIONS

I. Essential:

- 1) A master's degree from a recognized university with at least 50% marks.
- 2) B.Ed. or equivalent teaching degree.
- 3) Persons working in any of the Govt./Semi-Govt./Govt. recognized/ CBSE affiliated Sr. Secondary (10+2) Schools/Inter College.
 - a) Holding analogous post or
 - b) Vice-Principal in the scale of pay of Rs. 7,500-250-12,000/- or Rs. 8,000-275-13,500/- with 10 years experience/service as PGT/Lecturer in the scale of Rs.6,500-10,500/- or Rs. 7,500-12,000/- or
 - c) A minimum of 12 years experience/service as PGT/Master/ Lecturer in the scale of Rs.6,500-10,500/- (revised) or equivalent in the Sr. Secondary School.

II. Desirable:

- 1) At least three years experience as a House Master of fully residential school.
- 2) Experience of working in a fully residential/CBSE affiliated/Govt. recognized school.
- 3) Proficiency in English and Hindi/concerned/regional language.
- 4) Showed some innovation/inclination to 'innovate'.

TERMS & CONDITIONS

- i) The employees of Central/State Government/U.T. Administration/ Autonomous Bodies/Institutions recognized by the Government which have facility to release its employees on deputation basis on retaining lien are eligible to apply for recruitment on **DEPUTATION BASIS**.
- ii) The candidates selected for appointment on **DEPUTATION BASIS** will be initially appointed for a period of two years extendable to five years. The Samiti reserves the right to repatriate the service of a deputationist at any time even before the completion of approved deputation period, depending upon their performance, without assigning any reasons.
- iii) Selected candidates will be entitled to various allowances as admissible under the Central Government Rules. Besides, the Samiti offers the following incentives to the selected Principals:
 - Rent free, furnished housing facility as available on site.
 - Facility as per Samiti's rules for admission to their sons/ daughters in the Navodaya Vidyalaya where they are posted.
 - Free boarding with students, as per rules.
 - Special (Teaching) allowance @ 150/- p.m., as per rules.
- iv) There is a possibility as per rules, of the deputationists being absorbed permanently in NVS, provided they perform outstandingly.

HOW TO APPLY

Candidates fulfilling the eligibility criteria may send their applications through proper channel to the **Dy. Director (P&E), Navodaya Vidyalaya Samiti, Indira Gandhi Stadium, I.P. Estate, New Delhi-110002** so as to reach him by **15th November, 2001** along with a brief Bio-Data including the name, father's name, name of the present organization working, present post held along with scale of pay, details of total experience/service with pay scales in chronological order with the present and permanent address. Such of those candidates possessing the required experience of handling Senior Secondary Classes only should apply. Applications should accompany with a Demand Draft for Rs.200/- in the name of "**Navodaya Vidyalaya Samiti, New Delhi**" and copies of certificates of educational qualifications, percentage of marks, experience. Applications should be duly forwarded by the heads of Departments concerned along with certificate of experience, the posts of pay scales held by the applicant.

Last date of receipt of applications is **15th November, 2001**. However, the last date of receipt of applications for the candidates applying from Andaman & Nicobar Islands, North-East, Lakshadweep, Leh & Ladak, is **30th November, 2001**.

certified to be true and correct
Signature
Date
24/10/01
AGV

4/7/02

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Annexure - 12. SPEED POST
Court Case

NAVODAYA VIDYALAYA SAMITHI
I.G.I. STADIUM, NEAR I.T.O.
NEW DELHI - 110002.

Speed Post.

No.F.PD-22/99-NVS(Pers.)/VIP

Dated: 10.06.2002

ORDER

WHEREAS Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. No.426/2001 titled Shri D.D. Pathak Vs. Union of India and others vide orders dated 09.04.2002 referred as under:-

"The respondents shall consider the representation fairly and pass a reasoned order thereon as per law. It is expected that the respondents shall pass the orders as early as possible, preferably within three months from the date of receipt of the representation. Till the aforesaid exercise is completed the interim order dated 22.10.2001 shall continue to operate and impugned order dated 14.9.2001 and 15.10.2001 shall remain in abeyance."

WHEREAS the provision for permanent absorption in the N.V.S. exists in Revised Recruitment Rules notified vide No.F.2-29/94 dated 22.6.95 as per Clause-2(iii) which read as under :-

"Persons who have joined on deputation to various posts in the Samithi one year before the date of notification of these rules, shall be given one opportunity of consideration for permanent absorption in their respective posts after notification of these rules."

A. H. Arora
Adm

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against direct recruitment vacancies unless otherwise specified in the schedule hereto. Such of the deputationists who are not recommended for absorption shall continue in the same capacity till completion of their deputation period subject to administrative exigencies. Thereafter any deputationist seeking permanent employment in the Samiti will have to apply for direct recruitment as per prescribed rules".

WHEREAS it is thus clear that rules permit grant of one opportunity of consideration for absorption only to those employees who have joined the Samiti on deputation one year before the date of notification of these rules i.e. 23.6.94. The applicant Shri Dambarudhar Pathak joined the Samiti as Principal w.e.f. 27.9.99 on deputation. As such he cannot be considered for absorption being ineligible not having joined the Samiti one year before the date of Recruitment Rules i.e. 23.6.94.

WHEREAS further powers to relax any of the provision of these recruitment rules lie with the Executive Committee of the Samiti as per Clause-VI of these recruitment rules which is reproduced as below :-

"When the Executive committee of the Samiti upon a recommendation made by the Director to that effect, is of the opinion that it is necessary or expedient to do so, it may, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of posts or persons. All administrative orders/instructions providing for any relaxation, exemption etc. of the provisions of recruitment rules issued prior to notification of these revised rules shall stand superseded after notification of these rules."

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WHEEAS it is thus clear that only the Executive Committee of the Samiti is competent to relax any of the provisions of these rules. Anticipating such approval, a notification modifying Clause-2 (iii) of the recruitment rules dated 22.6.95 was issued vide No.1-5/1995-NVS(Admn.) dated 21.6.2001 whereby a provision was made to consider persons working on deputation for at least two years for permanent absorption. It was however not ratified by the Executive Committee and as such the above referred notification dated 21.6.2001 could not come into force.

Representation of Shri D.D. Pathak regarding his permanent absorption in the Samiti is therefore rejected in view of above.

(S.P. Gaur) 6/6
Commissioner

Shri D.D. Pathak
Through Dy. Director,
Navodaya Vidyalaya Samiti
Regional Office, Shillong

21.6.001 - provision was
not appear.

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FORM NO. 4

Annexure - 13 68

In The Central Administrative Tribunal :: Guwahati Bench
Guwahati

ORDER SHEET

Misc APPLICATION NO. 21

/2002 (04 426/2001)

Applicant(s) Damburnu Dhari Patrak

Respondent(s) UOI & ONS.

Advocate for Applicant(s) Mr M. Chandra, N. D. Goswami

Advocate for Respondent(s) NYS.

Notes of the Registry

Date

Order of the Tribunal

9.4.2002

In view of the order passed in O.A. No.426/2001 the Misc. petition stands disposed of with the direction to the opposite party/respondents to pay full salary to the petitioner/applicant on and from 17.10.2001 onwards.



Sd/VICE CHAIRMAN

Sd/ MEMBER (A)

COPIES TO BE MADE

प्रमाणित प्रतियां

A.K. Jena
Section Officer (Adm. Secy.)
आवृत्त अधिकारी (प्रशासनिक सहायक)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati
गुवाहाटी बेंच, गुवाहाटी

Attested
by
Adv.

6468001 (7 Lines)

नवदय विद्यालय समिति

मानव संसाधन विकास मंत्रालय, शिक्षा विभाग
का एक स्वायत्त संस्थान)

A-29, कैलाश कॉलोनी, नई दिल्ली-110048

संख्या

F.No. 1-5/95-NVS (Admn.)

No.



NAVODAYA VIDYALAYA SAMITI
(An Autonomous Organisation of Ministry of
Human Resource Development
Department of Education)

A-29, KAILASH COLONY, NEW DELHI-110048

Email : navodaya@ren02.nic.in
navodaya@nda.vsnl.net.in

Website : navodaya.nic.in

21/06/2001

दिनांक

Dated

NOTIFICATION

In exercise of the powers conferred under Rule-24 of the Rules of the Navodaya Vidyalaya Samiti, the chairman, NVS, hereby makes the following Rules for regulating and method of absorption in Navodaya Vidyalaya Samiti by modifying the clause-2(iii) of the Rules notified through Notification No.F.2-29/94-NVS (Admn.) dated 22nd June, 1995:

1. The notification No.F.2-29/94-NVS (Admn.), dated 22nd June, 1995 alongwith the Revised Recruitment Rules, 1995, the Clause-2(iii) may now be read as under :

"Persons working on deputaion for atleast 02 years on a post in the Samiti may be considered for permanent absorption."

Rule 24

To

(S.P. Gaur) 21/6/01
Director, NVS

1. All Regional Officers of the Samiti.
2. All Jawahar Navodaya Vidyalaya.
3. All Officers at NVS HQrs.

Seen

17/7/01

Received No. 3134 Date 17/7/01
I. N. V. Kalaigaoon
DARTANG 21

certified to be true copy
Suyitshash
Advocate

Attestd
Adv.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

In the matter of

O.A. No. 231 of 2002

Shri Dambarudhar Pathak

-vs-

Union of India & Ors.

-And-

In the matter of:

An Additional statement
submitted by the applicant.

The applicant most humbly and respectfully begs to state as
under :

1. That your applicant begs to state that he has filed an Original Application before the Hon'ble Central Administrative Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging the impugned order dated 10.6.2002 rejecting his representation for permanent absorption and the said application is now pending before the Hon'ble Tribunal for consideration of admission.
2. That the applicant begs to state that in terms of the judgment and order dated 9.4.2002 passed in O.A. 426 of 2001, he had submitted a detailed representation on 12.4.2002 expressing his willingness for permanent absorption to the post of

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Filed by the applicant
through M. Chandra Adv.
Dated 25/7/02

Principal and the said representation was addressed to the Director, Navodaya Vidyalaya Samiti, New Delhi, through proper channel. However, inadvertently the aforesaid statement was not incorporated in the aforesaid Original Application.

A copy of the representation dated 12.4.2002 is annexed hereto and marked as **Annexure-15** for perusal of the Hon'ble Tribunal.

VERIFICATION

I, Sri Dambarudhar Pathak, S/o Sri late Baidyanath Pathak, aged about 43 years, working as Principal, Jawahar Navodaya Vidyalaya, Kalaigaon, District Darrang, Assam applicant, do hereby verify that the statements made hereinabove are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 25th day of July, 2002.

Dambarudhar Pathak

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH AT GUWAHATI

Filed by:
The Deponent
Through:
Mrs. R. S. Chowdhury
Advocate
19/9/02

ORIGINAL APPLICATION NO.231/2002

SH. D.D.PATHAK

-APPLICANT-

-VS-

UNION OF INDIA & ON

-RESPONDENTS-

IN THE MATTER OF :

Written Statement on behalf of the Navodaya Vidyalaya Samiti,
Respondent Nos. 2,3,4,6 and 7 in OA No.231/2002.

(Written Statement on behalf of the Respondent Nos. 2,3,4,6 and 7)

I Wimon Tariatang Deputy Director (Incharge), Navodaya Vidyalaya Samiti, North Eastern Regional Office, Nongrim Hills, Shillong-3 do hereby solemnly affirm and state as follows:

1. That I am the Deputy Director (Incharge), Navodaya Vidyalaya Samiti. I have been impleaded as Respondent No. 7 in the aforesaid case and a copy of the application of the said case has been served upon me. I have perused the same and understood the contents thereof. I am well

Wimon Tariatang

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acquainted with the facts and circumstances of the case and have been duly authorized to swear this affidavit on behalf of the other respondents i.e., the Respondent Nos. 2,3,4 and 6.

2. That all the averments and submissions made in the original application are denied by the answering respondents, save and except those which have been specifically admitted herein and that which appear from the record of the case.

3. That with regard to the statements made in paragraphs 1,2,3,4.1,4.2 and 4.3, the answering respondents have no comments to make thereon. The deponent however, does not admit anything which is not borne out of records.

4. That with regard to the statements made in paragraph 4.4 and 4.5 the deponents states that it is a fact that the applicant had appeared for the interview consequent to the advertisement issued by the answering respondents dated 10/7/99 and had thereafter been selected to the post of Principal vide order dated 2/8/99. However it may be pertinent to mention that in the said appointment letter dated 2/8/99 (Annexure -1 to the OA) it had been categorically stated under the terms and conditions that "the Samiti reserves the right to repatriate him/her back to their parent department at any time without assigning any reason".

Further, the answering respondents state that the statements made in paragraphs 4.4, 4.5,4.6 and 4.7 of the original application were the subject matter of OA.No.174/2000 and the records of the same are at the disposal of the Hon'ble Tribunal. This Hon'ble Tribunal has looked into the subject matter of the OA.No.174/2000 and adjudicated thereon and therefore the answering respondents do not admit anything contrary to the records.

5. That with regard to the statements made in paragraph 4.8 of that application the answering respondents beg to state that as per the terms and conditions laid down in the advertisement dated 10/7/99, the candidates selected for advertisement on deputation basis were to be

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initially appointed for a period of two years extendable to five years. However, the Samiti reserved the right to repatriate the services of a deputationist at any time even before the completion of the approved deputation period, depending upon their performance, without assigning any reasons. It has been categorically stated that the deputation period shall be for 2 years, and the same may be extended for 5 years or less as the case may be, and the right to repatriate the deputationist is reserved with the Samiti. Therefore, the question of discriminating against the applicant does not arise. So far as the documents annexed as Annexures 5 and 6 in the original application the same being official communications by/of the applicant, the answering respondents have no comments to offer. Further, the academic achievement of the school where the applicant had been discharging his duties, does not in any way entitle the applicant for his services to be extended for another year on the deputation basis.

6. That with regards to the statement made in paragraph 4.9 of the application, the answering respondents state that it is a fact that vide office orders dated 14/9/01 and 15/10/01 the applicant has been repatriated consequent upon his completion of two years of service on deputation basis. It may be pertinent to mention herein that the delay in serving the order dated 14/9/01 to the applicant was purely due to administrative reasons. Further, the apprehensions of the applicant regarding the office order dated 12/10/01 are misplaced and misconceived and the same was a release order directing the applicant to report for duty to the Respondent No.5. Subsequently in view of the order dated 15/10/01, the applicant handed over charge of the post of Principal, JNV Kalaigoan on 17/10/01. The answering respondent further beg to state herein that since 17/10/01, the services of the applicant have not been utilized by the Samiti and Sh. Partha Pratim Nath PGT(Bio) has been officiating as Principal In-Charge since then.

~~Copies of the order dated 12/10/01 and handing taking over of charge~~

Wimn Tarang

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~~certificate~~ dated 17/10/01 are ~~annexed~~ herewith and marked as Annexure - A and B respectively.

7. That the statements made in paragraph 4.10 of the application are matters of records and the answering respondents do not admit anything contrary thereto. However, it may be pertinent to mention herein that the Hon'ble Tribunal vide its order dated 9/4/02 (Annexure 10) had directed the answering respondents to consider the representation made by applicant, fairly and to pass a reasoned order thereon as per law. The Hon'ble Tribunal has nowhere held/directed that the respondents are duty bound to consider the case of the applicant for absorption, as has been contended by the applicant in the present application and the said statement is therefore subject to scrutiny of this Hon'ble Tribunal.

8. That while denying the statement made in paragraph 4.11 of the application, the answering respondents beg to state as follows:

(i). Vide notification dated 22/6/95 the Executive Committee of the Navodaya Vidyalaya Samiti modified the earlier rules for regulating the method of recruitment to all the posts in the NVS. As per Clause (III) of Rule 2 of the said Rules, "Persons who have joined on deputation to various posts in the Samiti, one year before the date of notification of these Rules, shall be given one opportunity of consideration for permanent absorption in their respective post. Thereafter any deputationist seeking permanent employment in the Samiti will have to apply for direct recruitment as per prescribed rules".

(ii). Further as per Rule 6 of the said revised Rules, the power to relax such Rules lies with the Executive Committee. Rule 6 is reproduced below:

"When the Executive Committee of the Samiti upon a recommendation made by the Director to that effect, is of the opinion that it is necessary or expedient to do so, it may, for reasons to be recorded in writing, relax any of the provisions of these Rules with respect to any class or category of posts or persons. All administrative orders/instructions

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providing for any relaxation, exemption etc. of the provisions of Recruitment Rules issued prior to notification of these revised Rules shall stand superseded after notification of these Rules.

Hence any relaxation of the said Rules, shall not be void unless the same is ratified by the Executive Committee of the Samiti.

(iii). Subsequently, the Navodaya Vidyalaya Samiti, vide Notification dated 21/6/01 modified clause(iii) of Rule 2 as follows:

“Persons working on deputation for atleast two years on a post in the Samiti may be considered for Permanent absorption”.

It is respectfully submitted that even as per this modification/amendment the Samiti may consider a candidate for permanent absorption and there is no such compulsion/direction that the same ought to be done. It is further submitted that this notification dated 21/6/02 is yet to be ratified by the Executive Committee of the Samiti and hence the same is not yet applicable to the incumbents who are working on deputation basis with the Samiti.

It is a fact that the Samiti has issued an advertisement in the month of Oct. 2001, for filling up 40 posts of Principal on Deputation basis. In the said advertisement, Clause (ii) of the terms and conditions specifically states that the deputation period shall be for 2 years initially extendable for five years. The performance of the incumbent is relevant only so far as the right to repatriate the services of a deputationist before the completion of the deputation period is concerned. Hence statement to the effect that “Therefore it appears that the basic terms and conditions for deputationist is five years” made in the application is absolutely false and misleading and has been made with a view to misguide this Hon’ble Tribunal. As such the statement made in paragraph 4.11 of the applications are baseless and answering respondents reiterate that there has been no discrimination against the applicant. The applicant is deliberately misleading the observations made/directions issued by this Hon’ble

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Tribunal vide Judgment and order dated 9/4/02 in OA.No.426/2001 to serve his own purpose.

9. That with regard to the statement made in paragraphs 4.12 of the application, the answering respondents categorically deny that the order dated 10/6/02 (Annexure-12 therein) has been passed in violation of the Judgment and order dated 9/4/02 passed by the Hon'ble Tribunal in OA.No.426/2001. The answering respondent reiterate the statement made in above paragraph(Para 8 herein) to counter the statements made in the said paragraph and further state that Clause (iv) of the terms and conditions has been included in the advertisement issued by the Samiti in October 2001 (Annexure-11 in the OA) in view of the Notification dated 21/6/01 (Annexure-14 in OA) subject to the said Notification being ratified by the Executive Committee of the Samiti. As has been stated earlier, the said notification dated 21/6/01 is to receive the approval of the Executive Committee of the Samiti and has not come into force till date and the answering respondents are not in a position to consider the case of the applicant for permanent absorption. The order dated 10/6/02 passed by the Respondent No. 3 is therefore reasonable and in the facts and circumstances narrated above.

10. That with regard to the statement made in paragraph 4.13, the answering respondents state that as has been stated above, the applicant had handed over charge of the JNV Kalaigoan on 17/10/01 and the services of the applicant have not been utilized by the answering respondents since then. It is pertinent to mention herein that the dues and allowances payable to the applicant as on 17/1/01 have been cleared by the answering respondents and therefore the contention of the applicant regarding extreme financial hardship is baseless. The respondents leave of this Hon'ble Tribunal to produce copies of the pay-slips if and when so required by the Hon'ble Tribunal.

11. That the answering respondents categorically deny the statements made in Paragraph 4.14 of the application and further reiterate that the Samiti

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reserves the right to repatriate the deputationist after two years and there has been no denial of any legitimate claim of the applicant. Further, the applicant is no longer in the services of the Kalaigoan Navodaya Vidyalaya and infact one Partha Pratim Nath is officiating as Principal In-Charge since 17/10/01. The statements made by the applicant in this regard are contrary to records and are false and misleading.

12. That with regard to the statement made in paragraph 4.15 and 4.16 the answering respondents have no comments to offer.
13. That with regard to the statement made in paragraph 5 of the O.A, the answering respondent state that in view of the facts as narrated above the applicant has no tenable ground to seek the relief sought by him. His claim is not covered under any legal provision.
14. That with regard to the statement made in paragraph 5.1, the answering respondent do not agree that the ground for rejection of the representation of the applicant is contrary to their own record and further reiterate the statement made in paragraph 8 herein above.
15. That with regard to the statement made in paragraph 5.2 of the O.A, the answering respondent state that the applicant has already completed 2 years of his deputation period and therefore his repatriation to this parent department is in no way contrary to the provision of law.
16. That the statement made in paragraph 5.3 and 5.4 are vogue and baseless. The order dated 10/6/02 has infact been passed on reasonable and valid grounds as per the direction of this Hon'ble Court in OA.No.426/2001.
17. That with regard to the statement made in paragraph 5.5 and 5.6 of the application, the answering respondents state that in view of the statement made in paragraph 8 and 9 of this written statement, the action of the answering respondents cannot be considered as illegal, arbitrary, malafide nor can it be violated of Articles 14 and 16 of the Constitution or the Principles of Natural Justice. The order dated

Winn Taniang

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10/6/02 is a reasoned order passed in full compliance of the Hon'ble Tribunals directions in OA.No426/01 and is therefore liable to be upheld by this Hon'ble Tribunal.

18. That under the facts and circumstances as stated above, it is respectfully stated that the instant application is devoid of any merit, and as such, is liable to be dismissed.

VERIFICATION

I, Miss Wimon Tariang daughter of (L) Mr. Larsingh Khyriem, aged about 54 years, presently working as Deputy Director In-Charge, do hereby verify that the statement made in Paragraph 1 to 18 of the aforesaid written statement are true to my knowledge, and information derived from records and I have not suppressed any material facts.

Place: Shillong

Dated: September 2002

Wimon Tariang.
Signature

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

In the matter of

O.A. No. 231 of 2002

Shri Dambarudhar Pathak

-vs-

Union of India & Ors.

-And-

In the matter of:

Rejoinder submitted by the
applicant in reply to the
statement filed by the
Respondents.

The applicant most humbly and respectfully begs to state
as under :

1. That your applicant categorically denies the statements made in paragraph 4 and 5 of the written statement and further begs to state that the power of repatriation vested with the authority cannot be exercised in an arbitrary and unfair manner. Power of discretion when vested with the authority more particularly in a Government Organisation and for a public purpose the said power should be exercised in a fair manner, as such order of repatriation from the post of Principal JNV,

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Filed by the applicant
Through Sri B. N. Chakravarty
Advocate on 7-10-02.
for Advoca

Kalaigon, Darrang to his parent department while retaining other similarly situated Principal recruited on deputation basis along with the applicant the said action of the respondents is highly arbitrary illegal and the said action of the respondents is violative of Article 14 of the Constitution.

It is pertinent to mention here that Sri Madhav Sharma Principal on deputation at JNV, Barpeta is still continuing on deputation and forth year extension is already granted to Sri Madhav Sharma, Principal on deputation. In this connection, it is sated that Sri Madhav Sharma Principal on deputation in fact selected and appointed on deputation basis along with the applicant. Therefore enter exercise in passing the impugned repatriation order as well as non-consideration of the case for absorption of the applicant after issuance of the Notification dated 21.6.2001 is highly contrary to rule and the said action is violative of the direction passed by this Hon'ble Tribunal in O.A. No. 426/2001.

It is relevant to mention here that the applicant after receipt of the judgment and order dated 9.4.2002 passed in O.A. 426/2001 submitted a representation on 12.4.2002 addressed to Director NVS, New Delhi wherein the applicant inter alia prayed for permanent absorption as Principal JNV Kalaigaon, Mongoldoi. However, the said representation for consideration of permanent absorption rejected by the commissioner on a flimsy ground and the

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contention of the Commissioner for rejection of the case of the applicant is contrary to their own records. The prayer of absorption of the applicant has been rejected on extraneous consideration and with a malafide intention.

A copy of the representation dated 12.4.2002 is annexed as **Annexure-15**.

- ✓2. it is stated That with regard too the statements made in paragraph 6,7 and 8 of the written statement that the impugned order of repatriation dated 15.10.2001 in fact stayed by the Hon'ble Tribunal on 22.10.2001 in O.A. 426/2001 on the date of admission of the aforesaid Original Application and the Hon'ble Tribunal while disposed of the said Original Application also directed the respondents that till the case of the applicant is considered by passing of an appropriate reasoned order the interim order dated 22.10.2001 should continue to operate and the impugned orders dated 14.9.2001 and 15.10.2001 shall remain in abeyance. Against the aforesaid decision of the Hon'ble Tribunal rendered in O.A. 426/2001 no appeal or writ petition is preferred in the appropriate forum, as such the said decision of the Hon'ble Tribunal passed in O.A. 426/2001 is binding upon the respondents and as such the contention of the respondents that the order dated 14.9.2001 15.9.2001 is already implemented is contrary to the decision of the Hon'ble Tribunal. Therefore in terms of the order dated 9.4.2002 the applicant is still in service with the respondents in the capacity of Principal, JNV,

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Kolaigaon, District Darrang and the respondents are duty bound to pay his salary and allowances as admissible as per rules with effect from 17.10.2001 till the actual date of payment.

So far the statement made by the respondents regarding office order dated 12.10.2001 in paragraph 6 of the written statement it is stated that the said order was communicated to the applicant, as such the applicant is in dark regarding the contents of the letter dated 12.10.2001. Therefore the applicant offer no comments in this regard and the applicant further reiterates the statement made in paragraph 4.10 of the Original Application. ✓

3. That your applicant categorically denies the statement in paragraphs 8, 9 and 10 of the written statement and further begs to state that after issuance of the notification dated 21.6.2001 by the respondents in supersession earlier notification dated 22.6.1995 the case of the applicant attained eligibility both in terms of Notification dated 22.6.1995 as well as in terms of Notification dated 21.6.2001 for permanent absorption as Principal in Navodaya Vidyalaya Samiti. In fact, factually there is no basic difference so far terms and conditions laid down in the Notification dated 22.6.1995 as well as in the Notification 21.6.2001 for consideration of permanent absorption of Principal working in NVS on deputation basis. Rule 6 of the revised rule as indicated in paragraph 1 has no

relevancy in the instant case of the applicant for consideration of permanent absorption. Reference of Rule 6 is made in the written statement by the respondents with an ulterior motive to mislead this Hon'ble Tribunal. After issuance of a Notification for recruitment and particularly when the same is made public by the said respondent of India thereafter raising any plea that the same is not ratified by the Executive Committee of the Samiti is false and misleading and the said statement is being made to mislead the Hon'ble Tribunal with an ulterior motive to avoid the implementation of the order of the Hon'ble Tribunal passed in O.A. 426/2001 on 9.4.2002.

It is pertinent to mention here that the respondents also admitted that they have advertised for filling up of 40 posts of Principals on deputation basis in the month of October, 2001 on behalf of the Samiti. The respondents also specifically stated in the said advertisement that Principals after being selected on deputation basis there is a possibility of absorption depending on their performance. Therefore denial of such consideration for absorption in the instant case of the present applicant more particularly when the NVS recruitment rule so permitted is appears to be a hostile discrimination towards the applicant. It is relevant to mention here that the action of the respondents so far impugned order of repatriation is concerned is also appears to be highly discriminatory in

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as much as when Sri Madhav Sharma similarly situated Principal, JNV, Barpeta has been allowed to continue on deputation basis and fourth year extension of deputation period is also granted to him. It is pertinent to mention here that no specific reason is assigned for passing of the impugned order of repatriation with regard to the applicant save and except the statement that it is the discretion of the respondent authority and they are at liberty to pass the order of repatriation. The aforesaid contention of the respondents is contrary to the basic principles laid down in Article 14 of the Constitution of India and as such the impugned order dated 10.6.2002 rejecting the prayer of the applicant for consideration of permanent absorption is highly arbitrary, unfair and illegal. As such the same is liable to be set aside and quashed.

4. That the applicant categorically denies the statements made in paragraphs 11,13,14, 15,16,17 and 18 of the written statement by the respondents and further begs to state that the statement of the respondents that Patha Pratim Nath is officiating as Principal in charge since 17.10.2001 is a deliberate false statement rather it would be evident from the letter bearing No. F.21-2/2K/-NVS (SHR)/Admn./490 dated 20.11.2001 that one Sri Madhav Sharma, Principal (on deputation basis) JNV, Barpeta in fact directed to take over the charge of Principal of JNV, Kalaigaon, Darrang and Sri Madhav Sharma thereafter in addition to his normal duties at

JNV Barpeta was also discharging the duties of in charge Principal. However, one Sri Ram Singh, is now posted as Principal in place of the present applicant in total violation of the direction passed by the Hon'ble Tribunal in O.A. 426/2001 and also in violation of the interim order passed by this Hon'ble Tribunal in the instant case of the applicant. Be it stated that Sri Ram Singh joined as Principal in JNV, Kalaigaon on 5th September, 2002 in total violation of the order of the Hon'ble Tribunal passed in the instant case. To ascertain the correctness of the statement made by the present applicant the Hon'ble be pleased to direct the respondents to produce all relevant records with regard to the posting of Sri Madhav Sharma as well as Sri Ram Singh, Principal in JNV, Kalaigaon and more particularly be pleased to direct the respondents to produce the letter dated 20.11.2001 as stated above.

That it is stated that although there was a specific order passed by this Hon'ble Tribunal in M.P. No. 21/2002 in O.A. 426 of 2001 for payment of salary and allowances to the applicant with effect from 17.10.2001 onwards but till date the respondents have not taken any step for payment of pay and allowances to the applicant due to him in spite of the order of the Hon'ble Tribunal and in the compelling circumstances he has filed a Contempt Petition and the same is pending before this Hon'ble Tribunal. It is relevant to mention here that the Respondents did not comply with the

interim order passed by this Hon'ble Tribunal in O.A. 426/2001 as well as in O.A. 231/2002 staying the operation of the order of repatriation but the applicant has not been paid the pay and allowances till filing of this application.

In the facts and circumstances stated above, the O.A. deserves to be allowed with costs.

VERIFICATION

I, Sri Dambarudhar Pathak, S/o Sri late Baidyanath Pathak, aged about 44 years, working as Principal, Jawahar Navodaya Vidyalaya, Kalaigaon, District Darrang, Assam applicant, do hereby verify that the statements made hereinabove are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the ^{27th} day of ~~September~~^{Oct}, 2002.

Dambarudhar Pathak

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Annexure-15

To
The Director,
Navodaya Vidyalaya Samiti
Indira Gandhi Indoor Stadium
New Delhi

(Through Proper Channel)

Sub : Judgment and Order dated 09.04.2002 passed by the
Hon'ble Central Administrative Tribunal in O.A. No.
426/2001.

Sir,

Most humbly and respectfully I beg to enclose herewith a copy of the above mentioned judgment of the Hon'ble C.A.T., Guwahati Bench, Guwahati pertaining to the abeyance of the proposed order of repatriation dated 14.09.2001 and 15.10.2001 of the undersigned from the post of Principal of Jawahar Navodaya Vidyalaya, Kaligaon, Mongaldai, Assam, and directing the undersigned to submit an application to your honour for my regular absorption in the post aforesaid. In this context, I beg to submit the following few lines before your honour for your kind consideration.

That Sir, I have been working as Principal in JNV, Kalaigaon on deputation since 27.9.199 and have completed more than 2 years of service in the post. As per the terms of Advertisement, there is a scope of permanent absorption depending on performance. This apart, under the Revised recruitment Rules, 1995, clause 2 (iii) as notified vide your No. F.2-29/94-NVS (Adm) dated 22.6.1995, quoted in the latest notification No. F.1-5/95-NVS (Admn) dated 21.06.01, I am also entitled for permanent absorption.

That Sir, during my tenure as Principal, I have discharged my duties most faithfully, sincerely and with utmost devotion and the result/performance of the students during my tenure bears a testimony of my performance and ability. It is relevant to mention here that during my

*Certified to
be true copy
for
admission*

tenure, the school recorded 100% pass in Class-X CBSE final exam.

That Sir, similarly situated persons who were working as Principals under the same terms and conditions under the Samiti namely, Sri Madhav Sharma, Principal, JNV, Borpeta and Shri A.K.Singh, Principal, JNV, Sikkim have been granted extension of deputation period but unfortunately my case has not been considered in spite of my application and humble prayer and I have been sought to be repatriated in spite of my sincere and unblemished service. Further, the Samiti has also advertised recently for recruitment 40 posts of Principal under deputation vide Advertisement made in "Employment News" dated 13-19 October, 2001, incorporating therein a specific clause for permanent absorption on the basis of performance.

That Sir, I am sincerely willing to be permanently absorbed in the post which I have been holding for more than two years which I prayed in my earlier representations also which is my legitimate expectation.

Under the circumstances stated above, I pray your honour kindly to grant me permanent absorption as Principal, JNV, Kalaigaon, Mongaldai and for this act of kindness, I shall remain ever grateful to you.

Enclo :

Copy of Judgment & Order
Dated 12.04.2002

Yours faithfully,

(DMABARU DHAR PATHAK)
Principal,
JNV, Kalaigaon