

30/600

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

C.P-46/04 (DESTRUCTION OF RECORD RULES, 1990)

Closed Date - 12/05/05

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SECTION OFFICER (Judl.)

( SEE RULE -4 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI

ORDER SHEET

Original Application No : 331/2002

Misc. Petition No. \_\_\_\_\_

Contempt Petition No. \_\_\_\_\_

Review Application No. \_\_\_\_\_

Applicant (s)

Sri Monoranjan Roy & Ors.

-Vs-

Respondent (s)

Union of India & Ors.

Advocate for the Applicant (s)

A Ahmed

Advocate for the Respondent(s)

Case

Notes of the Registry	Date	Order of the Tribunal
7G 575325 27/9/02	3.10.02	Heard learned counsel for the parties. Application is admitted. Call for records. Returnable by four weeks. List on 13.11.02 for orders. ICU Bhattacharya Member
11/10/02	21.11.02	Peruse the office note. The applicant is directed to take necessary steps within a week from today. List on 3.12.2002 for orders ICU Bhattacharya Member
Notice Referred and Sent to M/s for enjoining the Respondent No 1 to 4 by Regd A.O. 18/10/02 DINo 2906 to 2909 Dtd 21/10/02	mb	Vice-Chairman

✓  
Resident No 1, untraced/  
seized due to incomplete  
Address as stated by Plaintiff.

8/11/02

3-12-2002

None appears for the applicant.

List the case again on 23.12.2002 for  
order.

KC Waz

Member

  
Vice-Chairman

No. written statement  
has been filed.

bb

23.12.02

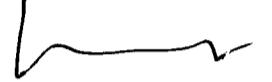
None appeared for the parties.

List again on 29.1.2003 for orders.

  
28.1.03.

KC Waz

Member

  
Vice-Chairman

mb

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

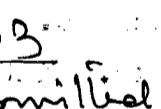
The Hon'ble Mr. S.K. Hajra,  
Administrative Member.

The respondents are yet to  
file written statement. Considering the  
facts and circumstances of the case, we  
proposed to fix the date of hearing on  
29.2.2003. The respondents may file  
written statement within two weeks from  
today. The applicant may also file rejoinder  
within one week thereafter.

List the matter on 29.2.2003  
for hearing.

  
Member

  
Vice-Chairman

  
27.2.03  
WS submitted  
by the Respondent.

mb

25.2.2003

Put up after three weeks to enable  
the parties to obtain necessary instruction  
on the matter.

List the case on 4.4.2003 for hear-  
ing.

  
Vice-Chairman

bb

A.H. was not present today.  
The cause is adjourned to 20/5/2003.

  
Vice-Chairman

20.5.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.  
The Hon'ble Mr. S.K. Rajra  
Member (A).

Pass over for the day. List again on 21.5.2003 for hearing.

*Signature*  
Member

*Signature*  
Vice-Chairman

mb

21.5.2003 On the prayer of Mr. A. Ahmed, learned counsel for the applicant, the case is adjourned and posted for hearing on 3.6.2003.

*Signature*  
Member

*Signature*  
Vice-Chairman

mb

3.6.2003 List again on 11.6.2003 for hearing before the Single Bench.

*Signature*  
Vice-Chairman

mb

11.6.2003. Single bench did not sit today  
The Case is adjourned to 13.6.2003

*Signature*  
13th June

13.6. Adjourned to 25.7.2003.

*Signature*  
25th July

25.7.2003 Present : The Hon'ble Mr. M.D. Dayal, Administrative Member.

Mr. S. Das, learned counsel appearing on behalf of Mr. M.K. Mazumdar, learned counsel for the respondents requests for postpone the case. The case is accordingly adjourned. List again on 11.8.2003 for hearing.

*Signature*  
Member

mb

11.8.03 The matter was heard earlier ~~also~~ also and directed the parties to take instruction.

Let the matter be listed for hearing on 5.9.03 in presence of Mr M.K.Mazumdar.

Vice-Chairman

pg

5.9.03 Adjourned to 24.10.03 for hearing.

1/0  
Ab

24.10.03 There is no Bench today.  
Adjourned to 20.11.03.

B70  
b3

12.12.03

21.11.03 no Single Bench today.  
Adjourned to 15.12.03.

B70  
b3

15.12.03

There was a reference.  
Adjourned to 8.1.04.

B70  
b3

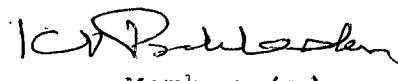
8.1.2004

Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is disposed of. No costs.

9.02.04

Copy of MS  
Judgment has been  
sent to the D.P.C.C.  
for entering the  
same to the application  
as well as to the  
Advocate for the  
K.V.S.

mb

  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A./R.A. No. 1111 8x81x2884x 331/2002.

DATE OF DECISION 8.1.2004.

Sri Monoranjan Roy & Ors:.....APPLICANT(S).

Mr. A. Ahmed.....ADVOCATE FOR THE  
APPLICANT(S).

-VERSUS-

U.O.I. & Ors.....RESPONDENT(S)

Mr. M.K. Mazumdar.....ADVOCATE FOR THE  
RESPONDENT(S).

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

THE HON'BLE

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

Judgment delivered by Hon'ble Member.

CENTRAL ADMINISTRATIVE TRIBUNAL :: GUJAHATI BENCH

X

Original Application No. 331/2002

Date of Order : This the 8th day of January, 2004.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Sri Monoranjan Roy,  
S/o Sri Nitai Roy,  
C/o Sono Das,  
Village - Bullapar,  
P.O. - Azara, Guwahati - 17.
2. Sri Dilip Biswas,  
S/o Robi Biswas,  
C/o Kamal Sarkar,  
Vill. - Kahikuchi,  
P.O. - Azara, Guwahati - 17. . . . Applicants.

By Advocate - Mr. A. Ahmed.

- Versus -

1. The Union of India,  
represented by the Secretary to the  
Government of India,  
Ministry of Human Resource and Development,  
New Delhi.
2. The Chairman,  
Kendriya Vidyalaya Sangathan, J.N.U. Campus,  
Mehrauli Road,  
New Delhi - 67.
3. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office, Maligaon Chariali,  
Guwahati - 12.
4. The principal,  
Kendriya Vidyalaya, Borjhar,  
Guwahati - 17. . . . Respondents.

By Mr. M.K. Mazumdar.

O R D E R

K.V. PRAHLADAN, MEMBER (Admn.) :-

The applicant Nos. 1 and 2 were working as Casual Labourers at Kendriya Vidyalaya, Borjhar, Guwahati. The applicant No. 1 was working as Casual Labourer since 1994 to 2001 and the applicant No. 2 was working since 1999 to 2001. Both the applicants have completed 240 days in a year. Their services were terminated in the year 2001. They

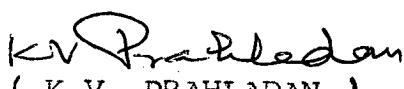
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approached the Central Administrative Tribunal, Guwahati Bench by way of O.A. No. 299/2001 and the Tribunal by order dated 10.6.2002 directed the respondents to consider their case alongwith persons similarly situated against available or future vacancies, keeping in mind their past services. The applicants approached ~~to~~ the Principal, Kendriya Vidyalaya, Borjhar with reference to the O.A. No. 299/2001. The Principal replied ~~on~~ 26.08.2002 vide letter No. 45/KVS/2002-03/449 whereby the decision to privatise the jobs of Security (Night Watchman), Sweeper, Mali etc. was taken.

2. The learned counsel for the respondents stated that there was no vacant post of Group 'D' where the applicants can be adjusted. The learned counsel for the applicant stated that both the applicants worked for more than 240 days in a year and therefore, they are entitled to temporary status. As per decision of the Supreme Court in Secretary HSEB vs. Suresh & Ors. (1999) 3 SCC 601 and State of U.P. & Ors. vs. U.P. Madhyamik Siksha Parisad Sangh & Anr. reported in 1996 (1) SLR 303, the Court observed that regularisation of service and payment of service would arise provided posts are created or existing. Therefore, the applicant cannot be conferred temporary status followed by regularisation. However, the employees under Government are entitled to equality of treatment both at the <sup>all</sup> time of appointment and ~~at~~<sup>material</sup> stages during continuation of their service. Those who are similar by circumstances are entitled to an equal treatment. Therefore, in no way their services of 240 days should be ignored. Accordingly, the respondents are directed to consider the case of the applicants for engagement whenever School needs it and if any future vacancy for Group 'D' arises, the applicants may be considered alongwith others. Suitable age relaxation may be given to the applicants considering their experience.

the  
With this, ~~the~~ application is disposed of. No costs.

  
( K.V. PRAHLADAN )  
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH AT GUWAHATI.  
(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL  
ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 331 OF 2002.

Sri Manoranjan Roy & Others

- Applicants

-Versus-

The Union of India & Others

- Respondents

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Filed by

Advocate.

(AHMED)

On: Manoranjan Roy

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GAUHATI BENCH AT GAUHATI.

(AN APPLICATION UNDER SECTION 19 OF THE  
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. OF 2002.

B E T W E E N

1) Sri Monoranjan Roy,  
S/o Sri Nitai Roy,  
C/o Sono Das,  
Village - Bullapara,  
P.O.- Azara, Guwahati-17.

2) Sri Dilip Biswas,  
S/o Robi Biswas,  
C/o Kamal Sarkar,  
Village- Kahikuchi,  
P.O.-Azara, Guwahati-17.

-Versus-

1) The Union of India,  
represented by the Secretary to  
the Government of India  
Ministry of Human Resource  
and Development,  
New Delhi.

Filed by  
Shri Monoranjan Roy  
applicant  
Abul Jaffar  
Advocate  
(Asst. Advocate)

2) The Chairman, Kendriya  
 Vidyalaya Sangathan, J.N.U.  
 Campus, Mehrauli Road,  
 New Delhi - 67.

3) The Assistant Commissioner,  
 Kendriya Vidyalaya Sangathan,  
 Regional Office, Maligaon  
 Chariali, Guwahati-12.

4) The Principal,  
 Kendriya Vidyalaya, Borjhar,  
 Guwahati-17.

- Respondents.

#### DETAILS OF THE APPLICATION:

##### 1) PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This application is made against the impugned Office memorandum Ref. No. 45/KVS/2002-03/449 dated 26<sup>th</sup> August 2002 and Ref. No. 45/KVS/2002-03/446 Dated 26<sup>th</sup> August 2002 by which applicants claim's for appointment in the Group-D post has been rejected by the Respondents.

##### 2) JURISDICTION OF THE TRIBUNAL

The applicants declares that the subject matter of the instant application is within the jurisdiction of this Hon'ble.

3)

### LIMITATION

The applicant further declare that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4)

### FACTS OF THE CASE :

4.1 That all the applicants are citizens of India and as such, they are entitled to all the rights and privileges guaranteed under the Constitution of India.

4.2 That your applicants beg to state that the applicant No. 1 & 2 are working under the Respondent No. 4 as Casual Labour. The applicant No. 1 is working as Casual Labour since 1994 and applicant No. 2 is working as Casual since 1999 without break till 30/7/2001. Their service were terminated by the Respondent No. 4 without notice on 1/8/2001.

4.3 That your applicants beg to state that as the grievances and reliefs prayed in this application are common, therefore, they pray for grant of permission under Section 4 (5)(a) of the Central Administrative Tribunal (Procedure) rules, 1987 to move this application jointly.

4.4 That your applicants beg to state that they were employed on daily wage basis at the

different rate per working day on 'no work no pay basis' since 1994 and 1999 till 30/7/2001.

4.5 That your applicants beg to state that the applicants were working in this Kendriya Vidyalaya Sangathan as Casual basis for years together but they were being deprived from regular service benefit, pay scale, dearness allowance, house rent, medical allowances and even minimum pay scale was also not granted to these applicants while they were in casual service under the Kendriya Vidyalaya Sangathan, Borjhar and benefit of the different scheme of the Central Government for casual workers, were not extended to the applicants. There were number of Central Government Schemes for regularization of casual workers, who continued for long time as casual worker some of these schemes were issued under the O.M. dated 7-6-88 and a like scheme for the grant of temporary status, and regularization was issued in the year 1993.

4.6 That your applicants beg to state that ~~also~~ ~~with~~ they had served for a considerable long period, under the Kendriya Vidyalaya Sangathan, Borjhar but service of the applicants were terminated by verbal order of Respondent No. 4 on 1.8.2001 and without following any establishment procedure of law. The applicants had rendered service as casual labour for a very long period

under the Kendriya Vidyalaya Sangathan, Borjhar and thereby they have acquired a valuable as well as legal right for appointment in the existing and future vacancies of Casual labour under Kendriya Vidyalaya Sangathan, Borjhar.

It may be stated here that the Respondent No. 3 vide his letter No. F.38-1/2000-KVS(GR)/7770 dated 3<sup>rd</sup> January, 2001 directed all principals of Kendriya Vidyalaya under Guwahati region not to engage Group-D Staff for Casual basis for continuous period due to administrative/legal problem.

Annexure-A is the photocopy of the letter No. F.38-1/2000-KVS(GR)/7770 dated 3<sup>rd</sup> January, 2001 issued by the Respondent No. 3.

4.7 That your applicants beg to state that being aggrieved by the termination of their services in Kendriya Vidyalaya Borjhar your applicants immediately filed an Original Application No. 299 of 2001 before this Hon'ble Tribunal. The said case was finally heard on 10-06-2002 and the Hon'ble Tribunal vide its order dated 10-06-2002 was pleased to direct the applicant to file a representation narrating all the grievances before the authority and when such representations are made the Respondents shall fairly and sympathetically consider their cases.

and take necessary measures by taking care of their grievances. Accordingly, your applicants filed a representation before the Respondent No. 4 narrating all their grievances and also prayed for reconsideration of their case and reappointment in their earlier posts.

Annexure-B is photocopy of judgment and order dated 10-06-2002 passed in O.A. No. 299 of 2001.

Annexure-C is the photocopy of representation filed by the applicants before the Respondent No. 4.

4.8 That your applicants beg to state that the Respondent No. 4 rejected the said representations filed by the applicants in a very casual and mechanical manner.

Annexures-D and E are the rejection letters dated 26-08-2002 issued by the Respondent No. 4 to the applicants.

4.9 That your applicants beg to state that in the said rejection letter it has been stated that the applicant were engaged as casual labour on daily wage against the work occurred on renovation and beautification of the Vidyalaya. Keeping in view the work and need of the Vidyalaya, they were engaged casual worker for doing some extra work

occurred at that time for that specific work. The competent authority vide letter No. F.12-13/99-KVS(Admin.I) dated 10-12-1999 had already conveyed to all Kendriya Vidyalaya to privatize the Group 'D' posts. In case of any addl. Work, persons could, be engaged on contract basis through registered private agencies. Even Security (Night Watchman), Sweeper, Mali are also to be engaged through Private agencies. As such, on completion of the said work their engagement as casual workers were dispensed with due to non-availability of extra works in the Vidyalaya. In the above stated circumstances, it is to inform that no vacancy of Group 'D' exist in the Vidyalaya and left no scope for their appointment in the vidyalaya.

It is pertinent to mention here that there are many vacancies under the Kendriya Vidyalaya Sangathan in this region. The respondents can easily absorb the applicants in these Group 'D' posts. But most surprisingly the respondents are engaging Private contractors to appoint such persons without considering the case of the applicants. From this it is very clear that respondents for their personal gains rejected the applicants' legal claim of appointment. Hence, finding no other alternative your applicants are compelled to approach this Hon'ble Tribunal for seeking justice in this matter.

Sri mona ranjan Roy

4.11 That the applicants beg to state that if the Hon'ble Tribunal does not interfere immediately than irreparable loss will be caused to applicants for their re-appointment and regularisation in services.

4.12 That your applicants beg to state that they are poor persons and they are working under the Respondents very sincerely and honestly. Now suddenly they are going to be unemployed and the family members of the applicants will be suffer from mentally and financially. Hence the Hon'ble Tribunal may be pleased to protect the applicants and their family members from starvation.

4.13 That this application is filed bona fide for the ends of justice.

5) GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.11 For that on the reason and facts which are narrated above the action of the Respondents is *prima facie* illegal and without jurisdiction.

5.21 For that the action of the Respondents are *mala fide* and illegal and with a motive behind. As such, the impugned rejection order DATED 26-08-2002 is liable to be set aside and quashed.

9

- 5.3] For that the applicants having worked for a considerable long period, i.e., from 3 to 7 years, therefore, they are entitled to be re-appointed and be regularised in Group 'D' posts.
- 5.4] For that fresh recruitment of Group D post in supersession of the claim of the applicants are hostile discrimination and violative of Articles 14 & 16 of the Constitution of India.
- 5.5] For that the applicants have become over aged for other employment.
- 5.6] For that it is not just and fair to terminate the services of the applicants only because they were initially recruited on casual basis.
- 5.7] For that they have gathered experience of different works in the establishment.
- 5.8] For that the nature of work entrusted to the applicants were of permanent nature and therefore they are entitled to be re-appointed and be regularised.
- 5.9] For that the applicants working as Casual Workers for several years in the same

Kendriya Vidyalaya Sangathan therefore, they are legally entitled to be regularised and re-appointed.

5.10] For that the applicants have got no alternative means of livelihood.

5.11] For that the Central Government being a model employer cannot be allowed to adopt a differential treatment as regard payment of wages to the applicants.

5.12] For that there are existing vacancies of Group D post under Kendriya Vidyalaya Sangathan- Borjhar.

The applicants crave leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of instant application.

6] DETAIL OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicants except invoking the jurisdiction of this Hon'ble Tribunal.

7] MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicants further declares that they have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority or any other bench of this Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8.I RELIEF PRAYED FOR:

Under the facts and circumstances stated above the applicants most respectfully prayed that your Lordship may be pleased to admit this petition and call for records and after hearing both the parties the Hon'ble Tribunal may be pleased to direct the Respondents to give the following reliefs:

8.1 That the Respondents may be directed by the Hon'ble Tribunal to give temporary status to the applicants and re-appoint the applicants and the services of the applicants be regularised in the existing vacancies on priority basis with all consequential service benefit including monetary benefits from the respective date of engagement immediately.

8.2 That the Respondents be directed to pay salary and allowances in the appropriate scale from the date of engagement.

8.3 Cost of the application.

9.I INTERIM ORDER PRAYED FOR:

Pending final decision of this application the applicants seek issue of the interim order:

9.1 That the Respondents may be directed to re-appoint the applicant in the existing vacancies on regular basis and also not to terminate the service of the applicant till final disposal of the original Application.

10.I THIS APPLICATION IS FILED THROUGH ADVOCATE.

11.I PARTICULARS OF I.P.O.

I.P.O. No. : 76575325

Date of Issue : 27.9.2002

Issued from : Guwahati C.P.O.

Payable at : Guwahati

12.I LIST OF ENCLOSURES:

As stated above.

-Verification.

## Verification

I, Sri Monoranjan Roy, S/o Sri Nitai Roy, C/o Sono Das, Resident of Village - Bullapara, P.O.- Azara, Guwahati-17. I am the applicant No. 1 of the instant application and as such I am authorised by other applicant to sign this verification and verify the statements made in accompanying application and in paragraphs 4.1 to 4.5, 4.10 to 4.11 are true to my knowledge and those made in paragraphs 4.6, 4.7, 4.8 —

— are true to my information being matter of records and which I believe to be true and those made in paragraph 5 are true to my legal advise and I have not suppressed any material facts.

I signed this verification on this day 1st of October 2002 at Guwahati.

  
Sri Monoranjan Roy  
Declarant

KENDRIYA VIDYALAYA SANGATHAN  
REGIONAL OFFICE  
GUWAHATI

Maligaon Chariatalli,  
Guwahati - 12

No. F: 38-1/2000-KVS.(GR)/7770

Dated: - 3rd January, 2001

To:

The Principals,  
All Kendriya Vidyalayas,  
Under Guwahati Region

Subject: Appointment of Group 'D' on casual/part-time basis/req.  
Sir/Madam,

"It has come to the notice of this office that some of the Principal's are engaging Group 'D' on Casual basis/part time for a long and continuous period. This normally leads to administrative/legal problems. In view of this, you are directed not to engage Group 'D' on Casual/part time basis for a continuous period. However, such persons may be engaged for piecemeal work only.

It is further informed that if such persons are still working you should immediately dispense with their services in a manner which does not lead to legal problems, it should be noted carefully that Principal shall personally be held responsible for any such problem later on.

Yours faithfully,

*D. K. Saint*  
( D. K. SAINT )  
ASSISTANT COMMISSIONER

Attested  
D. K. SAINT

Date of Order : This the 10th Day of June, 2002.

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

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

1. Sri Monoranjan Roy,

S/o Sri Nitai Roy,

C/o Sono Das.,

Village - Bullapar,

P.O. Azara, Guwahati-17.

2. Sri Dilip Biswas,

S/o Robi Biswas,

C/o Kamal Sarkar,

Village - Kahikuchi,

P.O. Azara, Guwahati-17.

... Applicants

By Advocate Sri A.Ahmed  
- Versus -

1. Union of India,

represented by the Secretary

to the Government of India,

Ministry of Human Resource Development,

New Delhi.

The Chairman,  
Kendriya Vidyalaya Sangathan,  
U.N.U. Campus,  
Mehrauli Road,  
New Delhi-67.The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office, Maligaon Chariali,  
Guwahati-12.4. The Principal,  
Kendriya Vidyalaya, Borjhar,  
Guwahati-17.

By Advocate Sri S.Sharma.

... Respondent

O R D E RCHOWDHURY J. (V.C.)

This application under Section 19 of the Administrative Tribunals Act 1985 has been filed assailing the legitimacy of the order of termination. The two applicants of other sought for a direction on the

*Attested*  
Jd → Advocate

contd... 2

respondents to regularise their services as Group D employee under the respondents.

2. The applicant No.1 was engaged by the respondents as a casual labour in 1994 and in a similar fashion the applicant No.2 was also engaged as a casual labour under the respondents in the Kendriya Vidyalaya, Borjhar. According to applicants they worked as such till they were terminated orally by the Principal on 11.8.2001 pursuant to a direction issued by the higher authority in a most arbitrary fashion. The applicants contended that since they had worked for more than 240 days in a year they were entitled for granting temporary status or regularization under the respondents. They were terminated solely on the ground for avoiding administrative and legal problems as indicated in the communication dated 3.1.2001. Mr. Ahmed, learned counsel appearing for the applicants brought our attention to the Memo No.38-1/2000-KVS(GR)/7770 dated 3.1.2001 sent by the Assistant Commissioner addressed to the Principals of all Kendriya Vidyalayas under Guwahati Region pertaining to appointment of Group D on casual/part time basis. Mr. Ahmed contended that on the basis of the said letter the applicants were terminated without regularising their services.

3. The respondents contested the case and submitted their written statement. In the written statement the respondents did not dispute that they were not allowed to work, what they contended was that the applicants worked at different times on daily basis and never they performed

Actual  
Job  
Private

their duties payment was made through cheques. The respondents further stated in the written statement they they were allowed to work in the Vidyalaya and subsequently they were asked to quit as per the pollution of K.V.N.

4. We have heard Mr A. Ahmed, learned counsel for the applicants and Mr S. Sarmi, learned counsel for the respondents at length. At the time of hearing no such policies were produced before us as regards termination of service. Save and except the communication dated 3.1.2001 sent by the Assistant Commissioner. The full text of the communication is reproduced below :

"It has come to the notice of this office that some of the Principal's are engaging Group 'D' on casual basis/part time for a long and continuous period. This normally leads to administrative/legal problems. In view of this, you are directed not to engage Group 'D' on Casual/part time basis for a continuous period. However, such person may be engaged for piecemeal work only.

It is further informed that if such person are still working you should immediately dispense with their services in a manner which does not lead to legal problems. It should be noted carefully that Principal shall personally be held responsible for any such problem later on."

The said communication only indicates that persons were not to be kept for long and they were to be terminated to avoid legal problems. Such instruction is not in conformity with the equality clause and an employee be hired and fired. If such person is engaged for a long

contd. 4

*Abdul*  
*Jahangir*

period steps should be taken to regularise them by taking aid of some legal policies. The applicants were in need of job and accordingly accepted the job in whatever conditions they were brought with but then the respondents as a State is to act as a benevolent employer which demands fairness in action. The applicants rendered job under the respondents it was generated a legitimate expectation on the part of the applicants to expect a fair deal for regularisation of their service. So long there was need of service there was no justification for not allowing them to work as ad hoc measure.

On overall consideration of the matter we are of the opinion that ends of justice will be met if a direction is issued on the applicants to file a representation narrating all the grievances before the authority within three weeks from today and when such representations are made the respondents shall fairly and sympathetically consider their cases and take necessary measure by taking care of their grievances. The applicants are accordingly directed to file representations within three weeks from today before the authority and the respondents are also directed to consider their case alongwith persons similarly situated against available or future vacancies keeping in mind their past services.

*Attended  
J.S. Adm G*

contd. 5

With these the application stands disposed  
There shall, however, be no order on to contn.

SERVICE CHAIRMAN  
SD/MEMBER (A)

THE GOVT  
of  
TAMIL NADU

Committed to the true C<sup>o</sup>py  
Xaffia affixa

N.D. 13/6/02

Accts Officer (S)  
Mr. M. S. (Tamil Nadu)  
and Administrative Tribuna  
Tamil Nadu Legislative Assembly  
Legislative Branch, Government  
Tamil Nadu, India

J.S  
After C  
Date 6

OK

To

The Principal,  
Kendriaya Vidyalaya, Borjhar,  
Guwahati-17.

Date: 01-07-2002

Ref: OA No. 299 of 2001

Sri Maniranjan Roy and Another  
-Applicants

-Versus-

The Union of India and Others.  
-Respondents.

Sub: Representation filed by the above applicant  
as per direction of the Hon'ble Central  
Administrative Tribunal, Guwahati Bench,  
Guwahati.

Sir,

Most humbly and respectfully we beg to state  
that we have filed the Original application  
No. 299/2001 before the Hon'ble Central  
Administrative Tribunal, Guwahati bench,  
Guwahati against the impugned verbal  
termination order issued to us on 01-08-2001.  
The Hon'ble Tribunal on 10-06-2002 heard both  
the parties and directed us to file a  
representation before you and other  
respondents narrating all the grievances. It

*After*  
*Qd* *Advocate*

is pertinent to mention here that the Hon'ble Tribunal vide its judgment and order dated 10-06-2002 stated that "Oral termination and instructions dated 03-01-2001 issued by the Respondent No. 3 is not in conformity with the equality clause and an employee is not to be hired and fired. If such person is engaged for a long period steps should be taken to regularise them taking aid of some legal policies. The applicants were in need of job and accordingly accepted the job in whatever conditions they were brought with but then the respondents as a State is to act as a benevolent employer which demands fairness in action. The applicants rendered job under the respondents it was generated a legitimate expectation on the part of the applicants to expect a fair deal for regularisation of their service. So long there was need of service there was no justification for not allowing them to work as an ad hoc measure." As per direction of the Hon'ble Tribunal we filed this representation before you narrating following grievances for your kind and sympathetic consideration:

That the applicant No. 1 of the O.A. No. 299/2001 Sri Manoranjan Roy was working under you since 1994 till 30-07-2001. The other applicant, i.e., the applicant No. 2 Sri Dilip Biswas was also working under you since 1999 to 30-07-2001. Both of us have worked

*After*  
*JL* *—* *Amrit*

more than 240 days in a year as such we are entitled for granting temporary status and regularisation of <sup>own</sup> ~~their~~ service. We have done our duties very sincerely and with devotion without any blemish in our service. Both of us have Employment Exchange Registration Cards and we have also requisite qualification and experience for consideration for appointment in regular Group-D post under the Kendriya Vidyalaya Sangathan. Moreover, we are going to be over aged for fresh appointment in other Central/State Semi-Government. We belong to very poor and most backward families. We have no other source of income. As such, your honour may be pleased to consider our case with top most priority and re-appoint us immediately in your organisation to save our families from starvation.

Thanking you,

Yours faithfully,

1) Sri Monoranjan Roy,  
S/o Sri Nitai Roy  
C/o Sono Das,  
Vill-Bullapar,  
P.O. Azara,  
Guwahati-17.

*After C1*  
*J.S. — Ravi T*

21 Sri Dilip Biswar,  
S/o Robi Biswas,  
C/o Kamal Sarkar,  
Vill-Kahikuchi,  
P.O.-Azara,  
Guwahati-17.

Copy of the judgment & Order dated 10-06-2001 passed in OA No. 299/2001 passed by the Hon'ble Central Administrative Tribunal, Guwahati is enclosed herewith for your ready reference.

Copy for information and necessary action:

- 1) The Chairman, Kendriya Vidyalaya Sangathan, J N U Campus, Mehrauli Road, New Delhi-67.
- 2) The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Maligaon Chariali, Guwahati-12.
- 3) The Principal, Kendriya Vidyalaya, Borjhar, Guwahati-17.

*Attn: Jd*  
*Jd* *Ansari*

KENDRIYA VIDYALAYA BORJHAR  
P.O. AZARA  
GUWAHATI-781 017



केन्द्रीय विद्यालय बोरझार  
पो० आजरा  
गुवाहाटी - 781 017

Ref. No. 45/KV8/2002-03/449

26<sup>th</sup> Date, 2002

REGISTERED (इमार्ग)

### MEMORANDUM

Whereas Sh. Manoranjan Roy Casual Worker of Kendriya Vidyalaya, Borjhar has filed OA No. 299/2001 in the Hon'ble CAT at Guwahati Bench against his termination order issued on 1.8.2001.

Whereas the Hon'ble CAT heard the OA on 10.6.2002 and passed the following directions:-

On over all consideration of the matter we are of the opinion that ends of Justice will be met if a direction is issued on the applicants to file a representation narrating all the grievance as before the authority within three weeks from today and when such representation are made the respondents shall fairly and sympathetically consider their cases and take necessary measure by taken care of their grievances. The applicants are accordingly directed to file representation within three weeks from today before the authority and the representation are also directed to consider their cases along with persons similarly situated against available or future vacancies keeping in mind their past services.

Whereas Sh. Manoranjan Roy in his representation dated 1.7.2002 has made the following:-

1. That he has filed the OA No. 299/2001 before the Hon'ble CAT Guwahati Bench against the impugned verbal termination order On 1.8.2001.
2. that the Hon'ble Tribunal vide its Judgment and order dated 10.6.2002 stated that oral termination and instructions dated 3.1.2001 issued by the Respondent is not in conformity with the equality clause.
3. that he worked in KV Borjhar since 1994 to 30.7.2001.
4. that he worked for more than 240 days in a year, as such, he is entitled for granting temporary status and regularization of his service.

Attachment  
JL  
Date

5. that he has done his duties very sincerely and without any blemish in service.
6. that he belong to very poor and most backward class.
7. As such, it is requested to re-appoint immediately to save his family from starvation.

The representation of Sh. Manoranjan Roy has been considered sympathetically and carefully by the competent authority and the following observations have been made:-

1. that Sh. Manoranjan Roy was engaged as Casual Labour on daily wage against the work occurred on renovation and beautification of the Vidyalaya.
2. Keeping in view the work and need of the Vidyalaya, he was engaged as Casual worker for doing some extra work occurred at that time for that specific work.
3. the competent authority vide letter No.F.12-13/99-KVS(Admin.I) dated 10.12.1999 had already conveyed to all Kendriya Vidyalayas to privatize the Group 'D' posts. In case of any addl. Work, a person could be engaged on contract basis through registered private agencies. Even Security(Night Watchman), Sweeper, Mali are also to be engaged through Private agencies,
4. As such, on completion of the said work his engagement as Casual Worker was dispensed with due to non availability of extra work in the Vidyalaya.

In the above stated circumstances, it is to inform that no vacancy of Group 'D' exist in the Vidyalaya and left no scope for his appointment in the Vidyalaya.

( Mrs. S.Chetia )

Principal

Govt. Secondary School  
Bardripur, 781012  
District : Dibrugarh  
State : Assam

Sh. Manoranjan Roy  
S/o Sh. Nitai Roy, C/o Sono Das  
Vill. Bullapar, PO Azara  
Guwahati - 781012

After  
Qd — Admitte

Copy to :

1. The Education Officer(L&C), Kendriya Vidyalaya Sangathan, 18-Instt. Area, Shaheed Jeet Singh Marg, New Delhi – for information please.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Maligaon Guwahati w.r.t. his letter No.F.15-12/2001-KVS(GR)/14044 dated 26.8.02 for information please.

Principal

Asstt. Edt  
Asstt. Com  
Advocate

KENDRIYA VIDYALAYA BORJHAR  
P.O. AZARA  
GUWAHATI-781 017



केन्द्रीय विद्यालय बोरझार  
पो आजरा  
गुवाहाटी - 781 017

Ref. No 45/KVS/2002-03/446

26<sup>th</sup> Aug, 2002

REGISTERED (ईडी)

MEMORANDUM

Whereas Sh. Dilip Biswas Casual Worker of Kendriya Vidyalaya, Borjhar has filed OA No. 299/2001 in the Hon'ble CAT at Guwahati Bench against his termination order issued on 1.8.2001.

Whereas the Hon'ble CAT heard the OA on 10.6.2002 and passed the following directions:-

On over all consideration of the matter we are of the opinion that ends of Justice will be met if a direction is issued on the applicants to file a representation narrating all the grievance as before the authority within three weeks from today and when such representation are made the respondents shall fairly and sympathetically consider their cases and take necessary measure by taken care of their grievances. The applicants are accordingly directed to file representation within three weeks from today before the authority and the representation are also directed to consider their cases along with persons similarly situated against available or future vacancies keeping in mind their past services.

Whereas Sh. Dilip Biswas in his representation dated 1.7.2002 has made the following:-

1. That he has filed the OA No. 299/2001 before the Hon'ble CAT Guwahati Bench against the impugned verbal termination order On 1.8.2001.
2. that the Hon'ble Tribunal vide its Judgment and order dated 10.6.2002 stated that oral termination and instructions dated 3.1.2001 issued by the Respondent is not in conformity with the equality clause.
3. that he worked in KV Borjhar since 1999 to 30.7.2001.
4. that he worked for more than 240 days in a year, as such, he is entitled for granting temporary status and regularization of his service.

*Make a  
Scheme  
After it  
Admit to*

5. that he has done his duties very sincerely and without any blemish in service.
6. that he belong to very poor and most backward class.
7. As such, it is requested to re-appoint immediately to save his family from starvation.

The representation of Sh. Dilip Biswas has been considered sympathetically and carefully by the competent authority and the following observations have been made:-

1. that Sh. Dilip Biswas was engaged as Casual Labour on daily wages against the work occurred on renovation and beautification of the Vidyalaya.
2. Keeping in view the work and need of the Vidyalaya, he was engaged as Casual worker for doing some extra work occurred at that time for that specific work.
3. the competent authority vide letter No.F.12-13/99-KVS(Admn.I) dated 10.12.1999 had already conveyed to all Kendriya Vidyalayas to privatize the Group 'D' posts. In case of any addl. Work, a person could be engaged on contract basis through registered private agencies. Even Security(Night Watchman), Sweeper, Mali are also to be engaged through Private agencies.
4. As such, on completion of the said work his engagement as Casual Worker was dispensed with due to non availability of extra work in the Vidyalaya.

In the above stated circumstances, it is to inform that no vacancy of Group 'D' exist in the Vidyalaya and left no scope for his appointment in the Vidyalaya.

*(Mrs. S.Chetia)*  
(Mrs. S.Chetia)  
Principal

Principal  
Kendriya Vidyalaya, Guwahati  
Guwahati, Assam  
Principal / Correspondent

✓ Sh. Dilip Biswas  
S/o Sh. Robi Biswas  
Vill. Kahikuchi, PO Azara  
Guwahati - 781017

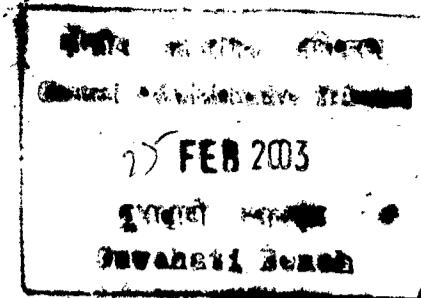
*Attested  
J.S. Amrit*

Copy to :

1. The Education Officer(L&C), Kendriya Vidyalaya Sangathan, 18-Instt. Area, Shaheed Jeet Singh Marg, New Delhi – for information please.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Maligaon Guwahati w.r.t. his letter No.F.15-12/2001-KVS(GR)/14044 dated 26.8.02 for information please.

Principal

Abhijit  
Abhijit



Filed by the Respondents  
Through M.K. Narendra  
Advocate

25/2/03  
39.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Q.A. No. 331/02.

Sri Manoranjan Ray & Ors.

..... Applicants.

-versus-

Union of India & Ors.

..... Respondents.

In the matter of -

written statement filed by the Respondent.

-And-

In the matter of -

The Assistant Commissioner,

Central Vidyalaya Sangathan,

Guwahati Region, Maligaon, Guwahati - 11.

..... Respondent.

the humble written statement of the

Respondents is as follows :

1. That the Respondents state that on being served of the original application upon them, the Respondents have gone through the contents of the paras of the petition, and have understood the same and on being supplied with the paravise comment from the Principal,

this.....

- 2 -

this written statement has been prepared. That the Respondent does not admit the contents thereof the statements and averments which are not born out of record are denied and the paragraphs which are not specifically admitted are deemed to be denied.

FACTS OF THE CASE.

1. that the facts of the case is that the applicants are casual worker employed purely on temporary basis getting daily wages. The Respondent authority engaged them whenever school needs. They were doing work like safaiwalla, Chowkidar, Mali and grass cutter. Since they are getting wagesxx at Rs. 42/- per day for their work. That the Respondent further states that after completion of the work performed by them, they were terminated. Again when school required some service, they were again engaged. But in the year 1999 the board of Governors decided not to engage any casual worker instead of they would engage such workers through private agencies, and in that regard the authority informed the matter through letter to all the regions. The plea of the applicants is that since they were worked in the school for several years for phase manners and they should be regularised in the above posts and being aggrieved the results is by filing the application before

the....

the Tribunal. The Respondents further states the applicants are casual worker getting daily wages at the rate of Rs. 42/- per day. There is no question to appoint them in group (D). Moreover they are not entitled to appointment as they are not permanent worker. The Respondent further states that there is no vacant post in the existing school. It is further stated by the Respondent that due to financial hardship it is not possible to create new posts in the school. Moreover, the total staff strength in group 'D' post is not altered.

2. That with regard to statements made in para 4.1 and 4.3 the Respondent does not forward any comment.

3. That with regard to statements made in para 4.2 the Respondent does not admit the same and states that both applicants are engaged on daily wages basis as and when work is required on various occasions.

4. That with regard to statements made in para 4.4 and 4.5 the respondents state that it is true that they were engaged on daily wages basis on different rates as prescribed by the Municipality Corporation/ labour council but it is not true that they were engaged from 1996 and 1999 respectively till 30.7.2001. They were engaged only when the work is required on payment of daily wages as casual labour.

It is.....

- 4 -

It is true that the applicants were engaged on daily wages for cutting of grass of ground and sports grounds etc. and were also paid remuneration for the day worked as per prescribed rates. It is pertinent to mention here that they were only engaged on daily wages on the additional work occurred and could not be engaged against any vacant post of the vidyalaya for performing the extra work as and when occurred viz., cleaning the vidyalaya etc. as the yearly sanction of staff strength for vidyalaya did not permit to appoint any regular employee.

5. That with regard to statements made in para 4.6 it is stated that they were engaged on daily wages basis on payment of Rs. 42/- per day verbally and they were not issued any letter or no agreement was done for engaging them. As such, there is no reason to give them in writing for removing from additional work assigned to them. Rest appointment in the existing and future vacancies it has already mentioned in the reply to their representation that there is no vacancy ~~which~~ exists in the vidyalaya.

However, it may be mentioned here that during the year 1996-97, 97-98, 98-99, 99-2000, 2000-2001 there were no sanction of Group 'D' employees for fresh appointment and further in the year 1999 the Board of Directors framed a scheme for privatisation of certain services in the

school.....

schools which includes safai karmachari, Mali, Chowkidar etc. and since adoption of this scheme the respondent No. 3 issued the letter to all principals of Guwahati Region with an intention to make clear the position in regard to employment of Sr. D. and casual worker and thereby to make success of the scheme otherwise there may be conflicting problem.

6. That with regard to statements made in paras 4.7 and 4.8 the respondent states that as per orders of the Hon'ble Tribunal, the representation of the applicants was considered sympathetically with due regard of the Hon'ble Tribunal and informed the applicants the decision of the competent authority accordingly. Moreover, the applicants have requested for reconsideration of their case for re-appointment in their earlier post. In this context it is submitted that the applicants were engaged on daily wages on payment of Rs. 42/- per day on occasion of addition work and not appointed against the vacant post for the purpose, as such, the question does not arise for re-appointment in their earlier posts.

Further it is mentioned here that due to embargo placed by the Ministry of Finance, the Respondent could not create any post as it is evident in the yearly sanction of the staff strength and the process of employing casual

employee.....

employees against extra work had to be continued till the decision of the Board of Directors regarding engagement of the service of the private agencies to improve the general state of cleanliness etc of Kendriya Vidyalaya.

7. That with regard to the statements made in para 4.9, it is submitted that it is true & that the applicants were engaged on additional xxxxxxxx work accrued in the vidyalaya and completion of work they were asked that no additional work is available, as such, their services are no more required for work. It is also not true that the competent authority with his personal gain rejected the request of applicants. Further as reported in the various judgement passed by the Apex Court in Secretary HSEB -vs- Suresh & ors. (1999) 3 SCC 601 and in the case of State of U.P. & ors. -vs-U.P. Madhyamik Shiksha Parishad Shramik Sangh & anr. reported in 1996 (1) SLR. 303 the Apex Court observed that a direction can be issued to consider the claim of regularisation of service and payment of service would arise provided posts are created or existing. Further in the case of M.Nageshwar Rao -vs- Govt. of Andhra Pradesh Housing Department, Hyderabad & ors. 1996 (7) SLR 793 wherein it has been clearly held that only because of a person who works for 240 days, the same does not confer any right to regularise in service.

It is.....

It is pertinent to mention here that it is approved in the Board of Governors meeting that there is no need to appoint ex. p on regular basis but to get the work done from a private registered Agency instead of appointing a person for the work.

8. That with regard to statements made in para 4.11 the respondent submits that the applicants were engaged on daily wages on payment of Rs. 42/- per day and there is no question arise for re-appointment and regularization their services.
9. That with regard to statements made in para 4.12 the respondent submits that the engagement/appointment of a person cannot be made on the basis of their status.
10. That with regard to the ~~stakeholders~~ grounds set forth to establish the claim of the applicant respondent submits that with regard to para 5.1 that the request of the applicants may be turned down on the basis that they were engaged on daily wage on payment of Rs. 42/- per day, as such, there is no question arises to regularise their service.
11. That with regard to the grounds set forth in para 5.2, the respondent submits that the request of the applicants....

applicants may be quashed since the applicants were engaged on daily wage only on payment of Rs. 42/- per day.

12. That with regard to the grounds set forth on para 5.3, the respondents submit that the applicants were not appointed but engaged on daily wage basis. The question of re-appoint does not arise.

13. That with regard to the grounds set forth in para 5.4, the respondents submit that it has already submitted that as per approval in the Board of Governors meeting, it is declared that in case of additional work, no appointment is made and to get the work, by assigning duty through registered private Agencies.

14. That with regard to the grounds set forth in para 5.5, the respondent does not forward any comment.

15. That with regard to the grounds set forth in para 5.6, the respondent submits that there is no question of terminating or appointing the applicants, they were engaged only as payment of Rs. 42/- per day on daily wage basis.

- 9 -

16. That with regard to grounds set forth in para 5.7 the respondent submits that it is not true . They were engaged only cutting of grass in the ground and cleaners of ground.

17. That with regard to the ground set forth in the original application in para 5.8 the respondent submits that it is not true. The work of cutting grass and bringing up the sports ground is not a permanent job. This work could be done by engaging daily worker till the work finished and no need to appoint a person for this work.

18. That with regard to the grounds set forth in the application in para 5.9 the respondents submits that the applicants were engaged on payment of Rs. 42/- per day on daily wage and regularization and re-appointment cannot be considered as stated by the applicants.

19. That with regard to the grounds set forth in the application in para 5.10 the respondent does not forward any comment.

20. That with regard to the grounds set forth in para 5.11 the respondent submits that the applicants were

engaged.....

engaged on payment as Rs. 42/- per day on the rates prescribed by the Municipality corporation , Guwahati.

2. That with regard to the grounds set forth in para 5.1.2 the respondent submits that it is not true. The applicants have already informed in response to their representation that no vacancy exists in the vidyalaya. Moreover, as per orders of the competent authority, no appointment has to be made and the work get by engaging a person through registered private agencies on payment basis.

verification.....

VERIFICATION

I, Sri Sunder Singh Sehrawat aged about 52 years, resident of Maligaon, employee of Kendriya Vidyalaya Regional Office, do solemnly affirm and verify that conversant with the facts and circumstances of the case. I am competent to verify this case and the statements made in paragraphs 1, 2, 3, 4, 5, 6, 7 are true to my information derived from records and the rests are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this the 25th Day of February 2003.

Sunder Singh Sehrawat

Cont.