

FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O R D E R S H E E T

Original Application No. - - - - -

Misc. Petition No. - - - - -

Contempt Petition No. - - - - -

Review Application No. - - - - -

Applicants: - - - - - E. M. Reddy - - - - -

Respondents: - - - - - N. O. I. 908 - - - - -

Advocates for the Applicant In person

Advocates of the Respondents Case

Notes of the Registry Date 19/04/2005 Order of the Tribunal

This Review petition
was filed by
the applicant in
person praying for
Review of judgement
and order dated 1.12.2004
in O.A. 163/03 passed
by this Hon'ble Tribunal.

Laid before the
Hon'ble Court for favours
& orders.

for Section Officer

SDS

The RA No. 19/04 submitted
for circulation.

N. S. N.

Hon'ble Mtd. 4/1/05

Laid before the
possible V.C. for consideration
of circulation. (Appendix II
Rule 49).

N. Shrivastava
17/1/05

Hon'ble V.C.

To In my opinion, the
review does not merit
hearing. Review is not
an appeal in dispute.
There are no grounds of
justification in order to
exercise power of
review.

Ram

17/1/05

To be placed before Hon'ble
Member

I fully concur.

I.C. Pandit

17/1/05

23 DEC 2004

मुख्यमंत्री न्यायालय
Guwahati Bench

filed by 3
Edumuri Mounendar
Reddy
in person
on 28th December
2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

Review Petition No. 19/2004

O.A. No. 163 /2003

IN THE MATTER OF :

E.M. Reddy.

.....Applicant.

- Versus -

Kendriya Vidyalaya Saugathan & Ors.

.....Respondents.

-AND -

IN THE MATTER OF:

An application on behalf of the
applicant praying for Review of
Judgment and order dated 1/12/2004.

MOST RESPECTFULLY SHEWETH:-

1. That I have approached this Hon'ble Tribunal by filing the aforesaid application challenging the illegal Reversion Order dated 24.6.2003, which has been passed by the authority with malafide intention and arbitrarily.
2. That, the aforesaid original application was heard on 1.12.04, and this Hon'ble Court was pleased to dismiss the same with cost of Rs. 2000/-.

Copy of the Judgment and order dated 1.12.04 is annexed herewith and marked as Annexure-A.

3. That, after going through the Judgment, it has come to the notice that some facts regarding the case could not be placed in proper way and hence this Hon'ble Court has taken the same as exceptional, holding the applicant has mislead this Hon'ble Tribunal.
4. That, the applicant submits that he had no intention to misguide this Hon'ble Tribunal and whatever he has stated in paragraph 4(ii) in the original Application was only to meant that he was selected and appointed on deputation basis but the same was against the direct recruitment quota i.e. (66 2/3%). In as much as, as per Rule 40A of the "Kendriya Vidyalaya Education Code" there is only two types of post for the principals - Direct recruitment and appointment by promotion. As per the said Rule for direct recruitment is 66 2/3% and for promotion quota is 33 1/3%. Be it stated that, though the advertisement was made to filling up the post by Transfer on deputation basis from amongst those serving in Central/State/Semi Govt/Autonomous Council, and also to fill-up the backlog vacancies, but all the posts were filled

against the direct recruitment quotas. It is pertinent to state that, the applicant has no intention to mislead this Hon'ble Tribunal. The copy of the Advertisement could not be enclosed due in inadvertences and the same was presented to the Hon'ble Tribunal at the time of hearing, by the applicant when the Hon'ble Court sought to peruse it. Be it also stated here that the said fact which has been stated in paragraph 4 (ii) does not in any way change the merit of the case in as much as he challenged the reversion, order which is a "stigmatic" one. Moreover as per the scope of the term "deputation" the applicant appointment should not be regarded as deputation as per G. I., Dept of Per. & Trg., O. M. No. 2/29/91-Estt. (Pay-II), dated the 5th January 1994 is annexed herewith and marked as Annexure - B.

By using the term deputation the department has violated the statutory Rule and hence the same is not sustainable.

5. That the applicant state that though the reversion order dated 24-06-2003 (Annexure - D) prima-facile do not reveal that the same is stigmatic, but if this Hon'ble Tribunal lift the veil and consider the written statement filed by the Respondent, it very clearly reveals the impugned order is punitive in nature and hence, the same should be considered by the Hon'ble Tribunal.

6. That the applicant submits that if the Hon'ble Tribunal does not allow this Review petition, the applicant will suffer irreparable loss and injury.
7. That this application is made bonafide and for the end of justice.

In the premises aforesaid, it is therefore prayed that Your Lordships may be pleased to Review the Judgment and Order dated 1/12/2004 passed by this Hon'ble Court in O.A. No. 163/2003.

And for this act, the applicant as in duty bound shall ever pray.

....Verification...

VERIFICATION

I, Shri Edunari Mounendar Reddy, Son of Shri Ranga Reddy, aged about - 46 years, resident of Ramkrishna Mission, Kokrajhar, P.O & Dist- Kokrajhar (Assam) at present working as post Graduate Teacher, K.V. Kokrajhar, do hereby verify that the statements made in paragraph no.1 to 7 above are true to my personal knowledge and the submission made therein, I believe the same to be true and I have not suppressed any material fact of the case;

And I sign this Verification on this the 28th day of December, 2004 at Guwahati.

Date : 28th December 2004

Place GUWAHATI

Edunari Mounendar Reddy,
Signature

Original Application No. 163/2003

Date of Order : This the 2nd day of December, 2004.

THE HON'BLE MR. JUSTICE R.K. BATTA, VICE CHAIRMAN.

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

1. Edunuri Mounendar Reddy,
Principal,
Kendriya Vidyalaya, Panisagar,
P.O. - Panisagar, North Tripura,
PIN - 799260. Applicant.

2. By Advocates Mr. A.K. Roy, Mr. I. Gogoi, Mr. A. Bhattacharya,
and Mr. L. Wapang.

- Versus -

1. Kendriya Vidyalaya Sangathan
Represented by its Commissioner,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi - 110 016.

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

By Advocate Mr. M.K. Mazumdar.

O R D E R

BATTU J. (V.C.)

The applicant was initially appointed as Post Graduate Teacher (PGT) in Kendriya Vidyalaya Sangathan in the year 1986. From July 1997 to July 2001 he was sent on deputation as Principal, Navodaya Vidyalaya. When the applicant was on deputation an advertisement was published in the "Employment News" for the post of Principal, Kendriya Vidyalaya. The said advertisement was for direct recruitment of Principal post against 66.2/3% of total vacant posts. We had asked the learned counsel for the applicant to place the said advertisement before us, which shows that the applicants were invited for the post of Principal in Kendriya Vidyalaya Sangathan by transfer on deputation, but the applicant states that the advertisement was for direct recruitment which is totally misleading and false statement made by the applicant. Be that

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as it may, the applicant was appointed vide letter dated 13th June, 2001, Annexure - A. The applicant claims that the method adopted by the respondents was to appoint on deputation basis though they follow the selection process of direct recruitment by an open advertisement on All India Basis and subsequently they are regularised. The applicant claims that as per the advertisement and Recruitment Rule he should be given regular appointment but his appointment was on deputation basis. The applicant further claims that he joined the post of Principal and hoped that he would be regularised. The applicant claims that he has been doing his duties to the satisfaction of all concerned. The applicant relies on Rule 12 of the Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority etc) Rules 1971.

2. We have heard learned counsel for the applicant and also learned counsel for the respondents. The learned counsel for the applicant has stated before us that the order of reversion is punitive in nature and in this connection he has drawn our attention to averments made in the written statement. According to him, the applicant could not be reverted without conducting proper enquiry and the reversion being stigmatic in nature is required to be set aside.

3. We may at the out set mention that the application is not only misconceived but also ill founded on the basis of facts projected by the applicant before us. The applicant claims in para (ii) that as per advertisement for direct recruitment the applicant should be given regular appointment. The copy of advertisement for "Employment News" dated 24th November, 2000, which was not initially filed by the applicant, has been placed before us on our direction by the learned counsel for the applicant. This advertisement was intentionally suppressed by the applicant in order to mislead that the advertisement was against the post for direct recruitment. This advertisement

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shows that the applications were invited for preparing panel to fill the post of Principal, Kendriya Vidyalaya Sangathan by transfer on deputation basis. It is pursuant to this advertisement that the applicant was given appointment order dated 13th June, 2001 which is at Annexure - A. This appointment also shows that the appointment of applicant was only on transfer on deputation and the appointment was on deputation basis, initially for a period for one year or till further orders whichever is earlier. Further the period of deputation could be extended for a maximum period of 5 years depending upon the applicant's conduct and performance. It was specifically mentioned in para 3 of the appointment order that the appointment on deputation will not confer permanent absorption/ regular appointment. The applicant cannot claim for extension of deputation period as a matter of right. It is also clearly stated that the period of deputation can be curtailed at the sole discretion of the Commissioner, KVS. On completion of termination of deputation period the appointee will be reverted back. Therefore, the contention of the applicant that as per advertisement he should have been given regular appointment is not only misleading but also misconceived. The impugned order is not stigmatic in nature but it is simplicitor order of curtailment of deputation period. In this connection, it is mentioned that he was doing his duties to the satisfaction of all concerned and it is in this connection that the respondents in written statement have placed certain facts before this Tribunal to rebut the same. The fact that the others have been regularised does not confer any right on the applicant to claim regularisation, since regularisation depend upon various facts.

4. Reliance placed on Rule 12 is misconceived as the same is applicable to direct recruitment and not to persons on deputation. Reliance upon the judgment of V.P. Ahuja ^{v/s} State of Punjab & Others, AIR 2000 SC 1080 does not in any

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manner help the case of the applicant and the same cannot be applied to the facts of the case under consideration.

The applicant being on deputation has no right to hold the post.

5. For the aforesaid reasons, we hold that the applicant has no right to continue on post of Principal on deputation and the order of termination of deputation dated 24/26.6.2003 being simplicitor in nature, no interference whatsoever, is called for.

Application is hereby dismissed with costs of
Rs.2000/-.

Sd/- Vice-Chairman
Sd/- Member (Admn)

certified to be true COPY
NATHA RUPA

Natha Rupa
6/12/04
Section Officer (I)
C.A.T. GUWAHATI BANCH
Guwahati-781005
Natha Rupa
6/12/04

APPENDIX 5
[See F.R. 9 (25)]

DEPUTATION WITHIN INDIA

SECTION I

**Transfer of Central Government Employees on deputation to
ex-cadre posts under Central/State Governments and on
Foreign service to Central/State PSUs/Autonomous Bodies**

[G.I., Dept. of Per. & Trg., O.M. No. 2/29/91-Estt. (Pay II), dated the 5th January, 1994.]

A need has been felt for some time past to consolidate at one place the various instructions/orders that have been issued from time to time and are still in force on the above-mentioned subject. It was also felt necessary to review the entire matter and bring about rationalization and uniformity in the instructions/orders. Accordingly, it has been decided to bring out a self-contained OM on the subject incorporating the provisions of various orders*, with suitable modifications, where necessary. The Ministry of Finance, etc., are requested to bring to the notice of all Administrative Ministries concerned the contents of this OM for information, guidance and compliance.

2. Application

2.1 These orders will apply to all Central Government employees who are regularly appointed on deputation/foreign service in accordance with Recruitment Rules of the ex-cadre posts under the same or some other Departments of Central Government or under the State Governments/Union Territories Administration/Local Bodies or under Central/State PSUs/Autonomous Bodies, etc. (where such foreign service has been permitted in relaxation of appointment on immediate absorption conditions). These orders will also cover the cases of regular appointment as per Recruitment Rules in the Central Government on deputation/foreign service of employees of State Governments/Central/State PSUs/Autonomous Bodies, Local Bodies, etc. However, the following cases shall not be covered under these orders for whom separate orders exist:—

*G.I., M.F., O.M. No. 19 (24)/E. III/60, dated 4-5-1961.

G.I., M.F., O.M. No. 1 (11)/E. III (B)/75, dated 7-11-1975.

G.I., Dept. of Per. & Trg., O.M. No. 2/12/87-Estt. (Pay II), dated 29-4-1988.

G.I., Dept. of Per. & Trg., O.M. No. 6/30/86-Estt. (Pay II), dated 9-12-1986.

G.I., Dept. of Per. & Trg., O.M. No. 1/4/84-Estt. (Pay II), dated 26-12-1984.

- (a) Members of the All India Services and those deputed to posts whose terms are regulated under specific statutory rules or orders;
- (b) Officers appointed on deputation to posts in the Central Secretariat such as Under Secretary, Deputy Secretary, Director, Joint Secretary, Additional Secretary, Secretary, etc., for whom separate orders as issued from time to time will continue to apply;
- (c) Deputation to posts outside India;
- (d) Appointments of a specific category of employees to a specified class of posts where special orders are already in existence such as appointments made in the Personal Staff of Ministers, etc., to the extent the provisions contained therein are at variance with those contained in these orders;
- (e) Appointments of the nature of deemed deputation or transfers to ex-cadre posts made in exigencies of services with the specific condition that no deputation (duty) allowance to be admissible, e.g.,—
 - (i) interim arrangements in the event of conversion of a Government office/organization or a portion thereof into a PSU/Autonomous Body or vice versa; and
 - (ii) appointments to the same post in another cadre.

3. Scope of term 'deputation/foreign service' — Restrictions on treating an appointment as on deputation/foreign service

3.1 The terms deputation/foreign service will cover only those appointments that are made by transfer on a temporary basis, provided the transfer is outside the normal field of deployment and is in the public interest.

The question whether the transfer is outside the normal field of deployment or not will be decided by the authority which controls the service or post from which the employee is transferred.

3.2 Appointment of serving employees made either by promotion or by direct recruitment with open market candidates, whether on permanent or temporary basis shall not be regarded as deputation/foreign service.

3.3 Permanent appointments made by transfer will also not be treated as deputation/foreign service.

3.4 Temporary appointment made on the basis of personal requests of employees will also not be treated as deputation/foreign service.

3.5 In case of appointments on deputation/foreign service from Central Government to Central Government and in those cases where the scale of pay and dearness allowance in the parent cadre post and ex-cadre post are similar, a person in a higher scale of pay shall not be appointed on deputation to a post in a lower scale of pay.

3.6 In case of appointment on deputation/foreign service from Central Government to Public Sector Undertaking and in those cases where the pay scale and DA in the parent cadre post and ex-cadre post are dissimilar, no appointment on deputation/foreign service shall be made if by raising the grade pay by one increment *plus* dearness allowance(s) including interim relief, if any, admissible to a person in parent cadre post exceeds the emoluments comprising pay *plus* dearness allowance(s) including interim relief, if any, at the maximum of the ex-cadre post.

4. Exercise of option

4.1 An employee appointed on deputation/foreign service may elect to draw either the pay in the scale of pay of deputation/foreign service post or his basic pay in the parent cadre *plus* deputation (duty) allowance thereon *plus* personal pay, if any.

4.2 The borrowing authority should obtain the option of the employee *within one month* from the date of joining the ex-cadre post unless the employee has himself furnished the option.

4.3 The option once exercised shall be final. However, the employees may revise the option under the following circumstances which will be effective from the date of occurrence of the same:—

- (a) When he receives pro forma promotion or is appointed to non-functional selection grade in his parent cadre;
- (b) When he is reverted to a lower grade in his parent cadre;
- (c) When the scale of pay of the parent post on the basis of which his emoluments are regulated during deputation/foreign service or of the ex-cadre post held by the employee on deputation/foreign service is revised either prospectively or from a retrospective date;
- (d) Based on the revised/same option of the employees, in the event of pro forma promotion/appointment to non-functional Selection Grade, revision of scales of pay in the parent cadre, the pay of deputationists will be refixed with reference to the revised entitlement of pay in the parent cadre. However, if the initial option was for the pay scale of the deputation post and no change in option already exercised is envisaged, the pay already drawn in deputation post will be protected if the pay refixed is less.