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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 105/2004

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

Gahil's
09/11/17

FORM No.4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Org. App./Misc Petn/Cont. Petn/Rev. Appl.....105/04.....

In O.A.....

Name of the Applicant(s) ..Baham Kharia.....

Name of the Respondent(s)....H.O.I. Jais (K.V.S.).....

Advocate for the Applicant ..Mr. A. Ahmed.....

Counsel for the Railway/CGSC.....K.V.S. Counsel.....

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

6.5.2004

Heard Mr. A. Ahmed, learned counsel for the applicant and also Mr. M.K. Mazumdar, learned counsel for the respondents.

The application is admitted, call for the records. Issue notice to the parties. Returnable within four weeks.

List on 7.6.2004 for orders.

TL application is in form
is 7.6.2004 Rs. 50/-
Dep. Secy. to Govt.
No. 116389274
Dated 30.4.04.....

Dy. Registrar

ICV Datta
Member (A)

mb

Steps taken with 7.6.2004
envelope

Mr. M.K. Mazumdar, learned Standing counsel for the K.V.S. is on accommodation.

List on 11.6.2004 for orders.

Notice and order
sent to D/Section
for issuing to
respondent nos
1 to 4, by regd. with A/D
post.

bb

11.6.2004

List on 18.6.2004 for orders.

ICV Datta
Member (A)

ICV Datta
Member (A)

mb

Cons
20/5/04.

18.6.04

Learned counsel for the applicant is not present, and has submitted a letter expressing his inability for some personal ground.

List on 21.7.04 for order.

K.V. Sachidanandan
Member(A)

B.
Member(J)

pg

21.7.04.

Present: Hon'ble Mr.K.V.Sachidanandan
Judicial Member

Hon'ble Mr.K.V.Prahladan, Administra-
tive Member.

None for the parties. Post the
matter on 25.8.04 for orders.

K.V. Sachidanandan
Member(A)

B.
Member(J)

lm

25.8.04.

Present: Hon'ble Mr.D.C.Verma,
Vice-Chairman.

Hon'ble Mr.K.V.Prahladan, Administra-
tive Member.

The learned counsel for the
Respondents prays for time to file
Written statement. Prayer is allowed.

List on 7.10.04 for orders.

K.V. Sachidanandan
Member

B.
Vice-Chairman

lm

07.10.2004

List on 11.11.2004.

Am

22-11-04

By Order

bb

23.11.2004

Four weeks time is given to the
respondents to file written statement.
List on 22.12.2004 for orders.

K.V. Sachidanandan
Member (A)

mb

21-12-04

No. W/S has been
Filed.

1) Service report is
incomplete in respect of
Report No: 4 to 4.

2) No W/C has been
filed by the Respondents.

3) No. Records received.

22.12.2004

Two weeks time is given to the respondents to file written statement. List on 7.1.2005.

[Signature]
Member

bb

07.01.2005

Two weeks time is given to the respondents to file written statement on the prayer of Mr. M.K. Mazumdar, learned counsel for the respondents. List on 31.01.2005 for orders.

[Signature]
Member (A)

mb

07.2.2005 Present: The Hon'ble Mr. M.K. Gupta, Judicial Member.

Two weeks is allowed to the applicant to file rejoinder, as prayed for by Mr. A. Ahmed, learned counsel for the applicant. Adjourned to 23.2.2005.

[Signature]
Member (J)

bb

23.2.2005 On the plea of Mr. A. Ahmed, learned counsel for the applicant six weeks time is allowed to the applicant to file rejoinder since the applicant is from Andaman & Nicobar Island.

List on 11.4.2005.

[Signature]
Member (A)

bb

11.04.2005

At the request made by counsel for the parties, the case is adjourned to 10.5.2005 for hearing.

[Signature]
Member

[Signature]
Vice-Chairman

bb

10.5.2005 At the request of counsel for the respondents the case is adjourned to 15.6.2005.

6-1-05
No W/S has been filed

11-1-05
W/S filed by the Respondents.

[Signature]

4-2-05

W/S filed.

22-2-05

W/S has been filed

8-4-05

No rejoinder has been filed

[Signature]

D/No-80 to 852
DT-24/5/04.

7-5-05

W/S has been filed
No rejoinder has been filed

[Signature]

10.05.2005

At the request of counsel for the respondents, the case is adjourned to 15.6.2005.

K.D. Bhalerao
Member

V. V. Varghese
Vice-Chairman

mb.

15.6.2005

On behalf of Mr. M.K. Mazumdar, learned counsel it is submitted that the case may be taken up after few days. Post on 5.7.2005.

K.D. Bhalerao
Member

V. V. Varghese
Vice-Chairman

mb

5.7.2005

Post on 11.7.2005 for hearing.

V. V. Varghese
Vice-Chairman

mb

11.7.05.

Judgment delivered in open Court.

Kept in separate sheets. Application is dismissed.

K.D. Bhalerao
Member

V. V. Varghese
Vice-Chairman

lm

20.7.05

Copy of the order has been sent to the D/Sec for issuing the same to the applicant as well as to the L/P Advocates for the K.V.S.

[Signature]

① Wks filed on behalf of the respondents.

② No rejoinder has been filed.

20
4.7.05

No rejoinder has been filed.

20
8.7.05

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

O.A. No. 105 of 2004.

DATE OF DECISION: 11.07.05

Shri Bahan Kharia,

APPLICANT

Mr.A.Ahmed

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I & Others

RESPONDENT(S)

Mr.M.K.Mazumdar, KVS ..

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

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

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

Judgment delivered by Hon'ble Vice-Chairman.

[Handwritten signature]

A

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.105 of 2004

Date of Order: This the 11th Day of July, 2005.

**HON'BLE MR.JUSTICE G.SIVARAJAN, VICE-CHAIRMAN
HON'BLE MR.K.V.PRAHLADAN, ADMINISTRATIVE MEMBER**

**Shri Bahan Kharia,
Ex.Primary Teacher,
Kendriya Vidyalaya,
Misimpur, Cachar, Assam
Presently Residing at Village School Line
P.O.School Line.
Port Blair, South Andaman
Andaman Nichobar Island,**

Applicant.

By Advocate Mr.A.Ahmed

-Versus-

- 1. The Chairman, Kendriya Vidyalaya Sangathan, 18,
Institutional Area, Saheed Jeet Singh Marg.
New Delhi-110016.**
- 2. The joint Commissioner(Admn) Kendriya Vidyalaya
Sangathan(Head Quarter) 18 Institutional Area,
Saheed Jeet Singh Marg, New Delhi-110016.**
- 3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan,
Regional Office, Hospital Road
P.O.Silchar, Pin-788001.**
- 4. The Principal, Kendriya Vidyalaya,
Mashimpur, Silchar Cantt.
P.O. Arunachal
Dist; Cachar,
Pin: 788025
Assam.**

Respondents.

By Advocate Mr.M.K.Mazumdar, KVS.

ORDER(ORAL)

SIVARAJAN J.(V.C.)

**The applicant was a primary School Teacher in the Kendriya
Vidyalaya Sangathan under the Respondents. He was appointed as
Primary School Teacher as per order dated 14.8.2001(Annexure A) He**



was on probation for a period of two years. It was extended till 04.9.04. His services were terminated during the probation on 27.11.03(Annexure L). The applicant challenges the said order in this O.A.

2. According to the applicant though the order dated 27 .11.03 is purported to be an order of termination simplicitor, it is really punitive in nature as could be seen from the Annexure I, J & K which are show cause notices proposing disciplinary action. The applicant has got a case that sufficient opportunity has not been given to him to show cause against the Annexure K Memorandum dated 1.10.2003 in that the termination order was passed on 27.11.2003.

3. The Respondents have filed their written statement wherein it is categorically stated that the applicant had admitted the charges as per his statement dated 29.1.03 and 5.9.03 (Annexure 4,5 & 6).

We have heard Mr.A.Ahmed, learned counsel for the applicant and Mr.M.K.Mazumdar, learned counsel for the KVS. Mr.A.Ahmed counsel for the applicant has strongly contended that the applicant had not committed the alleged misconduct . The counsel also submits that the Respondents have not given a reasonable opportunity to the applicant to show cause against the Memorandum. Mr.M.K.Mazumdar counsel for the KVS on the other hand submitted that the conduct of the applicant was such that it would be imprudent and undesirable to keep the applicant who used to come to the school in a drunken state. He also submitted that the applicant comes to school, mark attendance and leave without permission. He also submitted that an opportunity was given to the applicant to improve himself but the applicant failed to improve himself. He further submitted that on an overall consideration



of the matter the impugned termination order was issued by the Respondents.

4. We have considered the rival contentions. According to the Respondents the parents of the students of the school have reported that the applicant had consumed alcohol during the duty hours and was lying drunk in the class room at 1100 hrs. on 3rd September 2003. Similarly, it is stated that the applicant came to the Vidyalaya on 6.9.03 and signed on the Attendance Register and after sometime he left the Vidyalaya without permission. Admittedly, the applicant was issued show cause notices (Annexure I & J) but the applicant did not send his reply. He did not send reply even to the Memorandum dated 1.10.2003 till the order of termination was passed on 27.11.03. The termination order, it must be noted, has not cast any stigma on the applicant but a termination order simplicitor. The Respondents have got power to terminate the services of a teacher during the period of probation if the over all performance of the teacher is not satisfactory. In the instant case this is what happened. The applicant was irresponsible to the students and the institution. In such circumstances the Respondents cannot be faulted for issuing the termination order.

5. As already noted, the case of the applicant is that the termination order has been passed so as to give an impression that the order is an order of termination simplicitor only. According to the applicant the order is one of dismissal from service, which the respondents can do only after conducting disciplinary enquiry, but that has not been done.

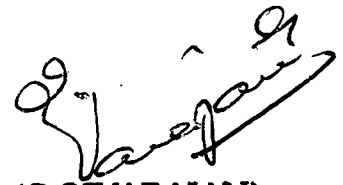
6. We do not find any merit in this submission, for, that the applicant committed a grave misconduct as a teacher which is serious



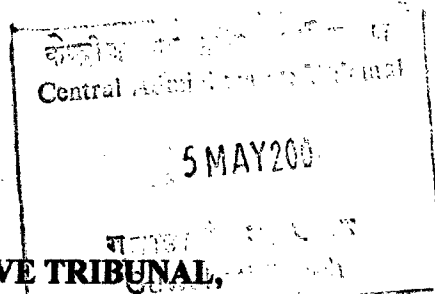
in nature. The applicant is on probation. Since the conduct of the applicant was not satisfactory, the respondents, on the basis of materials available on record, have decided to terminate the services of the applicant, which according to us was rightly done. This Tribunal will not be justified in interfere with the aforesaid decision in judicial review. There is no merit in this O.A. Accordingly the O.A. is dismissed. In the circumstances there will be no order as to costs.



(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER



(G.SIVARAJAN)
VICE-CHAIRMAN



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.**

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

ORIGINAL APPLICATION NO. 105 OF 2004.

BETWEEN

Shri Bahan Kharia

...Applicant

-Versus-

The Kendriya Vidyalaya Sangatan & Others

...Respondents

LIST OF DATES AND SYNOPSIS

Annexure-A is the photocopy of Office Memorandum No.F2-16/KVS/(SR) 6484-86 dated 14-08-2001.

Annexure-B is the photocopy of Office Memorandum No.F. ACR/2K-KVS(SR)/13494-96 dated 22-10-2002

Annexure-C is the photocopy of the representation dated 28-06-2003 filed by the applicant.

Annexure-D is the photocopy of the memorandum No.2-8 (ACR)/2000-KVS (SR)/7110-12 dated 18-07-2003

Annexure-E is the photocopy of show cause notice issued by the Respondent No.3 vide his letter No. F.1-44/2003/KVS (SR)/878376 dated 05-08-2003.

Annexure-F is the photocopy of letter dated 22-08-2003 submitted by the applicant with medical certificate.

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Annexure-G is the photocopy of memorandum vide Ref. No.5/KVM/PF (BK)/2003-04/634 dated 04-09-2003.

Annexure-H is the photocopy of memorandum No.F2-4 (A) 2003-KVS (SR)/11369-70 dated 05-09-2003.

Annexure-I is the photocopy of Ref. No.5/KVM/PF (BK)/2003-04/636 dated 06-09-2003.

Annexure-J is the photocopy of Ref. No. 5/KVM/PF (BK)/2003-04/637 dated 06-09-2003.

Annexure-K is the photocopy of F.No.1-45/KVS (SR)/2003/13708-09 dated 30.09.2003.

Annexure-L is the photocopy of Order No.F.1-45/203-KVS (SR) dated 27th November 2003.

This original application is made against the Office Order No. F1-45/2003-KVS/(SR) dated 27th November 2003 issued by the Respondent No.3 by which the service of the applicant was terminated as Primary School Teacher of Kendriya Vidyalaya. The applicant was selected and appointed for the post of Primary Teacher, Kendriya Vidyalaya at Masimpur, Assam vide Office Memorandum No.F2-16/KVS/(SR) 6484-86 dated 14-08-2001 on an initial pay of Rs.4500/-(Rupees Four Thousand Five Hundred only) in the scale of pay Rs.4500/- 125-7000. He was on probation for a period of two years, which may be extended by one year by the competent authority. Upon successful completion of probation he will be considered for confirmation in his post as per KVS rule, provided nothing adverse is found against him upon verification of his character/antecedents by the competent authority. After serving about 2(two) years in the said school by the applicant the Respondents particularly the Respondent No.3 & 4 began to harass the applicant by issuing false memorandums and show-cause notices one after another. In the meantime the Respondents had extended the period of probation of the applicant for another one year i.e. till 04-09-2004. Ultimately the Respondents have terminated the

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service of the applicant vide Office Order No. F1-45/2003-KVS/(SR) dated 27th November 2003. The allegations brought against the applicant are false and also not proved by the Respondents. The decision of termination of the service of the applicant is also passed by ex-parte without giving any opportunity to the applicant. Hence the applicant has filed this Original Application before this Hon'ble Tribunal for setting aside and quashed the impugned termination order of the applicant issued by the Respondent No.3 vide Office Order No. F1-45/2003-KVS/(SR) dated 27th November 2003.

✓

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

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

ORIGINAL APPLICATION NO. 105 OF 2004.

BETWEEN

Shri Bahan Kharia,
Ex. Primary Teacher,
Kendriya Vidyalaya,
Masimpur, Cachar, Assam,
Presently Residing at Village- School Line
P.O.- School Line
Port Blair, South Andaman
Andaman Nichobar Island,
...Applicant

-AND-

- 1) The Chairman, Kendriya Vidyalaya Sangathan,
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi-110016.
- 2) The Joint Commissioner (Admn.) Kendriya Vidyalaya
Sangathan, (Head Quarter) 18, Institutional Area,
Saheed Jeet Singh Marg, New Delhi-110016.
- 3) The Assistant Commissioner, Kendriya Vidyalaya
Sangathan, Regional Office, Hospital Road, P.O.-
Silchar, Pin-788001.

Filed by
Shri Bahan Kharia
Through [Signature] Applicant
(ADV. AHMED)
Advocate

- 4) The Principal, Kendriya Vidyalaya,
Mashimpur, Silchar Cantt.
P.O.: - Arunachal,
Distt.: - Cachar
Pin: -788025
Assam.

... Respondents

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

This application is directed against the Office Order No. F1-45/2003-KVS/(SR) dated 27th November 2003 issued by the Respondent No.3 by which the service of the applicant was terminated as Primary School Teacher of Kendriya Vidyalaya.

2) JURISDICTION OF THE TRIBUNAL

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

3) LIMITATION

The applicant further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

4) FACTS OF THE CASE:

Facts of the case in brief are given below:

- 4.1) That your humble applicant is a citizen of India and as such he is entitled to all rights and privileges guaranteed under the Constitution of India. He is from a very poor & backward family. He belongs to schedule tribe community of Andaman Nichobar islands.

4.2) That your applicant begs to state that he was selected and appointed for the post of Primary Teacher in Kendriya Vidyalaya at Masimpur, Assam vide Office Memorandum No.F2-16/KVS/(SR) 6484-86 dated 14-08-2001 on an initial pay of Rs.4500/- (Rupees Four Thousand Five Hundred only) in the scale of pay Rs.4500/- 125-7000. He was on probation for a period of two years, which may be extended by one year by the competent authority. Upon successful completion of probation he will be considered for confirmation in his post as per KVS rule, provided nothing adverse is found against him upon verification of his character/antecedents by the competent authority.

Annexure-A is the photocopy of Office Memorandum No.F2-16/KVS/(SR) 6484-86 dated 14-08-2001.

4.3) That your applicant begs to state that, accordingly he joined in his post as Primary Teacher, Kendriya Vidyalaya, Masimpur, Cachar, Assam. After serving about 2 (two) years in the said school by the applicant, the Office of the Respondents No.3 vide their Office Memorandum No.FA.CR/2K-KVS(SR)/13494-96 dated 22-10-2002 communicated the Adverse entry made in the Annual Confidential Report of the applicant. The applicant filed a representation dated 28-06-2003 before the Office of the Respondent No.3 against the Adverse entry into his ACR for the period of 2001-2002. The representation filed by the applicant against the Adverse entry was rejected by the reviewing officer vide his letter No.2-8 (ACR)/2000-KVS (SR)/7110-12 dated 18-07-2003 and it was decided by the reviewing officer to sustain the Adverse entries in the ACR.

Annexure-B is the photocopy of Office Memorandum No.F. ACR/2K-KVS(SR)/13494-96 dated 22-10-2002

Annexure-C is the photocopy of the representation dated 28-06-2003 filed by the applicant.

Annexure-D is the photocopy of the memorandum No.2-8 (ACR)/2000-KVS (SR)/7110-12 dated 18-07-2003

4.4) That your applicant begs to state that he met an scooter accident and he was under medical treatment from 16-04-2003 to 10-08-2003. But the Respondent No.3 vide his letter No.F.1-44/2003/KVS (SR)/878376 dated 05-08-2003 issued show cause notice to the applicant for remain absent for a period of 15(fifteen) days or more from 04-07-2003 till 05-08-2003. It may be stated the applicant has submitted an application dated 22-08-2003 with medical certificate before the Principal, Kendriya Vidyalaya, Masimpur, Silcahr Cantt. requesting him to grant EOL for the said period.

Annexure-E is the photocopy of show cause notice issued by the Respondent No.3 vide his letter No. F.1-44/2003/KVS (SR)/878376 dated 05-08-2003.

Annexure-F is the photocopy of letter dated 22-08-2003 submitted by the applicant with medical certificate.

4.5) That your applicant begs to state that the Principal, Kendriya Vidyalaya, Masimpur i.e. the Respondent No.4 issued a memorandum vide Ref. No.5/KVM/PF (BK)/2003-04/634 dated 04-09-2003 against the applicant.

Annexure-G is the photocopy of memorandum vide Ref. No.5/KVM/PF (BK)/2003-04/634 dated 04-09-2003.

4.6) That your applicant begs to state that the Respondent No.3 vide his memorandum No.F2-4 (A) 2003-KVS (SR)/11369-70 dated 05-09-2003 extended the period of probation of the applicant for another one year up to 04-09-2004.

Annexure-H is the photocopy of memorandum No.F2-4 (A) 2003-KVS (SR)/11369-70 dated 05-09-2003.

4.7) That your applicant begs to state that the Principal, Kendriya Vidyalaya, Masimpur i.e. the Respondent No.4 issued a Explanation letter to the applicant vide Ref. No.5/KVM/PF (BK)/2003-04/636

dated 06-09-2003 and another show-cause notice was issued to the applicant on the same day by the Principal, Kendriya Vidyalaya, Masimpur vide Ref. No. 5/KVM/PF (BK)/2003-04/637 dated 06-09-2003.

Annexure-I is the photocopy of Ref. No.5/KVM/PF (BK)/2003-04/636 dated 06-09-2003.

Annexure-J is the photocopy of Ref. No. 5/KVM/PF (BK)/2003-04/637 dated 06-09-2003.

4.8) That your applicant begs to state that the Respondent No.3 issued a memorandum against the applicant vide F.No.1-45/KVS (SR)/2003/13708-09 dated 30.09.2003.

Annexure-K is the photocopy of F.No.1-45/KVS (SR)/2003/13708-09 dated 30.09.2003.

4.9) That your applicant begs to state that the Respondent No.3 vide his Order No.F.1-45/203-KVS (SR) dated 27th November, 2003 terminated the service of the applicant.

Annexure-L is the photocopy of Order No.F.1-45/203-KVS (SR) dated 27th November 2003.

4.10) That your applicant begs to state that the Respondents particularly the Respondent No.3 and the Principal, Kendriya Vidyalaya, Masimpur i.e. the Respondent No.4 had been harassing your applicant continuously by issuing one after another false & vague memorandums and show-cause notices against the applicant. The memorandum issued on 04-09-2003 it was alleged that the applicant has left school 11:15 A.M. on 04-09-2003 and he signed in the departure column of Attendance Register at 1:50 P.M. It is also surprising that the Attendance Register is in custody of the Principal. As such how the applicant can signed the departure column of the Attendance Register by mentioning the time of departure at 1:50 P.M. instead of 11:15 A.M. It may also be stated that the Principal,

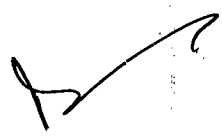
Kendriya Vidyalaya, Masimpur, Silchar issued two memorandums against the applicant on the same day i.e. on 06-09-2003. In the above said one memorandum dated 06-09-2003 it was alleged that applicant consumed alcohol during duty hours and were lying drunk in the classroom at 11 hours on 3rd September 2003. But interestingly the Principal, Kendriya Vidyalaya, Masimpur i.e. the Respondent No.4 did not bothered to issue the Letter/Explanation on 4th September 2003 to the applicant although it is a very serious allegation against the applicant. Moreover the Principal, Kendriya Vidyalaya, Masimpur does not referred for any Medical Test or Examination of the applicant on the alleged drunkard condition of the applicant during duty hours. The Respondent No.3 and the Principal, Kendriya Vidyalaya, Masimpur with a mala fide intention and motive behind issued all the above false memorandums and show-cause notices to the applicant for their vested interest and also to terminate the service of the applicant.

4.11) That your applicant begs to state that action of the respondents are illegal, arbitrary, malafide and also not sustainable before the eye of law as well as in facts. As such finding no other alternative your applicant is compelled to approach this Hon'ble for seeking justice in this matter.

4.12) That your applicant submits that he has got reason to believe that the Respondents are resorting the colorable exercise of power to accommodate their interested persons in their favourable place.

4.13) That your applicant submits that the action of the Respondents is in violation of the fundamental rights guaranteed under the constitution of India and also in violation of principles of natural justice.

4.14) That your applicant submits that the action of the Respondents by which the action of the Respondents by which the applicant has been deprived of his legitimate rights is arbitrary. It is further stated that the Respondents have acted with a mala-fide intention only to deprive the application from his legitimate right.



4.15) That your applicant submits that he has no alternative means for his livelihood and he has no agricultural land. Now he is facing acute financial hardship with his entire family members.

4.16) That your applicant submit that the Respondents have deliberately done serious injustice and put him into great mental trouble and financial hardship to his entire poor family including his little children by terminating the service of the applicant and such the impugned order is liable to be set aside and quashed.

4.17) That your applicant submits that the action of the Respondents is highly illegal, improper, whimsical and arbitrary.

4.18) That this application is filed bonafide and for the interest of justice.

That in view of the facts and circumstances it is a fit case for issuing an interim order by this Hon'ble Tribunal by giving a direction to the Respondents not to implement the Office Order No.F.1-45/2003-KVS (SR) dated 27th November 2003.

5) GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1) For that, due to the above reasons narrated in detail the action of the Respondents is in prima facie illegal, mala fide, arbitrary and without jurisdiction. Hence the impugned termination order dated 27th November 2003 of the applicant may be set aside and quashed.

5.2) For that, the Respondents have not able to prove the so called allegation of drunkard condition against the applicant by any Medical Examination. Hence the impugned termination order dated 27th November 2003 of the applicant may be set aside and quashed.

5.3) For that the Respondents have violated the Article 14, 16 & 20 of the Constitution of India. Hence the impugned termination order dated 27th November 2003 is liable to set aside and quashed.

5.4) For that the Respondents have not initiated any enquiry against the applicant nor any witnesses were examined by the Respondents before taking the decision of termination of service of the applicant. Hence the impugned termination order dated 27th November 2003 is liable to set aside and quashed.

5.5) For that the Respondents have taken the decision of the termination of the service of the applicant in an ex-parte manner. Hence the impugned termination order dated 27th November 2003 is liable to set aside and quashed.

5.6) For that, the action of the respondents is arbitrary, mala-fide and discriminatory with an ill motive.

5.7) For that, in any view of the matter the action of the respondents are not sustainable in the eye of law as well as fact.

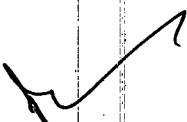
The applicant craves leave of this Hon'ble Tribunal advance further grounds the time of hearing of this instant application.

6) DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious and remedy available to the applicant except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

7) MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

That the applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the



instant application before any other court, authority, nor any such application, writ petition of suit is pending before any of them.

8) RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the applicant most respectfully prayed that Your Lordship may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relieves sought for the applicant may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following relieves.

8.1) That the Hon'ble Tribunal may be pleased to direct the Respondents to set aside and quash the impugned termination order issued by the Respondent No.3 vide Office Order No.F.1-45/2003-KVS (SR) dated 27th November 2003. (At Annexure-L)

8.2) To Pass any other relief or relieves to which the applicant may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.

8.3) To pay the cost of the application.

9) INTERIM ORDER PRAYED FOR:

9.1) The applicant prays before this Hon'ble Tribunal seeking an interim order by this Hon'ble Tribunal by giving a direction to the Respondents not to implement the Office Order No. F.1-45/2003-KVS (SR) dated 27th November 2003. (At Annexure-L)

10) Application is filed through Advocate.

11) Particulars of L.P.O.:

LP.O. No. JJG 389274

Date of Issue 30.4.2004

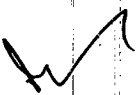
Issued from Guwahati G.P.O.

Payable at Guwahati

12) LIST OF ENCLOSURES:

As stated above.

Verification



-VERIFICATION-

I, Shri Bahan Kharia, Ex. Primary Teacher, Kendriya Vidyalaya, Masimpur, Cachar, Assam Presently Residing at Village-School Line, P.O.- School Line, Port Blair, South Andaman, Andaman Nichobar Island, presently do hereby solemnly verify that the statements made in paragraph nos. 4.1, 4.68 to 4.13 —————

are true to my knowledge, those made in paragraph nos. 4.2 to 4.9 — are being matters of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 30th day of April 2004 at Guwahati.

Bahan Kharia

KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE: SILCHAR-788001.

NO F-16 KVS(SRY)...

6484-86

Dated 14/8/2001.

Regd. No.

MEMORANDUMSUBJECT: OFFER OF APPOINTMENT TO THE POST OF PRIMARY TEACHER.

With reference to his/her application dated 17-03-99 Shri BAHAN KHARIA
is hereby informed that he/she has been selected for appointment against temporary post of PRT
Kendriya Vidyalaya Hasimpur (Assam) at an initial pay of Rs. 4500/- in the scale of pay
4500-125-7000 as per terms and conditions
stated below:

1. She will draw allowances and other benefits in addition to pay at rates as admissible to the Kendriya Vidyalaya Employees.
2. This offer of appointment is subject to the candidate being declared fit for the post of PRT by a Civil Surgeon.
3. If the candidate is a woman, she should certify that she is not in the family way at the time of acceptance of the appointment. If, however, she is pregnant of twelve weeks standing or over at the time of acceptance of appointment as a result of medical test, she will be declared temporarily unfit and the offer would be treated as withheld for the present. She would be re-examined for a fitness certificate six weeks after the date of confinement & her appointment would be subject to production of medical certificate from a Civil Surgeon. In case, the candidate fails to comply with these instructions her selection will stand cancelled and no further correspondence will be entertained from her. On production of medical fitness certificate she will be appointed to the same post.
4. T. A. on first appointment in case of journeys for taking up initial appointment to a post in the North Eastern Region limited to ordinary bus fare/second class rail fare for road/rail journey for himself/herself and his/her family will be admissible.
5. He/She will be on probation for a period of 2 years which may be extended by one year by competent authority. Upon successful completion of probation he/she will be considered for confirmation in his/her turn as per KVS rules, provided nothing adverse is found against him/her upon verification of his/her character/antecedents by the competent authority.

Adverse report on his/her character and antecedents submitted by the competent authority will render him/her liable to be terminated from the services under Kendriya Vidyalaya Sangathan.

During the probation and thereafter, until he/she is confirmed the services of the appointee are terminable by one month's notice on either side without any reason being assigned thereof. The appointing authority however, reserves to itself the right to terminate the services of the appointee before expiry of the stipulated period of notice by making payment of sum equivalent to the pay and allowances for the stipulated period of notice or the un-expired portion thereof.

If at any time after the appointment any statement/declaration furnished/made, whether before or after his/her selection, is found false his/her services shall be terminable forthwith without giving prior notice.

Other terms and conditions of services governing the appointment as laid down in the Education code for Kendriya Vidyalayas as amended from time to time. Since Kendriya Vidyalaya Sangathan Group Insurance Scheme has been introduced with effect from 1.1.93 joining to above scheme is compulsory.

He/She will be liable to be transferred any where in India in the interest of Kendriya Vidyalaya Sangathan, initially he/she is posted as PRT at K.V. Hasimpur (Assam)

Person already in service will be allowed to join Kendriya Vidyalaya Sangathan when he/she produces relieving order of his/her parent department at the time of joining. He/she will not request for transfer outside Silchar region within three years of initial posting.

P/2.....

Attested
Advant

- 13 -

26
ANNEXURE - B

Confidential:

KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE : SILCHAR-788001

No.F.ACR/2K-KVS(SR)/

13494-96

Date: 22. 10. 02

MEMORANDUM

Entries recorded in the Annual Confidential Reports for the year ending 30/6/02 in respect of
Sri/Smt. Bahan Kharia PRT, Kendriya Vidyalaya Masimpur are reproduced
Below for his/her information and necessary improvement.

Part-III: Remarks of the Reviewing/Reporting Officer

3. Other Observation - He has been found to
be away from his duties
duty on four different occasions
during visit to Primary Section.

The undersigned wishes to give Sri/Smt. B. Kharia PRT an opportunity
to represent against the above mentioned adverse entries made in the ACRs for the year 2001-02 for
expungement, if justified.

Hence Sri/Smt. B. Kharia PRT should submit his/her re-
presentation along with justification to this office within a month of the receipt of this communication. In
the absence of any representation it will be presumed that he/she has nothing to say against the
adverse entry.

The receipt of this memorandum should be acknowledge.

Sri Bahan Kharia
PRT

KV, Masimpur

[Signature]
22/10/02

(E.T. Awasie)
EDUCATION OFFICER

Copy:

1. ACR/Dossier in respect of Sri B. Kharia, PRT KV Masimpur.
2. The Principal, KV Masimpur.

EDUCATION OFFICER

[Signature]
Attested
Advocate

To
- 14 -
The Education Officer
K.V.S. Silchar Region,
Silchar.

27
ANNEXURE - C

THROUGH PROPER CHANNEL
Sub: → Submission of Clarification of
ACR 2001-02 - segd.

Sir,

With reference to your letter No. F.ACR/2K-KVS
(S/R)/13494-9 dated 22.10.02 about Part - III, other
observation that I was found away from my
duty on four different occasions during visiting
the Reporting Officer to Primary Section.

Sir, here I give my clarification that I
was in school at that time but I was five
minute late to go into the class. Sir, I am
regreating for my falls. I Promise you not
to repeat like same in future. I hope I may
be excused for the first time and oblige.

Thanking you in anticipation.

Yours faithfully

~~Devi~~

(BAHAN. KHARIA)

PRT.

K.V. Masimpur.

Date: - 28.6.03.

Attested
Advocate



केन्द्रीय विद्यालय संगठन

KENDRIYA VIDYALAYA SANGATHAN

34009 (AC) with FAX
34339 (AC) Resi.
34154 (AO)
45737 (EO)

ANNEXURE - D

क्षेत्रीय कार्यालय

अस्पताल रोड.

सिलचर - 788 001

Regional Office

Hospital Road,

Silchar - 788 001

CONFIDENTIAL

पत्रांक

F No

2-8(ACR)/2000-KVS(SR)/ 7118-12

दिनांक

Dated

REGD. POST

18.7.2003

Confidential

MEMORANDUM

Whereas adverse entries in the ACR of 2001-2002 have been communicated to Shri B. Kharia, Primary Teacher vide this Office memorandum of even No., Dtd. 22.10.02

Whereas Shri B. Kharia, PRT has represented against the adverse entries in the ACR vide his representation dtd. 28.6.03 which has been considered carefully by the re-viewing Officer concerned but it is regretted to state that on consideration of the facts and circumstances it has been decided by the re-viewing Officer to sustain the adverse entries in the ACR.

The decision of the reviewing authority is hereby conveyed accordingly.

To
Shri Bahan Kharia, PRT
Kendriya Vidyalaya Masimpur
Silchar

(P. DEVAKUMAR)
EDUCATION OFFICER
KVS, RO: SILCHAR

Copy to:-

1. The Principal, KV, Masimpur-He is requested to make necessary entries in the service records under proper attestation.
2. ACR dossier of the teacher concerned.

Sch/_____
EDUCATION OFFICER

Attested
Advocate

**KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE :: SILCHAR-788001.**

No.F.1-44/2002/KVS(SR)/ 8783

Date 07.07.03

Sub: order of Provisional loss of lien on post held Show-cause Notice under Article 81 (d) (3) of the Education Code for confirmation thereof.

Shri/Smt/Km. Bahan Kharia, PRT is hereby informed that he/she has remained absent for a period of fifteen days or more from 07.7.03 to till date without sanctioned leave or beyond the period of leave originally granted or subsequently extended. Shri/Smt. Km. B. Kharia has neither reported for duty within the aforesaid period of 15 calendar days nor satisfactorily explained the reasons for his/her absence. In terms of Sub-clause(1) of Clause(d) of Article 81 of the Education Code, he/she is deemed to have Voluntarily Abandoned his/her Service and thereby provisionally lost lien on his/her post.

As required under Sub-clause (3) of clause (d) of Article 81, this order is hereby made recording the factum of Voluntary Abandonment of Service by Shri/Smt/Km. B. Kharia and provisional loss of his/her lien on (post) and the same is hereby communicated to him accordingly.

As further required under sub-clause (3) of Clause(d) of Article 81, Shri/Smt./Km. B. Kharia, PRT hereby given the opportunity to show cause as to why the aforesaid order of provisional loss of lien should not be confirmed.

Shri/Smt/Km. B. Kharia, PRT may make written representation to the (Appointing Authority's Name & Designation) within 10 days of the receipt of this order failing which an order shall be passed confirming loss of lien on the post held by him/her and, in that case, he/she shall be deemed to have been removed from the service of Kendriya Vidyalaya Sangathan as per the provisions of Article 81(d).

To Bahan Kharia, PRT
KV, Hasimpur

(M.M.JOSHI) E/8
ASSISTANT COMMISSIONER

Copy for information to:

1. The Principal, KV Hasimpur with the request to ensure to ensure the service of the order to the concerned teacher at his/her address last known under acknowledgement.
2. The Dy. Commissioner(Admin.), KVS(HQ), New Delhi-16.
3. Staff Strength File

Sch/-----
ASSTT. COMMISSIONER

To

— 17 —

30
ANNEXURE - F

The Principal,
K.V. Masimpur,
Belchar Cantt.

Sub → Submission of Medical Certificate
against EOL - regd.

Sir,

I have the honour to inform you that
I did not attend my duty from 16.4.03 to
23.4.03 and 30.4.03 due to scooter accident.

Therefore I request you kindly grant
my EOL for the above date and oblige.


Thanking you in anticipation.

your faithfully

Encl :


1) Medical Certificate.

Date :- 22.8.03.


(BAHAN KHARIA)

PRT.

K.V. Masimpur.

Attested

Advant

Dr. H. R. Barlaskar

M.B.B.S., D.O.M.S.

Ex Deputy Director General

(M.H.&F. W.) INDIA

General Practitioner Cum Eye Specialist

Regd. No. : 4621 (A.M.C.)

- 18 -

☎ : 278717

TIMING

Morning : 7 A.M. - 10 A.M. (Resi.)
10 A.M. - 12 Noon.
(Masimpur)
Evening : 4.30 P. M. - 7 P. M.
(Arunachal)

Date: 01/04/03

To whom it
May concern

This is to certify
that Sri B. Kharia, a
teacher of K.V. Masimpur
was suffering from scooter
accident. He was under
my supervision up to 16/04/03
to 23/04/03 and 27/04/03
He improved and was
temporarily fit up to 24/04/03
and then on 27/04/03

Date
Dr. H. R. Barlaskar
M.B.B.S., D.O.M.S.
C.B.S.

Visit Dr. Barlaskar's Clinical Laboratory, Masimpur for all types of blood, stool and urine examination.

Attested
Advent

Dr. H. R. Barlaskar

M.B.B.S., D.O.M.S.

Ex Deputy Director General

(M.H.&F. W.) INDIA

General Practitioner Cum Eye Specialist

Regd. No. : 4621 (A.M.C.)

- 19 -

278717

TIMING

Morning : 7 A.M. - 10 A.M. (Resi.)
10 A.M. - 12 Noon.
(Masimpur)
Evening : 4.30 P.M. - 7 P.M.
(Arunachal)

Date.....11/08/03

To whom it
May concern

This is to certify
that Sw. B. Kharia, a
teacher of K.V. Masimpur
was suffering from exagger-
ated traumatic injury
on his Rt. shoulder. He
was under my supervision
upto 04/07/03 to 10/08/03.
Now he is fit to
resume his duty.

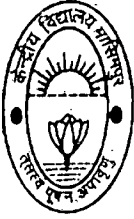
[Signature]
11/08/03
Dr. H. R. Barlaskar
M.B.B.S., D.O.M.S.
C.E.S.

*Dr. Barlaskar's Clinical Laboratory, Masimpur for all types of blood, stool and urine examination.

Attested
/
[Signature]

- 20 -

ANNEXURE - G



केन्द्रीय विद्यालय, मासिमपुर

Kendriya Vidyalaya, Masimpur

Silchar Cantt, P.O. : Arunachal
DIST. : CACHAR :: ASSAM :: 788025

Civ. Ph. : 78450 (O)
78054 (R)
Army Ext. : 2660

E-mail : sch_prkvm@sanchamet.in

Visit their website "www.kvsangathan.org"

Ref No: Gen S/KVM/PF(BK)/2003-04/ 634

Date.....
04/09/2003

MEMORANDUM

It came to the knowledge of the undersigned through Supervisor (Primary Section) that Shri Bahan Kharia, PRT came to the School on 04/09/2003 and he left at 11.15 A.M. but signed in the departure column of attendance register at 1.50 P.M. This behaviour is unbecoming of a Govt. servant and it is a grave misconduct on the part of a teacher. He is warned that he should not behave like that in future failing which attracts disciplinary action against him under CCA and CCS conduct rules.

To

Shri Bahan Kharia, PRT,
K.V. Masimpur.

(CH. SREEHARI)

PRINCIPAL

Principal

K V, MASIMPUR

SILCHAR CANTT-7880025

Attended
J. P. Adhikari



- 21 -

Phone

केन्द्रीय विद्यालय संगठन
KENDRIYA VIDYALAYA SANGATHAN

ANNEXURE - H

संस्थापक निदेश

संस्थापक निदेश

संस्थापक निदेश

Regional Office

Hospital Road

Silchar - 788 001

संस्थापक निदेश

C No. F.2-4(A)/2003-KVS(SR)/ 11369-10

Date

Dated: 05-9-03

M E M O R A N D U M

Shri Bahan Kharia, Primary Teacher was appointed to the post of Primary Teacher with effect from 05-9-2001 on probation for a period of two years which is extendable as per rules. After reviewing the work and conduct of Shri Kharia, the undersigned being the appointing authority decides to extend the period of probation in respect of Shri Bahan Kharia, PRT, KV, Masimpur upto 04-9-2004, which accordingly stands extended upto 04-9-2004.

To
Shri Bahan Kharia,
PRT, Kendriya Vidyalaya,
Masimpur.

(M. M. JOSHI)
ASSTT. COMMISSIONER

Copy to:

The Principal,
Kendriya Vidyalaya,
Masimpur - With a request to send the probation report upto extendable period well in time for taking further action. Further he is requested to handover this memorandum to Shri Bahan Kharia taking proper acknowledgement.

ASSTT. COMMISSIONER

Adm. Secy



केन्द्रीय विद्यालय, मासिमपुर
Kendriya Vidyalaya, Masimpur

Silchar Cantt, P.O. : Arunachal
DIST. : CACHAR :: ASSAM :: 788025

Civ. Ph. : 78450 (O)
78054 (R)
Army Ext. : 26607

E-mail: sch_prkvm@sanchamnet.in.

Visit their website "www.kvsangathan.org"

Ref No. Gen-S/KVM/PPF(BK)/2003-04/ 636

Date.....06/09/2003

EXPLANATION

It has been reported by the parents that you had consumed alcohol during duty hours and were lying drunk in the Class room at 1100 hours on 03 Sept. 03.

It is a highly unbecoming conduct. You are hereby asked to explain this unbecoming conduct failing which disciplinary action will be initiated against you. Your reply should reach by 1000 hours on 08 Sept. 03.

To

Shri Bahan Kharia, PRT,
K.V. Masimpur.

(CH. SREEHARI)
PRINCIPAL

Attested
Advocate



केन्द्रीय विद्यालय, मासिमपुर
Kendriya Vidyalaya, Masimpur

Silchar Cantt, P.O. : Arunachal
DIST. : CACHAR :: ASSAM :: 788025

E-mail: sch_prkvm@sanchamnet.in

Visit their website "www.kvsangathan.org"

Gen-5/KVM/PP(BK)/2003-04/

634

06/09/2003

Ref. No.:.....

Date:.....

SHOW CAUSE NOTICE

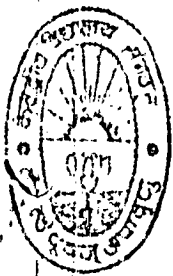
It came to my knowledge that Shri Bahan Kharia, PRT came to Vidyalaya on 06/09/2003 and signed on the Attendance Register. After some time he left the Vidyalaya without the permission. You are asked to show cause why you left the Vidyalaya without the permission of the undersigned. Your explanation should reach the undersigned on or before 09/09/2003.

To
Shri Bahan Kharia, PRT
K.V. Masimpur.

(CH. SREEHARI)
PRINCIPAL

Principal
K V. MASIMPUR
SILCHAR CANTT-7880025

Attended
Advocate



- 24 -

Phone

37
37
37
37

केन्द्रीय विद्यालय संगठन KENDRIYA VIDYALAYA SANGATHAN

ANNEXURE - K

प्रदेश कार्यालय

प्रदेश कार्यालय

सिद्धपुर 24.9.2003

Regional Office

Hospital Road

Silchar 788003

पत्रांक

No. 1-45/KVS(SR)/2003/

13708-09

दिनांक

Dated 30.9.2003

Regd/Confidential

MEMORANDUM

After careful examination of the fact finding enquiry report submitted by the Principal, KV, Masimpur, it has been found that:

i) Sri Bahan Kharia, PRT, KV, Masimpur behaves in an indecent improper and rough manner with the parents, children and his colleagues

ii) Sri Bahan Kharia, PRT is in the habit of coming to the vidyalaya in drunken state, sleeps in the class room and leaves the vidyalaya without permission of the authority

iii) Sri Bahan Kharia beats the children frequently unbecomingly

The said acts on the part of Sri Bahan Kharia amounts to misconduct and unbecomming of a KVS employee.

Sri Bahan Kharia, PRT is hereby directed to explain as to why appropriate action will not be taken against him. His explanation should reach the undersigned within 10 days from the date of receipt of this Memorandum, failing which it will be presumed that he has nothing to say in this regard and further action, as deemed fit would be taken by the undersigned.

✓ Sri Bahan Kharia, PRT
Kendriya Vidyalaya
Masimpur.

Copy to:

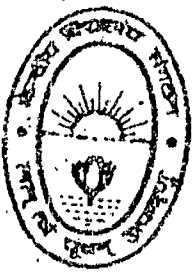
The Principal, KV, Masimpur, along with a copy of memorandum with the request to handover the Memorandum to the teacher concerned after due acknowledgement.

(M.M. JOSHI.)
ASSISTANT COMMISSIONER.

ASSISTANT COMMISSIONER.

Attal
R. S. S. S.

Signature



- 25 -

ANNEXURE - L
Kendriya Vidyalaya Sangathan
Regional Office-Silchar
Hospital Road
Silchar-788001, Assam

Tel. No [03842-234009
(Fax/Tel)

234154(0) 234339(R)

E-Mail: acsilchar@rediffmail.com

No.F.1-45/2003-KVS(SR)

Dated : 27th November, 2003

ORDER

Shri Bahan Kharia vide Memorandum No. 2-16/KVS(SR)/6484-86 dated 14-8-2001 was appointed as Primary Teacher in Kendriya Vidyalaya, Masimpur (Assam) on probation for a period of two years. The probation period was further extended upto 04-9-2004.

2. In order to consider confirmation/ termination of his service in terms of para- 6 (Six) of his appointment letter, I have perused his service record and probation reports. I find his service have not been confirmed as yet under para-6 of his letter of appointment, his services are terminable during the probation and thereafter until his confirmation, by giving one month notice or pay and allowances in lieu of notice period.

3. In pursuance of para- 6 of the aforesaid offer of appointment, I being the appointing Authority hereby terminate forthwith the services of Shri Bahan Kharia, Primary Teacher, Kendriya Vidyalaya, Masimpur (Assam) with immediate effect. The competent Authority further directs that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of one month which he was drawing immediately before the termination of his services as Primary Teacher, Kendriya Vidyalaya, Masimpur (Assam) in lieu of notice period.

(M.M Joshi)

Assistant Commissioner &
Appointing Authority

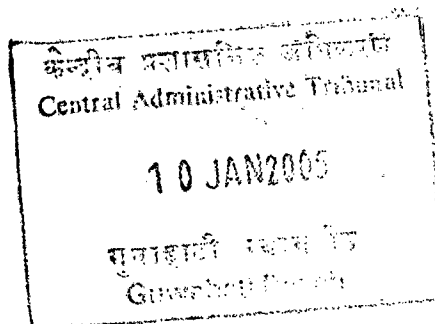
To

Shri Bahan Kharia,
Primary Teacher,
Kendriya Vidyalaya, Masimpur
Distt. Cachar-788025

Copy to:

1. The Principal, Kendriya Vidyalaya, Masimpur (Assam), with the direction to hand over the termination order to Shri Bahan Kharia, Primary Teacher with due acknowledgement under intimation to this office.
2. The Chairman, VMC, Kendriya Vidyalaya, Masimpur, for his kind information.
3. The Joint Commissioner (Admn), KVS (Hq), New Delhi for his kind information.
4. The Education Officer (Vig), KVS (Hq), New Delhi for his kind information.
5. The Audit and Accounts Officer, KVS, Regional Office-Silchar for information.
6. Vacancy position File at KVS R.O. Silchar for record.

Assistant Commissioner



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH - GUWAHATI

O.A No.105 of 2004

Sri Bahan Kharia

Applicant

-V E R S U S-

The Chairman, Kendriya Vidyalaya
Sangathan & others

Respondents

-AND-

IN THE MATTER OF:

Written Statement filed by the
Respondents.

AND

IN THE MATTER OF:

The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Silchar Region, Silchar.

The humble Written Statement on
behalf of the Respondents are as
follows:

I, Sri U.N Khawarey, the Assistant Commissioner,
Kendriya Vidyalaya Sangathan, Regional Office,
Guwahati, on being authorised to file this written
statement do hereby solemnly affirm and file the

Filed by the Respondents
Through Mr. M. J. Mondal
Advocate
Standing Counsel K.V. Sangathan
10-1-05 39

Contd....

written statement on behalf of Respondents No.1, 2, 3 and 4 as under:-

1). That the respondents have been served with a copy of the Original Application and on being supplied with comments from the Head-quarters this reply has been submitted on behalf of the respondents.

2). That the deponent states that he being the Assistant Commissioner of Guwahati region being authorised by the Respondents is competent to file this written statement on their behalf on being supplied the para wise comments from the Head Quarters.

3). That the deponent states that the allegations / averments which are not borne out of records are denied and not admitted. Any allegations / averments which are not specifically admitted hereinafter are deemed to be denied.

4). That the deponent before controverting the contents of the paragraphs made in Original Application begs to apprise that the Kendriya Vidyalaya Sangathan is registered under the Societies Registration Act XXI of 1860 and fully financed by the Government of India with the objectives of -

Contd... ..

- 41
- (I) to meet the educational need of children of transferable Central Government Employees including defence personnel by providing common syllabus of education.
 - (II) to develop Vidyalaya as a model school in the context of National goal of Indian education.
 - (III) to initiate / promote experimentation in the field of Education in collaboration with other bodies like C.B.S.C, N.C.E.R.T etc and
 - (IV) to promote national integration.

Para-wise Comments

4). That with regard to the statements made in paragraphs 1, 2 and 3, the deponent begs to state that those are matters of records and hence does not offer any comment.

5). That with regard to the statements made in paragraphs 4.1 and 4.2, the deponent states that those are matter of facts and hence does not offer any comment.

6). That with regard to statements made in paragraph 4.3 it is stated that the adverse entries

Contd....

made in Annual Confidential Report on the work and conduct of an employee are communicated to him to provide him a reasonable opportunity to defend himself. The representation made by the applicant in response to the Memorandum No.FA.CR/2K-KVS(SR)/13494-96 dated 22-10-2002 was considered by the competent authority and having been found not convincing, the entries made in the ACR were upheld accordingly. The action of the Authority is thus as per Rules.

7). That with regard to statements made in paragraph 4.4, the respondent denies the correctness of the same and submits that, the applicant contention in this paragraph is misleading. As per Rule 81(d) of Education Code an employee remaining absent from duties without intimation / sanctioned leave for period of exceeding 15 calendar days renders himself liable for action. As such the action of the authority was as per Rules. After having been found the reasons for his absence from duty convincing the applicant was allowed to join duties vide letter dated 22/26-08-2003.

A copy of the letter dated 22/26-08-2003 is annexed herewith and marked as ANNEXURE - R/I.

8). That with regard to statements made in paragraph 4.5, the deponent begs to submit that lapses noticed on the part of an employee are to be communicated to him to meet the end of justice with a

Contd....

view to improve himself. Hence the action of the authority is as per Rules.

9). That with regard to statements made in paragraph 4.6, the deponent begs to submit that the Memorandum No.F.2-16/KVS(SR)/6484-86 dated 14/20-08-2001 (Clause-5 of the offer of appointment) clearly speaks that the probation period may be extended by one year by competent authority based on his work and conduct. Since the work and conduct of the applicant was not found satisfactory by the Competent Authority the period of probation was extended by one year vide Memorandum dated 05-09-2003. (Annexure - H at Page - 21 of the O.A).

Copies of the letters dated 14/20-08-2001 and 05-09-2003 are annexed herewith and marked as ANNEXURES - R/II & R/III respectively.

10). That with regard to statements made in paragraphs 4.7, 4.8 and 4.9, the deponent begs to submit that the lapses on the part of the applicant have been communicated to him by the Principal with a view to improve his work and conduct. Hence the action taken by the Principal is justified.

Since the applicant failed to improve, the Memorandum dated 30-09-2003 was issued to him on the basis of the fact finding enquiry conducted by the Principal for providing him reasonable opportunity for his defence.

Contd....

Since the applicant was under the probation period and failed to improve himself inspite of opportunities given to him, he rendered himself liable to action under the provisions of offer of appointment issued to him vide Memorandum dated 14-08-2001. The action of the respondent(s) is as per rules which is justified and lawful. The Vidyalayas run by the Sangathan have co-education system where grown-up girls and boys study. An employee like applicant who attends / comes to the Vidyalaya in a drunken state can not be allowed to continue especially in an educational institute having co-education system.

11). That with regard to statements made in paragraph 4.10, the deponent submits that the averments made by the applicant is misleading and baseless. The lapses on the part of the applicant have been communicated to him with a view to provide him reasonable opportunity to put forth his defence if any and improvement of his service.

The applicant was found in a drunken state during the working hours which the applicant admitted vide his statement dated 29-01-2003 (Annexure-IV). The applicant failed to improve himself and he was again found in drunken state on 03-09-2003 by a parent and the applicant admitted his fault vide statement dated 05-09-2003 (Annexure-V). The applicant has also admitted this vide his statement dated 05-09-2003 (Annexure-VI) during the fact finding enquiry. As such the averment made by the

Contd... ..

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applicant that he was not referred to medical check up is nothing but an effort to deviate the attention of the Hon'ble Court from the fact which the applicant has admitted twice. Hence the action taken against the applicant is justified and lawful.

12). That with regard to the statements made in paragraphs 4.11 & 4.13 & 4.14, the respondent denies the correctness of the same for, the action of the respondents is legal and justified. The applicant has approached the Hon'ble Tribunal without exhausting the Departmental remedies available as per rules. The averments made in those paragraphs are baseless and untenable. The applicant has not been deprived of any legitimate right. Ample opportunity has been given to the applicant to improve but he failed to improve. Hence, the action of the Respondents is lawful and justified.

13). That with regard to statements made in paragraphs 4.15 & 4.16, the deponent submits that the action of the Respondents is in consonance with the provisions of offer of appointment which clearly speaks of the terms and conditions governing the service of the applicant. Since the applicant was under the probation period and his work and conduct was not satisfactory, his services have been terminated under the said provisions.

The action of the respondents is as per rules and it is justified and lawful.

Contd... ..

14). That with regard to statements made in paragraphs 4.17 & 4.18, the deponent submits that the action of the Respondents is legal, proper and justified. Hence the Original Application filed by the applicant, may be dismissed to meet the end of justice.

15). That with regard to the grounds set forth in the application in paragraph 5, the deponent submits that these grounds are ill founded and no legs to stand to support the claim of the applicant. The averments made by the applicant in these paragraphs are misleading. The order dated 27-11-2003 is as per rules. The applicant has himself admitted the lapses on his part which is self proved. The applicant was given sufficient reasonable opportunity before passing the order of termination of his service, which was made under the provisions of offer of appointment which does not provide for regular enquiry as contended by the applicant. Under the facts stated above Your Lordships may be pleased to dismissed the O.A filed by the applicant.

16). That with regard to remedies claimed by the applicant in paragraph 6, the deponent submits that the averment made by the applicant is misleading. Departmental remedies are there which the applicant has not availed of. The applicant has moved the court of law without exhausting the departmental remedies.

17). That with regard to statements made in paragraph 7, the deponent submits that the same is a

Contd... ..

matter of record and therefore the deponent does not offer any comment.

18). That with regard to the prayer made in the application the respondent submits that since the action taken by the respondents is strictly in accordance with the rules, the Hon'ble Tribunal may kindly be pleased to dismiss the O.A to meet the end of justice as continuance of the applicant is not in the interest of an organisation having co-education system where the teachers have to deal with grown up children.

19). That with regard to the interim prayer made in the application the respondent submits that the O.A filed by the applicant may be dismissed to meet the end of justice keeping in view the facts and circumstances of the case explained above.

Verification page/9

Contd....

AFFIDAVIT / Verification

I Shri Uday Narayan Khawarey, Son of Shri Jagat Narayan Khawarey, aged about 44 years, presently working as Assistant Commissioner in the Regional Office of Kendriya Vidyalaya Sangathan, Maligaon, Guwahati, do hereby solemnly affirm and declare as follows:

1. That I am the Assistant Commissioner of the Kendriya Vidyalaya Sangathan, Maligaon, Guwahati, as such I am acquainted with the facts and circumstances of the case. By virtue of my office I am competent to swear this affidavit.

2. That the statements made in this affidavit and in the accompanying application in paragraphs ^{13-15, 16, 17} are true to my knowledge, those made in ^{2, 6, 7, 8, 9} paragraphs being matter of records are true to my information derived therefrom. Annexures R I, R II, & R III are true copies of the originals and groups urged are as per the legal advice.

And I sign this affidavit on this the 10 th day of January August, 2005 at Guwahati.

Identified by

Uday Narayan Khawarey

DEPONENT

Advocate's Clerk.



ANNEXURE- R. 1

दूरभाष
Phone

34009 (AC) with FAX
34339 (AC) Rest
34154 (AO)
45737 (EO)

केन्द्रीय विद्यालय संगठन

क्षेत्रीय कार्यालय, अस्पताल रोड, सिलचर - 788 001

KENDRIYA VIDYALAYA SANGATHAN

Regional Office, Hospital Road, Silchar - 788 001

पत्रांक

F No 1-44/2003-KVS/(SR)/....

दिनांक

Dated 22/8/03.

To
The Principal,
Kendriya Vidyalaya
Masimpur.

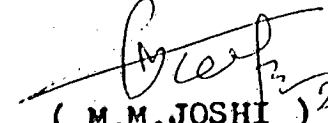
Sub:- Withdrawl of notice under Art 81(d)
of Education Code issued to
Shri Bahan Kharia, PRT.

Sir,

With reference to my Telephonic
instruction conveyed to you on 11-8-2003
Shri Bahan Kharia PRT is hereby permitted to
Join duties in your KV. w.e.f 11-8-2003
subject to without prejudice to Disciplinary
action.

Hence notice issued under 81 (d) of
Education Code to the teacher concerned may
kindly be treated as withdrawn.

Yours faithfully


(M.M. JOSHI) 20/8
ASSISTANT COMMISSIONER

Certificate to School copy
M.M. Joshi
Assistant Commissioner

KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE:::SILCHAR-788001.

NO.E2-16/KVS(SR) 6486-86

Date: 8/2001

To Registrar

MEMORANDUM

SUB: OFFER OF APPOINTMENT TO THE POST OF PRIMARY TEACHER.

With reference to his/her application dated 17-03-99 Shri BARAN KHARIA is hereby informed that he/she has been selected for appointment against temporary post of PRT in Kendriya Vidyalaya Basilepur (Anona) in an initial pay of Rs 500/- in the scale of pay 500-125-7000 as per terms and conditions indicated below:

1. He/She will draw allowances and other benefits in addition to pay at rates as admissible to the Kendriya Vidyalaya Employees.
2. This offer of appointment is subject to the candidate being declared fit for the post of PRT by a Civil Surgeon.
3. If the candidate is a woman, she should certify that she is not in the family way at the time of acceptance of the appointment. If, however, she is pregnant of twelve weeks standing or over at the time of acceptance of appointment as a result of medical test, she will be declared temporarily unfit and the offer would be treated as withheld for the present. She would be re-examined for a fitness certificate six weeks after the date of confinement & her appointment would be subject to production of medical certificate from a Civil Surgeon. In case, the candidate fails to comply with these instructions her selection will stand cancelled and no further correspondence will be entertained from her. On production of medical fitness certificate, she will be appointed to the same post.
4. T. A. on first appointment in case of journeys for taking up initial appointment to a post in the North Eastern Region limited to ordinary bus fare/second class rail fare for road/rail journey for himself/herself and his/her family will be admissible.
5. He/She will be on probation for a period of 2 years which may be extended by one year by competent authority. Upon successful completion of probation he/she will be considered for confirmation in his/her turn as per KVS rules, provided nothing adverse is found against him/her upon verification of his/her character/antecedents by the competent authority.

Adverse report on his/her character and antecedents submitted by the competent authority will render him/her liable to be terminated from the services under Kendriya Vidyalaya Sangathan.

During the probation and thereafter, until he/she is confirmed the services of the appointee are terminable by one month's notice on either side without any reason being assigned thereof. The appointing authority however, reserves to itself the right to terminate the services of the appointee before expiry of the stipulated period of notice by making payment of sum equivalent to the pay and allowances for the stipulated period of notice or the un-expired portion thereof.

If at any time after the appointment any statement/declaration furnished/made, whether before or after his/her selection, is found false his/her services shall be terminable forthwith without giving prior notice.

Other terms and conditions of services governing the appointment as laid down in the Education code for Kendriya Vidyalayas as amended from time to time. Since Kendriya Vidyalaya Sangathan Group Insurance Scheme has been introduced with effect from 1.1.93 joining to above scheme is compulsory.

He/She will be liable to be transferred any where in India in the interest of Kendriya Vidyalaya Sangathan, initially he/she is posted PRT at K.V. Basilepur (Anona)

A person already in service will be allowed to join Kendriya Vidyalaya Sangathan when he/she produces relieving order of his/her parent department at the time of joining. He/she will not request for transfer outside Silchar region within three years of initial posting.

P/2.....

Certified true copy
M. K. Guptar
14/9/2001

11. In case of any dispute or claim against the Kendriya Vidyalaya Sangathan in respect of service or any contact arising out of or flowing from this offer of appointment, the courts at Delhi alone shall have jurisdiction.
12. If he/she accepts the offer under the terms and conditions stipulated above, she/he should send his/her acceptance immediately on receipt of this memorandum in the form attached to the Principal and the undersigned and join KV mentioned above. Necessary proforma for purpose mentioned in forms VII A/B VII to XI and XIII are enclosed herewith which should be submitted to the Principal concerned after getting the same duly completed in all respects. This acceptance should reach the undersigned in any case 30-08-2001. If the offer is not accepted by the said date or after acceptance, if the appointee does not report for duty at the above named KV latest by 05-09-2001, this offer of appointment will be treated as automatically cancelled and no further correspondence will be entertained from him/her in this regard.
13. The appointment to the post of pgt is purely provisional and subject to the caste/tribe certificate being verified through the channels and if the verification reveals that the claim to belong SC/ST/OBC as the case may be is false the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian penal code for production of false certificates.

Encl: As above.

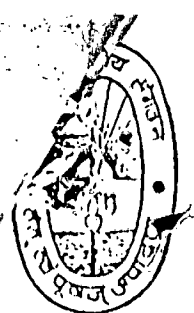
ASSISTANT COMMISSIONER

Sh. Bahan Aharia
School Ltne Port Blair
S Andaman Andaman and Nicobar PIN-744 103

Copy forwarded to:-

1. The Principal, KV, Hasimpur (Assam). The date of joining of the candidate may be intimated to this office telegraphically after the candidate reports for duties. In case he/she does not join by the stipulated date, this office should be informed telegraphically. This appointment is further subject to production of certificates etc. as per article 49(D) of Education Code for KVs. The original application form along with its enclosures of the said candidate is enclosed herewith which should be kept in the personal file of the official. The candidate be allowed to join his/her duties only after verification of original certificates and on submission of requisite forms/statements vide appendices VII(A)/(B), VIII, IX, X, XI (if necessary) and XIII duly completed in all respects.
2. The receipt of this application form should be acknowledged.
3. The Deputy Commissioner (Pers.), KVS(HQ), NEW DELHI - 16.

ASSISTANT COMMISSIONER



-14-

ANNEXURE K 11
Phone { 34154 (AO)
45737 (EO) (65)

केन्द्रीय विद्यालय संगठन
KENDRIYA VIDYALAYA SANGATHAN

श्री बाहन खरिया
असिस्टेंट
प्रिन्सिपल

Regional Office
Hospital Road,
Silchar 788 001

Ref: N.F.2-4(A)/2003-KVS(SR)/ 11/10/03
Date: 05-9-03.

M E M O R A N D U M

Shri Bahan Kharia, Primary Teacher was appointed to the post of Primary Teacher with effect from 05-9-2001 on probation for a period of two years which is extendable as per rules. After reviewing the work and conduct of Shri Kharia, the undersigned being the appointing authority decides to extend the period of probation in respect of Shri Bahan Kharia, PRT, KV, Masimpur upto 04-9-2004, which accordingly stands extended upto 04-9-2004.

To
Shri Bahan Kharia,
PRT, Kendriya Vidyalaya,
Masimpur.

(M. M. JOSHI)
ASSTT. COMMISSIONER

Copy to:

The Principal,
Kendriya Vidyalaya,
Masimpur - With a request to send the probation report upto extendable period well in time for taking further action. Further he is requested to handover this memorandum to Shri Bahan Kharia taking proper acknowledgement.

ASSTT. COMMISSIONER

*Certified to be true copy
M. M. Joshi
Asstt. Secy*

2/05/09

