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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Disposed date-19/02/05
petition copy-1 to 5

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petition copy pg-1 to 8

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET.

Org. App/Misc. Petn/Cont. Petn/Rev. Appl..... 268/04.....

In O.A. _____

Name of the Applicant(s) B. Mishra

Name of the Respondent(s) U. C. I. Ans (K.V.S.)

Advocate for the Applicant N. Dutta, A.C. Boragohain, N. Borah, D. Bora

Counsel for the Railway/C.G.S.C. K.V.S. Counsel

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

This application is in form
is filed/C.F. for Rs. 10/-
deposited vide P.O. No. 200135478
Dated 23.11.04

24.11.2004

Dy. Registrar

Heard Mr N. Dutta, learned Sr.
counsel for the applicant as well as
Mr M.K. Mazumdar, learned counsel for
the respondents. List the matter for
hearing on interim relief before the
Division Bench on 30.11.04.

In the meantime status quo is to
be maintained till the next date
regarding the continuation of the
applicant in his/her present post.

Steps Taken

Pai.

K. P. B. B. B.

Member

bb

- 1) Page 28 & 29 is not legible.
- 2) Copy of the application is not served on respondents' counsel.

23/11/04
done
23/11/04

SOCC) Notice & order
sent with MP 127/04
sent to D/Section for
issuing to resp. Nos. 1, 2
and resp. No. 3 received by
hand. 24/12

30.11.04 Present : Hon'ble Justice Shri R.K. Batta, Vice-Chairman

Hon'ble Shri H.V.Prahladan,
Administrative Member.

Heard Mr A.C. Buragohain,
learned counsel for the applicant and
Mr M.K. Mazumdar, learned counsel for
the respondents 2 and 3.

Issue notice to the
respondents on admission. Mr M.K.
Mazumdar, learned counsel for the
respondents seeks four weeks time to
file reply.

List on 4.1.2005 for filing
reply. Status quo order dated 24.11.04
shall continue till next date.

[Signature]
Member

[Signature]
Vice-Chairman

pg

4.1.2005 Mr A.C. Buragohain, learned
counsel for the applicant and Mr M.K.
Mazumdar, learned counsel for the
respondents are present.

On the plea of Mr M.K. Mazumdar,
learned counsel for the respondents
four weeks time is allowed for filing
reply. List on 3.2.2005 for filing
reply. Status quo order dated 24.11.'04
shall continue till next date.

[Signature]
Member

7-1-05

w/s have filed

by the respondent no 2, 3

by.

bb

10.1.2005

Written statement has been filed.

The applicant may file rejoinder, if any.
List on 3.2.2005. Status quo order dated
24.11.2004 shall continue till next date.

[Signature]
Member (A)

18.1.05

Rejoinder has not
been filed by the
applicant.

mb

[Signature]
18.1.05

15/2/05

Rejoinder has been filed

OA. 268/04

3

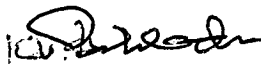
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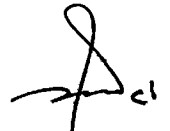
16.02.2005

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

The Hon'ble Mr. K. V.
Pahladan, Member (A).

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


Member (A)


Member (J)

pg

PUC - Memo No. HC. XXI. 33 150-53 / R.M. dtd.
10.10.07 received from The Asstt. Registrar
(B), Gauhati High Court, Gauhati.

The order dated 1.10.2007 at PUC
may kindly be seen.

The applicants A.K. Mishra & ors
filed the WP(c) 2311/2005 & 2313/2005
before the Hon'ble Gauhati High Court
against the judgment and order dated
16.2.2005 passed in O.A. No. 268/2004 in
series.

The above mentioned WP(c)s are
dismissed as infructuous on 1.10.2007.

Submit the same for favour of
kind perusal.

14/11

Signature
SO(S), 14.11.07.

Signature
14.11.07
S.O.(E)

Hon'ble (N)

Hon'ble V.E.

Department of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
			<p style="text-align: center;">  14/11/07 <u>Humble M(A)</u> </p>

Humble M(A)

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

Appeal from

~~Civil Rule~~

W. P. (C)

No.2313..... of 2005

A. K. Mishra & Ors

Appellant

Petitioner

Versus

Union of India & Ors

Respondent

Opposite Party

Appellant

For

Petitioner

Respondent

For

Opposite Party

~~Mr. G. K. Bhattacharya~~ Sr. Adv

Mr. B. Chakraborty
Mr. B. C. Kalita
Mr. S. Chakraborty
Mr. A. Ali

Mr S. C Biswas, Advocate -
S.C, K.V.S

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

URGENT

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

WP(C) 2311/2005

WP(C) 2313/2005

PRESENT

HON'BLE CHIEF JUSTICE MR. J.CHELAMESWAR

HON'BLE MR. JUSTICE ASOK POTSANGBAM

01.10.2007 •

(Chelameswar, CJ)

It is represented by Mr. B Chakraborty, learned counsel for the petitioners that these matters have become infructuous. Accordingly, these matters are dismissed as infructuous.

Sd/- ASOK POTSANGBAM
JUDGE

Sd/- J. CHELAMESWAR
CHIEF JUSTICE

Memo No.HC.XXI.....33, 150-53...../R.M.Dtd.....10/10/07.....

Copy forwarded for information and necessary action to: -

1. The Union of India, represented the Secretary, Govt. of India, Ministry of Human Resource, New Delhi.
2. Kendriya Vidyalaya Sangathan represented by its Chairman, 18, Institutional Area, Swahid Jeet Singh, New Delhi-16.
3. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Swahid Jeet Singh Mark, New Delhi-16.
4. The Deputy Registrar, Central Administrative Tribunal, Guwahati Bench, Guwahati-5. He is requested to acknowledge the receipt of the following records. This has a reference to his letter No. 16-3/02/JA/1773 dated 17.11.2005.

Encls. :

1. O.A. No.268/2004 Part A with Original Judgment.
2. M.P. 5/2005 Part A
3. M.P. 127/2004 Part A
4. M.P. 4/2005 Part A

By Order,

Asstt. Registrar (B)
Gauhati High Court, Guwahati.

10/10/07

80/20125
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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~XXX~~ No. 268/2004 & Series

DATE OF DECISION 16.02.2005.

Mrs. Biraja Mishra & Ors. APPLICANT(S)

S/Shri A.C. Buragohain & A. Dasgupta ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

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

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

THE HON'BLE MR. M.K. GUPTA, JUDICIAL MEMBER.

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

1. Whether Reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgment ?
 4. Whether the judgment is to be circulated to the other Benches ?
- Judgment delivered by Hon'ble ~~Judicial~~ Member.
- [Handwritten signature and mark on the right margin]*

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CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH

Original Application Nos. O.A.268/04(M.P.127/04), 269/04(M.P.129/04), 270/04(114/04), 271/04(M.P.134/04), 272/04(M.P.131/04), 273/04(M.P.120/04), 274/04(M.P.128/04), 275/04(M.P.130/04), 276/04(M.P.135/04), 277/04(M.P.117/04), 278/04(M.P.118/04), 279/04(M.P.116/04), 280/04(M.P.133/04), 281/04(M.P.115/04), 282/04(M.P.132/04), 283/04(M.P.124/04), 284/04(M.P.121/04), 286/04(M.P.126/04), 287/04(M.P.122/04), 288/04(M.P.119/04), 289/04(M.P.136/04), 290/04(M.P.159/04), 291/04, 292/04(M.P.137/04), 293/04(M.P.163/04), 294/04(M.P.160/04), 295/04(M.P.138/04), 296/04(M.P.161/04), 297/04(M.P.164/04), 298/04, 299/04(M.P.157/04), 300/04(M.P.139/04), 302/04(M.P.158/04), 303/04(M.P.162/04), 304/04(M.P.140/04), 305/04(M.P.141/04), 306/04(M.P.123/04), 307/04(M.P.125/04) and 313/2004.

Date of Order : This the 16th day of February, 2005.

THE HON'BLE MR. M.K. GUPTA, JUDICIAL MEMBER.

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

1. O.A. No. 268/2004 and M.P. 127/2004

Mrs. Biraja Mishra
Wife of Ashok Kumar Mishra
Principal, Kendriya Vidyalaya
Happy Valley
Shillong.

2. O.A. No. 269/2004 with M.P. 129/2004.


Shri Ashok Kumar Mishra
Son of Shri Bhahaban Mishra
Principal, Kendriya Vidyalaya
EAC, Upper Shillong, Shillong.

3. O.A. 270/2004 with M.P. 114/2004.

Smti. Ina Baruah
Daughter of Late Munindra Nath Gogoi, IAS,
Sundarpur Zoo Road,
P.O. & P.S. - Dispur, Guwahati - 5.

4. O.A. 271/2004 with M.P. 134/2004.

Shri Ashok P
Son of Late Sri K.S. Paramu Pillai
Principal, Kendriya Vidyalaya, AFS,
Jorhat, Assam.

5. O.A. 272/2004 with M.P. 131/2004.
- 

Shri Amit Tripathi
 Son of Shri Debabrata Tripathi
 Principal, Kendriya Vidyalaya
 Tura, Garo Hills, Meghalaya.

6. O.A. 273/2004 with M.P. 120/2004.

Shri Ranjit Kumar Sinha
 Son of Shri Tej Kishore Prasad Sinha
 Principal, Kendriya Vidyalaya, AFS,
 Borjhar, Guwahati, Guwahati - 17.

7. O.A. 274/2004 with M.P. 128/2004.

Sri Chandra Kumar Ojha
 Son of Sri Shakti Kumar Ojha
 Principal, Kendriya Vidyalaya
 HPCL, Jagiroad, Morigaon, Assam.

8. O.A. 275/2004 with M.P. 130/2004.

Sri Janakiranjan Dash
 Son of Late Mayadhar Dash
 Principal, Kendriya Vidyalaya, AFS,
 Digaru, Kamrup, Assam.

9. O.A. 276/2004 with M.P. 135/2004.

Sri R.C. Agarwal,
 Son of Late Roshan Lal Agarwal
 Principal, Kendriya Vidyalaya,
 ONGC, Jorhat.
 Assam.

10. O.A. 277/2004 with M.P. 117/2004.

Shri K.S. Murali Krishna
 Son of Shir K. Sankar Narayan
 Principal, Kendriya Vidyalaya
 No. 1 Tezpur, Assam.

11. O.A. 278/2004 with M.P. 118/2004

Shri Nilamani Pany
 Son of Late Murali Dhar Pany
 Principal, Kendriya Vidyalaya
 Umroi Cantt.
 Shillong, Meghalaya.

12. O.A. 279/2004 with M.P. 116/2004

Sri Gona Rama Rao



Son of Shri Giona Raghupati Rao
Principal, Kendriya Vidyalaya,
Missmari, Sonitpur, Assam.

13. O.A. No. 280/2004 with M.P. 133/2004

Shri Vijay Prakash Mishra,
Son of Shri Sadafal Mishra
Principal Kendriya Vidyalaya,
RRL, Jorhat
Assam.

14. O.A. 281/2004 with M.P. 115/2004.

Shri Vijayakumar M. Karkal
Principal, Kendriya Bidyalaya,
Lokra
District – Sonitpur, Assam.

15. O.A. 282/2004 with M.P. 132/2004.

Sri A. Jyothy Kumar
Son of Sri A.A. Nayar
Principal, Kendriya Vidyalaya,
Tenga Valley,
West Kameng, Arunachal Pradesh.

16. O.A. 283/2004 with M.P. 124/2004.

Shri D.C. Chattopadhyay
Principal, Kendriya Vidyalaya
Panbari, Dhubri
Assam.

17. O.A. 284/2004 with M.P. 121/2004

Sri Ranjan Kishore
Son of Late Siya Saran Verma,
Principal, Kendriya Vidyalaya,
Kokrajhar, Assam.

18. O.A. 286/2004 with M.P. 126/2004

Smt. Pathamitra Basu
Daughter of Late Priyabrata Ghosh
Principal, Kendriya Vidyalaya,
NEPA, Barapani, Shillong, Meghalaya.

19. O.A. No. 287/2004 with M.P. 122/2004

Shri Arpal Singh Bhati
Son of Late Hanwant singh Bhati

Principal, Kendriya Vidyalaya
NERIST, Nirjuli, Arunachal Pradesh.

20. O.A. No. 288/2004 with M.P. 119/2004

Smt. Bandana Mohanty
Daughter of Sri Hare Krishna Mohanty
Principal, Kendriya Vidyalaya
No. 1 Itanagar, Arunachal Pradesh.

21. O.A. No. 289/2004 with M.P.136/2004

Sri Devendra Kumar Dwivedi
S/O Chandra Bali Dwivedi
Principal Kendriaya Vidyalaya
Duliajan
Dist. - Dibrugarh (Assam), 786602.

22. O.A. 290/2004 with M.P. 159/2004.

Mr. V. Sivaji
S/o - Venkatraman
Principal Kendriya Vidyalaya
Karimganj, Assam.

23. O.A. 291/2004 .

N.M Varadharajulu
Son of N. Munuswamy Naidu
Principal, Kendriya Vidyalaya
Air Force Station chabua,
District - Dibrugarh, Assam.

24. O.A. 292/2004 with M.P. 137/2004.


Sri Bhat Keshav Narasinha
S/O Narasinha Bhat
Principal Kendriya Vidyalaya
Namrup.

25. O.A. 293/2004 with M.P. 163/2004.

Sri Gobind Prasad Saini
S/o C.L. Saini
Principal, Kendriya Vidyalaya,
ONGC Nazira.

26. O.A. 294/2004 with M.P. 160/2004

Sri Sri Sojan P John
S/o P.V. Johan
Principal, Kendriya Vidyalaya,
Hijuguri Colony Tinsukia.



27. O.A. 295/2004 with M.P. 138/2004.

Sri P.C. Ratha,
Son of Mr. Rama Chandra Ratha
Principal Kendriya Vidyalaya
Kunjaban, Agartala.

28. O.A. 296/2004 with M.P. 161/2004

Sri K. Lakhmipathi
Son of Mr. E. Kothandapani
Principal, Kendriya Vidyalaya,
K.V. Project Sewak, C/o 99 APO.

29. O.A. 297/2004 with M.P. 164/2004

Sri Md. Shabidur Rahman
S/o Sh. Abdul Rashid
Principal, Kendriya Vidyalaya
ONGC, Sibsagar.

30. O.A. 298/2004.

Sri B.K. Pradhan
S/O Mr. G.M. Pradhan
Principal Kendriya Vidyalaya
Kailashahar, North Tripura.

31. O.A. 299/2004 with M.P. 157/2004

Sri E. Ananthan
S/o - Ellappa Naidu
Principal, Kendriya Vidyalaya,
Tarapur, Silchar.

32. O.A. 300/2004 with M.P. 139/2004


Sri S. Sarangi
Son of Sri M.D. Sarangi
Principal Kendriya Vidyalaya
ONGC, Agartala.

33. O.A. 302/2004 with M.P. 158/2004

Sri Radha Gobinda Das
Son of Late Sarat Narayan Das
Principal, Kendriya Vidyalaya
Zakhama, Dist. - Kohima, Nagaland.

34. O.A. 303/2004 with M.P. 162/2004

Sri P.C. Mahapatra
S/o Sri S.B. Mohapatra



Principal, Kendriya Vidyalaya
64 Bn. BSF, Jaraitola, Cachar, Assam.

35. O.A 304/2004 with M.P. 140/2004

Sri B. Bvijaya Varma
S/o B. Kannayya Raju
Principal Kendriya Vidyalaya
Tuli.

36. O.A. 305/2004 with M.P. 141/2004

Sri Dayaram Yadav
Son of Lt. R.C. Yadav
Principal, Kendriya Vidyalaya
Kumbhirgram (AFS), Dist. – Cachar, Silchar.

37. O.A. 306/2004 with M.P. 123/2004

Sri R.S. Ramanujam,
Son of Sri Srinivasan R.
Principal, Kendriya Vidyalaya
New Bongaigaon, Assam.

38. O.A. 307/2004 with M.P. 125/2004

Sri K. Sreenivasan,
Son of Kalyanasundaran
Principal, Kendriya Vidyalaya
ARC, Doomdama,
Tinsukia, Assam.

39. O.A. 313/2004 .

Sri Mandem Krishna Mohan
Son of Mr. M. Munaswamy
Principal, Kendriya Vidyalaya,
GC CRPF, Langjing, Imphal, Manipur- 795113

..Applicants

By Advocates S/Sri A.C.Buragohain & N.Borah for Sl.No.1 to 20 and S/Sri A.Dasgupta & K.Bhattacharya for Sl.No.21 to 39.

- Versus -

1. Chairman,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 1.
2. Kendriya Vidyalaya Sangathan
Represented by the Commissioner, KVS
18, Institutional Area,
Shaheed Jeet Singh Marg,



New Delhi-110 016.
Through its Chairman

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

... Respondents

(By Advocate Sri M.K. Mazumdar, KVS Standing Counsel)

ORDER (ORAL)
SHRI M.K. GUPTA, MEMBER (J):

Rejoinders have been filed in each case, which are taken on record. With the consent of parties, we have taken up the cases for final hearing at admission stage.

2. Since the question of law involved in these O.As is identical, we propose to dispose of the abovesaid 39 O.As by this common order.

3. The applicants were appointed as Principal in different Kendriya Vidyalayas. One set of the said applicants had been appointed as Principals on regular basis and others had been appointed on deputation/ad hoc basis. Their grievance is common.

4. By ~~virtue of~~ present O.As they seek setting aside of the decision of the Chairman, Kendriya Vidyalaya Sangathan whereby direction had been given to Commissioner, Kendriya Vidyalaya Sangathan, to cancel or terminate their appointment to the post of Principal, KVS and also quashing such decision which culminated in termination order dated 18.11.2004 passed by the Commissioner, KVS.



5. It is an admitted fact that as far as the question of validity of orders passed in individual case vide order dated 18.11.2004 by the Commissioner, KVS is concerned, the same had been the subject matter before the Principal Bench of this Tribunal in O.A. No.281/2004, Mrs. Radha G. Krishan & Ors. Vs. KVS & Ors. decided on 21.12.2004.

6. After considering the rival contentions of the parties as well as noticing catena of judgements by the Hon'ble Supreme Court on various issues including the mandate of the principle of natural justice etc. the aforesaid termination order dated 18.11.2004, which is common to all applicants in present O.As as well as in the O.A before the Principal Bench, was quashed and set aside on the ground that when Rules and Regulations confer particular power on an authority only, the said authority should exercise the same rather than act on the directions of another, may be the superior authority. The Principal Bench noted that Commissioner, KVS in his impugned order had specifically stated that : "the undersigned has been directed by the Chairman, KVS to cancel the Appointment Order.....". Similarly, the Co-ordinate Bench in para 34 of the said judgement observed that:

"Ordinarily when the persons who had been appointed on regular basis as Principals, have a vested right as accrued in normal circumstances and they should have been given a chance to explain and thereafter taking stock of the totality of facts, an order could be passed pertaining to if they could be reverted to the lower post or note."

At the same time the Bench added that their aforesaid expression should be treated as opinion on merits. The Co-ordinate Bench also ruled that: "In all fairness, the applicants




could have been given opportunity to explain in this regard, particularly to those who have been regularly appointed."

7. After noticing various judgements, the Principal Bench also recorded the following conclusion:

"50. These facts which we have analysed, clearly indicate that so far as the post of the Principal is concerned, the appointing authority is the Commissioner of KVS and he is also the disciplinary authority to impose all penalties. So far as the Chairman is concerned, the powers are circumscribed by the Rules that have been framed. It does not give him the power to remove the concerned persons as against the requirement of the rules. It is true that under Rule 25 to which we have referred to above, the Chairman can exercise such powers as may be delegated by the Sangathan or the Board. But our attention has not been drawn to any such delegation of power by the Sangathan or the Board by amending the relevant rules conferring the powers of the appointment and of the disciplinary authority or any such other power which is vested with the Commissioner of KVS.

51. Once it is clear that the order has been passed on the dictate of the Chairman and not by the Commissioner applying his own mind as is clear from the tenor of the order, the orders in both the cases, on this ground, are liable to be quashed."

8. A close perusal of the aforesaid order passed by the Principal Bench would show that certain other observations were also made, which we are not repeating here except to reiterate. We as a Co-ordinate Bench are bound to follow the said precedent as held by the Hon'ble Supreme Court in S.I. Rooplal and Another vs. Lt. Governor through Chief Secretary, Delhi and Others, AIR 2000 SC 594. It is pointed out by learned counsel for the applicants that the Writ Petition (Civil) No.29-32 of 2005 as preferred before the Delhi High Court, wherein the validity of the said order had been



questioned. Vide judgement dated 25.1.2005 the High Court of Delhi maintained the order passed by the Principal Bench in so far as the termination of the Principals on the dictate of Chairman, KVS. As far as the other question relating to declaration that the petitioners were direct recruits on the post of Principal in KV and were entitled to be absorbed against their vacancies, it was not decided and the issue was remanded to the Tribunal for adjudication.

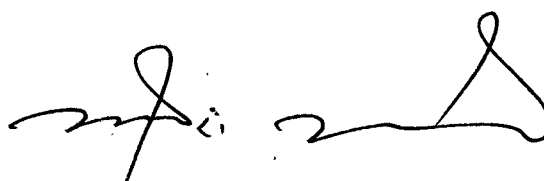
9. We may note that in all the O.As the order dated 18.11.2004 was filed subsequently byway of various Misc. Petitions filed which have also been taken up along with the O.As

10. Following the ratio and the dicta laid down in the aforementioned judgement we allow the present O.As and quash order dated 18.11.2004 passed by the Commissioner, KVS terminating the services of the applicants on the dictate of Chairman, KVS, with liberty to the respondents to take action in accordance with rules and law as held in para 52 of the aforesaid order passed by the Principal Bench.

11. Accordingly O.As and Misc. petitions are disposed of. No costs.


(K.V. PRAHALADAN)

MEMBER (A)


(M.K. GUPTA)

MEMBER (J)

Filed by
Nina
Barb
bambi

O. A. No. 268 of 2004

... Applicant.

Union of India & ors.

... Respondents.

The applicant abovenamed respectfully submits that this original application seeking a direction upon the respondents for not to disturb the service of the applicant as Principal of Kendriya Vidyalaya and to set aside and quash the impugned press release dated 19-11-2004 and allow the applicant to continue as Principal of respective Kendriya Vidyalaya.

That some of the relevant dates with brief facts leading to filing of the present applicant are as under -

12-06-1999 : Select List issued by KVS Headquarter for passing Department test.

(Annexure - A, Page - 12)

12-06-2001 : Appointment letter as Principal, KVS, NEPA Barapani, Shillong issued by Assistant Commissioner, Administration for Commissioner.

(Annexure - 2 Page - 5 of 6)

30-06-2001 : Joining letter.

(Annexure - C Page - 8)

24-06-2002 : Extension order of deputation of the applicant
and extended upto 30-06-2002.

(Appendix - D Page - 9-20)

Contd..

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07-07-2003: Extension order of deputation of the applicant and extended upto 29-06-2004

(Annexure - E, Page - ~~21~~ 20)

28-06-2004: Regularisation of the post of deputation as Principal, KVS, Upper Shillong.

(Annexure - F, Page - ~~22~~ 24)

19-11-2004: A press release issued by Ministry of Human Resource Development Department, Govt. of India (Impugned order) cancelling the appointment of all the Principals who were initially appointed on deputation basis and later on regularised.

(Annexure - G, Page - ~~25~~ 26)

20-11-2004: News item published in the The Hindu cancelling the appointment orders of over 300 KV, Principals on the ground that those appointments were made in violation of Rules.

(Annexure - H, Page - ~~27~~ 26)

18-11-2004: One particular office order cancelling the appointment of Sri S.K. Tyagi, Principal, KV, Faridabad.

(Annexure - I, Page - ~~28~~ 29)

22

DISTRICT : EAST KHASI HILLS

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GAUHATI BENCH: GUWAHATI

[An application under section 19 of the Administrative Tribunals
Act, 1985]

Original Application No. 268 /2004

Mrs. Biraja Mishra

...Applicant.

-Versus-

The Union of India and others.

...Respondents.

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Filed by:

Beech Baro.

Advocate.

Mrs. Biraja Mishra

DISTRICT: EAST KHASI HILLSIN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: GUWAHATI.

[An application under section 19 of the Administrative Tribunals Act, 1985]

Original Application No. /2004

I. Particulars of the Applicant:-

Mrs. Biraja Mishra,
Wife of Ashok Kumar Mishra,
Principal, Kendriya Vidyalaya,
Happy Valley,
Shillong.

II. Particulars of the Respondents:

Deleted-R-1
vide order
dt. 10/1/05
passed in
MP 05/05.

*1. Union of India,

Through the Secretary to the Government of
India, Ministry of Human Resource Development,
Central Secretariat,
New Delhi-1

2. Kendriya Vidyalaya Sangathan,

18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110016,
Through its Chairman.

Represented By Commissioner KVS

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

Mr. B. Raju M. S. Rao

III. Particulars of the order against which the application is made:-

The application is also presented against the press release dated 19-11-2004 issued by the Respondent No.1 and for a declaration that his appointment as Principal on regular basis is legal and valid.

IV. Jurisdiction of the Tribunal:-

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

V. Limitation:-

The applicant further declares that the present application is within the limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.

VI. Facts of the case:-

1. The applicant is a citizen of India and is as such entitled to all the rights and privileges guaranteed to the citizens of India by the Constitution of India and the laws framed thereunder.

Mrs. Bat Ajamish ro

mc

mc

mc

mc

Mr. B. B. Mishra

5. The applicant joined as Principal at Kendriya Vidyalaya, Umroi Cantt on 30-06-2001 and this was communicated to the Respondent No.2 by the Chairman, Kendriya Vidyalaya, Umroi Cantt vide his letter dated 30-06-01.

A copy of the said letter dated 30-06-2001 is enclosed herewith and marked as ANNEXURE - C.

6. Thereafter, the deputation period was extended vide orders dated 24-06-02 and 07-07-03. As per the order dated 07-07-03, the deputation period of the applicant was extended upto 29-06-04.

Copies of the two office orders dated 24-06-02 and 07-07-03 are enclosed herewith and marked as ANNEXURES - D & E respectively.

7. In the meantime, the applicant was transferred in public interest and posted to Kendriya Vidyalaya, Happy Valley, Shillong. The applicant joined as Principal, Kendriya Vidyalaya, Happy Valley, Shillong on 30-06-03.

8. The Respondent No.2 issued office order dated 28-06-04 appointing the applicant and 36 other Principals of Kendriya Vidyalayas, who were working on deputation basis, on regular basis with immediate effect. It was stated that the said appointments on regular basis were made in view of the emergence of 36 numbers of vacancies in the General and OBC category. It was further stated that the inter-se seniority of the aforesaid appointees will be

Contd.

determined under the Rules according to their rank in the select penal, which is indicated as per serial order of the said list.

A copy of the said office order dated 28-06-04 is enclosed herewith and marked as ANNEXURE - F.

9. Since then, the applicant is serving as Principal, Kendriya Vidyalaya, Happy Valley, Shillong on regular basis.

10. To the utter shock and surprise of the applicant, the Respondent No.1 issued a press release dated 19-11-2004 whereby it was stated that the appointments of all the Principals who were initially appointed on deputation basis and later on regularised have been cancelled. It was stated that directions have been issued to repatriate those Principals to their parental posts/cadre. The reason given was that the regulations were made in violation of the Rules of KVS and the reservation Rules of the Government of India. It was stated that the appointments on regular basis have deprived the candidates of reserve category.

A translated copy of the said press release dated 19-11-04 is enclosed herewith and marked as ANNEXURE - G.

11. A news item was also published in the daily newspaper "The Hindu" on 20-11-04 wherein it was reported that the Respondent No.1 cancelled the appointment orders of over 300 Kendriya Vidyalaya Principals on the ground that those appointments were made in violation of Rules and constitutional provisions on equality

28
Mrs. Binyan Singh

of opportunity. It was also reported that orders were issued repatriating them to their parent cadre.

A copy of the said news item published on 20-11-2004 is enclosed herewith and marked as ANNEXURE - H.

12. Though the applicant has not yet been served with any order cancelling his appointment as Principal on regular basis, he has obtained a copy of the office order bearing No.F7-7/2002/KVS (Esstt-I) dated 18-11-2004 issued by the Respondent No.2 in respect of one Shri S.K. Tyagi, Principal, No.1 Faridabad KVS, whereby his appointment as Principal on regular basis has been cancelled. It is stated therein that since his appointment on regular basis is void ab-initio, the cancellation of the same without issuing show cause notice is justified. Shri S.K. Tyagi has been directed to hand over the charge of Principal to the Vice-Principal/Senior most PGT immediately and report to the Principal-in-Charge in the same Kendriya Vidyalaya as PGT (Physics).

A copy of the said office order dated 18-11-04 is enclosed herewith and marked as ANNEXURE - I.

13. The applicant is similarly placed like Shri S.K. Tyagi. Both were earlier appointed as Principal on deputation basis and vide the office order dated 28-06-04 both were appointed Principal on regular basis. The press release dated 19-11-04 covers the case of the applicant as well.

Contd.

VII. GROUNDS:

1. For that the press release dated 19-11-04 and the decision contained therein are bad in law as well as on facts and the same are as such liable to be set aside and quashed.
2. For that the applicant is eligible and qualified to hold the post of Principal, KVS. He had successfully cleared the departmental examination for the post of Principal. Thereafter, pursuant to the advertisement issued in September, 2000, he submitted application for the post of Principal. He came out successful in both the written test and in the interview. Thereafter, he was appointed as Principal on deputation basis as per the approval of the competent authority. His deputation periods were extended from time to time and finally vide office order dated 28-06-2004 he was appointed on regular basis with immediate effect.
3. For that the applicant was appointed on regular basis against vacancies in the General and OBC category, and not against vacancies in the SC/ST category. His appointment was not at the expense of any SC/ST candidate.
4. For that the appointment of the applicant as Principal on regular basis was made in accordance with the relevant provisions of the Education Code and there was no violation of any provisions of the KVS Rules or any constitutional provisions.
5. For that no notice was issued to the applicant or any opportunity of hearing was granted to him before taking the

impugned decision. The impugned decision is in gross violation of the principles of natural justice and the same is as such liable to be set aside and quashed.

6. For that the clarification given that since the appointment order for the post of Principal on regular basis is void-ab-initio, the cancellation of the same without issuing show cause notice is justified in law, is wholly untenable. Far from being void-ab-initio, the appointment order of the applicant for the post of Principal on regular basis is legally valid and does not suffer from any infirmity. The impugned cancellation is most unjustified, illegal and arbitrary.

7. For that after becoming the Principal, the applicant's name was removed from the seniority list of PGTs. The applicant is senior to all the PGTs of his school. The impugned decision, if given effect to, would require the applicant to serve under his juniors.

8. For that as per the press release, the respondents are only contemplating amendment of the relevant service rules. The applicant's appointment was made as per the existing service Rule after following the due process of law. The same cannot therefore, be termed as illegal or unconstitutional.

9. For that after appointment of the applicant as Principal, there has been substantial improvement in the results for both Classes X and XII firstly in the KVS, Umroi Cantt and then in the KVS, Happy Valley, Shillong. Repatriation of the applicant would be wholly detrimental to the interest of the students and the school.

10. For that the impugned cancellation/repatriation would cause serious prejudice to the applicant. It would entail adverse civil consequences upon the applicant. Besides, it would cause extreme humiliation to the applicant which will have a demoralizing effect not only on the applicant but also on the whole school. Therefore, it become all the more necessary to atleast issue a show cause notice to the applicant, which is the minimum requirement.

11. For that the impugned decision can be justified only by reasons other than relevant and bonafide. No reasonable person properly instructed in law could have taken such a decision as has been done in the instant case. The impugned decision has been influenced by wholly irrelevant and extraneous considerations.

12. For that the impugned decision is vitiated by arbitrariness and unreasonableness. There is arbitrary exercise of power by the authority in the present case. The Respondents have acted illegally in taking the impugned decision and the same is violative of Articles 14 and 16 of the Constitution of India. There has been total non-application of mind by the Respondents to the relevant factors while issuing the impugned order. There is malice in law as well as on facts and the same has vitiated the impugned decision. The applicant has been subjected to an unfair treatment and the same has prejudicially affected him.

13. For that in any view of the matter, the impugned decision is wholly untenable and the applicant is entitled to the reliefs as prayed for in this application.

14. For that the Respondent No.1 vide press release on 19-11-2004 has cited the following three reasons for cancellation of the appointments -

- i) The percentage of marks was increased from 45% to 50% in the Master Degree as one of the essential qualifications making many aspirants ineligible for appointment. The Scheduled Caste, Scheduled Tribe, OBC and General category candidates have been deprived of their rights and equality of opportunity. Constitutional provisions on equality of opportunity have been violated.
- ii) Appointments were made against backlog quota of SC and ST vacancies.
- iii) Regularisation of deputation Principals is unconstitutional and violative of appointment rules.

15. For that the above reasons are flimsy, frivolous and devoid of merit. There has been precedence of increasing the percentage of marks in the essential condition by the UGC for lecturership. The increase in percentage of marks has only been applied to Principals of the KVS and PGTs, TGTs and PRTs, though in their cases the percentage of marks was also increased from 45% to 50%. The

regularisation of the Principals has been only against regular vacancies of General and OBC categories.

VIII. Details of the remedies exhausted:

As the applicant has challenged the legality and correctness of the impugned decision and has prayed for setting aside/quashing of the same, he has not submitted representation before the authority as the same would not only be a futile exercise but also render his challenge redundant.

IX. Matter not previously filed or pending with any other Court:-

The applicant has not filed any other case/application in any other Court/Tribunal regarding the present subject matter.

X. Reliefs sought:-

Under the facts and circumstances, the applicant prays for following reliefs :-

1. For a declaration that the applicant's appointment as Principal on regular basis vide office order dated 28-06-2004 is legal and valid,
2. To set aside and quash the impugned press release dated 19-11-2004 (Annexure - G) in so far it relates to the applicant,
3. To pass such further order or orders as this Hon'ble Tribunal may deem fit and proper,

Mrs. Binaya Mishra

4. Costs of the proceeding.

XI. Interim order prayed for:-

Pending disposal of the present application, the applicant prays for an interim direction to the Respondents not to disturb the service of the applicant as Principal of Kendriya Vidyalaya, EAC, Upper Shillong, Shillong and/or pass such interim order/orders as may be deemed fit and proper.

XII. Particulars of the Postal Order:-

Postal order - 206 135478

Date 23/11/04.

Issuing Office - Guwahati GPO

Payable at - Guwahati GPO

XIII. List of enclosures:-

An index showing the particulars of documents enclosed.

MR. BIRAJ NISHA

VERIFICATION:

I, Mrs. Biraja Mishra, wife of Ashok Kumar Mishra, aged about 42 years, by profession - service, resident of Shillong, do hereby verify that I am the applicant in the accompanying application. I am acquainted with the facts and circumstances of the case. I hereby verify that the statements made in paragraphs I to XIII are true to my knowledge and that I have not suppressed any material facts.

And I set my hand on this verification today the 22nd November, 2004 at Guwahati.

Mrs. Biraja Mishra.
Applicant.

Annexure - A'
36

KENDRIYA VIDYALAYA SANGATHAN
(TRAINING CENTRE)
SECTOR-2, R.K.PURAM, NEW DELHI

Ref. No. F.12-1/99/KVS (Tg)/DE

Dated: 21-6-99

(IV)

LIST OF SUCCESSFUL CANDIDATES OF THE DEPARTMENTAL
EXAMINATION HELD IN DECEMBER-1998.

S.No.	Name	Designation	KV	Reg ion
1.	2	3.	4.	5.
1.	Sh. A.P.Jyothish	Principal	MCL Dera	Bhubaneswar
2.	Sh. Banwari Lal Gautam	-do-	Dhanbad	-do-
3.	Sh. Bijay Ketan Pradhan	PGT	No.-1, Kalaikunda	-do-
4.	Sh. Ashok Kumar Mishra	PGT	MCL Dera	-do-
5.	Sh. Sarat Kumar Behura	PGT	Puri	-do-
6.	Sh. Bibhuti Bhosan Mishra	PGT	-do-	-do-
7.	Sh. Purna Chandra Sahu	PGT	Balasore	-do-
8.	Ms Uma Patnaik	PGT	-do-	-do-
9.	Sh. Pradeep Kumar Purohit	PGT	No.-1, Bhubaneswar	-do-
10.	Ms Biraja Mishra	PGT	FCI Talchar	-do-
11.	Ms Sulpani Sarangi	PGT	No.-2 Kalaikunda	-do-
12.	Sh. Purn Chandra Panda	PGT	Mancheswar	-do-
13.	Ms Snehsuta Shadangi	PGT	Berahmpur	-do-
14.	Sh. P.S.Geothi	Principal	INS Dronecharya	Chennai
15.	Ms Sita Lakshmi	Principal	Island Ground	-do-
16.	Sh. Sakthival (on deputation)	-do-	JNV Nalgouda (AP)	-do-
17.	Ms. K.Rajeshwari	PGT	Coimbatore	-do-
18.	Ms Sundari Krishnamurti	PGT	DGQA, Pazhavanthan- angal, Chennai.	-do-
19.	Ms Sharddha	PGT	OCF Avadi	-do-
20.	Sh. K.Lakshmi Pathi	PGT	-do-	-do-
21.	Sh. Mohan Das N.	PGT	Island Ground	-do-
22.	Sh. Cherian C.George	PGT	Pangode	-do-
23.	Sh. P.M.Chandrase	PGT	HVF Avadi	-do-
24.	Ms Ieline S. Theophilus	PGT	-do-	-do-
25.	Ms Neenakshi Madhu Gudanan	PGT	-do-	-do-

(Total Twenty five only)

J. Jagannathan
(Dr. (Mrs) J. JAGANNATHAN)
By: Commissioner
(Training)

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20/6/99

Annexure-B'

15- 37

KENDRIYA VIDYALAYA SANGATHAN
(ESTT.II SECTION)

SPEED POST

18 - INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI - 110016

DATE: 12-6-01

F:7-4/2001-KVS(E.II)/0067

THE ASSISTANT COMMISSIONER
KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE, BHUBNESWAR

Subject: Appointment of Smt Biraja Mishra, PGT(Geog),
K.V. MCL Dera(Orissa)
to the post of PRINCIPAL in Kendriya
Vidyalaya Sangathan by transfer on DEPUTATION
BASIS in Pay Scale of Rs.10000-325-15200/-.

Sir/Madam,

On the basis of the recommendations of the Selection Committee, the competent authority has approved the appointment of Smt Biraja Mishra as Principal in KVS on deputation basis in pay scale of Rs.10000-325-15200/- with effect from the date he/she assumes the charge of the post. His/Her deputation in KVS will be initially for a period of ONE YEAR or till further orders whichever is earlier. The period of deputation can be extended on year to year basis for a maximum period of 5 years depending upon his/her conduct and performance and administrative exigencies. The appointment will be governed by usual deputation terms.

2. He/She is posted as Principal at Kendriya Vidyalaya, Happy Valley, Shillong.

He/She will have an option to draw pay in the scale of the post or draw deputation allowance as per Govt. of India orders/ instructions on this subject.

3. Smt Biraja Mishra may be informed that this appointment on deputation will not confer on him/her any claim for permanent absorption/regular appointment as Principal in Kendriya Vidyalaya Sangathan. Moreover, he/she cannot claim for extension of deputation period as a matter of right. It should be clearly understood that the aforesaid period of deputation can be curtailed at the sole discretion of the Commissioner, KVS. On completion/termination of deputation period, he/she will be reverted back to his/her Parent Office/feeder post.

Contd....p/2...

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[Signature]

[Signature]

10 38
4. It is, therefore, requested that Smt Biraja Mishra may please be relieved the instruction as Principal at K.V. Happy Valley, Shillong latest by 30.6.2001, failing which it will be presumed that he/she is not interested in this offer and this offer will be treated as WITHDRAWN without any further notice. Before relieving, it may be ensured that no disciplinary case is pending or contemplated.

In case it is found at any stage that the candidate does not satisfy/fulfil the eligibility condition as prescribed in Recruitment Rules for the post of Principal OR is not clear from Vigilance angle or has furnished incorrect particulars or suppressed any material/information in the application for the post of Principal, his/her deputation shall stand terminated.

Yours faithfully;

(V.K.Gupta)
Assistant Commissioner(Admn)
For Commissioner

Copy to:-

1. Smt ~~Biraja~~ Biraja Mishra, PGT(Geog), K.V. MCL Dera, P.O. Dera Colloery, Dist- Angul(Orissa)- 759103. He may communicate his/her acceptance immediately to this office within 7 days from the date of issue of offer and also report to posting place as stated above by the stipulated period.
2. The Chairman, VMC, K.V. Happy Valley, Shillong with the request to intimate the date of joining of individual concerned to this office as well as Assistant Commissioner, KVS, RO, concerned immediately by Speed Post/ Fax.
3. The Principal, K.V. MCL Dera
4. The Asst. Commissioner, KVS, RO, Guwahati. He/She is requested to intimate the date of joining of the incumbent to this office immediately by Speed Post/Fax.
5. Personal file. 06. Guard file.

12
Assistant Commissioner(Admn)



Ann-B

फैक्स / FAX: 6514179

तार : (केविसंग)

Telegram: KEVISANG

फोन / TEL: 6858566, 6858567, 6858570, 6858571

केन्द्रीय विद्यालय संगठन

KENDRIYA VIDYALAYA SANGATHAN

18 संस्थागत क्षेत्र, शाहीद जेत सिंह मार्ग

नई दिल्ली 110 016

18 Institutional Area, Shaheed Jee Singh Marg

New Delhi 110 016

क्रमांक / No. F. 7-4/2001-KVS (Estt.II)/0067

दिनांक / Dated 20.6.2001

(SPEED POST)

OFFICE ORDER

In partial modification of this office communication of even number dated 12.6.2001, the posting of Smt Biraja Mishra PGT(Geog), Kendriya Vidyalaya, MCL Dera, Talchar, who has been offered the appointment to post of Principal on deputation basis is hereby modified from Kendriya Vidyalaya, Happy Valley Shillong to Kendriya Vidyalaya, Umroi Cantt.

02. She is directed to report for duty at KV Umroi Cantt latest by 30.6.2001 positively.

03. Other terms and conditions of this office communication dated 12.6.2001 remain unaltered.

(V.K.Gupta)

Assistant Commissioner (Admin)
for Commissioner.

Copy to:-

01. ✓ Smt Biraja Mishra, PGT(Geog), Kendriya Vidyalaya MCL Dera Talchar Distt Angul (Orissa) 759103
02. Principal, Kendriya Vidyalaya, MCL Dera Talchar
03. Chairman, VMC, Kendriya Vidyalaya, Happy Valley Shillong/Umroi Cantt for favour of information
04. Asstt Commissioner, KVS, R.O. Bhubaneswar/Gauwhati
05. Personal file
06. Office order.

Asstt Commissioner (Admin)

दस्तावेज को
फाइल करें

Am

महेश्वरी



केन्द्रीय विद्यालय

उमरोई कैंन्ट, जिला रिभोई
मेघालय - 793 103

KENDRIYA VIDYALAYA

Umroi Cantt, Ribhoi Dist. (MEGHALAYA) - 793 103

Annexure - C 40
Tel.: (O) 577233, 577355
(R) 577300, 577356

क/Ref.....F.71/KVUC/2001-02/

दिनांक/Date.....30-6-2001

To,

The Chairman,
VMC, K.V.Umroi Cantt.

Sub: Joining Report.

Respected Sir,

Consequent upon my selection to the post of Principal vide KVS letter No.F.7-4/2001-KVS(Estt-II)/0067 dt.20-6-2001 I am reporting for duty today ie 30-6-2001. I may be allowed to resume my duties as Principal, K.V.Umroi Cantt in the forenoon of 30-6-2001.

Thanking you,

Yours faithfully

dated. 30-6-2001

(Biraja Mishra)

Ok H
30/6

Biraja Mishra

KENDRIYA VIDYALAYA SANGATHAN
(Estt.II Section)

18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi -110016

No. F.7-07/2002.KVS(Estt.II.)

Dated;- 26.06.2002

OFFICE ORDER

Approval of the competent authority is hereby conveyed for extension of deputation periods in respect of the following Principals of Kendriya Vidyalayas, who have been working on deputation basis for a period of one more year or till further orders whichever is earlier as indicated against each;-

SNo.	Name of Principal and KV where working	Date of extension deputation period
GUWAHATI REGION		
01.	SHRI DC CHATOPADHYA PANBARI	22.6.2002
02.	SHRI SK BEHURA HAGAON	25.6.2002
03.	SHRI VIJAY KR. KARKAL LOKRA	27.6.2002
04.	SHRI OM BIR SINGH MOHANBARI	29.6.2002
05.	SMT B. MISHRA UMROI CANTT	30.6.2002
06.	SHRI AR MISHRA NEPA BARAPANI	30.6.2002
07.	SHRI AS BHATI NERIEST	30.6.2002
08.	SHRI G RAMA RAO MISSAMARI	30.6.2002
09.	SHRI NM VARADHARAJULU AFS CHABUA	30.6.2002
10.	SHRI RANJAN KISHORE KORRAJHAR	7.7.2002
11.	SHRI AMIT TRIPATI TURA	25.6.2002

02. It is clarified here that ;-

i) the period of deputation can be extended on year to year basis for a maximum period of five years after recknoing the initial date of joining on deputation depending upon the individual concerned Principal conduct and perforance and administrative exigencies of the organisation. Moreover, this appointment on

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deputation will not confer on him/her any claim for permanent absorption/regular appointment as Principal in Kendriya Vidyalaya Sangathan as well as he/she should not claim for extension of deputation period as a matter of right.

ii) The deputation period can be curtailed at the sole discretion of the Commissioner. On completion/termination of deputation period, he/she will be reverted back to his/her Parent office/feeder post.

02. Other terms and conditions of the offer of appointment of deputation to the post of Principal of the individual concerned remain unaltered.

(V.K. Gupta)

Deputy Commissioner (Admin & Fin)
for Commissioner.

Copy to:

01. Individual concerned Principal of KV
02. Asstt Commissioner, KVS, Regional Office with the request to make the proper entry in the service book of the individual concerned with proper attestation immediately and also regulate his increment which is due for this year under the provisions of rules as extended from time to time
03. Chairman, VMC of Kendriya Vidyalaya concerned.
04. Education Officer (Vig).
05. Office order file.

18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi -110016

No. F.7-07/2002.KVS(Estt.I)

Dated;- 7/7/2003

OFFICE ORDER

In terms of the offer of appointment to the post of Principal on deputation basis, approval of the competent authority is hereby conveyed for extension of deputation period in respect of the following Principals of Kendriya Vidyalayas, who have been working on deputation basis, for a period of one more year or till further orders whichever is earlier as indicated against each;-

=====

SNo.	Name of Principal and KV where working	Date upto which period of deputation extended
------	---	--

=====

Guwahati Region

- | | | |
|-----|---|------------|
| 01. | Sh.D.C.Chattapadhya
Panbari | 21.6.2004. |
| 02. | Shri S.K.Behura
Nagaon | 24.6.2004. |
| 03. | Sh.Vijay Kr.Karkal
Lokra | 26.6.2004. |
| 04. | Sh.Om Bir Singh
Mohanbari
(under order of transfer to CRPF,Guwahati) | 28.6.2004. |
| 05. | Smt. B.Mishra ✓
Umroi Cantt.
(under order of transfer to Happy Valley,
Shillong) | 29.6.2004. |
| 06. | Shri A.K.Mishra
Nepa Barapani
(under order of transfer to EAC Upper Shillong) | 29.6.2004. |
| 07. | Shri A.S.Bhati
NERIEST | 29.6.2004. |
| 08. | Shri G.Rama Rao
Missamari | 29.6.2004. |
| 09. | Sh.N.M. Varadharajulu
AFS Chabua | 29.6.2004. |
| 10. | Sh.Ranjan Kishore
Kokrajhar | 06.7.2004. |
| 11. | Sh. Amit Tripathi
Tura | 24.6.2004. |

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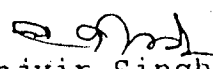
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12. Sh.A.M. Khan 18.7.2004.
BRPL Bongaigaon
13. Shri J.R.Das 03.7.2004.
Digaru
14. Shri N.Pani 02.7.2004.
Happay Valley
(Under order of transfer to Umroi Cantt)
15. Sh.C.K. Ojha 04.7.2004.
Jasgiroad
16. Sh. K.P. Rao 04.7.2004.
AFS Jorhat
(under order of transfer to Sambra)
17. Sh.R.C.Aggarwal 14.7.2004.
ONGC Jorhat
18. Sh.R.S.Ramanujam 12.7.2004.
New Bongaigaon
19. Sh.K.S.M.Krishna 04.7.2004.
No.1 Tezpur
20. Smt. P.Basu 18.7.2004.
Upper Shillong
(Under order of transfer to NEPA Barapani)

=====

02. The terms and conditions of the offer of appointment of deputation to the post of Principal remain unaltered.


(Rajvir Singh)
Deputy Commissioner(Pers)
for Commissioner.

Copy to:-

01. Individual concerned.
02. Asstt Commissioner, KVS, Regional office, Guwahati with the request to make proper entry in the service book of the individual concerned with proper attestation immediately and also regulate his increment as per rules.
03. Chairman, VMC of Kendriya Vidyalaya concerned.
04. Education Officer(Vig).
05. Three-order file

- 23 -
KENDRIYA VIDYALAYA SANGATHAN
(Esstt. -1 Section)

85 Annexure-1 F1
18- INSTITUTIONAL AREA,
SHAHEED JEET SINGH MARG,
NEW DELHI-110 016.

F.7- 7/2002-KVS(Esstt.1)

Dated: 28/6/2005

OFFICE - ORDER

In view of emergence of 36 vacancies in the general & OBC category, the Commissioner, KVS hereby appoints the following Principals of Kendriya Vidyalayas on regular basis, who have been working on deputation basis against the temporary posts of Principal in Kendriya Vidyalayas on an initial pay of Rs.10000/- in the pay scale of Rs.10000-325-15200/- or as admissible under the rules with immediate effect. Their inter-se seniority will be determined under the rules according to their rank in the select panel, which is indicated as per serial order of this list.

Sl.No.	Name of Principal	KV where working
1	Sh.B.Valmilingam	AFS Nala
2	Smt.L.Ramchandran	INS Mandovi
3	Sh.R.K.Lale	No.2 Sagar
4	Sh.C.Karunakaran	Khurda road
5	Smt.Vijay Lakshmi Das	Sunboda
6	Sh.S.K.Upadhyay	Old AS Dhanbad
7	Sh.DV.Ramakrishnan	Mallandam
8	Dr.S.P.Thakur	Meghahatuburu
9	Dr.P.Bhatnagar	CTPS, Chandrapur
10	Sh.P.Saktival	Salua
11	Sh.D.P.Mahapatra	No.2 Binaguri
12	Sh.Anil Kumar	Makda
13	Smt.Poonam Malik	No.4 Jalandhar
14	Smt.M.K.Kulshreshtha	Suranussi
15	Smt.Ranjana K.Bassi	Mandi
16	Smt.Rajni Uppal	Rawala
17	Sh.N.Ajay Babu	Birpur D'Dun
18	Sh.R.P.Chahar	Joshimath
19	Sh.G.S.Mehla	NHPC Banbasa
20	Sh.S.K.Tyagi	No.1 Faridabad
21	Sh.N.M.Vardarjulu	Chabua
22	Sh.Ranjan Kishore	Kokrajhar
23	Sh.V.K.M.Karkal	Lokra
24	Sh.G.Rama Rao	Missamari
25	Sh.Ombir Singh	Amalgong, Guwahati
26	Sh.S.K.Behura	Nagpur
27	Sh.A.K.Mishra	Upper Shilong
28	Sh.A.S.Bhat	Nerist

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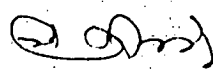
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29	Sh.D.Chattopadhyaya	Panabari
30	Smt.B.Mishra ✓	Happy Valley
31	Smt.S.K.Murthy	Kumool
32	Smt.Vasanthi Krishnan	ONGC Rajamundri
33	Smt. A.R.Lakshmi	SKU, Ananthapur
34	Mohd.Masood Ali	Rewa
35	Sh.V.Thiagarajan	Zawar Mines
36	Sh.Saseendran P.	No.1 AFS Suratgarh

02 The appointment is subject to the following terms & conditions:-

- They will be on probation for a period of two years with immediate effect, which may be extended by another two years for the reasons to be recorded in writing. Upon successful completion of probation period, they will be confirmed (in their turn).
- During probation and thereafter, until they are confirmed, their services are terminable by one month's notice on either side without any reasons. The appointing authority, however, reserves the right to terminate the services before the expiry of stipulated period of notice by making payment to the appointee of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof. They will draw the allowances and other benefits in addition to pay at Central Govt. rates as admissible to Kendriya Vidyalaya Sangathan Employees. They will be liable to transfer any where in India.
- Other terms & conditions of service governing the appointment are as laid down in the Education Code for Kendriya Vidyalayas as amended from time to time.
- In case of any dispute or claim against the Sangathan, the court at Delhi alone have jurisdiction to decide any dispute arising out of or in respect of service of any other contract.
- For non-KVS employees
They will be considered for absorption in the services of the KVS subject to their willingness and concurrence of their parent department.
- Their inter-se-seniority will be according to their rank in the Select Panel, which is indicated as per the serial order of this list.


 (RAJIVIR SINGH)
 Dy. Commissioner (Pers)
 For Commissioner

Distribution:-

- Individual concerned.
- The Assistant Commissioner, KVS, All Regional Offices with the request to keep a copy of this order in the Personal File of the individual concerned and also make the necessary entries to this effect in the Service Book with proper attestation.
- Office order file.

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Annexure - 6
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PRESS INFORMATION OFFICE
GOVT. OF INDIA

Annexure-6

The Ministry of HRD cancels appointment of Principals on deputation basis

NEWDELHI

Dt-19.11.2004

The Ministry of HRD has cancelled the appointed of all the Principals who were initially appointed on deputation basis and later on regularised in violation of the rules of KVS and the reservation rules of Govt. of India. The Ministry has also directed to repatriate the principals to their parental posts/cadre. A special drive will be launched to fill up the vacant post of Principals reserved for SC/ST. Besides this, the remaining vacancies will be filled up by all categories. The recruitment rules for Principals in KVS will be modified. As per this, one has to secure at least 45% marks at the Master Degree for direct recruitment. For appointment to the post of Principal on promotion, the employee has to serve at least one year as Vice Principal (Now three years).

The decisions were taken after thorough study of documents.

The 65th Meeting of the Board of Governors was held on 19th March, 1999 the mode of appointment of Principal by Commissioner was decided in the meeting. The study of documents reveals that the guidelines have not been followed due to which injustice has been done to the reservation as well as general category candidates. Apart from it, right to equal opportunity as laid down in constitutional articles, has also been flouted as a result of which employees belonging

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Advocate

to reserved as well as general categories have been deprived of opportunities to face competition. It has also been known that such principals who were appointed on deputation basis were regularised afterwards. In such cases, the Commissioner has violated the directive of the Hon'ble Supreme Court in regard to reservations. Thus, the Commissioner KVS has deprived the candidates of reserved category from their legitimate right though they had requisite qualification for the post of Principal.

There are 140 Principals on deputation who have been regularised in violation of rules. Besides this, 187 persons have been appointed as Principal on deputation basis. These persons are working against vacancies of reserved as well as general categories.

Appointments of 300 KV principals cancelled

By Our Special Correspondent

NEW DELHI, NOV. 19. The Human Resource Development Ministry today cancelled the appointment orders of over 300 Kendriya Vidyalaya principals issued during the Murli Manohar Joshi regime as these appointments were "made in violation of" rules and constitutional provisions on equality of opportunity. Cancelling the appointments, the Ministry also issued orders repatriating them to their parent cadre.

These appointments were made in exercise of the Commissioner's power to appoint principals and cleared at the 65th meeting of the Board of Governors of the Kendriya Vidyalaya Sangathan (KVS) on March 19, 1999.

The appointments were initially made on a deputation basis and subsequently many of the appointees were regularised "in violation of the KVS rules and

reservation rules of the Government."

Given the vacuum that will be created in a number of Kendriya Vidyalayas across the country, the Ministry simultaneously announced that a drive would be undertaken to fill the backlog of vacancies for principals from the Scheduled Caste and Scheduled Tribe categories followed by a general recruitment for all categories to fill up the remaining vacancies.

The Recruitment Rules for principals in KVS will be amended to make 45 per cent at the post-graduate level the qualifying mark for direct recruits.

The qualifying mark had been increased to 50 per cent by the previous regime "to the disadvantage of the reserved categories."

The rules will be amended to reduce the number of years for promotion as principal from vice-principal.

According to the ministry, the

decision to cancel the appointments was taken after a scrutiny of documents relating to the 65th Meeting of the Board of Governors of KVS. "These documents revealed that the Commissioner's power to appoint principals was not followed strictly resulting in injustice to persons belonging to both reserved and general categories."

Besides, constitutional provisions on equality of opportunity were violated as persons belonging to reserved/general categories did not get an opportunity to compete for the posts.

"Also, while appointing the deputationists on regular basis as principals, who were initially taken on deputation for a fixed tenure, the then Commissioner had not followed the Supreme Court judgment on reservation thereby depriving the legitimate rights of persons belonging to the reserved categories from getting appointed as principals in KVS," the ministry said.

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Advocate

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Annexure I
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**KENDRIYA VIDYALAYA BANGALURU
HEADQUARTERS
18, INSTITUTIONAL AREA
SHAHED JEET SINGH MARG
NEW DELHI - 110016**

No. F.7-7/2002/KVS (Estt-I)

November 18 2004

OFFICE ORDER

WHEREAS SHRI S.K. TYAGI presently working as the Principal at Kendriya Vidyalaya, NO 1 FARIDABAD was initially appointed as Principal on deputation basis vide letter No. F.7-4/2001-KVS(Estt-II) dated 12.6.2001.

WHEREAS the said SHRI S.K. TYAGI was appointed as Principal on regular basis while working as Principal on deputation basis by the then Commissioner, KVS, vide Office Order No. F.7-7/2002-KVS(Estt-I) dated 28.6.2004.

WHEREAS the Chairman KVS after examining all the materials on record and Recruitment Rules of KVS for the post of Principal has found that the then Commissioner had acted beyond the Recruitment Rules and constitutional provisions in appointing the said SHRI S.K. TYAGI as Principal on regular basis while working as Principal on deputation basis and has observed that his/her appointment on regular basis as Principal is ultra vires and hence in law and is liable to be cancelled.

to cancel the Appointment Order issued vide letter No. F.7-7/2002-KVS(Estt-I) dated 28.6.2004 to SHRI S.K. TYAGI appointing him/her as Principal on regular basis.

Contd.....2/

**Verified to be
True Copy.**

[Signature]
Director

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Pursuant to the above direction, I hereby cancel the appointment order issued vide Office Order No P 7-7/2003-K SEstt-I dated 28.6.2004 to SHRI S.K. TYAGI appointing him/her as Principal on regular basis with immediate effect. It is clarified that since the Appointment Order for the post of Principal on regular basis is void ab initio, cancellation of the same without issuing Show Cause Notice is justified in law. SHRI S.K. TYAGI is directed to handover the charge of Principal to Vice-Principal/Senior Most PGT immediately and report to Principal Incharge in the same Kendriya Vidyalaya as PGT (Phase II) the post held by him/her prior to his/her appointment as Principal and discharge his/her duties as may be assigned to him/her.

(RANGLAB JAMUDA)
COMMISSIONER

For information and necessary action to:

1. SHRI S.K. TYAGI, Principal, KV, No.1 Faridabad
2. The Principal, Kendriya Vidyalaya, No.1 Faridabad
3. The Chairman, VMC, Kendriya Vidyalaya No.1 Faridabad
4. The Assistant Commissioner, KVS, Region I Office, Delhi with the direction to ensure compliance of the above directions immediately. The same may be sent by FAX at No. 011-26832680.
5. Personal file.

KENDRIYA VIDYALAYA SANGATHAN

NOTICE

Applications are invited for preparing the panels to fill up the posts of Principals in Kendriya Vidyalayas in the pay scale of Rs. 10000-325-15200/- by transfer on deputation basis from amongst those serving the Central/State/Semi Govt. Autonomous Organisations and C.B.S.E. affiliated 2 Schools and also for direct recruitment to fill up the backlog vacancies of Principals for SC/ST fulfilling the following conditions:

Age: Should not exceed 50 years on the last date of receipt of the application. (Relaxable for SC/ST/OBC/Discharged Defence Personnel/Govt. servants and employees of K.V.S.) as per rules.

Essential Qualifications:

(i) Atleast 2nd Class Master's Degree (45% marks and above considered as equivalent) in Mathematics, Physics, Chemistry, Zoology, Botany, English, Hindi, Sanskrit, History, Geography, Commerce/Economics/Political Science, Computer Science/Physical Education/Music/or Fine Arts.

(ii) A Degree or Post Graduate Degree/Diploma in Teaching/Education.

(iii) Atleast 10 years experience in Educational Institutions including atleast 07 years teaching experience at Senior Secondary or Higher levels in recognized institutions and minimum of 03 years experience in educational administration.

Experience in Educational administration is defined as under:

(a) As Principal/Headmaster of a High School/Higher Secondary School/Inter College/Degree College: OR

(b) As Vice Principal of a Higher Secondary School/Inter College/Degree College/Head of Deptt. in a Degree College/University Teachers Training College: OR

(c) As House Master in Public/Sahnik School or as Officer in Army Education Corps: OR

(d) As a Vice-Principal in a Kendriya Vidyalaya for 03 years or more: OR

(e) As Vice Principal and/or PGT in Kendriya Vidyalayas for atleast 15 years: OR

(f) As Vice-Principal and/or as PGT in Kendriya Vidyalayas for atleast 10 years in case of those who have passed the Departmental Examination: OR

(g) As Warden of Hostel in a Kendriya Vidyalaya.

Desirable:

(i) Working knowledge of Hindi and English.

(ii) Experience in organizing Games and Sports and Co-curricular activities.

Note: In case sufficient number of SC/ST candidates are not forthcoming for filling backlog vacancies, the competent authority may consider relaxing administrative experience to the following extent:

5 years educational experience including 03 years teaching experience at Senior Secondary or Higher level in recognized institution and 02 years experience in educational administration. In case of existing Post Graduate teachers and Vice-Principals in Kendriya Vidyalaya belonging to SC/ST community who have rendered 10 years of service as PGT and/or Vice-Principal required administrative experience will be relaxed altogether.

How to apply

Applications complete in all respect as per proforma given in the Annexure along with attached copies of certificates, mark sheets mentioned therein, one self addressed post card and Demand Draft of Rs. 200/- (Rupees two hundred only) drawn in favour of Kendriya Vidyalaya Sangathan, New Delhi, should be submitted, in duplicate, to the Assistant Commissioner (Admin.), Kendriya Vidyalaya Sangathan, 1B, Institutional Area, Shaheed Jeeb Singh Marg, New Delhi-110016.

Applications neatly typed/written, in the prescribed proforma, on white paper only, on one side of the paper in double space (the size of paper should be that of foolcap size (21 x 30 cms) are acceptable. Candidates serving in any recognized Institution/Organization/Autonomous body or Central/State Govt. and CBSE affiliated 2 Schools must apply through Proper Channel. Applications through proper channel will be entertained only if they are received within two weeks after the last date. However, candidates should send an advance copy (along with the Demand Draft of Rs. 200/-) so as to reach Assistant Commissioner (Admin.) at the above mentioned address, before the last date. These advance applications will be considered provisionally subject to the condition that the applications through proper channel are received within two weeks after the last date. SC/ST/Ex-servicemen/Physically Handicapped are exempted from payment of Fee. The Ex-servicemen candidates who have already joined the Govt. job are not entitled for fee concession. Fee paid by Cash, Crossed Cheques, Money Order will not be accepted under any circumstances.

LAST DATE FOR RECEIPT OF APPLICATIONS IS 15TH DECEMBER, 2000.

Instructions to the candidates:

(a) The prescribed essential qualifications are the minimum and mere possession of the same does not entitle a candidate to be called for written test/interview. The K.V.S. may at its discretion to hold a written test, and call the candidates for interview on the basis of merit position in the examination. The decision of the K.V.S. in this regard shall be final and binding. No correspondence will be entertained in this regard.

(b) Departmental candidates belonging to the Kendriya Vidyalayas fulfilling the prescribed qualifications etc. held down for the post may apply Through Proper Channel.

Terms and Conditions:

(i) The employees of Central/State Govt. Autonomous Organisations and C.B.S.E. affiliated 2 Schools recognized by the Government which have facilities to release its employees on deputation basis on retaining a lien shall be eligible to apply.

(ii) The term of deputation shall be for 3 years and will be governed by the existing instructions of the Government of India relating to deputation. The K.V.S. reserves the right to repatriate the service of a deputationist at any time even before the completion of approved deputation period, depending upon their performance. Further, the appointment on deputation basis will not confer any right, on the candidate, for permanent absorption in the K.V.S. at any time.

Notes: (i) Applications if not received in duplicate shall be rejected.

(ii) Incomplete applications shall be rejected.

(iii) The date of eligibility in all respects shall be the last date for submission of the application.

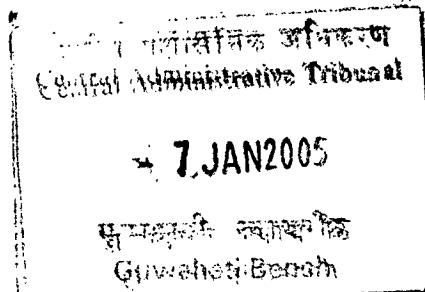
(iv) No correspondence in this regard shall be entertained.

KENDRIYA VIDYALAYA SANGATHAN

Copy

Signature

Minister



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH - GUWAHATI

O.A No.268/2004

IN THE MATTER OF:

Mrs Biraja Mishra

____ Applicant

- V E R S U S -

The Union of India & others

____ Respondents

Written Statement filed by the
Respondents No.2 & 3:

I, Sri U.N Khawarey, the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati, do hereby solemnly affirm and file the written statement on my behalf and on behalf of Respondent No.2 as under:-

1). That I have been served with a copy of the Original Application, I have gone through the contents thereof. I am competent to serve this Written Statement on being supplied with comments from the Head-quarters on behalf of the respondents, they being official respondents. I am fully acquainted with the facts and circumstances of the case.

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*Filed by the Respondent
Through Mr. Majumdar
Advocate
Secy. Sangathan*

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

3). That the deponent begs to apprise that the grievance of the applicant is that by issuing the order of cancellation of appointment and their repatriation to the substantive post their right have been violated, whereas the applicant has no right to submit that any of their right have been violated inasmuch as in the advertisement it is clearly mentioned that the term of deputation shall be for a period of one year extendable from year to year upto a maximum period of five years and will be governed by the existing instructions of the Government of India relating to deputation and that the Kendriya Vidyalaya Sangathan deserves the right to repatriate the deputationist at any point of time even before completion of the approved deputation period without assigning any reason.

4). That with regard to the statements made in paragraphs 6.2, 6.3, 6.4, 6.5, 6.6 and 6.7, the respondent states that these are matter of records and does not submit any comment.

5). That with regard to the statements made in paragraphs 8, 9, 10 and 11, the respondent denies the correctness of the same for, the decision of the Chairman in cancelling the appointment made on

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deputation basis and in furtherance some of them who were regularised were to be cancelled is lawful.

Had the applicants been appointed as per Rule of the Kendriya Vidyalaya Sangathan, then there was no need for the Kendriya Vidyalaya Sangathan to take action in the manner it has taken now. To allow the applicant to continue in the post would mean to giving a go-bye to all the Constitutional provisions and the Kendriya Vidyalaya Sangathan would remain a silent spectator by suppressing the legitimate rights of those persons who were eligible for being either promoted or recruited as Principals. It is submitted that the then Commissioner who happened to be the appointing authority appointed Principals on deputation basis on year to year basis. Simultaneously, the then Commissioner was approving clubbing of all the posts earmarked for General and OBC / other reserved category and went on appointing Principals on regular basis who were working on deputation, although no such provisions were not made in the recruitment Rule for the post of Principal. In all, upto now, there are 140 candidates whose appointments have been regularised against the Rules and as many as 187 persons working on deputation basis as Principals in various Kendriya Vidyalayas. These persons (Regularised as well as on Deputation) are occupying the posts meant for the reserved as well as general category candidates. The Commissioner's power to appoint Principals in the manner decided by the BOG was not followed strictly resulting in injustice to persons belonging to

Contd....

reserved / general category. The appointments made by the then Commissioner cannot stand the scrutiny of law inasmuch as there has been a flagrant violation of Constitutional provisions vis-à-vis persons belonging to reserved / general category who could not gather opportunity to compete for the post of Principal. Even the Hon'ble Supreme Court's Judgment on reservation has not been followed while operating the recruitment Rules thereby depriving the legitimate right of persons in the reserved category from getting appointed as Principals ever since the then Commissioner started regularising the deputationists as Principals who were initially appointed for a fixed tenure.

6). That with regard to the statements made in paragraphs 6.12 and 6.13, the respondent states that since filing of the Misc Petition 127/01py which the impugned order has been annexed the defect being cured and the respondent does not offer any comment.

7). That with regard to the grounds set forth in the application in paragraph ~~VI~~, the deponent submits that these grounds are ill founded and no legs to stand to support the claim of the applicant for the irregularities and illegalities as mentioned in above paragraph being committed in appointing the applicant in the initial, it has violated the provisions as under:

I. Direct recruitment quotas of ST/ SC/ OBC categories have been utilized by the deputationist's

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incidentally, reservation rules are not applicable when the posts are filled up with by way of deputation. Similarly, promotion quotas of all candidates have been utilized by deputationist. Deputationists for such period frustrated the very purpose of reservation Rules.

II. By denying the opportunity of competing for the post of Principal to the general public, the Constitutional Provisions have been violated.

III. By regularising the deputationist against the vacant posts of Principals contrary to the terms of deputation, the appointing authority (i.e. Commissioner KVS) has exercised the power not vested on him.

Therefore, from the above it is seen that no action contrary to law has been taken by the respondent and the actions have been taken in accordance with the Constitutional provisions and further more the applicants have no vested rights conferred upon them to seek quashing of the order dated 18-11-2004 and in the circumstances it is submitted that the applicant have not made out any case for interference by this Hon'ble Tribunal.

It is further submitted that, as submitted above there were irregularities committed by the then Commissioner, the present Commissioner referred the matter to the Chairman for taking a decision although the Commissioner himself had pointed out the

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following steps to rectify the same and details that was put forward by the Commissioner in this regard are as follows:

"Considering this blatant violations in the recruitment rules for the posts of Principals the following policy decisions are proposed to rectify the situation:

i. The order of appointment issued to the Principal on deputation for regularising their service as Principals while working on deputation may be cancelled.

ii. All the deputationist working as Principal may be repatriated to their parent cadre.

iii. Recruitment Rules for Principals may be amended providing for 45% quailing marks in Master Degree in case of direct recruitment and in case of promotees minimum 1 year qualifying service as Vice Principal in the Kendriya Vidyalaya for promotion to the post of Principal.

iv. Special Recruitment drive may be made for SC and ST to fill up the backlog vacancies followed by the general recruitment for all categories to fill up the remaining vacancies".

Thereafter, on getting the direction from the Chairman, the Commissioner proceeded to issue the order dated 18-11-2004. A reading of the order dated 18-11-2004 itself makes it clear that the

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Commissioner had applied his mind and it is only the applicant who are twisting the facts.

It is submitted that the Commissioner applied his mind and also the Rule while cancelling the appointments of the applicants. Since the regularisation and continuing of deputationist beyond the period is void ab-initio, non observance of principal of natural justice which in other words, the observance of natural justice is no way attracted would not vitiate the order dated 18-11-2004. It is further submitted if the order dated 18-11-2004 were not issued it would amount to encouraging the violation of constitutional provisions thereby depriving the legitimate right of the persons who are entitled to get appointment as Principal on promotion or by way of recruitment.

8). In view of the above it is submitted that there is no merit in the O.A and the O.A is liable to be dismissed with cost, it is also prayed that in view of the above the interim order passed by this Hon'ble Tribunal may be vacated.

V E R I F I C A T I O N.....Page/8

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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 paragraph 1, 2, 3, 4 & 5 are true to my knowledge, those made in — paragraphs being matter of records are true to my information derived therefrom. Annexures — are true copies of the originals and groups urged are as per the legal advice.

And I sign this affidavit on this the 4th day of January August, 2004 at Guwahati.

Identified by

Uday Narayan Khawarey

DEPONENT

Advocate's Clerk.

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FD by -
D. Mishra, Singh
A.C. Bandyopadhyay 16/12/05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BRANCH-GUWAHATI

O.A.NO. 268 OF 2004

MISC. CASE NO. 127/2004

In the matter of:-

B. MISHRA

.. Applicant

-VERSUS-

THE KENDRIYA VIDYALAYA SANGATHAN AND OTHERS

.. Respondents

AND

In the matter of:-

REJOINDER FILED ON BEHALF OF THE APPLICANT AGAINST
THE WRITTEN STATEMENT FILED ON BEHALF OF THE KVS.

I **B. MISHRA w/o Shri A. K. MISHRA** aged about 42 years, **Principal, KV, HAPPY VALLEY, Disst. EAST KHASI HILLS (MEGHALAYA)**, do hereby solemnly and sincerely affirm and state as follows:

1. That I am the applicant herein and as such acquainted with the facts and circumstances of the case. I have gone through the written statement filed by the respondents and having understood the contents, do hereby deny all the allegations, save those that are specifically admitted hereunder.
2. That the deponent begs to state that the entire written statements is based on a presumption that all the applicants were initially engaged as Deputaionists due to non-availability of suitable candidates for the direct recruitment and promotion. At the outset it is important to have a glance at the recruitment rules for the Principals as given under **Article 36 Appendix III of the EDUCATION CODE FOR KENDRIYA VIDYALAYAS**. As per the recruitment rules for the post of Principal, it is stated that 66.2/3% of posts are filled by direct recruitment on the basis of All India Advertisements and remaining 33.1/3 % by promotion. The applicants fall under the category of 66.2/3% direct recruitment. It is a precondition to

Biraja Mishra

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advertise for direct recruitment and only in the event, suitable candidates are not available by following such procedure, the respondent Sangathan can opt for filling up the vacancies on Deputation basis. Moreover, after 1999 there has been no advertisement for appointment by the KVS against Regular vacancies of general and OBC categories. No adequate answer has come up from the respondents as to the efforts made by them for obtaining regular direct recruitment candidates by way of deputation. No details of statistics are forthcoming from the reading of the written statement filed by the respondents.

3. That the deponent begs to state that a perusal of Appendix-12 of the Accounts Code for the Kendriya Vidyalaya clearly indicates that the term Deputation / foreign Service can be used only in the event of appointments made in public interests outside the normal field of deployment (i) on a temporary transfer basis to other Central Government Departments and state Governments and (ii) on temporary transfer on foreign service to bodies (incorporated or not) wholly or substantially owned or controlled by Government and organizations like Municipalities, University etc. Applicant submits that the applicants are borne on the records of the KVS. As such there is no element of Deputation in the selection of the applicants and hence by no stretch of imagination, their selection can be termed as Deputation. As already submitted an effort must be made by the respondents to appoint Principals by way of direct recruitment prior to appoint Principals on deputation basis and hence deponent reiterate that the selections of the applicants is a Direct recruitment and the term DEPUTATION is a MISNOMER and MISCHIEVOUS.

4. That the deponent begs to state in the year 2002, the KVS authorities issued instructions to the Asstt. Commissioners of the all the Regional Offices not to forward the applications of the Principals outside KVS admitting that they are facing shortage of Principals. This act of the respondents clearly indicates that the KVS had many vacancies of the Principals and they needed the services of the applicants to run the

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schools. By way of issuing such orders the respondents have deprived the applicant of an opportunity outside KVS.

5. The respondents have not offered promotion by applying the rule of proforma promotion to any Principal working on so called Deputation basis who have fallen in the zone of Promotion from the post of PGT to Vice Principal from the year 2000 to 2004, which clearly indicates that the KVS has treated all these appointments on regular basis.

6. That the deponent begs to state that the respondents KVS being an instrumentality of State under Article 12 of the Constitution of India, the respondents should act with more responsibility respecting the Fundamental Rights and Principles of natural justice. In the instant case, I submit that having recruited the applicant, the respondents did not even feel the necessity of issuing a notice disclosing the intentions to cancel the appointments of the applicants as Principals and they make self serving statement that the cancellation of appointment of the Principals by proceeding dated 18-11-2004 is not by way of any disciplinary proceeding as the same is only to correct the mistake committed by the department. I submit that such a statement by the respondents indicate the irresponsible, dictatorial and arbitrary attitude they have towards their employees in utter disregard of all the right available to them.

7. That the deponent begs to state that it is not out of place to mention that the respondents failed to explain as to the reasons existing for cancellation of the appointments in such haste is utter disregard to the Constitutional Rights as well as the Principles of natural justice. In the process, the respondents are committing a blunder of cancelling the duly selected Principals by directing them to handover the charge to the Vice Principals / senior most PGTs. The respondents failed to explain as to how such an arrangement would correct the imbalance in the rule of reservation, which they allege had occurred by the appointment of the applicants.

8. That the deponent begs to state that the respondents failed to explain as to how the chairman can over rule the decisions taken by the Board of

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Governors in their 65th Meeting, which was ratified, in the 66th meeting. Further the respondents failed to explain the irregularity committed by the Commissioner when he is only implementing authority and he has only implemented the decision of the Board of Governors as approved by the DOPT.

9. That the deponent begs to state that the appointing authority for the post of Principals is the Commissioner and the Chairman has no right to interfere when the Commissioner was implementing the decisions of the BOG as Executive Head to implement the rules and regulations as decided by the BOG of the Sangathan. Under Article 15 of the Education Code for KVS, the Commissioner has got powers to make appointments to all posts at Head Quarters and Regional offices as well as Vidyalayas corresponding in status to Group-A excluding Asst.Commissioner and above, on the recommendation of the Appointment Committee/DPC. Applicant further submits that the Commissioner, KVS made the appointments of the applicants pursuant to the minutes of the 65th and 66th meetings of the Board of Governors and only in the recommendation of the Appointment Committee/DPC and as such there is no irregularity committed by then Commissioner, which warranted the interference of the Chairman of KVS. The applicants are appointed after following the due procedure prescribed for the selection and the applicants are also fully qualified to hold the post of Regular Principal and therefore, the interference of the Chairman KVS is uncalled for and unwarranted. Applicant submits that when the Commissioner has only implemented the decisions of the BOG, the Chairman has no authority to direct the Commissioner to nullify the resolutions of the BOG since the powers of the Chairman; KVS are conformed only to ensure that all decisions taken by the board are implemented.

10. That the deponent begs to state that the statements of the respondents that there is no provisions for regularizing the Deputaionists against the regular vacancies without following the recruitment rules is a mischievous

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and misleading statement intended only to disguise the malafide actions of the respondents in terminating the services of the applicant without even the following the basic minimum principles of natural justice and the protections available to them under the service rules as well as the Constitution of India. The power to absorb the deputationist in the regular establishment is always available and when such a decision was taken in the 65th meeting of the BOG, which is supreme authority in the Sangathan and also a rule and policy making body, the respondents cannot be permitted to turn around and make such a submission before this Hon'ble Tribunal to suit their convenience. It is not out of place the applicant was not recruited without following any recruitment rules and it is respectfully submitted that the applicant is fully qualified and selected only pursuant to the procedure followed for direct recruitment.

11. That the deponent begs to state that the entire procedure followed for recruiting the applicant is the procedure that is to be adopted for direct recruitment, as is evident from the fact that the procedure adopted for direct recruitment of the SC/ST/OBCs is the same as that is followed for the selection of applicant. In fact the applicants as well as the reserved category candidates have gone through the same procedure of their selection and there is no difference. For instance a written test was conducted followed by an interview, which constituted the selection process for both the reserved category as well as applicant who belongs to the general category. I submit that though mistakenly the respondents termed the selection of the applicant as by way of Deputation, their intention all along is only to select the applicants on Direct recruitment basis since the procedure that is to be adopted is first to make an attempt to secure candidates for direct recruitment. When the respondents are not forthcoming with any information as to the attempts made by them to procure Principals by way of direct recruitment for all practical purposes as well as per the intentions of the respondents, the applicant was recruited as Direct recruitment Principal and are stopped from taking a huge U turn and

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state that they were initially recruited as deputationist and therefore, their regularisation and absorption in the KVS is unsustainable.

12. That the deponent begs to state it is pertinent to point out that the Chairman is not the Competent Authority as per the Education Code of KVS and therefore Chairman cannot abrogate the powers that are not vested in him and try to interfere and over rule the acts of the Commissioner done pursuant to the decisions of the Board of Governors.
13. That the deponent begs to state that the analysis of the reply statement filed by the respondents indicate that the decision to cancel the appointments of applicant is taken in view of the fact that there was a violation of the reserved quota system but the respondents fail to furnish any statistics or any fact to prove their contention. The bald and bare statements cannot be a justification for cancellation of the appointment of applicant. In fact the rule of reservation is followed as it is evident from the notification calling for candidature wherein, it is categorically mentioned that the backlog vacancies etc., of the reserved communities.
14. That the deponent begs to state that the respondents can not be permitted to use the word Deputation to their favour when for all practical purposes the applicant was selected as Direct recruit Principal. Assuming but without admitting applicant submits that when my initial recruitment is for a tenure of 05 years my continuation as Principal can not be termed as indefinite when not even the minimum tenure offered is not completed. Moreover, there are no unfettered powers to cancel the deputation without assigning any valid reasons. The Deputation can be concluded only basing on the conduct, performance and achievements but no otherwise. Therefore, even on this count the respondents miserably failed to make out a case for the repatriation of the applicant.
15. That the deponent begs to state that the intention of the respondents is always to treat the recruitment of the applicant as Direct recruitment as regular Principal in letter and spirit as could be seen from the fact that consequent to the selection of the applicant as Principal the vacancies of

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PGTs were filled up on regular basis. The said vacancies arose as a result of the applicants being selected as Principals. Therefore whatever may be the terms used by the respondents, the process that was undertaken was only for direct recruitment but not deputation. Now the respondents cannot be permitted to take advantage of the terminology used by them and term the selection of applicant as only deputation but not direct recruitment.

16. That the intention of the KVS was to put the applicants in substantive post of Principals is evident from the fact that about 140 Principals out of total 327 Principals were regularized against the vacancies of general and OBC categories, without affecting the quota of the vacancies of SC and ST. In other words the applicants were appointed by adhering to the rules meant for appointing Regular Principals in the KVS through All India advertisement in leading national dailies and Employment News followed Centrally conducted written test and an interview/ Viva Voce board conducted centrally at KVS head quarter in New Delhi. Such elaborate selection procedure is never adopted in case of appointment made on deputation basis. In fact the applicants were appointed in the post of Principal in substantive capacity and the word deputation is misleading and a misnomer.
17. That the deponent begs to state that the initial appointment of the applicants were regularized by the respondent vide order **No.F.7-7/2002-KVS (Estt.1) Dated 28.06.2004**. The order clearly states that the regularization has been made on the emergence of vacancies in the general and OBC category. Hence the regularization of the appointment to the vacant post of the Principal in no case hampers the interest of SC/ST category.
18. When the applicants are absorbed in substantive capacity of the existing regular posts they hold the lien to that post. Lien can only be withdrawn on superannuation or dismissal from the service. Any other means of withdrawing the lien to that post is clearly in violation of fundamental right.

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19. Some of the applicants whose services were regularized in the years 2001 and 2002 have successfully completed the period of probation and deemed to have confirmed after two years of probation, and they are out in the respective post in substantive capacity.
20. Therefore, it is prayed that this Hon'ble Tribunal may be pleased to declare that applicants were direct recruits on the post of Principal in Kendriya Vidyalayas as per the prevalent recruitment rules and are entitled to be absorbed against their vacancies as is in case of other such appointee, the applicants further prays to declare the applicants who are already regularized as Principals against vacancies of general and OBC categories, as a principals in substantive capacity and allow the O.A. as prayed for and to pass such orders or further orders as it deems just and proper in the circumstances of the case or else the applicant herein will suffer irreparable loss and injury

Solemnly and sincerely affirmed and stated

On this day of February 2005 and

Signed before me.

ADVOCATE, GUWAHATI

DEPONENT

Divya Mishra

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BRANCH-GUWAHATI

O.A.NO. 268 OF 2004

MISC. CASE NO. /2004

In the matter of:-

B. MISHRA

.. Applicant

-VERSUS-

THE KENDRIYA VIDYALAYA SANGATHAN AND OTHERS

.. Respondents

AND

In the matter of :-

REJOINDER FILED ON BEHALF OF THE APPLICANT AGAINST

THE WRITTEN STATEMENT FILED ON BEHALF OF THE KVS.

FILED ON:

FILED BY:

ADVOCATES:

GUWAHATI:

Biraja Mishra