

100
CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 272/2006

R.A/C.P No.....

E.P/M.A No. 1311/04

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SECTION OFFICER (Judl.)

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

ORDER SHEET

Org. App./MiscePetn/Cont.Petn/Rev.appl..... 272/04.....

In O.A.....

Name of the Applicant(s) ..Amit..Im pathi.....

Name of the Respondent(s).....H. U. I. (K. R. S.)

Advocate for the Applicant N. Dutta, A. C. Bora, N. Bora

D. Bora

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

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

24.11.2004

This application is in form
is filed C.F. I. I.S. 20/-
deposited via P. B. D.
No. 264 DSC/292
Dated. 23.11.04

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.

Member

Member

1) ~~defect~~ ^{Part} 22.22 & 23
the above defects will be removed.
2) COPY not yet served
on Respondents Counsel.

bb

23/11/04

30.11.04

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

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

Notice & order
with M.P 13/104
sent to D/Section
for issuing its
resp. Nos 1, 2 and
resp. No-3 received
by hand.

(Ld)
23/11/04.

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.

KV Prahladan
Member

R
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 seeks 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.

KV Prahladan
Member

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.

KV Prahladan
Member (A)

mb

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.

[Signature]

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 - 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 Janakirajan 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 Shri 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,
NEP A, 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 Kendriya 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

[Signature]

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, Doordam, 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)

O R D E R (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 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 the 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.

Sd/ MEMBER (J)

Sd/ MEMBER (A)

23 NOV 2004

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: GUWAHATI

IN THE MATTER OF :

O. A. No 272 of 2004

Sri Amit Tripathi.

... Applicant.

- Versus -

Union of India & ors.

... Respondents.

LIST OF DATES AND SYNOPSIS

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 -

12-06-2001 : Appointment order as Principal, KV, Tura, West Garo Hills, Meghalaya.

(Annexure - A, Page - 13-14)

24-06-2001 : Extension order of deputation of the applicant and extended upto 24-06-2003

(Annexure - B, Page - 15-16)

07-07-2003 : Extension order of deputation of the applicant and extended upto 24-06-2004

(Annexure - C, Page - 17-18)

19-11-2004 : A press release issued by Ministry of Human Resource Development Department, Govt. of India (Impugned order) cancelling the

Contd..

appointment of all the Principals who were initially appointed on deputation basis and later on regularised.

(Annexure - D, Page - 19-20)

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 - E, Page - 21)

18-11-2004

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

(Annexure - F, Page - 22)

01-01-2004

: Seniority List

(Annexure - G, Page - 24)

DISTRICT : GARO HILLS

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GAUHATI BENCH: GUWAHATI

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

Original Application No. 272 /2004

Shri Amit Tripathi

... Applicant.

-Versus-

The Union of India and others.

... Respondents.

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Filed by:



Advocate.

DISTRICT: GARO HILLS

IN 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:-

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

II. Particulars of the Respondents:

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, (As represented by the Commissioner
KVS)

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

Contd.

18

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

Anil Tripathi

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.

Contd.

Amit Tripathi

2. The applicant was initially appointed in the Kendriya Vidyalaya Sangathan (KVS) as Post Graduate Teacher (PGT) (Biology).

3. A departmental examination was held in December, 1999 for selection of candidates for the post of Principal, KVS. The applicant being eligible for the same as per the Education Code for Kendriya Vidyalayas, appeared in the said departmental examination and cleared the same.

4. Advertisement for the post of Principal, KVS was issued in September, 2000. The applicant applied for the post of Principal pursuant to the said advertisement. The written test was held on 20-04-2001 and the interview was held on 14-05-2001. The applicant was called to appear in both and was selected and on the basis of the recommendations of the selection committee, the competent authority approved the appointment of the applicant as Principal in KVS on deputation basis. By the appointment order dated 12-06-2001, the applicant was posted as Principal at Kendriya Vidyalaya, Tura, Garo Hills.

A copy of the said appointment order dated 12-06-2001
is enclosed herewith and marked as ANNEXURE - A.

5. The applicant joined as Principal at Kendriya Vidyalaya, Tura, Garo Hills on 25-06-2001 and this was communicated to the Respondent No.2 by the Chairman, Kendriya Vidyalaya, Tura, Garo Hills.

Contd..

Anup
Tripathi

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 24-06-2005.

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

7. Since then, the applicant is serving as Principal, Kendriya Vidyalaya, Tura, Garo Hills on deputation basis.

8. 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 - D.

9. 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 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 - E.

10. 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 - F.

11. 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.

12. The fact that the petitioner's name has been included in the all seniority list of KVS Principals published in 01-01-2004 and that no further extension has been granted to the petitioner is indicative of the fact that the petitioner's service has been regularised. Moreover, some of the junior Principals to that of the petitioner have been regularised and put their names below applicant's name in the All

India Seniority list is also indicated that the petitioner has been duly regularised.

The photocopy of the All India Seniority list indicating the petitioner's name at Sl. No.33 and his junior at Sl. No.34 is annexed herewith and marked as ANNEXURE - G.

Ankit Tripathi

I. 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.

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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

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and XII in the KV, Tura, Garo Hills. 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.

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Petition

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.

Anil Tripathi

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 - D) 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,

Anil Tripathi

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, Tura, Garo Hills and/or pass such interim order/orders as may be deemed fit and proper.

XII. Particulars of the Postal Order:-

Postal order - 20G 135492

Date 23.11.2004

Issuing Office - Guwahati GPO

Payable at - Guwahati GPO

XIII. List of enclosures:-

An index showing the particulars of documents enclosed.

VERIFICATION:

I, Shri Amit Tripathi, son of Shri Debabrata Tripathi, aged about 49 years, by profession – service, resident of Tura, Garo Hills, 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 23rd November, 2004 at Guwahati.

Amit Tripathi
Applicant.

KENDRIYA VIDYALAYA SANGATHAN
(ESTT.II SECTION)

SPEED POST

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

F.7-4/2001-KVS(E.II) 5032

DATE: 12.6.2001

THE ASSISTANT COMMISSIONER
KENDRIYA VIDYALAYA SANGATHAN,
REGIONAL OFFIC. CALCUTTA

Subject: Appointment of Shri Amit Tripathi, PGT(Bio),
KV No.1 Kanchrapara,
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 Shri Amit Tripathi 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, Tura

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. Shri Amit Tripathi 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.

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4. It is, therefore, requested that Shri Amit Tripathi may please be relieved the instruction to join at K.V. Tura as Principal 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. Shri Amit Tripathi, PGT(Bio), 28A, Charu Chandra Place East Calcutta -700 033.
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. Tura 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, KV No.1 Kanchrapara
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.

Assistent Commissioner (Admn) 42

- 15 - *Annexure-B* Speed Post
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:- 24.05.2002

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 NAGAON	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 AK 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 reckoning the initial date of joining on deputation depending upon the individual concerned Principal conduct and performance 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.

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(V.K.Gupta)
Deputy Commissioner(Admn & 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 Date upto which period
and KV where working of deputation extended

Guwahati Region

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

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

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**PRESS INFORMATION OFFICE
GOVT. OF INDIA**

Annexure - D

**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 reserved 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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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 Multi 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 "in 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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KENDRIYA VIDYALAYA BARCATION
HEADQUARTERS
18, INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI - 110016

No. P.T.7/2002/KVS(Estt-II)

November 18 2004

OFFICE ORDER

WHEREAS SHRI S.K. TYAGI presently working as the Principal at KVS Designation No. 1 RAMANAN was initially nominated as Principal on deputation basis vide letter (No. P.T.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. P.T.7/2002-KVS(Estt-II) 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 in intrinsic and honest in law and liable to be cancelled.

to cancel the Appointment Order issued vide Office Order Chairman KVS to cancel the Appointment Order issued vide Office Order Chairman KVS dated 28.6.2004 to SHRI S.K. TYAGI appointing him/her as Principal on regular basis.

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Pursuant to the above direction, I hereby cancel the appointment under issued vide Office Order No. P.T-7/2003-K SIEsl-II dated 28.5.2004 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, the 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) - 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 JAMUDAI)
COMMISSIONER

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 necessary action is taken immediately. The same may be sent by FAX at No. 011-26832680
5. Personal file.

KENDRIYA VIDYALAYA SANGATHAN
SENIORITY LIST OF PRINCIPAL'S APPOINTED ON DEPUTATION BASIS

Sl. No./ Sen. No.	Name of the Principal	Educational Qualification	Date of Birth	Year of Allot- ment	cate- gory	K.V. where working
1	2	3	4	5	6	7
1.	Sh. B. Vaithilingam	M.Sc. M.Ed., DSM	12.03.61	2001	-	AFS Naliya
2.	Smt. L. Ramchandran	M.Sc., B.Ed.	26.11.54	2001	-	INS Mandovi
3.	Smt. Alka Srinivas	-	17.12.61	2001	-	VSN Nagpur
4.	Sh. R.K. Lale	-	16.03.61	2001	-	No.2 Sagar
5.	Sh. Hemant Upadhyaya	M.A., M.Ed.	30.06.64	2001	-	Adra
6.	Sh. C. Karunakaran	M.A, M.Sc., B.Ed.	30.05.60	2001	-	Khurda Road
7.	Sh. S.S. Jhambunanda	M.Sc., B.Ed.	14.09.55	2001	-	Bonbamura
8.	Smt. Vijay Lakshmi Das	M.A., B.Ed.	12.04.46	2001	-	Sunabeda
9.	Sh. S.K. Upadhyay	M.Sc., B.Ed.	10.07.49	2001	-	Old DMS Dhanbad
10.	Sh. V Ramakrishnan D.	M.Sc., M.Phil., M.Ed.	28.03.62	2001	-	Maithandam
11.	Dr. S.P. Thakur	M.A., M.Ed., Ph.D	04.01.54	2001	-	Meghahatuburu
12.	Dr. P. Bhatnagar	M.Sc., M.A., Ph.D, LT	20.10.47	2001	-	Chandrapur
13.	Sh. P. Saktival	M.Sc., M.Ed.	02.01.61	2001	-	Salua
14.	Sh. D.P. Mahapatra	M.Sc., M.Ed.	08.10.48	2001	-	No.2, Binaguri
15.	Sh. Anil Kumar	M.Sc., M.Ed.	23.12.59	2001	OBC	Malda
16.	Smt. Poonam Malik	M.Sc., M.Ed.	20.07.65	2001	-	No.4, Jhalandhar
17.	Smt. Meena Kulshreshtha	-	01.03.61	2001	-	Suranussi
18.	Smt. Ranjaa K. Bassi	M.A.(Eng & Hin.) M.Ed.	18.10.58	2001	-	Mandi
19.	Smt. Rajni H. Uppal	M.A., M.Ed.	01.10.55	2001	-	Raiwala

1	2	3	4	5	6	7
20.	Sh. N. Ajay Babu	M.A., B.Ed.	18.04.52	2001	OBC	Almorah
21.	Sh. R.P. Chahar	M.A., M.Com., M.Ed.	01.05.49	2001	-	Joshimath
22.	Sh. G.S. Mehta	M.Com., B.Ed.	02.01.64	2001	OBC	NHPC Banbasa
23.	Sh. S.K. Tyagi	M.Sc., M.Ed.	01.03.55	2001	-	No.1, Faridabad
24.	Sh. N.M. Vardarjulu	M.A., M.Ed.	10.10.57	2001	-	Chabua
25.	Sh. Ranjan Kishore	M.A. M.Ed.	21.06.57	2001	-	Kokrajhar
26.	Sh. V.M. Karkal	M.Com., DHE	01.06.54	2001	OBC	Lokra
27.	Sh. G. Rama Rao	M.Sc., M.Ed., LL.B., PGDCS	07.03.60	2001	-	Missamari
28.	Sh. Ombir Singh	M.A., M.Ed.	01.01.62	2001	-	Mohanbadi
29.	Sh. S.K. Behura	M.Sc., M.Ed.	05.06.56	2001	-	Nagaon
30.	Sh. A.K. Mishra	M.Sc., M.,Ed.	24.03.63	2001	-	Nepa Barapani
31.	Sh. A.S. Bhati	M.A., M.Ed.	05.09.58	2001	-	Nerist
32.	Sh. D.C. Chattopadhyaya	M.A., M.Ed.	02.05.50	2001	-	Panabari
33.	Sh. A. Tripathi	M.Sc., M.Ed.	28.12.55	2001	-	Tura
34.	Smt. B. Mishra	M.A., B.Ed.	12.07.62	2001	-	Umrai Cantt.
35.	Smt. Sundari Krishna Murthy	M.Sc., M.Ed.	30.12.58	2001	-	Kurnool
36.	Smt. Vasanthi Krishnan	-	20.02.47	2001	-	ONGC Rajamundri
37.	Smt. A.R., Lakshmi	-	15.12.51	2001	-	Ananthpur
38.	Mohd. Masood Ali	-	04.01.58	2001	-	Rewa
39.	Sh. B.B. Mishra	-	01.02.55	2001	-	-
40.	Sh. C.M. Kurup	-	02.11.48	2001	-	Koraput

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7 JAN 2005

গুৱাহাটী বৰ্ষাকৰ্ত্তা
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH - GUWAHATI

O.A No.272/2004

IN THE MATTER OF:

Sri Amit Tripathi

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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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 6.8 and 6.9, the respondent denies the correctness of the same for, the decision of the Chairman in cancelling the appointment made on deputation basis is lawful.

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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 reserved / general category. The appointments made by the then Commissioner cannot stand the scrutiny of law inasmuch as their has been a flagrant violation

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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 paragraph 6.10, the respondent states that since filing of the Misc Petition 131/04 by 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 VII, 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 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.

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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.

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 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

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

As submitted in the preceding paragraphs, the chairman, KVS who is duty bound to implement the decisions of the BOG has after going through the records took a decision in the manner resulting the issuance of the order dated 18-11-2004. This order had not been issued in violation of any principles of natural justice but to protect the constitutional provisions. It is further submitted that the orders has not been issued by way of punishment but the same

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has been passed for, their appointments as Principals when effected by contravening the rules. It is submitted that the order dated 18-11-2004 is not primitive in nature inasmuch as the applicant's original position has been restored and therefore question of civil rights having been violated does not arise.

It is most specifically submitted that since there is no right for the applicant to continue as Principal on deputation and his further continuance would have harmed the interest of the organisation, it was the high time that a decision was taken in this regard to review the appointment made. Had the appointment were made in accordance with rule no review would have taken place and therefore it cannot be stated that the order dated 18-11-2004 repatriating the applicant is illegal. It is further submitted that no prejudice is caused to the applicant and even if the principle of natural justice were to be followed the result would have been same inasmuch as appreciating the rule of deputation the applicant would not have got any right to continue in the post.

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.

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
October, 2005 at Guwahati.

Identified by

Uday Narayan Khawarey

DEPONENT

Advocate's Clerk.