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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

100
M.P. 133/04 (DESTRUCTION OF RECORD RULES, 1990)
Ordersheet Not Forward

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disposed date - 10/02/05

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O.A/T.A No. 280/2004

R.A/C.P No.

E.P/M.A No. 133/04

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SECTION OFFICER (Judl.)

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

ORDER SHEET

Org. App./Misc Petn./Cont. Petn./Rev. Appl. 280/04

In O.A.
 Name of the Applicant(s) ... M. P. Mishra

Name of the Respondent(s) ... W. O. R. ... Ram K. V. S.

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

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

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
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24.11.2004

This application is in form
 is filed/C.F. ...
 deposited vide ...
 No. 209.135480
 Dated 23.11.04

[Signature]
 Dy. Registrar
 23/11/04

Steps taken

[Signature]

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.

[Signature]
 Member

bb

✓

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

Hon'ble Shri K.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.

K.V. 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 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.

K.V. Prahladan
Member

bb

7.1.05

WB has been ruled by R 10.1.2005

Reply No. 2, 23

Ag

Written statement has been filed. The applicant may file rejoinder, if any. List on 3.2.2004. Status quo order dated 24.11.2004 shall continue till next date.

K.V. Prahladan
Member (A)

mb

Notice & order,
sent to D/section
(with MP 133/04)
sent to D/section
for issuing to resp.
No. 1, 2 and resp. No. 3
by hand.

23/12/04

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

7

4

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



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)

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 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.

Sd/MEMBER (J)
Sd/MEMBER (A)

23 NOV 2004

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH, GUWAHATI.

IN THE MATTER OF :

O. A. No. 280 of 2004

Sri Vijay Prakash Mishra.

... 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 -

08-07-2003 : Appointment letter as Principal, KV, RRL, Jorhat issued by Deputy Commissioner, Administration for Commissioner.

(Annexure - A, Page - 13 to 14)

28-06-2004 : Extension order of deputation of the applicant and extended upto 20-07-2005.

(Annexure - B, Page - 15 to 17)

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 - C, Page - 18 to 19)

Contd.

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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 - D, Page - 120)

18-11-2004

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

(Annexure - E, Page - 216 22)

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केन्द्रीय प्रशासनिक न्यायालय
 Central Administrative Tribunal
 23 NOV 2004
 गुवाहाटी

DISTRICT: JORHAI

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GAUHATI BENCH: GUWAHATI

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

Original Application No. 280 /2004

Shri Vijay Prakash Mishra

...Applicant.

-Versus-

The Union of India and others.

...Respondents.

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Filed by:

Sachin Bora

Advocate.

DISTRICT: JORHAT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: GUWAHATI.

17
Filed by the
applicant through
Miser Bant
Advocate

Vijay Prakash Mishra

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

Original Application No. /2004

I. Particulars of the Applicant:-

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

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

Contd.

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

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.

2. The applicant was initially appointed in the Kendriya Vidyalaya Sangathan (KVS) as Post Graduate Teacher (PGT) (Hindi) on 12-09-1997.

3. Advertisement for the post of Principal, KVS was issued in December, 2002 in the "Employment News". The applicant applied for the post of Principal pursuant to the said advertisement. The written test was held on 06-04-2003 and the interview was held on 05-05-2003. 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 08-07-2003, the applicant was posted as Principal at Kendriya Vidyalaya, RRL, Jorhat.

A copy of the said appointment order dated 08-07-2003 is enclosed herewith and marked as ANNEXURE - A.

4. The applicant joined as Principal at Kendriya Vidyalaya, RRL, Jorhat on 21-07-2003 under the approval of the Chairman, Vidyalaya Management Committee, RRL, Jorhat.

5. Thereafter, the deputation period was extended vide order dated 28-06-04 and the deputation period of the applicant was extended upto 20-07-05.

Copy of the office order dated 28-06-04 are enclosed herewith and marked as ANNEXURES - B.

Contd.

Vijay Prakash Mishra

6. Since then, the applicant is serving as Principal, Kendriya Vidyalaya, RRL, Jorhat on deputation basis.

7. 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 - C.

8. 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 - D.

Contd.

Vijay Pradeep Mishra

9. 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 - E.

10. The applicant is similarly placed like Shri S.K. Tyagi. The press release dated 19-11-04 covers the case of the applicant as well.

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. In pursuant to the advertisement issued in

Contd.

Vijay Prakash Mishra

December, 2002, 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 was extended, which period is valid up to 20-07-2005.

3. For that the applicant was appointed 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 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 applicant's appointment letter was valid upto 20-07-2005. His case for regular appointment is under consideration and he would be appointed on regular basis as and when vacancies against General and OBC categories arises as is done in the principals selected in the 2001 and 2002 batch.

Vijay Prakash Mishra

7. For that the clarification given that since the appointment order for the post of Principal 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 is legally valid and does not suffer from any infirmity. The impugned cancellation is most unjustified, illegal and arbitrary.

Nigay P. S. K. M. N. S. K.

8. 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 ^{Teachers} PGTs of his school. The impugned decision, if given effect to, would require the applicant to serve under his juniors.

2 h

9. 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.

10. For that after appointment of the applicant as Principal, there has been substantial improvement in the results for both board classes classes and internal examinations in the KV, RRL, Jorhat. Repatriation of the applicant would be wholly detrimental to the interest of the students and the school.

11. 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.

12. 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.

13. 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.

14. 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.

Vijay Lalwani Mishra

15. 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.

16. 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.

Vijay Prakash Mishra

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 deputation basis which is valid upto 20-07-2005 is legal and valid,
2. To set aside and quash the impugned press release dated 19-11-2004 (Annexure - C) 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,
4. Costs of the proceeding.

Vijay Prakash Mishra

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, ^{RRL}~~ONGC~~, Jorhat and/or pass such interim order/orders as may be deemed fit and proper.

Vijay Prakash Mishra

XII. Particulars of the Postal Order:-

Postal order - 209 135480

Date 2-3-11-2004

Issuing Office - Guwahati GPO

Payable at - Guwahati GPO

XIII. List of enclosures:-

An index showing the particulars of documents enclosed.

VERIFICATION:

I, Shri Vijay Prakash Mishra, son of Shri Sadafal Mishra, aged about 45 years, by profession - service, resident of RRL, Jorhat, 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 November,
2004 at Guwahati.

Vijay Prakash Mishra
Applicant.

- 13 -

Annexure 'A'

29

KENDRIYA VIDYALAYA SANGATHAN
(ESTT. I SECTION)

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

F.7-11/2003-KVS(E.I)/0057

Date: 8.7.2003

The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office, Bangalore

Subject: - Appointment of Dr. Vijay Prakash Mishra, PGT (Hindi), K.V. No.2 Vasco-Da-Gama to the post of Principal in Kendriya Vidyalaya Sangathan by transfer on deputation basis in the pay scale of Rs. 10000-325-15200/-

Sir/Madam,

On the basis of the recommendation of the Selection Committee, the competent authority has approved the appointment of Dr. Vijay Prakash 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.

02. He/She is posted as Principal at Kendriya Vidyalaya, RRL Jorhat.

03. 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.

04. He/She 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.

05. It is, therefore, requested that he/she may be relieved with the instruction to join at K.V. RRL Jorhat as Principal latest by 28.7.2003 failing which it will be presumed that he/she is not interested in this offer and the same will be treated as WITHDRAWN without any further notice. Before relieving, it may be ensured that no disciplinary case is pending or contemplated against the official.

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Mr.
[Signature]

06. 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 deputatuion shall stand terminated.

Yours fatithfully,

(Rajvir Singh)
Deputy Commissioner(Pers)
For Commissioner

Copy to:-

1. ~~Dr. Vijay Prakash Mishra~~ PGT (Hindi),
KV, No.2 Vasco-Da-Gama. He/She may He may communicate his/her acceptance immediately to this office within 7 days from the date of issue of offer and also report to the place of posting as stated above by the stipulated period.
2. The Chairman, VMC, K.V., RRL Jorhat with the request to intimate the date of joining of the individual concerned to this office as well as Assistant Commissioner, K.V.S. R.O., concerned immediately by Speed Post/Fax.
3. The Principal, K.V. No.2 Vasco-Da-Gama, Goa ..
4. The Asstt. Commissioner, KVS, Regional Office 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.
6. Guard file.

(Rajvir Singh)
Deputy Commissioner (Pers)

KENDRIYA VIDYALAYA SANGATHAN
(ESTT-I SECTION)

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

F.7-7/2002-KVS(Estt.I)

Dated: 28.6.2004.

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:-

Sl.	Name of Principal	KV where working	Date upto which period Of deputation extended
01	Smt. Ramani Thyagrajan	Aurangabad	03.7.2005
02	Sh.R.Sankar	No.2 Cochin	29.6.2005
03	Smt. Metali Rudra	No.3 Colaba	22.6.2005
04	Smt.N.Prasanna Kumar	OF Bhusawal	24.6.2005
05	Sh.Md.Shahidurrahman	ONGC Sibsagar	14.7.2005
06	Smt.Dipty Roy Chowdhury	No.1 Dehu Road	08.7.2005
07	Sh.Y.G.Patil	Gulbarga	04.7.2005
08	Sh.P.Pramod	FW Kolkata	01.7.2005
09	Smt.Anubuti Mehta	Sec-30, Gandhinagar	08.7.2005
10	Smt.P.V.V.Prasanna	No.1 Raipur	03.7.2005
11	Smt.J.Ramda Devi	No.1 Kanchanpara	20.6.2005
12	Smt.Ranjana Chowdhury	Ambernath	22.6.2005
13	Smt.Lakshmi Ramkrishnan	Ernakulam	09.7.2005
14	Sh.Kumaran C.P.	No.1 Ajmer	08.7.2005
15	Sh.Shridar Mishra	IMA, Dehradun	02.7.2005
16	Sh.K.Prasad Mishra	Jamshaidpur	20.6.2005
17	Sh.Muralidhar Pathak	IIOC Barauni	04.7.2005
18	Ms.Vijay Anil Joshi	No.1 Ahmednagar	30.6.2005
19	Sh.Vinod Kumar Tyagi	Mathura Cantt.	08.7.2005
20	Sh.Prem Chand Sharma	IAT Gorinagar	04.7.2005
21	Sh.Ashok P.	AFS Jorhat	29.6.2005
22	Sh.Maya George	Arvankadu	30.6.2005
23	Sh.Ghosh S.	Dindori	16.7.2005
24	Sh.E.Krishna Murthy	Gangtok	26.6.2005
25	Sh.M.Maryappan	Kalliampong	08.7.2005
26	Sh.Arvind Gaur	No.2 Jaipur	18.7.2005
27	Smt.Shyam Chawla	Kapurthala Cantt.	24.7.2005
28	Dr.Mala Tiwari	Kasauli	25.7.2005
29	Smt.Kiran Awasthi	No.6 Jaipur	16.7.2005
30	Sh.S.Ajay Kumar	No.1 Nausena Bagh	24.7.2005
31	Smt.Ranjana Singhal	No.2 Jalandhar	22.7.2005

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(Signature)

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32	Sh. Sanjib Sinha	Paradeep Port	27.7.2005
33	Sh. M. S. Soianki	CRPF Gandhinagar	17.7.2005
34	Sh. TA. Santhana Raman	No. 2 Jammu	16.7.2005
35	Smt. Urmila Sharma	No. 1 Ambala	14.7.2005
36	Sh. V. Kalyanaraman	Guntakal	25.7.2005
37	Sh. Ranjit Kr. Sinha	AFS Borjhar	29.7.2005
38	Sh. Joshua Hastings	No. 2 Nausenabagh	16.7.2005
39	Smt. Indu Kaushik	No. 4 Ambala Cantt.	14.7.2005
40	Dr. (Smt) A. Nagamani	Samba	14.7.2005
41	Sh. S. P. Arora	No. 1 Pathankot	17.7.2005
42	Sh. George Thadathil	OF Dhandara	23.7.2005
43	Smt. Rama Raghuram	No. 3 Pathankot	21.7.2005
44	Sh. T. P. T. Gaur	Reckongpeo	13.8.2005
45	Smt. Pratibha Naruia	Lakhanpur	21.7.2005
46	Sh. B. L. Vyas	Suratgarh Cantt.	17.7.2005
47	Smt. Sushma Thapar	Sunjabari	16.7.2005
48	Ms. C. P. Chaudhari	No. 2 Colaba	27.7.2005
49	Smt. Bandana Mohanty	No. 1 Itanagar	24.7.2005
50	Sh. Gurjit Singh Sethi	No. 1 AFS Jaisalmer	20.7.2005
51	Sh. Prashant Ghanekar	Tezu	25.7.2005
52	Smt. S. R. Laxami	DGQA Chennai	24.7.2005
53	Smt. Poonam Pandey	Kashipur	19.9.2005
54	Sh. Vijay Pr. Mishra	✓ RRL Jorhat	26.7.2005
55	Sh. Bijay Ketan Pradhan	Bagafa	23.7.2005
56	Sh. B. Sudhakara Sharma	Ponchgram	21.7.2005
57	Smt. Neelam S. Kapoor	JRC Bareilly	29.10.2005
58	Sh. K. Lakshmi Pathi	Dimapur	22.7.2005
59	Sh. N. P. Mishra	NAD Visakhapatnam	07.9.2005
60	Dr. (Sh) Shiv Kr. Swamy	FRI Dehradun	19.9.2005
61	Smt. Swarna Shrivastava	CEF Kanpur	04.9.2005
62	Smt. J. L. Wishvekar	Bambolin Goa	29.8.2005
63	Sh. N. Suresh	CRPF Durgapur	13.9.2005
64	Smt. S. S. Shadangi	Uppal, Hyd.	11.9.2005
65	Sh. M. V. R. S. S. V. L. N. Sastri	NAD Kranja	07.9.2005
66	Sh. C. Mani	Bhandup	31.8.2005
67	Sh. Dinesh Kr. Gupta	Ahmedabad Cantt.	26.9.2005
68	Sh. L. Venu Gopal	Damoh	11.9.2005
69	Sh. G. K. Dwivedi	MIRC Ahmednagar	08.9.2005
70	Sh. P. Salvaraj	Ghar	04.9.2005
71	Smt. Kiran Mishra	No. 1 Jaipur	02.9.2005
72	Smt. Lizamma Daniel	Tumilgherry	08.9.2005
73	Sh. K. V. V. Ramamurthy	Kiranoli	13.9.2005
74	Sh. Ghanshyam Das	Baran	07.9.2005
75	Sh. Ramjee Singh	STPS, Suratgarh	04.9.2005
76	Sh. Kuldeep Kr. Gupta	Churu	04.9.2005
77	Sh. Srimala Sambanna	Ahmed	09.9.2005
78	Sh. M. Veerachary	Barkuli	09.9.2005
79	Smt. P. Anuradha	Ramrauli Allhad	14.9.2005
80	Smt. Vandana Shekhar	Sivassa	20.4.2005

(S. S. D. S.)

2- The terms & conditions of the offer of appointment of deputation to the post of Principal remain unaltered.



(Rajvir Singh)
Dy. Commissioner(Pers)
for commissioner

Copy to:-

- ✓ 1. Individual concerned.
2. The Asstt. Commissioner, KVS, RO, concerned with the request to make proper entry in the S/Book of the individual concerned with proper attestation immediately and also regulate his increment as per rules.
- ✓ 3. The Chairman, VMC of Kendriya Vidyalaya concerned.
4. The Education Officer(Vig), KVS(HQ), New Delhi.
5. Office order file.

-18-
Annexure - C
34

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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The Comr.
of
KVS

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.

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THE HINDU, Saturday, November 20, 2004

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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Annexure E

37

**KENDRIYA VIDYALAYA SANGATHAN
HEADQUARTERS
18, INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI - 110015**

No. P. 7/2001/KVS (Estt-I)

November 18 2001

OFFICE ORDER

WHEREAS SHRI S.K. TYAGI presently working as the Principal at Kendriya Vidyalaya, NO 1 FARINAPAN was initially nominated as Principal on deputation basis vide letter No. P. 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. P. 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 void in law and is liable to be cancelled. He has cancelled the Appointment Order issued vide O.O. No. P. 7/2002-KVS(Estt-I) dated 28.6.2004 to SHRI S.K. TYAGI appointing him/her as Principal on regular basis.

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COPIES OF
THIS COPY
[Signature]

Pursuant to the above direction, I hereby cancel the appointment order issued vide Office Order No P 7-7/2003-K SIEstt-I 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, 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 I) in 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 JAMUNDA)
COMMISSIONER

1. Action 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 with the above directions immediately. The same may be sent by FAX at No. 011-26852680.
5. Personal file

केन्द्रीय प्रशासनिक अपील निकाय
 Central Administrative Tribunal
 7 JAN 2005
 गुवाहाटी न्यायपीठ
 Guwahati Bench

*Filed by the Respondent 39
 Through Mr. Kojimolhar
 Adv. Guwahati
 S.M. Sangathan
 6-1-05*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH - GUWAHATI

O.A No.280/2004

IN THE MATTER OF:

Shri Bijay Prakash 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.

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, 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 7 and 8, the respondent denies the correctness of the same for, the decision of the Chairman in cancelling the appointment made on deputation basis 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 reserved / general category. The appointments made by the then Commissioner cannot stand the scrutiny of law inasmuch as there has been a flagrant violation

Contd.....

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 6.9 and 6.10, the respondent states that since filing of the Misc Petition 134/04 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.

Contd.....

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

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% qualifying 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

Contd.....

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.

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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
October, 2005 at Guwahati.

Identified by

Uday Narayan Khawarey

DEPONENT

Advocate's Clerk.