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3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P.-115/04 ordersheet not bound

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O.A/T.A No. 281/2004

R.A/C.P No.

E.P/M.A No. 115/04

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SECTION OFFICER (Judl.)

M M

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

ORDER SHEET

281/04

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

In O.A.
 Name of the Applicant(s) V. M. Karkal

Name of the Respondent(s) U. D. I. Jais K. V. S.

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

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

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

24.11.2004

This application is in order
 is filed in the office of
 deposited with P. B. S.
 No. 206/350/85
 Dated 23.11.04

Dy. Registrar

AI
AI
 23/11/04

Steps taken

AI

bb

Defect page 21, 22 & 23

The learned advocate submit
 to remove the above defect.

AI
 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

✓

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

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

Notice & Order, MP 115/04 sent to D/section for issuing to resp. Nos. 1, 2 and resp. No. 3 received by hand.

CLM
23/12/04.

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.

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 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.

K.V. 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.

K.V. Prahladan
Member (A)

mb

W/s has been filed on R. No. 243

MP
7/1/05

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.

5
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 Janakiranjana Dash
Son of Late Mayadhar Dash
Principal, Kendriya Vidyalaya, AFS,
Digaru, Kamrup, Assam.

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

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

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

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

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

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

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

Sri Gona Rama Rao



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

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

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

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

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

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

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

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

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

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

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

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

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

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

Shri Arpal Singh Bhati
Son of Late Hanwant singh Bhati

Principal, Kendriya Vidyalaya
NERIST, Nirjuli, Arunachal Pradesh.

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

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

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

Sri Devendra Kumar Dwivedi
S/O Chandra Bali Dwivedi
Principal 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)

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

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

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

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

4. By ~~virtue of~~² 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

Jps

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)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: GUWAHATI.

IN THE MATTER OF :

O. A. No. _____ of 2004

Sri Vijay Kr. M. Karkal.

... 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 : Appointed as Principal, KV, Lokra.
(Annexure - A, Page -13-14)

07-07-2003 : Extension order of deputation of the applicant and extended upto 26-06-2004.
(Annexure - B, Page - 15-16)

28-06-2004 : Regularisation order of the applicant as Principal, KV, Lokra.
(Annexure - C, Page - 17-18)

19-11-2004 : A press release issued by Ministry of Human Resource Development Department, Govt. of

Contd.

15

India (Impugned order) cancelling the 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)

Central Administrative Tribunal
23 NOV 2004
Guwahati Bench

DISTRICT : SONITPUR

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH, GUWAHATI

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

Original Application No. 281 /2004

Shri Vijayakumar M. Karkal

...Applicant.

-Versus-

The Union of India and others.

...Respondents.

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Filed by:

Banu Basu

Advocate.

DISTRICT: SONITPUR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH: GUWAHATI.

17
Filed by
[Signature]
(NIRANBAR SAHA)
23/1/2004

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

Original Application No. /2004

I. Particulars of the Applicant:-

Shri Vijayakumar M. Karkal,
Principal, Kendriya Vidyalaya,
Lokra,
District - Sonitpur,
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.

Represented by (Committee)
K.V.S.

Vijayakumar M. Karkal

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.

Nijayakumar M. Karikal

2. The applicant was initially appointed in the Kendriya Vidyalaya Sangathan (KVS) as Post Graduate Teacher (PGT) (Commerce) on 07-09-1987.

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. This would be evident from the list of successful candidates published by the KVS on 21-06-1999.

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 17-05-2001. 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, NEPA Barapani.

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

Vijayakumar M. Karikal

5. The applicant joined as Principal at Kendriya Vidyalaya, Lokra on 27-06-2001.

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

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

7. The Respondent No.2 issued office order dated 28-06-04 appointing the applicant and 36 other Principals of Kendriya Vidyalayas, who were working on deputation basis, on regular basis with immediate effect. It was stated that the said appointments on regular basis were made in view of the emergence of 36 numbers of vacancies in the General and OBC category. It was further stated that the inter-se seniority of the aforesaid appointees will be determined under the Rules according to their rank in the select penal, which is indicated as per serial order of the said list.

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

8. Since then, the applicant is serving as Principal, Kendriya Vidyalaya, Lokra, Sonitpur on regular basis.

Vijayakumar M. Karal

9. 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

10. 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

11. 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

Contd.

Vijayakumar M. Karbal

(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.

12. 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.

VII. GROUNDS:

1. For that the press release dated 19-11-04 and the decision contained therein are bad in law as well as on facts and the same are as such liable to be set aside and quashed.

2. For that the applicant is eligible and qualified to hold the post of Principal, KVS. He had successfully cleared the departmental examination for the post of Principal. Thereafter, pursuant to the advertisement issued in September, 2000, he submitted application

Contd..

Vijayakumar M. Karwal

for the post of Principal. He came out successful in both the written test and in the interview. Thereafter, he was appointed as Principal on deputation basis as per the approval of the competent authority. His deputation periods were extended from time to time and finally vide office order dated 28-06-2004 he was appointed on regular basis with immediate effect.

3. For that the applicant was appointed on regular basis against vacancies in the General and OBC category, and not against vacancies in the SC/ST category. His appointment was not at the expense of any SC/ST candidate.

4. For that the appointment of the applicant as Principal on regular basis was made in accordance with the relevant provisions of the Education Code and there was no violation of any provisions of the KVS Rules or any constitutional provisions.

5. For that no notice was issued to the applicant or any opportunity of hearing was granted to him before taking the impugned decision. The impugned decision is in gross violation of the principles of natural justice and the same is as such liable to be set aside and quashed.

6. For that the clarification given that since the appointment order for the post of Principal on regular basis is void-ab-initio, the cancellation of the same without issuing show cause notice is justified in law, is wholly untenable. Far from being void-ab-initio, the appointment order of the applicant for the post of Principal on

Vijaya Kumar M. Karikal

regular basis is legally valid and does not suffer from any infirmity.

The impugned cancellation is most unjustified, illegal and arbitrary.

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

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

9. For that after appointment of the applicant as Principal, there has been substantial improvement in the results for both Classes X and XII in the KV, Lokra. 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.

Vijayakumar M. Karbal

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.

Vijayakumar M. Karkal

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

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

- i) The percentage of marks was increased from 45% to 50% in the Master Degree as one of the essential qualifications making many aspirants ineligible for appointment. The

Scheduled Caste, Scheduled Tribe, OBC and General category candidates have been deprived of their rights and equality of opportunity. Constitutional provisions on equality of opportunity have been violated.

- ii) Appointments were made against backlog quota of SC and ST vacancies.
- iii) Regularisation of deputation Principals is unconstitutional and violative of appointment rules.

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

VIII. Details of the remedies exhausted:

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

Vijayakumar M. Karikal

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 - F) 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.

XI. Interim order prayed for:-

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

Vijaya Kumar M. Karikal

XII. Particulars of the Postal Order:-

Postal order - 209 135485-

Date - 23-11-04

Issuing Office - Guwahati GPO

Payable at - Guwahati GPO

XIII. List of enclosures:-

An index showing the particulars of documents enclosed.

VERIFICATION:

I, Shri Vijayakumar M. Karkal, son of _____, aged about 45 years, by profession - service, resident of Lokra, District - Sonitpur, Assam, do hereby verify that I am the applicant in the accompanying application. I am acquainted with the facts and circumstances of the case. I hereby verify that the statements made in paragraphs I to XIII are true to my knowledge and that I have not suppressed any material facts.

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


Applicant.

Vijayakumar M. Karkal

Vijayakumar M. Karkal

-13-

Annexure - A

9 (17)

KENDRIYA VIDYALAYA SANGATHAN
(EET.II SECTION)

SPEED POST

18 - INSTITUTIONAL AREA
SHAHEED JEET SINGH MARG
NEW DELHI - 1 1 0 0 1 6

F.7-4/2001-KVS(E.II)/0030

DATE:

THE ASSISTANT COMMISSIONER
KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE, MUMBAI

Subject: Appointment of Shri Vijayakumar M. Karkal
PGT (Comm), H.V. No.1 AFS Pune
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 Vijayakumar M. Karkal 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, Lokra

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 Vijayakumar M. Karkal 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 Sh. Vijayakumar M. Karkal may please be relieved the instruction to join at K.V. Lokra 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. ✓ Sri Vijayakumar M. Karkal, PGT (Comm), Flat No. 10, Laxmi Angan, S.No. 40 plot No. 35-36, Subhashnagar, Vishrantwadi, Pune
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. Lokra
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 AFS Pune
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. 08. Guard file.

62
Assistant Commissioner (Admn)

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

Dated;- 7/7/2003

OFFICE ORDER

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

SNo.	Name of Principal and KV where working	Date upto which period of deputation extended
<u>Guwahati Region</u>		
01.	Sh.D.C.Chattopadhyaya Panbari	21.6.2004.
02.	Shri S.K.Behra Nagaon	24.6.2004.
03.	Sh.Vijay Kr.Lalok 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.Bhatt 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.

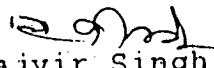
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Director

3 ✓ 

- 12. Sh.A.M. Khan
BRPL Bongaigaon 18.7.2004.
- 13. Shri J.R.Das
Digaru 03.7.2004.
- 14. Shri N.Pani
Happy 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.Ramantam
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(Vlg).
- 05. File-order file

- 17 -

Annexure - 2

39

33

(33)

KENDRIYA VIDYALAYA SANGATHAN
(Esstt. I Section)

18- INSTITUTIONAL AREA,
SILAHEED JEET SINGH MARG,
NEW DELHI-110 016.

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

Dated: 28/6/2005


OFFICE ORDER

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

Sl.No.	Name of Principal	KV where working
1	Sh.B.Vaithilingam	AFS Nafa
2	Smt.L.Ramchandran	INS Mandovi
3	Sh.R.K.Lale	No.2 Sagar
4	Sh.C.Karunakaran	Khurdaroad
5	Smt.Vijay Lakshmi Das	Sunabeda
6	Sh.S.K.Upadhyay	Old DMS Dhanbad
7	Sh.DV.Ramakrishnan	Maithandam
8	Dr.S.P.Thakur	Meghahaiburu
9	Dr.P.Bhatnagar	CTPS, Chandrapur
10	Sh.P.Saktival	Salua
11	Sh.D.P.Mahapatra	No.2 Binagun
12	Sh.Anil Kumar	Makla
13	Smt.Poonam Malik	No.4 Jalandhar
14	Smt.M.K.Kulshreshtha	Suranussi
15	Smt.Ranjana K.Bassi	Mandi
16	Smt.Rajni Uppal	Raiwala
17	Sh.N.Ajay Babu	Birpur D'Dun
18	Sh.R.P.Chahar	Joshimath
19	Sh.G.S.Mehta	NHPC Banbasa
20	Sh.S.K.Tyagi	No.1 Faridabad
21	Sh.N.M.Vardarjulu	Chabua
22	Sh.Ranjan Kishore	Kokarjhar
23	Sh.VK.M.Karkal	Lokra
24	Sh.G.Rama Rao	Missaman
25	Sh.Ombir Singh	Amerigong, Guwahati
26	Sh.S.K.Behura	Nagaon
27	Sh.A.K.Mishra	Upper Shilong
28	Sh.A.S.Bhati	Nerist

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[Signature]

24


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

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

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


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

Distribution:-

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

- 19 -

ANNEXURE D

25

(Signature)

PRESS INFORMATION OFFICE
GOVT. OF INDIA

Annexure-81

The Ministry of HRD cancels appointment of Principals
on deputation basis

NEW DELHI

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).

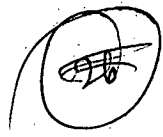
The decisions were taken after thorough study of documents.

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.

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THE HINDU, Saturday, November 29, 2001

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 the remaining vacancies.

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

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 review of all appointments made by the State Government of the Principal Category of KVS. These decisions revealed that the Commissioner's power to appoint principals was being misused, resulting in appointments of persons belonging to both reserved and general categories.

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

The whole appointment of deputationists on regular basis as principals who were later taken on deputation for a fixed term, the then Commissioner had not followed the Supreme Court judgment on reservation thereby depriving the legitimate rights of persons belonging to the reserved categories. The petition appointed a panel of 1,175 in the country and

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[Signature]

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

No. F.7-7/2001/KVS (Extt-II)

November 18, 2004

OFFICE ORDER

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

WHEREAS the said SHRI S.K. TYAGI was appointed as Principal on regular basis while working as Principal on deputation basis by the then Commissioner, KVS, vide Office Order No. F.7-7/2002-KVS(Extt-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 ultra vires and hence in law and liable to be cancelled. In view of the above, the Chairman KVS has decided to cancel the Appointment Order issued vide Office Order No. F.7-7/2002-KVS(Extt-II) dated 28.6.2004 to SHRI S.K. TYAGI appointing him/her as Principal on regular basis.

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Secretary

Pursuant to the above direction, I hereby cancel the appointment order issued vide Office Order No P 7-7/2002-K SIES(I-I) dated 28.6.2004 to SHRI S.K. TYAGI appointing him/her as Principal on regular basis with immediate effect. It is clarified that since the Appointment Order for the post of Principal on regular basis is void ab initio, cancellation of the same without issuing Show Cause Notice is justified in law. SHRI S.K. TYAGI is directed to handover the charge of Principal to Vice-Principal/Senior Most PGT immediately and report to Principal incharge in the same Kendriya Vidyalaya as PGT (Principal) 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 JAMUDAI)
COMMISSIONER

For information and necessary action to:

1. SHRI S.K. TYAGI, Principal, KV, No.1 Faridabad
2. The Principal, Kendriya Vidyalaya, No.1 Faridabad
3. The Chairman, VMC, Kendriya Vidyalaya No.1 Faridabad
4. The Assistant Commissioner, KVS, Region I Office, Delhi with the direction to advise him/her accordingly immediately. The copy may be sent by FAX at No.011-26852680.
5. Personal file.

आ. (का.) ५७७८०६०

(नि.) ५७८२५३०

प्र. अ. ५७८२३२८

ले. प. अ. ५७८१६१४

फैक्स : ०२२-५७७८०६०

तार : "केविस"

Phone : AC (O) 5778060

(R) 5782530

EO/AO 5782328

AIO 5778060

Fax : 022- 5778060

Telegram : "KEVISANG"

केन्द्रीय विद्यालय संगठन
KENDRIYA VIDYALAYA SANGATHAN

मुम्बई सम्भाग
MUMBAI REGION

आई. आई. टी. परिसर
I. I. T. Campus

पवई, मुम्बई-४०० ०७६
Powai, Mumbai-400 076

संचिका क्र.

File No. F.43-22/96/KVS(MR)

दिनांक :

Date : 17.10.2000

The Principal,
Kendriya Vidyalaya,

NO. I AFS PUNE

Subject:- Result of Departmental examination -1999

Ref.:- KVS letter No. F.1-KVS/Departmental Examination
99/Acad. dt. 5.10.2000.

Sir,

We are happy to inform that Vijayakumar M. Karkal,
PGT (Com.) of your Vidyalaya has succeeded
in clearing the Departmental Examination held in Dec, 1999
You are requested to inform the candidate and make
necessary entries in his/her service records.

Yours faithfully,

L. Chari
13 Oct 2000

(L. CHARI)

EDUCATION OFFICER
FOR ASSISTANT COMMISSIONER

Mr. Vijay Kumar
to Mr. Chari
24/10/2000
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Verified to be
True Copy

Chari

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no 82/12
Dt. 7-10-95 - M
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KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE BOMBAY

IIT POWAI
BOMBAY-76

F.15-13/95/KVS(BR)

Date:-28.9.95.

The Principal,
Kendriya Vidyalaya,
OF BOMBAY REGION.

Sub:- Entry of OBC in the service book - reg.

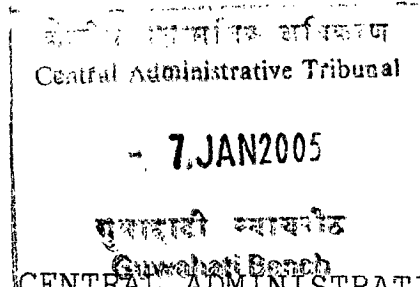
Sir/Madam,

Inviting your attention to the above subject,
I am to say that the entry regarding OBC may be made
in the service documents of the employees who belong
to that category under production of required certificate
as per rules.

Yours faithfully,

(28)
(RAM LAL)
ASSISTANT COMMISSIONER

R
4/10/



-26-42

Filed by the Respondent
through Mr. K. Mazumdar
Advocate

S.C. - K.V. Sangathan
06-01-05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH - GUWAHATI

O.A No. 281 /2004

IN THE MATTER OF:

Smt. Vijayakumar M. Karkal
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 8, 9, 10 and 11, the respondent denies the correctness of the same for, the decision of the Chairman in cancelling the appointment made on

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

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

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JS

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

6). That with regard to the statements made in paragraphs 6.12 and 6.13, the respondent states that since filing of the Misc Petition 129/04 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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AFFIDAVIT / Verification

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

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

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

And I sign this affidavit on this the 4th day of January
October, 2005 at Guwahati.

Identified by

Uday Narayan Khawarey

DEPONENT

Advocate's Clerk.