

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

ORDER SHEET

✓ Org. App. / Misc Petn / Cont. Petn / Rev. App. .... 13/04

In O.A. .... 24/2004

Name of the Applicant(s) ... Rajaram D. Nivede

Name of the Respondent(s) ... Sri. H. M. Canee

Advocate for the Applicant ... Mr. A. S. Choudhury  
 Mr. J. Hussain

Counsel for the Railway / CGSC ....

ORDER OF THE TRIBUNAL

OFFICE NOTE

DATE

12.5.2004 Present: Hon'ble Shri Mukesh Kumar Gupta,  
 Judicial Member

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

In this Contempt Petition, the breach of directions issued by an order dated 6.4.2004 passed in O.A. 24/2004 is alleged. Issue notice to the respondent as to why contempt proceedings be not initiated against him for alleged wilful and deliberate violation of the order dated 6.4.2004. The personal appearance of the respondent is dispensed with for the time being. Registry to issue notice at the earliest.

List the matter on 15.6.04 for orders.

*KV Prahlan*  
 Member (A)

*SPJ*  
 Member (J)

nkm

Section 107(1) 15.6.04.

Present: The Hon'ble Mrs. Bharati Roy, Judicial Member and Hon'ble Mr. K.V. Prahlan, Administrative Member.

None appears for the alleged contemners. It is seen that

contd/-

Notice & order dt.  
 12/5/04, sent to  
 D/Section for  
 issuing to respondent,  
 by regd. with A/D post.

12/5/04. Memo No. 793  
 Dt. 19/5/04.

A/D card return  
from respondent.

Copy  
9/6/04.

15.6.04. from the A/D Card that the notices were sent by the Registry was received by the alleged contemners on 26.5.2004. It appears that the alleged contemner <sup>is</sup> ~~was~~ not engaged <sup>as</sup> ~~as~~ yet. The matter be posted before the next Division Bench.

Member (A)

Member (A)

lm

22.7.2004 present: The Hon'ble Shri K.V.Sachidananda Member (J).

The Hon'ble Shri K.V.Prahladan Member (A).

When the matter came up for hearing, Mr.M.K.Mazumdar, learned counsel for K.V.S., submitted that he has filed reply statement and he also produced an order dated 8.6.2004 stating the compliance ~~to~~ of the order of the Tribunal passed in O.A. 24/2004 dated 6.4.2004.

The matter is relating ~~to~~ to transfer of an employee in K.V.S. Learned counsel for the applicant, Mr.I.Hussain submitted that the applicant, a teacher, has already retired on 31.5.2004.

Considering the aspect that the applicant has already been retired from service, we are of the view that the applicant's transfer is of no consequence now and therefore, nothing survives and hence the C.P. is liable to be closed.

Accordingly, we close the present Contempt Petition with the above observations. Noticesent, if any, ~~will be~~ <sup>will be</sup> discharged.

Member (A)

Member (J)

bb

12/5/04

केन्द्रीय प्रशासनिक अधिकारण  
Central Administrative Tribunal

10 MAY 2004

गुवाहाटी न्यायालय  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.  
GUWAHATI BENCH AT GUWAHATI.

Filed by the Petitioner  
Sri Raja Ram Dwivedi  
through  
Advocate  
10.5.04

Contempt Petition No. 13 /2004.  
( Arising out of O.A. No.24 of 2004. )

IN THE MATTER OF :

Sri Raja Ram Dwivedi

...

Petitioner.

-Versus -

Sri H.M. Carie

... Respondent.

Alleged Contemner.

- And -

IN THE MATTER OF :

An application under Section 17 of the  
Administrative Tribunals Act, 1985  
praying for initiation of a Contempt  
proceeding against the respondent for  
non-compliance of order dt. 6.4.2004  
passed in O.A. No.24/2004.

- And -

IN THE MATTER OF :

Sri Raja Ram Dwivedi,  
Son of late G.P. Dwivedi,  
R/o vill. Mawaiya,  
P.O. Harijindurnagar,  
Dist. Kanpur, Nagar, Pin: 206 007  
Uttarpradesh.

....

Petitioner.

- Versus -

Sri H.M. Carie

Commissioner,

Kendriya Vidyalaya Sangathan,  
18, Institutional Area,

Shaheed Jeet Singh Marg,  
New Delhi- 110 026.

... Respondent.  
Alleged Contemner.

The humble petitioner named above,

MOST RESPECTFULLY BEGS TO STATE :

1. That the petitioner is a permanent resident of village Mawaiya, P.O. Hariatnagar, Dist. Kanpur Nagar, Uttar Pradesh and is presently serving as an Work Experience Teacher in Kendriya Vidyalaya, Kokrajhar, Assam.
2. That the petitioner was initially appointed and served in Kendriya Vidyalaya at Kanpur and was transferred in public interest to Kendriya Vidyalaya, Kokrajhar vide an order dt. 9.10.2000 of the respondent and he joined there on 14.11.2000. He will retire on super annuaation on 30.5.2004.
3. That the Govt. of India as well as the Kendriya Vidyalaya Sangathan which is headed by the present respondent have published various notifications / guidelines for transfer of their employees. As per the notification/ guidelines, the petitioner was eligible for his transfer

and as such he applied for his transfer to his home State at U.P.. He also submitted the prescribed format of the K.V.S. as regards transfer according to which the petitioner is eligible to get top priority ( 20 points) as he is to retire on 30.5.2004.

4. That as nothing was done to transfer the petitioner, he approached this Hon'ble Tribunal vide Original Application No.170/2003 with a prayer for a direction to the respondents for his transfer to Kanpur Area or in any nearby areas in terms of Official Memorandum ( Accounts Code ) Thereafter, the respondent No.3 of the aforesaid O.A, i.e., Asstt. Commissioner, K.V.S. Guwahati filed a written statement wherein he made false statement that as the petitioner was transferred on administrative ground to Kokrajhar, he (petitioner) is not eligible for transfer. This contention was challenged by the petitioner before the Hon'ble Tribunal and the Hon'ble Tribunal vide an order dt. 21.11.2003 was pleased to direct the respondent to pass a reasoned and speaking order on the representations given by the petitioner/applicant taking into account the grounds taken in the Original Application and to pass a reasoned and speaking order in accordance with law, rules and instructions within two weeks of receipt of the order with intimation to the applicant. Thereafter, the order was immediately communicated to the <sup>present</sup> ~~proper~~ respondent on 9.12.2003. In this regard, one refinder was also sent on 27.12.2003.

5. That the petitioner states that thereafter, the respondent passed an order dt. 5.1.2004 rejecting the prayer of the petitioner.

6. That being aggrieved, the petitioner preferred another Application before this Hon'ble Tribunal, being O.A. No.24/2004 with a prayer for quashing the aforesaid order and prayed for a direction for his transfer to his home State as per the own guidelines issued by K.V.S. authorities from time to time as he is going to retire on 30.5.2004 and his family was in great difficulty at home because of his absence. In the said O.A., also the respondent filed written statement reiterating their earlier contention that as the petitioner/applicant was transferred on administrative ground, and not on public interest, he is not eligible for transfer. The respondents without verifying the contention as well as fact (Transfer order dt. 9.10.2000 issued by him) submitted false written statement and tried to mislead the Hon'ble Tribunal. Thereafter detail hearing, this Hon'ble Tribunal was pleased to pass an order on 6.4.2004 discussing the facts in details and rejected the contentions of the respondent that the petitioner /applicant was transferred on administrative ground and further held that as the petitioner /applicant was transferred on public interest, he is eligible for transfer back to Kanpur and he also gets the benefit of being posted in excess of three years in N.E. States for the purpose of transfer. By the said order, the respondents were directed to consider transferring the petitioner/applicant to any of the places of his choice near Kanpur, Unnao, Lucknow, Fatehgarh and Etawah within fifteen days of receipt of the order.



The copy of order dt. 6.4.2004

passed in O.A. No.24/2004 is annexed  
as Annexure No.1.

7. That the petitioner states that after obtaining the certified copy of the order, the same was sent to all the respondents including the present respondent through FAX dt. 17th April 2004 alongwith a forwarding letter dt. 17.4.2004.

The copy of letter dt. 17.4.2004 along with FAX receipt dt. 17.4.04 is annexed as Annexure No.2.

8. That the petitioner also sent reminder dt. 30.4.04 to the respondent vide a FAX message dt. 30.4.04.

The copy of letter dt. 30.4.04 alongwith FAX receipt dt. 30.4.04 is annexed as Annexure No.3.

9. That the petitioner states that he also submitted his representation dt. 19.4.04 alongwith copy of the order of the Hon'ble Tribunal through proper channel and the same was forwarded by the Principal of Kokrajhar Kendriya Vidyalaya Ssanthan on 22.4.04.

The typed copy of the representation dt. 19.4.04 sent to respondent is annexed as Annexure No.4.

The copy of forwarding letter dt. 22.4.04 of the Pttncipal K.V.S.Kokrajhar is annexed as Annexure No.5.

10. That all his representations have been received by the respondents and more than three weeks have been passed since receipt of order of this Hon'ble Tribunal through FAX dt. 17.4.04. But till date nothing has been done to implement the order of the Hon'ble Tribunal to transfer the petitioner.

11. That the petitioner states that as he is going to retire on 30.5.04, the respondent is avoiding of taking any action to implement the order, just to frustrate the prayer of the petitioner by lapse of time.

12. That the respondent has wilfully violated the order dt. 6.4.04 passed in O.A. No.24/04 in not transferring the petitioner to Kanpur area as per direction of the Hon'ble Tribunal. The respondent is duty bound to honour the order of the Hon'ble Tribunal. Because of violation of the order of this Hon'ble Tribunal, it is a fit case for initiation of Contempt proceeding against him and impose punishment in accordance with law and further be pleased to pass any other order or orders as deemed fit and proper in facts and circumstances of the case stated above.

13. That this petition is filed bonafide and for ends of justice.

Under the above circumstances, this Hon'ble Court may be pleased to initiate contempt proceedings against the respondents/alleged contemper for willful non-compliance of order

dt. 6.4.04 passed by this Hon'ble  
Tribunal in O,A. No.24 of 2004 and further  
be pleased to impose punishment upon  
the ~~g~~alleged contemners in accordance  
with law and further be pleased to pass  
any such other order as deemed fit and  
proper by this Hon'ble Tribunal

And for this act of kindness, the humble petitioner, as  
in duty bound, shall ever pray.

Affidavit....

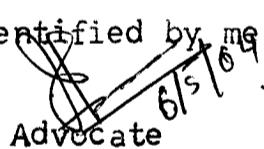
- 8 -

- A F F I D A V I T -

I, Sri Raja Ram Dwivedi, son of late G.P. Dwivedi, resident of vill. Mawaiya, P.O. Harijindurnagar, Dist. Kanpur Nagar, Uttar Pradesh, presently serving as a Teacher in Kendriya Vidyalaya, Kokrajhar do hereby solemnly declare as follows:

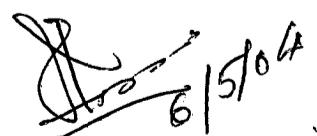
1. That I am the petitioner of the accompanying Contempt petition and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statements made in paragraph 1 to 11. are true to my knowledge and belief and I have not suppressed any material fact.
3. That this affidavit is made for the purpose of filing Contempt petition before this Hon'ble Tribunal, Guwahati Branch at Guwahati in the matter of non-compliance of Hon'ble Tribunal's order dt. 6.4.04 passed in O.A. No.24/04

Identified by me:

  
6/5/04  
Advocate

Raja Ram Dwivedi  
DEPONENT

Solemnly affirmed and declared before me by the Deponent -  
Raja Ram Dwivedi on  
6th day of May, 2004 at  
Guwahati

  
6/5/04  
(I. Hussain)  
Advocate

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati for initiating a contempt proceeding against the alleged contemner / Respondant for wilful and deliberate non compliance of the order of the Hon'ble Tribunal dated 6-4-2004 passed in O.A. 24/2004 and futher be please to impose punishment upon the aleged contemner /Respondant for wilful and deliberate non-compliance of order dated 6-4-2004 passed in O.A. 24/2004

000000- 000000

Original Application No. 24 of 2004.

ANNEXURE NO.1

Date of Order : This the 8<sup>th</sup> 6th day of April, 2004.

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

Sri Raja Ram Dwivedi,  
Son of Late G.P. Dwivedi,  
Resident of Vill. - Mawaiya,  
P.O. - Harijindurnagar,  
Dist. - Kanpur, Nagar,  
Pin. - 206 007.  
Uttar Pradesh.

• • • Applicant.

By Advocates Mr. A.S. Choudhury and  
Mr. I. Hussain.

- VERSUS -

1. The Union of India, through  
The Secretary, Ministry of Human Resource Deptt.,  
(Dept. of Education),  
Sastri Bhawan, New Delhi - 1.
2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18 Sahid Jeet Singh Marg,  
New Delhi - 110 016.

The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Guwahati Region, Maligaon Chariali,  
Guwahati.

• • • Respondents.

By Advocate Mr. M.K. Mazumdar.

O R D E R

K.V. PRAHALDAN, MEMBER (A) :

The applicant is a teacher in Kendriya Vidyalaya Sangathan since 1988. From 1988 to 2000, he was transferred in public interest from Kanpur to Kokrajhar, where he joined on 16.10.2000 and where he still continues. The present Original Application is the second round of litigation. In the first O.A. 170/2003 dated 21.11.2003, the applicant was aggrieved on account of the Respondents not transferring him to his home town Kanpur since he had less than a year to retire on 21.5.2004. The O.A. 170/2003 directed that -

"The respondents shall pass a reasoned and speaking order on the aforesaid representation given by the applicant dated 8.7.2003, taking into account also

Contd...2

Certified to be



Advocate

the grounds taken by the applicant in the O.A. They shall pass a reasoned and speaking order in accordance with law, relevant Rules and instructions within two weeks from the date of receipt of a copy of this order, with intimation to the applicant."

The Respondents vide reply dated 5.1.2004, vide Annexure-12, rejected the request for transfer. As per this reply of 5.1.2004, the Respondents said that the Applicant had in his application of 8.7.2003 'raised the following issue':



- "1. that he had applied for request transfer on superannuation for the year 8.7.2003-04 for final settlement of self and his family.
- 2. that though the transfer policy was extended to consider the cases of transfer who has less than three years to retire, his name was not included for transfer, when he had only ten months to retire..
- 3. that he is facing acute health problem, as he is suffering from Lumber spondylitis due to which he is unable to work smoothly.
- 4. that he has to arrange marriages of his three grown up daughters and construction of dwelling place he didn't possess so far."

2. The Applicant then went on to say that having considered his application of 8.7.2003 carefully the competent authority. The Respondent's decision was :

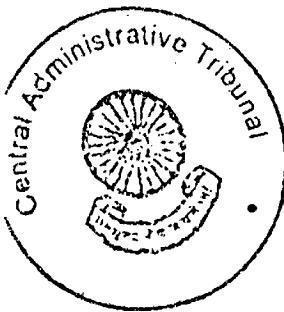
- "1. that as per the amended provision of Clause 7 of KVS transfer guidelines the transfers sought on account of death of spouse within a period of 2 years of death, medical grounds as per Para 9 and employees who have less than 3 years of retire will be placed on bloc higher in the above sequence than the others listed in para 8 of these guidelines. However, the said benefit LTR (Less than three years to retire) will be granted to all their choice stations, except the station from where they have been displaced during the last one year (i.e. 1.4. 2002) subject to want of clear vacancy as well as availability of eligible persons for displacement in terms of Para 10(1) of the KVS transfer guidelines.
- 2. that all the requests of annual transfer under LTR category were considered by the respondent organisation in terms of prevailing facts and circumstances of the case as well as the KVS transfer guidelines in force. The dominant consideration in

effecting transfers will be administrative exigencies/grounds and organizational reasons including the need to maintain continuity uninterrupted academic schedule and quality of teaching and to that extent no individual interest/request shall be subservient. Transfers cannot be claimed as matter of right by those making requests nor do these transfer guidelines intend to confer any such right.

3. that in the instant case of applicant being due to retire on 31.5.2004, he submitted his application for transfer under LTR category with choice station Kanpur only which was also considered alongwith all other applicants but his request could not be materialized for want of clear vacancy of WET as well as due to non availability of eligible person for displacement in terms of Para 10(1) of the KVS transfer guidelines at the time of considering request transfer under LTR category. Moreover, he was transferred from Kanpur to Kokrajhar in Oct.2000 on administrative ground as such he was not eligible to be transferred on request to Kanpur as per KVS transfer guidelines.
4. that as per Article 54(k) of Education code, which a documentary text, for governance of Kendriya Vidyalaya, the services of KVS employees are liable to be transferred to any Kendriya Vidyalaya of the Sangathan at any time on short notice on organizational reasons, administrative exigencies. Also as held by the Apex Court that the individual's personal inconveniences have got little importance over administrative exigencies and public interest particularly in the matter of transfer/posting. The personal problems expressed by the applicant should not come in the way of service conditions and public interest.

Having considered all the facts and circumstances of the case sympathetically and carefully the undersigned rejects the request of the applicant to consider his transfer at his home town. Thus the representation dated 8.7.2003 is disposed of in compliance of the Hon'ble CAT, Guwahati directions dated 21.11.2003 given in O.A. 170/2003."

Therefore, the present O.A. has been filed. The applicant claims that the respondent rejected his claim for transfer to Kanpur in violation of their own guidelines. These guidelines for gave weightage of 20 points for those who had less than 2 years to retire on 31.3.2005 and 20 points for serving in North Eastern States.



3. The respondents claim that the applicant cannot seek transfer to the same station from where he was transferred on administrative grounds as per clause 18(d)(ii) of KVS transfer guidelines. The respondents also stated that teachers transferred on administrative grounds will not be eligible to request for transfer before completing five years stay at the transferred station.

4. Heard Mr. I. Hussain, learned Counsel for the applicant and also Mr. M.K. Mazumdar, learned counsel for the respondents. It is for the administration to decide who should be transferred and to which place. However, there are orders, instructions and guidelines which acquire almost the force of law due to their continuous implementation over a period of time. The KVS circular No.F.1-1/2003-04/ CLT/KVS(Estt.III)Vol.II dated 19.9.2002 at Sl. No. 2 clarifies that "employees who have been transferred in public interest except on administrative grounds can also be considered for request transfer - without any tenure." The respondents have also intimated in their written statement at Para 3-D said that the benefits of transfer to those with less than three years to retire will be granted all their choice stations except the stations from which they were displaced. Since the applicant, as per the KVS circular of 19.9.2002, is not bound by the rules relating to tenure since he was transferred in public interest. Para 5 of the respondent's letter dated 5.1.2004 at Annexure - 12, said that ~~xxx~~ since the applicant "was transferred from Kanpur to Kokrajhar in Oct.2000 on administrative grounds he was not eligible to be transferred on request to Kanpur as per KVS guidelines." This by implications means that the applicant becomes eligible for transfer back to Kanpur since he was transferred ~~not~~ on administrative grounds but in public interest as can be seen in the transfer order dated 9.10.2000 at Annexure - 1.

b/w

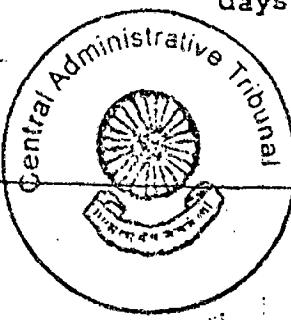
Contd...5"

The applicant also gets the benefits of being posted in excess of three years in the N.E. States for the purpose of transfer request.

5. Taking all these facts into consideration the respondents are hereby directed to consider transferring the applicant to any of the places of his choice: Kanpur, Unnao, Lucknow, Fatehgarh and Etawah. The exercise is to be completed and the applicant informed within fifteen days from the date of receipt of this order.

The application is allowed. No order as to costs.

Sd/MEMBER(ADM)



certified to be true Copy  
मतापद्धति

Section Officer (J)  
C.A.T. GUWAHATI BRANCH  
Guwahati-781005

8/4/04

Certified to be  
true Copy  
Advocate

Date 17 April 2004.

To

The Commissioner KVS Hqr.  
New Delhi - 16

Sub:-Compliance of C.A.T. Guwahati Order No. 24/2004 dated 6/4/04

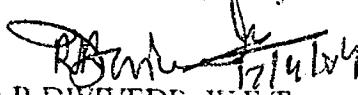
Sir,

Please find enclosed herewith the order of Hon'ble Cat, Guwahati Bench regarding the transfer of Sri R.R.Dwivedi WET of KVK Kokrajhar.

Kindly, implement the CAT Order no. 24/2004. Dated 6/4/04 with immediate effect to honour the honourable CAT Guwahati.

Thinking you.

Yours faithfully

  
(R.R.DWIVEDI) W.E.T.  
K.V.KOKRAJHAR (ASSAM)

SENDING REPORT

Apr. 17 2004 02:26PM

NO.	OTHER FAXSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	91 11 26965147	Apr. 17 02:22PM	04'23	SND	06	OK

Certified to be

  
Advocate

8  
KV Kokrajhar

Date:-- 30th April 04

To,  
The Commissioner  
KVS-II, New Delhi-16.

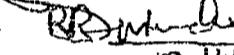
Sub:--Reminder for compliance of CAT Order No. 24/2004 dt. 6<sup>th</sup> April 2004.

Sir,

Please, compliance the above said order which was faxed to you on dated 17th April 04 at 2:22 p.m.  
No. 1 91-11-26965147 total no. of pages six only with in due date to avoid the contempt of court proceeding.

Thank you Sir,

Yours faithfully,

  
(R.R. Dwivedi) 344/04  
WET  
KV Kokrajhar

SENDING REPORT

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	01126514179	Apr. 30 10:45AM	00'37	SND	01	OK

Certified to be

  
Advocate

-16-

Annexure No.4.

9

R.R. Dwivedi, W.E.T  
K.V.S Kokrajhar.

Date: 14th April /04

To

The Commissioner,  
K.V.S. H.Qtrs. New Delhi-16.

(Through proper channel )

Principal K.V. Kokrajhar.

Sub: Compliance of Court order No.24 of 2004  
of CAT Guwahati, dt. 6th April 2004.

Sir,

I have the honour to request you that the attached  
CAT Guwahati order No.24 /2004 dt. 6th Aprl. 2004 may please  
be implemented as directed by honourable court with  
immediate effect as indicated in the order itself.

Thanking you, Sir,

Yours faithfully,

Sd/-

19.4.04

Enclosure: CAT order 24/2004 dt. 6.4.04

one copy

Certified to be

  
true Copy

Advocate

Annexure No.5.

PF/RRD/KVK/2004-2005/67-68

22.2.2004

20

To

The Commissioner,  
Kendriya Vidyalaya Sangathan  
18, Institutional Area,  
Sahheed Jeet Singh Marg.  
New Delhi-16.

Sub: Forwarding the representation submitted by Mr.R.R.Dwivedi  
WET

Sir,

Please find enclosed herewith a representation alongwith  
a copy of the order Hon'ble CAT Guwahati applicatin No.24  
of 2004 dated 6th day of April 2004 for your needful.

Thanking you,

Yours faithfully

Sd/-

( S.S. Bhattacharjee ) BGT (PHY)

Copy to:

offg. Principal

Sh. RR Dwivedi WET

KV Kokrajhar.

Certified to be

True Copy

Advocate