

50/100  
6

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

**INDEX**

O.A/T.A No. 3.....

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

E.P/M.A No.....

1. Orders Sheet..... O.A. Pg. 1..... to 5.....  
C.P 39/2015 order Pg. 1..... to 9.....
2. Judgment/Order dtd. 19.8.2008 Pg. 1..... to 19. All these are in
3. Judgment & Order dtd. .... Received from H.C/Supreme Court
4. O.A..... O.A.B/16/2005 Pg. 1..... to 9.7.....
5. E.P/M.P..... Pg..... to.....
6. R.A/C.P..... 3.9/2005 Pg. 1..... to 31.....
7. W.S..... Pg. 1..... to 19.....  
W.S to C.P 39/15 Pg. 1..... to 12.....
8. Rejoinder..... Pg. 1..... to 8.....
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

permanently papers Pg. 1 to 20

SECTION OFFICER (Judl.)

Habib  
10.11.17

FORM NO. @  
(See Rule 42)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 316/2005

Misc. Petition No. \_\_\_\_\_

Contempt Petition No. \_\_\_\_\_

Review Application No. \_\_\_\_\_

Applicant(s) Shri Haren Chandra Das

Respondent(s) Mr. & Mrs. S. N. Chakrabarty

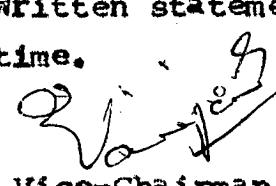
Advocate for the Applicants Mn M. Chanda, G. N. Chakrabarty  
S. Nalit

Advocate for the Respondent(s) KV3. EGSC  
Rly St. Counsel

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

21.12.05. Heard Mr. M. Chanda learned counsel for the applicant. Mr. MK. Mazumdar learned counsel for the Respondents is present.

Application is admitted. Issue notice on the respondents. Post the matter on 23.2.06. Written statement if any, in the meantime.

  
Vice-Chairman

23.02.06.

When the matter came up for hearing Mr. M. K. Mazumdar learned counsel for the Respondents submits that he wants some more time to file written statement.

Post the matter on 24.3.06.

  
Vice-Chairman

Notice & order sent to D/section for issuing to resp. Nos 1 to 4 by regd. A/D post. D/110 = 53 to 56 (ex) 6/110/6. Dt = 9/110/6.

Contd....

24.3.06,

The learned counsel appearing for the respondents has submitted that he would like to have some more time to file written statement. Let it be done. Post the matter on 5.4.06.

22-2-06

lm

① Service report are awaited.

Vice-Chairman

05.04.2006

No reply statement has been filed. Post on 01.05.2006.

② No. Wks has been filed.

1

Vice-Chairman

23-3-06

1.5.2006

Let the case be posted on 9.5.06 for filing of reply statement.

① Service report awaited.

Vice-Chairman

② No Wks has been filed.

bb

4-4-06

9.5.06

Counsel for the applicant wanted to file rejoinder.

Post on 25.5.06 for order.

No. Wks has been filed.

Vice-Chairman

28-4-06

pg

25.05.2006 Learned counsel for the applicant wanted time to file rejoinder. Let the case be posted on 29.06.2006.

No Wks has been filed.

Vice-Chairman

1.5.06

mb

Wks submitted by the respondents.

DR

8-5-06

Wks has been filed.

No Rejoinder has been filed.

3

## Order of the Tribunal

Notes of the Registry

Date

28-6-06

29.6.2006

Learned counsel for the applicant wanted to file rejoinder. Let it be done. Post on 21.7.2006.

No rejoinder has been filed.


 Vice-Chairman

No rejoinder has been filed.


 Vice-Chairman

No Rejoinder has been filed.

30.8.06.

31.8.2006

bb  
The counsel for the Respondents has submitted that he has some personal difficulty and he has not attend the Court to-day. Post the matter on 15.9.06.


 Vice-Chairman

lm

18.9.2006

Mr. S. Nath, learned counsel for the applicant wanted to have some more time to file rejoinder. Let it be done. Post on 1.11.2006.

No rejoinder has been filed.

31.10.06.

No rejoinder has been filed.

16.11.06.

bb  
1.11.2006

post the matter on 17.11.2006 granting time to the applicant to file rejoinder.


 Vice-Chairman

21.11.06

Rejoinder Submitted by the Applicant.

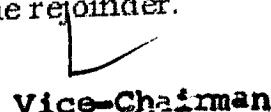
21.

Wts and rejoinder has been filed.

22.11.06

17.11.2006 Present: Hon'ble Sri K.V. Sachidanandan Vice-Chairman.

Learned Counsel for the Applicant submitted that he has filed rejoinder. Post on 12.12.2006. In the meantime, learned Counsel for the Respondents may take instructions, if any, in the rejoinder.


 Vice-Chairman

12.12.06.

Post the matter for hearing  
before Division Bench.The case is ready  
for hearing.

lm

Vice-Chairman

~~20/3/07~~

21.3.2007

~~Learned counsel for the respondents was represented and submitted that he has some personal inconvenience and sought for an adjournment.~~~~Post before the next Division Bench.~~~~bm~~

Member

Vice-Chairman

bb

21.3.2007

~~Mr. M.K. Mazumdar, learned Standing counsel for the KVS submitted that he is producing the the documents regarding the enquiry. Registry will keep the same in safe custody and submit in the next date of hearing.~~~~Post before the next Division Bench~~~~bm~~

Member

Vice-Chairman

bb

05.05.2008

This matter stands adjourned to  
27.05.2008 for hearing.The case is ready  
for hearing.~~26.5.08~~

/bb/

(Khushiram)  
Member (A)

27.05.08 On the prayer of the counsel for both the parties call this matter on 30.06.2008; when the departmental proceeding records shall be made available by the learned counsel for the Respondents/Kendriya Vidyalaya Sangathan.

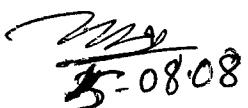
(Khushiram)  
Member(A)(M.R. Mohanty)  
Vice-Chairman

30.06.2008 Call this matter on 06.08.2008 for hearing before Division Bench.

  
(M.R. Mohanty)  
Vice-Chairman

nkm

The case is ready for hearing.

  
5-08-08

Dt. 6.8.08

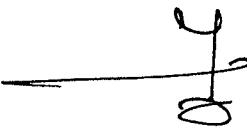
Pl. send copies of this order to the Respondent

  
7/8/08

06.08.2008 Mr.M.Chanda, learned counsel for the Applicant is present. None appears for the Kendriya Vidyalaya Sangathan/Respondents.

Call this matter on 11.09.2008 for hearing.

Send copies of this order to the Respondents; who should come ready to participate in the hearing.



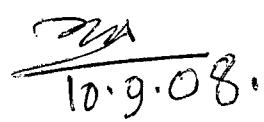
(M.R. Mohanty)  
Vice-Chairman

order dated 6/8/08  
sent to D/Section  
for issuing to /bb/  
respondents by  
post.

11.09.2008 Heard Mr M. Chanda, learned Counsel appearing for the Applicant, and Mr M.K. Mazumder, learned Standing Counsel for the KVS, and perused the materials placed on record.

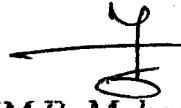
Hearing concluded. Orders reserved.

The case is ready for hearing.

  
10.9.08.

nkm

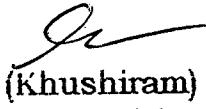
  
(Khushiram)  
Member(A)

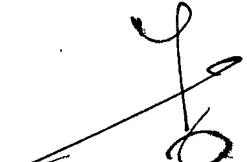
  
(M.R. Mohanty)  
Vice-Chairman

25.9.08  
Copy of the Judgement  
sent to the Office  
for issuing the same  
to the applicant as  
well as to KVS &  
by post and  
Hand for the parties.

19.09.2008 Judgment pronounced in open Court. Kept in separate sheets. Application is allowed. No costs.

lm

  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

X

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. No. 316 of 2005

DATE OF DECISION: 19.09.2008

Sri H.C.Das

.....Applicant/s

Mr. M.Chanda

..... Advocate for the  
Applicant/s,

- Versus -

Union of India & Others

.....Respondent/s

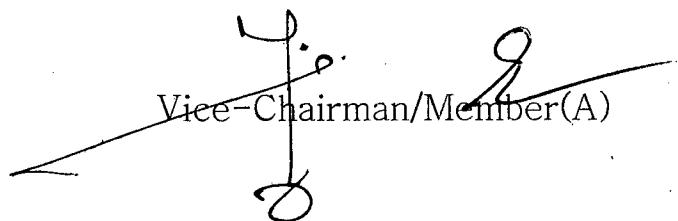
Mr. M.K.Mazumdar, Standing counsel for KVS.

..... Advocate for the  
Respondents

CORAM

THE HON'BLE MR. MANORANJAN MOHANTY, VICE CHAIRMAN  
THE HON'BLE MR. KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

  
Vice-Chairman/Member (A)

B

## **CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH**

Original Application No. 316 of 2005

Date of Order: This, the 19<sup>th</sup> Day of September, 2008

**HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN**

**HON'BLE SHRI KHUSHIRAM, ADMINISTRATIVE MEMBER**

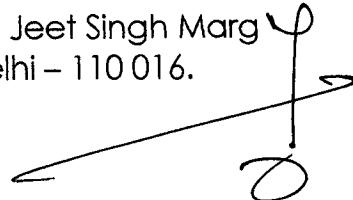
Shri Haren Chandra Das  
Resident of Sadilapur, Pandu  
P.O: Pandu, Guwahati-12  
Dist: Kamrup, Assam.

... Applicant,

By Advocates: Mr. M. Chanda & Mr. G. N. Chakraborty & Mr. S. Nath.

**- Versus -**

1. The Union of India  
Represented by the Secretary  
to the Government of India  
Ministry of Human Resource Development  
Govt. of India  
New Delhi.
2. The Commissioner  
Kendriya Vidyalaya Sangathan  
18, Institutional Area  
Saheed Jeet Singh Marg  
New Delhi – 110 016.
3. The Joint Commissioner (Admn)  
Kendriya Vidyalaya Sangathan  
18, Institutional Area  
Saheed Jeet Singh Marg  
New Delhi – 110 016.

A handwritten signature consisting of a stylized 'Y' shape with a horizontal line extending to the right, ending in a small circle.

4. The Assistant Commissioner  
Kendriya Vidyalaya Sangathan  
Regional Office, Jawahar Nagar  
Khanapara  
Guwahati-781 022.

... Respondents.

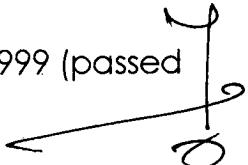
By Advocates: Mr. M.K.Mazumdar, Standing counsel for KVS.

**ORDER**

**.09.2008**

**MANORANJAN MOHANTY, (V.C.):**

This is the third journey of the Applicant to this Tribunal. Having faced dismissal from service, the Applicant approached this Tribunal with O.A. No.47 of 1999; which was disposed of on 28.05.1999 asking the Appointing Authority to consider the case of the Applicant by giving personal hearing. Appellate Authority having passed orders on 18.08.1999, the Applicant, again, approached this Tribunal with the 2<sup>nd</sup> O.A. No.390/1999; which was disposed of on 26.02.2001. That case (O.A. No.309/1999) was directed against the order dated 02.02.1999 [passed by the Assistant Commissioner of Kendriya Vidyalaya Sangathan] dismissing the Applicant from services in exercise of the powers under proviso of Rule 19(ii) of Central Civil Services (Classification, Control and Appeal) Rules 1965 as well as the order dated 16.08.1999 (passed



by the Deputy Commissioner, Administration, KVS) dismissing the Appeal of the Applicant and upholding the punishment order dated 02.02.1999. The facts leading to filing of that case (as taken cognizance by this Tribunal in the said case/O.A. No.390 of 1999) as noted in the order dated 26.02.2001 of that case/O.A. 390 of 1999 reads as under:-

" The applicant at the relevant time was holding the post of Upper Division Clerk under the respondents. The applicant joined the service on Kendriya Vidyalaya Sangathan on 9.7.73 as a Group D employee. He was thereafter promoted to the post of LDC in the year 1980 and appointed as UDC in the year 1988. He was actively involved in the Union activities and he was the Regional Secretary of Kendriya Vidyalaya Non-Teaching Staff Association from 1985 to 1990. He was also elected as Joint Secretary of the said association from 1990 to 1993. He was again elected as Joint Secretary and holding the post from 1993 to the date of filing this application. According to the applicant the Commissioner of the Kendriya Vidyalaya Sangathan, respondent No-2, visited the Kendriya Vidyalaya during the year 1999, the applicant alongwith other office bearers of the Association wanted to meet respondent No-2 for the purpose of submitting a memorandum to him comprising of certain demands of the employees and also for felicitating him. The respondents No-2 visited Kendriya Vidyalaya, Maligaon on 15.1.99 and the applicant alongwith other office bearers wanted to meet the respondent No-2 and sought for permission from the Principal, KV, Maligaon. However, the Principal, KV, Maligaon refused to do so. When the situation became fervid the respondent No-2 who was at the relevant time inside the room came out and called the applicant and his colleagues inside the room. The applicant and his colleagues thereafter felicitated the Commissioner and also submitted a memorandum



containing the grievance of the employees in regard to their pay scale. According to the applicant he left for New Delhi on 22.1.99 in response to a call letter dated 15.1.99 whereby he was requested to appear in a departmental examination for the post of Head Clerk to be held on 24.1.99. The applicant returned from Delhi and reported for duty on 30.1.99 since his leave was sanctioned upto 29.1.99. However, in the meantime he received an order No. F.14-2/99-KVS(GR)/11710-13 dated 25.1.99 passed by respondent No.4 placing him under suspension in contemplation of disciplinary proceeding. The applicant thereafter was served with Order No.F.14-2/99-KVS(GR)/11896-902 date 2.2.99 passed by respondent No.4 dismissing the applicant from service in exercise of powers under the provision of Rule 19(ii) of CCS (CCA) Rules 1965. The applicant preferred an appeal on 15.2.99 against the aforementioned order of dismissal. The applicant also moved this Tribunal assailing the legitimacy of the order dated 2.2.99 by an application which was numbered and registered as O.A.47/99. In the aforementioned O.A the respondents submitted its written statement and the applicant also submitted his rejoinder. The said O.A was finally disposed of directing the appellate authority to dispose of the appeal expeditiously after providing an opportunity of personal hearing to the applicant vide order dated 28.5.99. The respondent No.3 in due course disposed of the appeal vide order dated 16.8.99 dismissing the appeal and upholding the order of dismissal."

2. After giving full dress hearing to the rival views of the parties, this Tribunal allowed the above said O.A. No.390/1999, on 26.02.2001, and the impugned order of dismissal dated 02.02.1999 and the Appellate Order dated 16/18.08.1999 were quashed/set aside and the Respondents were directed to re-instate the Applicant with full back wages.



3. The management/authorities of KVS challenged the above said Order dated 26.02.2001 of this Tribunal (that was rendered in O.A. No.390 of 1999) in the Hon'ble Gauhati High Court in a Writ Petition (No.6071 of 2001); which was dismissed on 29.08.2001. Hon'ble High Court also held that the impugned order of 'dismissal' imposed on the Applicant was not sustainable. The Hon'ble Court also refused to interfere with the directions given by this Tribunal.

4. Upon re-instating the Applicant (on 19.09.2001) the Respondents charge-sheeted the Applicant, on 02.01.2002, initiating a major penalty proceeding under Rule 14 of CCS (CCA) Rules, 1965. One incident (of 15.01.1999) was subjected to 4 Articles of Charges dated 02.01.2002 which reads as under:-

"ARTICLE :I

That the said Shri H. C. Das, UDC, Kendriya Vidyalaya, Tengavalley while working in Kendriya Vidyalaya, AFS Borjhar, Guwahati came to the office of Principal, Kendriya Vidyalaya, Maligaon without obtaining prior permission of his controlling officer on 15.01.1999 where a meeting of Principals and other officials of KVS was in progress chaired by the Commissioner, KVS, New Delhi.

Thus the said Shri H. C. Das by his aforesaid act committed a misconduct which is violative of rule 3(1)(i)(ii) and (iii) of Central Civil Services (Conduct) Rules, 1964 as extended to the employees of KVS.



### ARTICLE : II

That the said Shri H. C. Das, UDC, Kendriya Vidyalaya, Tengavalley while working in Kendriya Vidyalaya, AFS Borjhar, Guwahati forced his entry into the office of Principal, Kendriya Vidyalaya, Maligaon on 15.01.1999 at 3.00 p.m. during the conduct of the official meeting being conducted and chaired by Shri H.M. Caire, IAS, Commissioner, KVS, New Delhi. He forced the Principal, Kendriya Vidyalaya, Maligaon to arrange his meeting with the Commissioner immediately.

Thus the said Shri H. C. Das by his aforesaid act committed a misconduct which is violative of rule 3(1) (i), (ii) & (iii) of Central Civil Service (Conduct) Rule 1964 as extended to the employees of KVS.

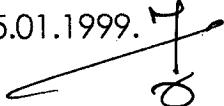
### ARTICLE : III

That the said Shri H. C. Das, UDC, Kendriya Vidyalaya, Tengavalley while working in Kendriya Vidyalaya, AFS Borjhar, Guwahati did not leave when asked to leave the office of Principal, Kendriya Vidyalaya, Maligaon after his forced entry in his office/meeting room during the continuance of the meeting conducted & chaired by Commissioner, KVS, New Delhi.

Thus the said Shri H.C.Das, by his aforesaid act committed a misconduct which is violative of rule 3(1) (i), (ii) & (iii) of Central Civil Service (Conduct) Rule 1964 as extended to the employees of KVS.

### ARTICLE : IV

That the said Shri H.C.Das, UDC, Kendriya Vidyalaya, Tengavalley while working in Kendriya Vidyalaya, AFS Borjhar, Guwahati behaved in a manner unbecoming of a Kendriya Vidyalaya employee with his superiors after being asked to leave the office of the Principal, Kendriya Vidyalaya, Maligaon on 15.01.1999.



Thus the said Shri H.C.Das by his aforesaid act committed a misconduct which is violative of rule 3(1) (i), (ii) & (iii) of Central Civil Service (Conduct) Rule 1964 as extended to the employees of KVS.

Statement of Imputations to the above-said charges (in 4 heads)

dated 02.01.2002, as supplied to the Applicant, reads as under:-

**"ARTICLE-I**

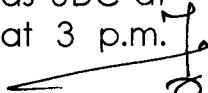
That Shri H.C.Das, UDC, Kendriya Vidyalaya, Tengavalley while working as such at Kendriya Vidyalaya, AFS Borjhar, Guwahati on 15.01.1999 at 3-00 p.m. during the conduct of the official meeting being conducted & chaired by the Commissioner and senior officials from KVS (Hqrs) and Regional Office, Guwahati with the local Principals of Guwahati, came to the office of Principal, Kendriya Vidyalaya, Maligaon without obtaining prior permission of his controlling officer.

He was absent from his Vidyalaya office during duty hours without permission of his controlling officer and entered into the Kendriya Vidyalaya, Maligaon without permission of the Principal, Kendriya Vidyalaya, Maligaon.

Thus, the said Shri H.C.Das by his aforesaid act failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an employee of Kendriya Vidyalaya Sangathan and has thus violated the provision of rule 3(1) (i), (ii) & (iii) of Central Civil Service (Conduct) Rule 1964 as extended to the employees of Kendriya Vidyalaya Sangathan.

**ARTICLE-II**

That the said Shri H.C.Das, while working as UDC at Kendriya Vidyalaya, AFS, Borjhar on 15.1.99 at 3 p.m.



forcibly entered into the meeting room during the important meeting being conducted and chaired by Shri H.M.Cairae, IAS, Commissioner, Kendriya Vidyalaya Sangathan.

He entered into a heated argument with the Principal, Kendriya Vidyalaya, Maligaon and forced him to arrange a meeting with the Commissioner immediately. Shri H.C.Das had neither taken prior permission from the Assistant Commissioner or venue Principal to meet the Commissioner.

Thus the said Shri H.C.Das by his aforesaid act committed a misconduct which is violative of Rule -3(1) (i), (ii) & (iii) of Central Civil Service (Conduct) Rule 1964 is extended to the employees of Kendriya Vidyalaya Sangathan.

### ARTICLE -III

That Shri H.C.Das, UDC, Kendriya Vidyalaya, Tengavalley while working as such at Kendriya Vidyalaya, AFS Borjhar, on 15.1.99 during the official meeting being conducted and chaired by the Commissioner, Kendriya Vidyalaya Sangathan at Kendriya Vidyalaya, Maligaon, he forcibly entered into the meeting room and did not leave the room when asked to leave by Shri J.P.Yadav, former Principal, Kendriya Vidyalaya, Maligaon.

Thus the said Shri H.C.Das by this act committed misconduct, showed lack of devotion to duty and has violated Rule-3(1) (i), (ii) & (iii) of Central Civil Service (Conduct) Rule 1964 as extended to the employees of Kendriya Vidyalaya Sangathan.

### ARTICLE-IV

That the said Shri H.C.Das while working as UDC, in Kendriya Vidyalaya, AFS Borjhar on 15.1.1999 during the meeting being conducted and chaired by the

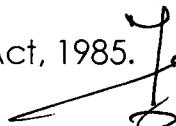
✓

Commissioner, KVS forcibly entered into the meeting room and did not leave the room when asked to leave. He entered into a heated argument with Shri J.P.Yadav, Principal, Kendriya Vidyalaya, Maligaon. Not only this he behaved in a very defiant and arrogant manner with the Principal, KV, Maligaon forcing him to arrange his meeting with the Commissioner immediately. He was so violent that without realizing the solemnity of the occasion, he abused the Principal of Kendriya Vidyalaya, Maligaon in the presence of Commissioner, Dy. Commissioner (Acad), Asstt. Commissioner and local Principals of Guwahati.

Thus by this act of insubordination, unbecoming behaviour, Shri H.C.Das has committed a misconduct and has violated Rule -3(1), (i), (ii) & (iii) of Central Civil Service (Conduct) Rule 1964 as extended to the employees of Kendriya Vidyalaya Sangathan."

Applicant having filed his written statement to the above charge-sheet, the matter was put to an enquiry and the enquiry report dated 07.01.2005 was supplied to the Applicant on 19.01.2005. Applicant having submitted a representation on 12.02.2005, the final Order dated 03.03.2005 was issued imposing punishment of "compulsory retirement with 25% cut in pension" upon the Applicant. Accordingly, the Applicant was relieved on 10.03.2005. Applicant's Appeal dated 19.04.2005 was dismissed on 07.01.2005.

5. Being aggrieved by the above action of the Respondents, the Applicant has filed the present Original Application on 20.12.2005 under section 19 of the Administrative Tribunals Act, 1985.

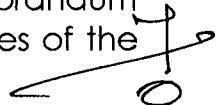


6. In the written statement filed by the Respondents, it has been disclosed that in compliance with the orders of this Courts, the Applicant was "reinstated in service without prejudice to the right of KVS to take further action as per law and posted at Kendiya Vidyalaya, Tengavalley vide this office order No.F.10-6/2001-KVS(GR)/15983-86, dated 19-09-2001 and subsequently at Kendriya Vidyalaya, Tawang" and that the Applicant was charge-sheeted under Rule 14 of CCS(CCA) Rules, 1965 "for misconduct committed by him while he was working as UDC in Kendriya Vidyalaya, AFS-Borjhar" under Memorandum dated 02.01.2002. By resisting all the grounds set forth in the O.A., the Respondents prayed for dismissal of this case.

7. By filing a Rejoinder, the Applicant has supported his own case (as made out in the O.A.) and proceeded to state as under:-

a "...that the newly appointed commissioner of Kendriya Vidyalaya Sangathan (KVS), New Delhi visited Assam in January 1999.

b During his visit to KVS, Maligaon on 15.01.1999, the applicant in his capacity of Joint Secretary of the "Kendriya Vidyalaya Non-Teaching staff association" (for short KEVINSTA), accompanied by few other office bearers of the KEVINSTA, went to K.V. Maligaon for availing the opportunity of meeting the Commissioner and felicitating him on behalf of KEVINSTA and submitting a memorandum to him relating to some genuine grievances of the



employees of Kendriya Vidyalayas.

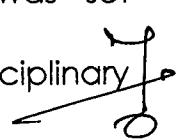
c The applicant prior to his proceeding for KV, Maligaon obtained due permission from the Principal, KV, Borjhar who was his controlling officer at the relevant time.

d After reaching KV, Maligaon the applicant and his colleagues sought for permission from the Principal, KV, Maligaon for meeting the Commissioner but the Principal refused to grant permission. The applicant and his colleagues were then trying to explain the purpose of their proposed meeting with the Commissioner for a short while to the Principal and were insisting on him for his kind permission maintaining all decency and politeness.

e At this stage, the Commissioner himself came out of the room and called the applicant and his colleagues inside the room. The applicant and his colleagues thereafter entered the room, felicitated the Commissioner with "Phulam Gamocha" and submitted a memorandum containing some grievances of the employees to him which the Commissioner was pleased to accept and he assured to consider the demands also, which took no time.

f Then the applicant and his colleagues left the room happily."

8. In the Rejoinder, the Applicant has proceeded to state that even after losing the case in this Tribunal and Hon'ble High Court (where the previous penalty of 'dismissal' imposed upon the Applicant was set aside/quashed) the Respondents, "with pre-set mind", started a Disciplinary



Proceeding/Enquiry on self same allegations and conducted the said enquiry not in accordance with the procedure prescribed under the Rules; that although the evidences, produced in the enquiry, were not raising finger against the Applicant, yet finding were unjustly recorded against him without any application of mind and that the penalty was highly disproportionate etc, and that Appellate order to be cryptic.

9. We have heard Mr.M.Chanda, learned counsel appearing for the Applicant and Mr.M.K.Mazumdar, learned Standing counsel for the KVS/Respondents and perused the materials placed on record including the Disciplinary Proceeding Records produced by Mr.Mazumdar, learned Standing counsel for the KVS,

10. On the basis of the allegations pertaining to the incident dated 15.01.1999 the Applicant was proceeded with under CCS (CCA) Rules, 1965 and was dismissed from service on 02.02.1999. The said dismissal order dated 02.02.1999 was challenged in this Tribunal in O.A. No.390/1999 and the said order of dismissal dated 02.02.1999 was set aside/quashed by this Tribunal on 26.02.2001. While doing so, no liberty was granted by this Tribunal to the Respondents/KVS to start a de-novo proceeding against the Applicant on self-same charges/allegations. The Respondents, being dissatisfied with the



order dated 26.02.2001 of this Tribunal (rendered in O.A. No.390/1999), carried the matter to the Hon'ble Gauhati High Court in a writ petition (No.6071 of 2001); which was dismissed on 29.08.2001. Hon'ble High Court also held that the order (of dismissal of the Applicant from service) dated 02.02.1999 to be not sustainable and did not interfere with the order dated 26.02.2001 of this Tribunal. Hon'ble High Court also did not grant any liberty to the Respondents/KVS to proceed against the Applicant, de-novo, on the self same allegation/incident dated 15.01.1999. There are also no material on record to show that the Respondents/KVS took liberty from this Tribunal (or from the Hon'ble High Court) to proceed against the Applicant, de-novo, on the self same charges/allegations pertaining to the incident dated 15.01.1999. Mr.M.Chanda, learned counsel appearing for the Applicant has argued that without leave from this Tribunal/the Hon'ble High Court, in the circumstances of the case, the Respondents/authorities of KVS were estopped to proceed against the Applicant, de-novo, on the self same charges/allegations. Mr.M.K.Mazumdar, learned Standing counsel for the KVS, on the other hand, has argued that, while reinstating the Applicant, the authorities of KVS/Respondents expressly retained their right (by using the words "without prejudice to the right of KVS to take further action as per law") to proceed against the Applicant de-novo and that, as such, there were no estoppel.

acting against KVS in the matter of charge-sheeting the Applicant on 02.01.2002 after his reinstatement.

11. Where no liberty were given to/obtained by the Respondents/KVS to proceed against the Applicant, de-novo, on the self same charges/allegations, the Respondents/KVS were really to be estopped to proceed against him (Applicant); especially when the so called enquiry was a post-decisional one. On the earlier occasion, the Appellate Authority, the Disciplinary Authority and other officers of KVS, with an intent to throw the Applicant out of employment, resorted to Rule 19 of CCS (CCA) Rules, 1965 and "dismissed" the Applicant from services. After quashing of the said order of 'dismissal'; they resorted to a mind-set enquiry and also came to the same conclusion of throwing him out of employment by way of imposing penalty of "Compulsory Retirement with 25% cut in pension". For these reasons alone, de-novo proceedings are ordinarily not allowed to proceed on self same allegations/charges; unless the matter are very serious.

12. Faced with the above position, Mr. Mazumdar, learned Standing counsel for the KVS, argued that the Applicant having participated in the Departmental Proceeding to a considerable extent, he is estopped to raise the point at this belated stage. To this, Mr. M.Chanda pointed out that the

Applicant ab-initio raised the question of jurisdiction of de-novo proceeding/mindset enquiry/pre-decisional enquiry in his reply to the charge-sheet, in the representation directed against the enquiry report and in the Appeal Memo and that is why the objection of the KVS (raised through their Standing counsel Mr. Mazumdar) is not sustainable. It is seen that, in substance, the Applicant raised the point, ab-initio, that this Tribunal/Hon'ble High Court having set aside/quashed the penal order of dismissal passed in one of the proceeding under CCS (CCA) Rules of 1965; the charge-sheet on self same allegation ought not to proceed against him. Therefore, we hereby over rule the stand of the learned Standing counsel for the KVS and sustain the stand of the Applicant (as discussed in previous paragraphs 10 & 11 above) and hold that, in absence of the liberty from this Tribunal/Hon'ble High Court, the Management of KVS were not available to proceed against the Applicant de-novo.

13. On examination of the Departmental Proceeding file produced by the learned Standing counsel for the KVS, it appears that the enquiry proceeded ex parte (in absence of the Applicant) and, while adjourning the enquiry to a future date (on which date eye witnesses were examined), no notice, apparently, were given to the Applicant. On going through the recordings of the statements of the eye-witness, it appears, instead of making



an endeavour to trace out the actual state of affairs, the Inquiry Officer went on putting leading questions to the witnesses. Leading questions are such questions; which suggested a particular answer. It appears from the minutes of the enquiry proceedings that as if the Inquiry Officer was bent upon to collect materials to support the allegations in the charge-sheet. That apart, when it was the case of the Applicant that he (as the representative of the staff) had been to the place of meeting to pay respect to the Commissioner of KVS (and to submit a written representation to him) on the date of incident; while rejecting his prayer to examine the said Commissioner (in the enquiry proceeding), the Enquiry Officer ought to have, at least, called for a report from the Commissioner pertaining to the incident in question. In fact the Applicant, at one stage, prayed to change the Inquiry Officer but no heed was paid to said grievance.

14. All these observations of ours (from the records of the enquiry proceeding) has forced us to record a finding that the enquiry was done in a most perfunctory manner in gross disregard to the principles of natural justice and the procedure prescribed under the CCS (CCA) Rules, 1965.

15. We have also found that the Disciplinary Authority accepted the enquiry report in most mechanical manner and the Appellate Authority 

(although under Rule 27 of the CCS (CCA) Rules, 1965; it was required to examine, among other points, as to whether the enquiry was conducted in perfect manner or not) passed the Appellate Order without examining all aspects of the matter as required under Rule 27 of the CCS (CCA) Rules, 1965. Under the said Rule 27 of CCS (CCA) Rules, 1965 the Appellate Authority is to consider -

- (a) whether the procedure laid down in these rules has been complied with and, if not, whether such non-compliance has resulted in violation of any provisions of the Constitution of India or in failure of justice;
- (b) whether the findings of the Disciplinary Authority are warranted by the evidence on record and
- (c) whether the penalty or the enhanced penalty imposed is adequate, in-adequate or severe.

Had the Disciplinary Authority or the Appellate Authority examined the matter in the above parameters, then they would have certainly seen that not only the enquiry was bad for the reason of violation of principles of natural justice (amounting to violation of Article 14 of the Constitution of India) but also the finding recorded therein was outcome of gross miscarriage of justice. Without



a written report from the Commissioner, the *ex parte* evidences of the subordinate officers of the Commissioner ought not to have been accepted with reference to their self serving previous statements; especially in the peculiar circumstances of this case. We are taking this view, because it is the positive case of the Applicant that he was there to pay respect and submit a representation to the Commissioner and that the Commissioner received the representation in a cordial atmosphere. Best thing should have been to keep a report from the Commissioner and without that there has been a miscarriage of justice. Records of KVS show that at no point of time, the views of Commissioner were taken in the matter.

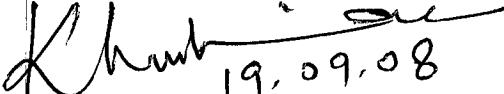
16. Mr. M. Chanda, learned counsel appearing for the Applicant, also raised the point that 2 penalties have been imposed on the Applicant. Mr. Mazumdar, learned Standing counsel for the KVS, explained that while imposing the punishment of 'compulsory retirement' on the Applicant, it became necessary to specify as to how much should be paid as 'pension' to the Applicant; for the reason of the provision in Rule 40 of the CCS (Pension) Rules. It is seen that under the said Rule 40 of the CCS (Pension) Rules, the authority competent to impose penalty of compulsory retirement is to pass an order allowing pension etc. at a rate not less than 2/3<sup>rd</sup> and not more than full

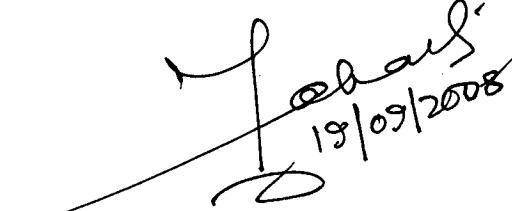
J  
S

compensation pension and under Rule 39 there are provision for compensation pension.

17. For the reason of discussion made in paragraphs 10 to 15 above, we hold that the punishment of "Compulsory Retirement with 25% cut in pension" on the Applicant is not sustainable and, as such, we quash the same. As a consequence, the Applicant shall be deemed to be continuing in service from the date of his compulsory retirement.

18. The Original Application is allowed to the extent indicated above. There shall, however, be no order as to costs.

  
 19.09.08  
 (KHUSHIRAM)  
 ADMINISTRATIVE MEMBER

  
 19/09/2008  
 (MANORANJAN MOHANTY)  
 VICE-CHAIRMAN

/bb/

20 DEC 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 316 /2005

Shri Haren Chandra Das

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

09.07.1973- Applicant was initially appointed as Group- D employee and thereafter selected as LDC in 1980 and as UDC in 1988.

15.01.1999- Commissioner, KVS, New Delhi visited Kendriya Vidyalaya, Maligaon. Applicant in his capacity as Joint Secretary of the Kendriya Vidyalaya Non-teaching Staff Association (KEVINTSA), accompanied by some other office bearers of the said Association met the Commissioner at KV, Maligaon and after felicitating him with "Gamocha", submitted a memorandum containing some grievances of the staff. A report was also published in local dailies. (Annexure- I & II)

25.01.1999- Respondent No. 4 issued one order placing the applicant under suspension on some false and unfounded allegations resting on the aforesaid meeting of the applicant with the Commissioner on 15.01.99.

02.02.1999- Applicant was dismissed from service on the aforesaid allegations arbitrarily without conducting any disciplinary proceeding and without giving any reasonable opportunity to the applicant to defend.

15.02.1999- Applicant submitted appeal against the order of dismissal but to no avail. Applicant thereafter filed O.A. No. 47/99 before the Hon'ble CAT.

28.05.1999- Hon'ble Tribunal passed order in O.A No. 47/99 directing the appellate authority to dispose of the appeal dated 15.02.99 expeditiously.

16.08.1999- Appellate Authority dismissed the appeal and upheld the order of dismissal dated 02.02.99.

Applicant again filed O.A No. 390/1999 before the Hon'ble Tribunal.

26.02.2001- Hon'ble Tribunal passed judgment and order dated 26.02.2001 in O.A. No. 390/99 quashing the order of dismissal dated 02.02.99 and appellate order dated 16.08.99 and directed the respondents to reinstate the applicant with full back wages. (Annexure- III)

28

Respondents preferred appeal against the order dated 26.02.01 in O.A. No. 390/99 of the Hon'ble Tribunal before the Hon'ble Gauhati High Court.

29.08.2001- Hon'ble High Court dismissed the appeal and upheld the learned CAT's judgment and order dated 26.02.01. (Annexure-IV)

**19-09-01-**

02.01.2002- Respondents issued memorandum of charges against the applicant once again on the same charges already adjudicated upon by the CAT and the Hon'ble High Court as stated above and initiated disciplinary proceedings. (Annexure-V)

15.01.2002- Applicant submitted his written statement denying all the charges. (Annexure-VI)

10.10.2003- Applicant has duly informed the he has nominated Shri R.S. Mourya as his Defence Assistant to assist him.

18.10.2003- Inquiry Officer requested Shri R.S. Mourya to attend the enquiry proceeding at K.V. Maligaon. (Annexure-XV)

23.10.2003- Principal, K.V. Khanapara vide her letter dated 23.10.03 informed the inquiry officer that Shri R.S. Mourya has been removed from his service and as such question of relieving him from the Vidyalaya does not arise. (Annexure-XVI)

13.11.2003- Applicant vide his letter dated 13.11.03, addressed to the inquiry officer, praying interalia that the name of his defence assistant, Shri R.S. Mourya may not be rejected on the ground that he is very much in service in view of the judgment and order dated 04.02.03 passed in O.A. No. 384/2002, but inspite of the aforesaid clarification Inquiry Officer did not allow Shri R.S. Mourya to act as Defence Assistant for and on behalf of the applicant. (Annexure-XVII Series)

16.12.2003- Applicant submitted representation praying for change of inquiry Officer. (Annexure-XVIII)

06.01.2004- Respondents denied permission to Shri R.S. Mourya as defence Assistant of the applicant in the proceeding. (Annexure-XIX)

23.01.2004- Applicant submitted representation praying for change of inquiry officer but to no result. (Annexure-XX)

19.01.2005- Copy of Inquiry report forwarded to the applicant after completion of inquiry. (Annexure-VII)

12.02.2005- Applicant submitted representation against the inquiry report to the Disciplinary Authority. (Annexure-VIII)

29

03.03.2005- Respondents issued the impugned order imposing the major penalty of compulsory retirement with 25% cut in pension upon the applicant without considering his representation dated 12.02.05. (Annexure-IX)

19.04.2005- Applicant released on 10.03.05 (Annexure-X)

19.04.2005- Applicant submitted appeal against the order dated 03.03.05 to the Appellate Authority. (Annexure-XI)

07.10.2005- Appellate Authority issued the impugned order rejecting the appeal and upheld the order of penalty dated 03.03.05. (Annexure-XII)

Hence this application before this Hon'ble Tribunal.

#### P R A Y E R S

##### Relief (s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned Memorandum No. F. 14-2/99-KVS (GR)/300-01 dated 02.01.2002 (Annexure- V) penalty order No. F. 14-2/99- KVS (CR)/17169 dated 03.03.2005 (Annexure-IX), and the appellate order No. F.9-32/2005-KVS (Vig.) dated 07.10.2005 (Annexure-XII) be set aside and quashed.
2. That the Hon'ble Tribunal be pleased to direct to reinstate the applicant in service with all consequential service benefits including monetary benefits.
3. That the Hon'ble Tribunal be pleased to declare that order to cut 25% from pension, passed by the impugned order dated 03.03.2005 is void.
4. Costs of the application.
5. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

##### Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

20 DEC 2006

30

গুৱাহাটী বিধায়ৰণ  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O.A.No. \_\_\_\_\_/2005

Shri Haren Chandra Das. : Applicant.  
-Versus-

Union of India & Ors. : Respondents.

INDEX

Sl. No.	Annexure	Particulars	Page No.
1.	---	Application	1-24
2.	---	Verification	-25-
3.	I	Copy of news cuttings of Assam Tribune dated 30.01.99.	- 26 -
4.	II	Copy of news cuttings dated 23.01.99.	- 27 -
5.	III	Copy of judgment and order dated 26.02.01.	28 - 29
6.	IV	Copy of judgment and order dated 29.08.01.	40 - 44
7.	V	Copy of memorandum dated 02.01.02.	45 - 51
8.	VI	Copy of written statement dated 15.01.02.	52 - 57
9.	VII	Copy of memorandum dated 19.01.05.	58 - 68
10.	VIII	Copy of representation dated 12.02.05.	69 - 72
11.	IX	Copy of impugned order dated 03.03.05.	73 - 74
12.	X	Copy of release order dated 10.03.05.	- 75 -
13.	XI	Copy of appeal dated 19.04.05.	76 - 80
14.	XII	Copy of impugned appellate order dated 07.10.05.	81 - 83
15.	XIII	Copy of certificate dated 19.03.02.	- 84 -
16.	XIV	Copy of letter dated 05.12.02.	- 85 -
17.	XV	Copy of letter dated 18.10.03	86 - 87
18.	XVI	Copy of letter dated 23.10.03	- 88 -
19.	XVII (Series)	Copy of letter dated 13.11.03 and 13.11.03	89 - 90
20.	XVIII	Copy of representation dated 16.12.03	91 - 92
21.	XIX	Copy of office order dated 06.01.04	- 93 -
22.	XX	Copy of representation dated 23.01.04.	94 - 97

Filed By:

Date: -

Advocate

20 DEC 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O.A. No. 316 /2005

BETWEEN:

Shri Haren Chandra Das,  
Resident of Sadilapur, Pandu,  
P.O- Pandu, Guwahati- 12.  
Dist- Kamrup, Assam.

-----Applicant.

-AND-

1. The Union of India,  
Represented by Secretary to the  
Government of India,  
Ministry of Human Resource Development,  
Govt. of India,  
New Delhi.
2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Saheed Jeet Singh Marg,  
New Delhi- 110 016.
3. The Joint Commissioner (Admn.)  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Saheed Jeet Singh Marg,  
New Delhi- 110 016.
4. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office,  
Jawahar Nagar,  
Kahanapara,  
Guwahati- 781022.

..... Respondents.

1  
3  
Dated by the petitioner  
through Agent Chakrabarty  
on 21/12/05

Haren Ch. Das

32

### DETAILS OF THE APPLICATION

**1. Particulars of the order (s) against which this application is made:**

This application is made against the impugned order bearing No. F. 14-2/99-KVS (GR)/17169 dated 03.03.2005 issued by the Respondent No. 4 imposing a major penalty of compulsory retirement with 25% cut in pension upon the applicant and against the impugned appellate order No. F. 9-32/2005-KVS (Vig.) dated 07.10.2005 issued by the Respondent No. 3 whereby the appeal preferred by the applicant has been rejected and the penalty imposed by the Disciplinary authority has been upheld.

**2. Jurisdiction of the Tribunal:**

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

**3. Limitation:**

The applicant further declares that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act' 1985.

**4. Facts of the case:**

**4.1** That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

**4.2** That the applicant was initially appointed as a Group- D employee in the Kendriya Vidyalaya Sangathan and he joined his service in the Sangathan on 09.07.1973. He was thereafter selected to the post of Lower Division Clerk (for short LDC) in the year 1980 and further promoted as Upper Division Clerk (for short UDC) in the year 1988. He served in Kendriya Vidyalaya, Tenga Valley in Arunachal Pradesh and at the time of

*Harench Das*

33

imposition of penalty aforesaid, he was working at Kendriya Vidyalaya, Tawang in Arunachal Pradesh.

The applicant was the Regional Secretary of Kendriya Vidyalaya Non-Teaching Staff Association (KEVINTSA) from 1985 to 1990. He was also elected as Joint Secretary of the said Association (KEVINTSA Central Committee) from 1990 to 1993 and was again elected as Joint Secretary in 1993 which he has been holding since then.

4.3 That the newly appointed Commissioner of the Kendriya Vidyalaya Sangathan (KVS), New Delhi visited Assam in the month of January, 1999 and during his visit he visited Kendriya Vidyalaya, Maligaon, Guwahati on 15.01.1999 (which was a Government holiday). The employees of Kendriya Vidyalayas had some grievances and since the applicant was holding a responsible position in the employees association, it was incumbent upon the applicant to deal with their grievances. As such, when the Commissioner of KVS came to visit the Kendriya Vidyalaya, Maligaon on 15.01.99, the applicant in the capacity of Joint Secretary of the KEVINTSA, accompanied by few other office bearers of the KEVINTSA went to KV, Maligaon for availing the opportunity of meeting the Commissioner and felicitating him on behalf of KEVINTSA and submitting a memorandum to him. The applicant prior to his proceeding for KV, Maligaon obtained due permission from the Principal, KV, Borjhar who was his controlling officer at the relevant time.

4.4 That it is stated that when the applicant and his colleagues went to meet the Commissioner at KV, Maligaon, they sought for permission from the Principal, KV, Maligaon refused to grant permission which the applicant and his colleagues were insisting upon. At this stage, the Commissioner himself who was inside the room at the relevant time, came out and called the applicant and his colleagues inside the room. The applicant and his colleagues thereafter entered the room, felicitated the Commissioner with

Harun ch Dab.

434

"Phulam Gamocha" and submitted a memorandum containing some grievances of the employees to him which the Commissioner was pleased to accept and he assured to consider their demands also. Then the applicant and his colleagues left the room happily. This was subsequently reported in the leading local dailies also and two paper cuttings are annexed hereto.

(News cuttings of "Assam Tribune" dated 30.01.99 and "Dainik Asom" dated 23.01.99 are annexed hereto for perusal of Hon'ble Tribunal as Annexure- I & II respectively).

4.5 That thereafter, the respondents No. 4 all on a sudden issued one order No. F. 14-2/99-KVS (GR)/11710-13 dated 25.01.99 placing the applicant under suspension in contemplation of disciplinary proceeding. But immediately thereafter, the respondent No. 4 issued another order bearing No. F.14-2/99-KVS (GR)/11896-902 dated 02.02.99 dismissing the applicant from service in exercise of powers under Rule 19 (ii) of CCS (CCA) Rules, 1965, without conducting disciplinary proceeding or providing any opportunity to the applicant of being heard. The applicant was straightway removed from service on the ground that the applicant forced his entry into the office of the Principal, Kendriya Vidyalaya, Maligaon, on 15.01.99 without obtaining prior permission when the Commissioner, KVS was conducting a meeting therein. The applicant got surprised at this concocted and unfounded allegations and preferred an appeal on 15.02.99 against the order of dismissal dated 02.02.99 to the appellate authority. The applicant also filed an O.A. No. 47/99 before this Hon'ble Tribunal challenging the validity and legality of the order of dismissal dated 02.02.99. This Tribunal vide it's order dated 28.05.99 in O.A. No. 47/99 directed the appellate authority to dispose of the appeal expeditiously after providing opportunity of personal hearing to the applicant. The appellate authority subsequently dismissed the appeal vide appellate order dated 16.08.99 and upheld the order of dismissal dated 02.02.99.

Haren Ch Das

4.6 That being aggrieved, the applicant again approached this Hon'ble Tribunal through O.A. No. 390/1999 challenging the validity and legality of the order of dismissal dated 02.02.99 and the appellate order dated 16.08.99. This Hon'ble Tribunal after thoroughly examining the case, passed it's judgment and order dated 26.02.2001 in O.A No. 390/99, whereby the order dated 02.02.99 and the appellate order dated 16.08.99 issued by the respondents were set aside with further direction to the respondents to reinstate the applicant with full back wages.

(Copy of the judgment and order dated 26.02.2001 is annexed herewith for perusal of Hon'ble Tribunal as Annexure- III).

4.7 That the respondents thereafter preferred an appeal before the Hon'ble Gauhati High Court against the judgment and order dated 26.02.2001 passed by this Hon'ble Tribunal in O.A. No. 390/99. The appeal was registered as W.P (C) No. 6071/2001. The Hon'ble High Court vide it's judgment and order dated 29.08.2001 in W. P(C) No. 6071/2001 dismissed the Writ Petition and upheld the judgment and order dated 26.02.2001 passed by this Hon'ble Tribunal in O.A No. 390/99.

(Copy of the High Court's order dated 29.08.2001 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure-IV).

4.8 That the respondents having failed to substantiate their allegations against the applicant in both the learned Tribunal and the Hon'ble High Court, became vindictive against the applicant and as such issued another memorandum bearing No. F. 14-2/99-KVS (GR)/300-01 dated 02.01.2002 alleging same and exactly similar charges against the applicant which are as under:-

(1) That the applicant while working in Kendriya Vidyalaya, AFS. Borjhar, Guwahati came to the office of the Principal, Kendriya Vidyalaya, Maligaon without obtaining prior permission of his

Hacker Ch. Das

6  
36

controlling officer on 15.01.1999 where a meeting of Principals and other officials of KVS was in progress chaired by the Commissioner, KVS, New Delhi.

Thus the applicant by his aforesaid act committed a misconduct which is violative of Rule 3 (1) (i) (ii) and (iii) of CCS (Conduct) Rules, 1964.

(2) That the applicant forced his entry into the office of Principal Kendriya Vidyalaya, Maligaon on 15.01.99 at 3.00 P.M during the conduct of the official meeting being conducted and chaired by Shri H.M Caire, IAS, Commissioner, KVS, New Delhi. He forced the Principal, Kendriya Vidyalaya, Maligaon to arrange his meeting with the Commissioner immediately.

Thus the applicant by his aforesaid act committed a misconduct, which is violative of rule 3(1) (i) (ii) & (iii) of CCS (Conduct) Rule, 1964.

(3) That the applicant did not leave when asked to leave that office of Principal, Kendriya Vidyalaya, Maligaon after his forced entry in his office/meeting room during the continuance of the meeting conducted and chaired by Commissioner, KVS, New Delhi.

Thus the applicant by his aforesaid act committed a misconduct which is violative of Rule 3 (1) (i) (ii) and (iii) of CCS (Conduct) Rule, 1964, and,

(4) That the applicant behaved in a manner unbecoming of a Kendriya Vidyalaya employee with his superiors after being asked to leave the office of the Principal, Kendriya Vidyalaya, Maligaon on 15.01.1999.

Thus the applicant by his aforesaid act committed a misconduct which is violative of Rule 3 (1) (i) (ii) & (iii) of CCS (Conduct) Rule, 1964.

Harren ch. Das

37

It is relevant to mention here that the same charges as mentioned above were framed by the respondents against the applicant earlier also which led to the filing of O.A. No. 47/99 and O.A No. 390/99 successively by the applicant before this Hon'ble Tribunal and also the W.P (C) No. 6071/2001 by the Respondents before the Hon'ble Gauhati High Court. Both the Tribunal and the Hon'ble High Court held as stated above that the allegations are not sustainable and pursuant to the orders of the Hon'ble Tribunal and the Hon'ble High Court the applicant has been reinstated. But surprisingly, the respondents adhering to their grudging attitude, have again framed the same charges against the applicant which are false, concocted, unfounded and even held to be unsustainable by the Tribunal as well as the Hon'ble High Court in tandem as stated in the preceding paragraphs hereinabove.

(Copy of the memorandum dated 02.01.2002 is annexed herewith for perusal of Hon'ble Tribunal as Annexure- V).

4.9 That as directed in the memorandum of charges dated 02.01.2002, the applicant submitted his written statement of defence on 15.01.2002. In his written statement, the applicant categorically denied all the charges labeled against him and further rebutted those charges and stated that-

- (1) He came to K.V Maligaon on 15.01.99 alongwith his colleagues for meeting the Commissioner, KV, Borjhar.
- (2) He did not force his entry into the office of the Principal, KV, Maligaon on 15.01.99 as alleged but he had entered only when called by the Commissioner into the room and he and his colleagues felicitated the Commissioner with "Fulam Gamocha" and also submitted a memorandum which he was within his right to do as a responsible office bearer of the Staff Association and there was nothing wrong in his conduct.

Hakeem Ch. Dad

33

(3) He and his colleagues left the room immediately after felicitating the Commissioner and submitting memorandum to him.

(4) There was no untoward incidence whatsoever in the KV, Maligaon during his presence there and he did not have any heated exchange of arguments with Shri J.P. Yadav, Principal, KV, Maligaon although the Principal prevented him from meeting the Commissioner.

The applicant in his written statement not only denied and rebutted all the charges, but further contented that he did not commit any such act whatsoever which can be construed as a misconduct on his part and further stated that the same charges have already been adjudicated upon by the Hon'ble Tribunal and the High Court earlier and as such the instant actions of the respondents are malafide, unfair, and with ulterior motive.

(Copy of the written statement dated 15.01.02 is annexed herewith for perusal of Hon'ble Tribunal as Annexure- VI).

4.10 That thereafter the respondents conducted a departmental inquiry which continued for a long time and the Inquiry Officer appointed for the said inquiry conducted the inquiry in an unfair, illegal and arbitrary manner with pre-set mind and malafide intention. On completion of inquiry, the Inquiry Officer submitted his inquiry report on 07.01.2005 holding that all the charges against the applicant are proved and a copy of the said inquiry report was forwarded to the applicant vide memorandum No. F. 14-2/99-KVS (GR)/14336-37 dated 19.01.2005, with further direction therein that the applicant might submit his representation on the inquiry report within fifteen days of receipt of the memorandum to the disciplinary authority.

Haren Ch. Das

(Copy of the memorandum dated 19.01.05 alongwith inquiry report are annexed hereto as Annexure- VII).

4.11 That your applicant thereafter submitted his representation dated 12.02.2005 to the Disciplinary Authority (Respondent No. 4) against the report of the Inquiry Officer aforesaid stating therein that the charges inquired by the Inquiry Officer in the instant case were alleged against the applicant in 1999 itself following which the applicant was placed under suspension and was subsequently dismissed from service. The matter was then adjudicated upon by the learned Central Administrative Tribunal and subsequently by the Hon'ble Gauhati High Court and the order of dismissal from service was set aside by both the learned CAT and the Hon'ble High Court. Pursuant to the judgment of the Tribunal and the High Court, the applicant was reinstated in service and was transferred to K.V. Tengavalley (Arunachal Pradesh). As such the applicant in his representation dated 12.02.05 denied and rebutted all the charges once again and reiterated that the same charges which were already adjudicated upon and dismissed by Hon'ble Courts earlier and for which even the punishment of dismissal from service was inflicted upon the applicant by the Respondents, cannot be initiated or inquired into once again now for the same cause of action and in violation of the judgment and order of the Hon'ble CAT and High Court. The applicant further maintained that the Inquiry Officer during the course of inquiry did not give reasonable opportunity to the applicant for defending his case. The applicant also stated the incidence which took place on 15.01.1999 and affirmed once again that he did not commit any misconduct on that day as alleged/inquired and further requested to drop the proceeding instituted against him for the sake of natural justice.

(Copy of the representation dated 12.02.05 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- VIII).

Haten Ch.Das

4.12 That surprisingly and shockingly, the Respondent No. 4 acting upon the Inquiry Report, issued his impugned order No. F. 14-2/99-KVS (GR)/17169 dated 03.03.2005 thereby inflicting upon the applicant the major penalty of compulsory retirement with 25% cut in pension without considering his representation. Pursuant to the said order the applicant has also been relieved from his duties by the Principal, Kendriya Vidyalaya, Tawang (Arunachal Pradesh) vide office order No. F.P.F. HC Das/KVT/2004-05/621 dated 10.03.2005.

(Copy of the impugned order dated 03.03.05 and release order dated 10.03.05 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- IX and X respectively).

4.13 That the applicant thereafter submitted an Appeal on 19.04.2005 to the Appellate Authority (Respondent No. 2) against the order of Penalty dated 03.03.05 stating that he is innocent and prayed for exonerating him from the charges labeled against him and quashing the impugned order of Penalty dated 03.03.05.

(Copy of the appeal dated 19.04.05 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- XI).

4.14 That the appellate authority vide his impugned order No. F. 9-32/2005-KVS (Vig.) dated 07.10.2005 rejected the appeal dated 19.04.2005 of the applicant and upheld the order of Penalty dated 03.03.05 issued by the Disciplinary Authority (Respondent No. 4). It is relevant to mention here that the appellate authority while issuing the appellate order, has acted most mechanically and without any application of mind. The Appellate authority has simply relied on the report of the Inquiry Officer with a pre-set mind and has not taken into consideration the reality of facts and the submissions made thereto by the applicant whatsoever and has issued the impugned appellate order.

(Copy of the impugned appellate order dated 07.10.05 is annexed hereto for perusal of Hon'ble Tribunal as Annexure- XII).

4.15 That the applicant most humbly begs to state that at no point of time during his long tenure of service, he has ever restored to any sort of indiscipline or committed any misconduct whatsoever and always worked upto the satisfaction of his superiors. In this context, the certificate dated 19.03.2002 issued by the Principal, K.V. Tenga Valley, and one letter dated 05.12.2002 issued by the Principal, Kendriya Vidyalaya, Tawang are self evident and bear ample testimony as to what extent he has been enjoying the trust and confidence of his controlling officers.

(Copy of the certificate dated 19.03.02 and letter dated 05.12.02 are annexed hereto for perusal of Hon'ble Tribunal as Annexure- XIII and XIV respectively).

4.16 That the applicant most respectfully begs to submit that the same charges were labeled against the applicant in 1999 itself and the applicant was removed from service vide order dated 02.02.99 issued by the disciplinary authority and subsequent appellate order dated 16.08.99 issued by the appellate authority. Both these orders were subsequently quashed by the CAT and the Hon'ble Gauhati High Court and the applicant was reinstated in service. While quashing the order of penalty and the appellate order aforesaid, the Hon'ble CAT or the High Court did not grant any liberty to the Respondents to initiate further proceeding on the same/identical charges under memorandum of charge sheet dated 02.01.02, the order of penalty dated 03.03.05 and the appellate order dated 07.10.05 are liable to be quashed and set aside.

4.17 That the applicant further begs to state that the respondents initiated the impugned disciplinary proceeding against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 but the same has been conducted without

Haseen ch. Dab.

following the procedures laid down in Rule 14 and 15 of the CCS (CCA) Rules, 1965. The respondents did not give any reasonable opportunity during the course of inquiry to the applicant for defending his case which is mandatory under the rules. Even his Defence Assistant Shri R. S. Mourya was not allowed to act on behalf of the applicant during the inquiry on the plea that Sri Maurya was no more a serving or a retired employee of the KVS in terms of judgment and order dated 04.02.2003 in O.A No. 384/2002 passed by the Hon'ble CAT in the case filed by Sri Maurya. Such action of the Inquiry Officer is arbitrary, malafide, unfair, ill-motivated and as such the impugned memorandum dated 02.01.02, and orders dated 03.03.05 and 07.10.05 are liable to be set aside.

- 4.18 That the applicant further begs to submit that inspite of submission of objection on 19.03.04 and 05.04.04 by the applicant against not allowing his Defence Assistant to act on behalf of the applicant, the inquiry was held ex parte on 6/7.04.04 without giving opportunity for cross-examination of the witness. Similarly, inquiry has been held on 13.11.03, 16.12.03, 17.12.03, 20.02.04, 06.04.04, 07.04.04, 26.04.04 and 14.07.04 in an arbitrary manner by restraining the Defence Assistant of the applicant from participating in the proceeding, thereby not giving any opportunity to either cross-examine the prosecution witness or to examine the documents relied on by the prosecution side. As such the inquiry is vitiated by procedural infirmities and the conclusions arrived thereat arbitrary, malafide and against the provisions of CCS (CCA) Rules and hence liable to be set aside.
- 4.19 That the humble applicant begs to submit further that on the same charges, the applicant was removed and kept out of service for a long period w.e.f. 02.02.99 to 26.09.2001. It was only after the judgment and order passed in favour of the applicant by the Hon'ble CAT and the High Court that the applicant was reinstated in service but even thereafter he has been subjected to punishment transfers to remote localities like Tenga Valley,

J. A. Khan Esq. D.A.S.

Tawang in Arunachal Pradesh. As such the respondents have already inflicted extreme hardships and punishments to the applicant even though the charges labeled against the applicant have failed to withstand the judicial scrutiny. But even thereafter, the respondents adhering to their grudging attitude over these long six years, have sought to punish the applicant on the same charges and same cause of action for the second time which is not sustainable under law.

It is relevant to mention here that the applicant has got his wife, 85 years old ailing mother, two school-going children as his dependents and he has got no other source of income to maintain them. As such his distressing condition is too hard to be explained.

4.20 That your applicant most respectfully begs to submit that due to arbitrary and illegal actions of the respondents as stated above, the applicant has been suffering irreparable losses. As such finding no other alternative, the applicant is approaching this Hon'ble Tribunal for protection of his legitimate rights and interest and it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interests of the applicant by quashing the impugned orders dated 02.01.02. (Annexure- V), dated 03.03.05 (Annexure-IX) and dated 07.10.05 (Annexure-XII) and further be pleased to direct the respondents to reinstate the applicant in service with all consequential service benefits.

4.21 That it is categorically submitted that applicant has duly informed the enquiry officer vide his letter dated 10.10.2003 that he has nominated Shri R.S.Mourya as his Defence Assistant to assist him defending his case adequately, the Enquiry Officer on receipt of the letter dated 10.10.2003 requested to Shri R.S.Mourya to attend the Enquiry proceedings as Defence Assistant on 13 and 14 November 2003 at 11 A.M at K.V.Maligaon, Guwahati vide enquiry officer's letter dated 18.10.2003, accordingly on the date of regular hearing on 30.11.2003, when the

Harren Ch. Das

charged officers along with his Defence Assistant started entering into the K.V. Maligaon, Guwahati, they are prevented to enter inside the K.V. Maligaon at the entry gate at the instance of Enquiry officer namely Shri Kartar Singh, Asstt. Commissioner. Be it stated that the entry of the applicant and Defence Assistant was resisted by one Group 'D' employee namely Shri P. Bora of the said Vidyalaya at the instigation of the enquiry officer. However on the same day the applicant addressed a letter dated 13.11.2003 to the enquiry officer praying interalia that the name of his Defence Assistant may not be rejected on the basis of report of Principal K.V. Khanapara. Mrs J. Das Basu with reference to the Enquiry officers letter dated 23.10.2003 and in this connection it may be stated that the said letter dated 23.10.2003 was written by the Principal, K.V. Khanapara to the Enquiry officer treating interalia that Shri R. S. Mourya has been removed from his service and as such the question of relieving him from the Vidyalaya does not arise and Shri Das vide his another letter dated 13.11.2003, it is clarified that Shri R.S. Mourya is very much in service in view of the judgment and order dated 04.02.2003 passed by the Hon'ble CAT in O.A. No. 384/2002, but inspite of the aforesaid clarification the Enquiry officer did not allow Shri R.S. Mourya to act as Defence Assistant for and on behalf of the applicant without any valid reasons for rejection of Shri R.S. Mourya as Defence Assistant and thereby violated the relevant provision of Rule 14 (8) of CCS (CCA) Rules, 1965 and on that score alone the impugned penalty order as well as the impugned order is liable to be set aside and quashed.

A Copy of the letter dated 18.10.2003, 23.10.2003, 13.11.2003 and 13.11.2003 are enclosed herewith as Annexure-XV, XVI, XVII (Series) respectively.

4.22 That your applicant vide his representation dated 23.01.2004 addressed to the Disciplinary authority requested for change of Enquiry officer on the

*Haren Ch. Das*

ground interalia that the said enquiry officer prevented Shri R. S. Mourya, PGT (Chemistry) of K.V. Khanapara to act as his Defence Assistant on the basis of wrong information and being influenced with the letters written by PW- 7 regarding Shri R.S. Mourya and thereby the Enquiry officer namely Shri Kartar Singh has been acted at the dictation of K.V.S authorities in gross violation of provision of law as well as principle of natural justice and thereby the said enquiry officer acted in violation of the relevant rules, therefore, applicant prayed for change of enquiry officer but the disciplinary authority without considering the representation dated 23.01.2004 regarding change of enquiry officer proceeded with the enquiry ex-parte without communicating any decision on the said representation of the applicant. In this connection it is relevant to mention here that the said representation was given after receipt of the office order bearing letter no. 14-2/99-KVS (GR)/17, 144 dated 06.01.2004, wherein it is stated that although applicant was permitted but Sri R.S. Mourya was not permitted with the applicant since Shri R.S. Mourya has no connection with the enquiry, the contention of the disciplinary authority is contrary to the factual position and also contrary to the contents of the letter dated 18.10.2003 issued by the enquiry officer, whereby Shri Mourya has been invited to act as Defence Assistant. In such compelling circumstances the applicant submitted a reply/representation dated 23.1.2004 for change of enquiry officer, but to no result and the enquiry was conducted deliberately in a arbitrary manner at the whims of the inquiry officer without observing the relevant procedure of examination of witnesses, examination of relevant documents relied upon by the disciplinary authority and in total violation of procedure of cross-examination laid down in the provision of CCS (CCA) Rule, 1965. On a mere perusal of the daily order sheet it would be evident that the document was not been examined in the manner it was required.

Harren Ch. Das

Be it stated that the applicant also prayed for change of enquiry officer earlier in his representation dated 16.12.2003 on various ground but to no result.

(Copy of the representation dated 16.12.2003, office order dated 06.01.2004 and representation dated 23.01.2004 is enclosed hereto and marked as Annexure- XVIII, XIX and XX respectively).

4.24 That it is stated that when a representation is pending which was submitted by the applicant before the authority demanding change of enquiry officer, at that point of time the authority conducting an ex-party enquiry that too in a very arbitrary manner in the absence of the charged official, which is evident from the daily order sheet dated 20.02.2004 and on that score alone the ex-parte enquiry proceeding including the order of penalty passed by the disciplinary authority which is further confirmed by the appellate authority are liable to be set aside and quashed.

4.25 That it is stated that on a careful reading of the entire enquiry proceeding and the deposition made by prosecution witnesses recorded in the enquiry proceeding, it would be evident that a mere altercation took place with the Principle Mr. J.P. Yadav, the then Principle of K.V. Maligaon who objected/ resisted the applicant to meet the Commissioner, KVS on his visit at Guwahati to submit a memorandum and also to greet him for his first visit in N.E. Region in the capacity of Commissioner K.V.S on the date of alleged incident. It would be evident from the deposition of PW- 7 recorded in the enquiry proceeding on 20.02.2004, where on a specific query raised by the Presenting Officer, the PW-7 deposited his statement regarding behaviour of the applicant on the day of incidents in the following manner. The relevant portion of daily order sheet dated 20.02.2004 is quoted below for perusal of the Hon'ble Court.

*Haren Ch. Das*

" P.O to P.W.7- What was the behaviour of Shri H. C. Das, C.O. after his forcible entry into the official meeting room (Principle's chamber) chaired by Shri H. M. Cairae, I.A.S., Commissioner K.V.S (H. Qtr), New Delhi and in the presence of Principals and other officers of KVS?

P.W. 7 to P.O- His behaviour (Mr. H. C. Das) was most unbecoming, based on arrogance and defiance and that too of a subordinate employee in the presence of higher officials especially the honourable Commissioner Shri H. M. Cairae. It disrupted and disturbed the decorum and dignity of the meeting. Further, he also snubbed and spoke rudely to Mr. J.P. Yadav, the then Principle of K. V. Maligaon who tried to pacify him and show him reason."

It is quite clear from the statement of PW-7 that a mere altercation was took place which does not warrant initiation of disciplinary proceeding under CCS (CCA) rules, 1965 and as such the penalty imposed on the applicant is highly disproportionate and shocking. It would further be evident from the report of the local news paper that the applicant and other office bearers greeted the newly appointed Commissioner. Therefore, on that score alone the impugned order dated 03.03.2005, appellate order dated 07.10.2005 are liable to be set aside and quashed.

4.26 That it is stated that on a mere careful reading of the impugned appellate order dated 07.10.2005, it would be evident that the appellate authority failed to discuss the grounds raised by the applicant in his appeal in the manner it was required under the law. The appellate authority in his findings simply observed that Sri R.S. Mourya, Defence Assistant nominated by the applicant was removed from service at that relevant point of time and the applicant failed to further nominate any valid Defence

Harren Ch. Das

Assistant. In this connection it may be stated that this particular observation/discussion of the disciplinary authority as well as the appellate authority are contrary to the judicial order in view of the fact when a competent Court of law passed the order that Shri R.S. Mourya should be treated as deemed in service, to be in the service, in the termination case and the said order was produced by the applicant before the disciplinary/enquiry authority and also before the appellate authority, therefore such judicial order cannot be ignored and further authority is not entitled to declare that Shri R. S. Mourya is a removed employee until and unless the said order is set aside or quashed by the competent higher Court. Therefore, the respondents have deliberately and also without having any jurisdiction refused to allow Shri R. S. Mourya to act as Defence Assistant, thereby reasonable opportunity has been denied to the applicant and on that score alone the impugned penalty order dated 03.03.2005 as well the appellate order dated 7.10.2005 and the entire enquiry proceeding are liable to be set aside and quashed.

4.27 That it is stated that in the impugned order dated 7.10.2005, the appellate authority has simply dealt with the question of engagement of Shri R.S. Mourya and the findings on the said question is also contrary to the records and the said findings of the appellate authority is erroneous. But the appellate authority did not discuss any other points raised by the applicants in his appeal as required under Rule 27, sub rule 2, it is needless to mention here that as per sub rule 2 of rule 27 it is mandatory on the part of the appellate authority to see whether the following requirement of the rule has been complied with or not;

- (a) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice.

Hansen Ch. DAS

- (b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

But surprisingly the disciplinary authority miserably failed to consider the aforesaid mandatory guidelines, there is no discussion of evidence in the appellate order and also there is no discussion regarding the violation of relevant provisions of Rule 14 and 15 of the CCs (CCA) Rule, 1965.

- 4.28 That it is stated that the impugned order of penalty dated 03.03.2005, has been passed in total violation of Rule 9 (1) of the C.C.S (Pension) Rule, 1972, since there is no finding recorded, either in the inquiry report, impugned order dated 03.03.2005 or in the appellate order dated 07.10.2005, to the extent that the applicant is found guilty of grave misconduct, as such imposition of penalty of 25% cut in pension is in violation of Rule 9 (1) of C.C.S (Pension) Rule 1972. Therefore, the impugned order of penalty dated 07.10.2005, are liable to be set aside and quashed.
- 4.29 That this application is made bonafide and for the cause of justice.

**5. Grounds for relief (s) with legal provisions:**

- 5.1 For that, the allegations/charges made against the applicant are false, malicious, malafide, unfair, concocted and not sustainable.
- 5.2 For that, the cause of action arose on 15.01.99 and immediately thereafter the same charges were labeled against the applicant and the applicant was even removed from service. But the applicant was subsequently reinstated in service since the order of dismissal from service being illegal was

Haren Ch. Daf

quashed by the learned Central Administrative Tribunal vide its judgment and order dated 26.02.2001 in O.A No. 390/99 which was also upheld by the Hon'ble Gauhati High Court vide its judgment and order dated 29.08.2001 in W. P (C) No. 6071/2001.

*26/02/01*

- 5.3 For that, the Hon'ble High Court in its judgment and order dated 29.08.01 did not grant liberty to the respondents to initiate fresh disciplinary proceeding against the applicant and as such the instant proceeding is unwarranted, lacks jurisdiction, malicious and arbitrary and liable to be quashed.
- 5.4 For that, in view of the judgment and order dated 29.08.01 passed by the Hon'ble High Court upholding the order of the learned CAT, the order dated 29.08.2001 of the learned CAT has attained finality and as such the instant disciplinary proceeding and the penalty imposed on the applicant is not sustainable and liable to be quashed.
- 5.5 For that, on the alleged charges, the applicant was once removed from service and kept out of service for a long period from 02.02.99 to 26.09.01 until he was reinstated following Courts orders and that too with punishment transfer and now again the applicant has been sought to be punished with major penalty of compulsory retirement and 25% cut in pension on the same charges which means punishment twice for the same offence and as such violates the doctrine of "Double Jeopardy" enshrined in Article 20 of the Constitution of India.
- 5.6 For that, the respondents initiated the disciplinary proceeding under Rule 14 of the CCS (CCA) Rules, 1965 but did not follow the procedures laid down therein and the inquiry is vitiated by apparent irregularities and infirmities which having been pointed out by the applicant has been ignored.

Haren Ch. Das

- 5.7 For that, the applicant was not given the reasonable opportunity during the inquiry to defend his case in as much as that the Defence Assistant to act on behalf of the applicant which violates the principles of natural justice and opposed to the procedures established by law.
- 5.8 For that, some of the hearings were conducted ex-parte by the Inquiry Officer even inspite of objections filed by the applicant regarding charge of Inquiry Officer and against not allowing the Defence Assistant to act on behalf of the applicant which violates the principles of natural justice and opposed to the procedures established by law.
- 5.9 For that, the Disciplinary Authority and the Appellate Authority solely relied on the unfair and erroneous report of the Inquiry Officer without taking into consideration the factual detail of the allegations and acted mala fide, with a pre-set mind and imposed the penalty in an arbitrary and unfair manner and that too a penalty which is disproportionate to the alleged offence.
- 5.10 For that, the respondents have acted on grudging motive since the applicant approached the Hon'ble Courts for remedy and has imposed the said penalty arbitrarily.
- 5.11 For that, the respondents wanted to restrain the applicant from exercising his vested right to meet the Commissioner on 15.01.99 in his capacity as an office bearer of the Staff Association and having failed to do so, have resorted to such repressive measures against the applicant, which is unfair, illegal and malicious.
- 5.12 For that the enquiry has been conducted in total violation of sub-rule (8) (a) of Rule 14, where there is a specific provision that the charged official entitle to take assistance of any other Govt. servant to present the case on his behalf, but the said assistance has been deliberately denied to the

Haren Ch. Das

applicant inspite of his valid nomination of a Defence Assistant namely Sri R.S.Mourya on the alleged ground that Sri R.S.Mourya, defence Assistant is not in service, overlooking the judicial order passed by a competent court of law setting aside the order of termination/removal of said Sri R. S. Mourya by the learned Tribunal and directed the respondents to treat Shri R. S. Mourya deemed to be in service.

- 5.13 For that ex-parte hearing conducted without staying further continuance of the proceedings when a representation is specifically made by the applicant for change of enquiry officer of the specific ground of bias-ness.
- 5.14 For that there is no discussion of evidence in the order of the disciplinary authority as well as in the order of appellate authority dated 07.10.2005 as required under the rule.
- 5.15 For that the order of penalty dated 03.03.2005, has been passed by the disciplinary authority in violation of Rule 9 (1) of CCS (Pension) Rules 1972 to the extent of the penalty order, 25% cut in pension as because, there is no finding recorded, either by the Inquiry Authority, disciplinary authority or by the appellate authority in the inquiry report. Penalty order dated 03.03.2005 or also in the impugned appellate order dated 07.10.2005 that the applicant is found guilty of grave misconduct as such penalty order is liable to be set aside and quashed.
- 5.16 For that appellate authority did not discuss the points raised by the applicant in his appeal as required under the rule except on the question of engagement of Defence Assistant.
- 5.17 For that the appellate order dated 7.10.2005 has been passed in a most arbitrary manner without following the mandatory provision laid down in sub rule (2) (a) (b) (c) of Rule 27.

5.18 For that the appellate order is cryptic, non-speaking and in violation of the relevant provision of CCS (CCA) Rules 1965.

5.19 For that the penalty is highly disproportionate commensurate to the gravity of the offence and the said order of penalty is passed in violation of CCS (Pension) Rule 1972.

6. Details of remedies exhausted

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

7. Matters not previously filed or pending with any other Court

The applicant further declares that saves and except of filing of O. A. No. 47/99 and O. A No. 390/99 successively before this Hon'ble Tribunal and the W. P (C) No. 6071/2001 before the Hon'ble Gauhati High Court he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief (s):

8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned Memorandum No. F. 14-2/99-KVS (GR)/300-01 dated 02.01.2002 (Annexure-V) penalty order No. F. 14-2/99- KVS (GR)/17169 dated

Haben ch. Dab

03.03.2005 (Annexure-IX), and the appellate order No. F.9-32/2005-KVS (Vig.) dated 07.10.2005 (Annexure-XII) be set aside and quashed.

8.2 That the Hon'ble Tribunal be pleased to direct to reinstate the applicant in service with all consequential service benefits including monetary benefits.

8.3 That the Hon'ble Tribunal be pleased to declare that order to cut 25% from pension, passed by the impugned order dated 03.03.2005 is void.

8.4 Costs of the application.

8.5 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

**9. Interim order prayed for**

During pendency of the application, the applicant prays for the following interim relief:-

9.1 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

10. ....

**11. Particulars of the I.P.O**

i) L.P.O No.	26 G 317124
ii) Date of issue	14.11.05
iii) Issued from	GPO, Guwahati
iv) Payable at	GPO, Guwahati

**12. List of enclosures:**

As given in the index.

Jitoren Ch. Das

VERIFICATION

I, Shri Haren Chandra Das, Son of Late Jaitiram Das, aged about 52 years, Resident of Sadilapur, Pandu, P. O- Pandu, Guwahati- 12, Dist- Kamrup, Assam, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 26<sup>th</sup> day of December 2005.

Haren Ch. Das.

**Assam**  
The 2nd Arambha Puja will be held at Bamakhatia Bazaar, Dibrugarh, Assam on February 6 and 7. The general secretary of Dibrugarh Dwarakiana Samiti of the Satra, Sri Jitendra Baruah has requested to attend the holy Puja.

### Shukr Jatra

Under a Chester would see a Shukr Jatra programme will be organized at the 'Arati Dwarakiana Ghat' in the holy Tropic river at Bhamoghat, Bhasupara division in Dhubri district from January 29 to January 31. It may be mentioned that apart from various districts, a sub-district town West Dergaon will also participate in the programme.

### Tragic death

Social master Sri Jasbir Singh of Tinsukia, N.F. Railway met with an accident on January 14 last while doing his duty as helper in AC coach of Ranipuri Express bound for Calcutta. He fell down from the running train and expired on the spot. The N.F. Railway officers and staff condole the death of Sri Singh and conveyed heart-felt sympathy to the bereaved family praying almighty for his soul to rest in peace.

### Annual meet

The UGC assisted second annual conference of the North Eastern Economic Association will be held at Margherita College, in Tinsukia district from February 10-12. In this national level conference noted economist and economic think tanks like Dr Jayanta Madhukar, Dr Atul Goswami, Dr Hemanshu Goswami together with learned pathos of high distinction from across the country and experienced doyens and managers of the local based industries will actively take part in the deliberations.

### PTI pror

A day-long awareness programme on pulse polio immunisation was organised at Dori-Mugh recently by the Directorate of Field Publicity, Government of India, Dibrugarh unit, in collaboration with Health unit, Muz. Dibr., Sri K.N. Dungong explained the aims and objectives of the campaign. A healthy baby show cum health check up, photo and poster exhibition, public meeting, film show, etc were organised on the occasion.

### Customer service

Assam O.P.C. initiated customer service to its customers and patients through its retail outlets and LPG agencies. Customers may meet Sri A. Datta, Deputy General Manager (MO) (Phone : 547214) and Sri J. Borah, Chief Sales Manager (Guwahati) (Phone : 547143) on every second Tuesday of the month at its office located at 2, Dr. B. K. Deka Lane, Rangbadh, Guwahati between 10.30 am to 1.30 pm for any complaint and redressal of grievances.

### Commissioner's visit

Sri H.M. Canaie, newly appointed Commissioner of Kendriya Vidyalaya Sangathan (KVS) New Delhi visited Kendriya Vidyalaya, Mahapuri, Guwahati and Kendriya Vidyalaya, Tezpur, No. 1 Army Cantonment, Sompur district recently. A team of KEVINTSA under the leadership of Sri Hiren Chandra Das, joint secretary, All India Kendriya Vidyalaya Non Teaching Staff Association, Central Committee, along with Gopinath Chakraborty, KEVINTSA, NE Zone and Sri Taracharan Kalita, branch secretary KEVINTSA, Dibrugarh unit submitted a memorandum and congratulated the newly appointed Commissioner with a traditional *phulangamocha*.

initial were done by 7 doctors and other staff. Doctors of Bhopal and Ganga State Dispensary were also present and operated. Altogether 702 patients of the meritorious students, Sri Bhattacharyya laid the foundation stone of the covert fencing of Ashram.

Sri Lakhi Saha, secretary of Ashram offered the vote of thanks.

### ANNEXURE

The open meeting was presided over by Sri Jugal Das, senior BDO, Behn Bolek which was inaugurated by Sri K.N. Dungong.

## Road Safety Week observed at Dhubri

From Our Correspondent

GAUHATI, Jan 29: 'Road Safety Week' was observed at Dhubri with several programmes from January 4 to 10. The programmes were jointly organised by District police and District Transport Office, Dhubri.

A colourful procession with message for road safety and precautionary measures to be taken against road accidents was staged throughout Dhubri town.

Speaking on the occasion, Sri

Prabin Saikia, Superintendent Police, Dhubri appealed to the public to follow traffic rules to minimise road accidents.

In this connection, a seminar was organised in the conference hall Deputy Commissioner's office, Dhubri. The topic of the seminar was 'Prevention of road accidents and responsibilities of the traffic people.' The seminar was conducted by Smt Gayatri Datta, Deputy Commissioner, Dhubri.

Sri Kushal Hazarika, District Transport Officer, Dhubri gave detailed elaboration of the aims and objectives of conducting such seminar.

Sri Prabin Saikia, SP, Dhubri, K. Zaman, principal, B.N. College, Dhubri, Sri G.N. Goswami, president, Zila Sahitya Sabha, Dhubri, Sri Bhupan Saikia, lecturer (retired), B.N. College, Dhubri and Sri Prithviraj Rava, assistant director of Employment, Dhubri delivered their valuable lectures on the topic distinguished speakers.

Moreover, District Student Union, Dhubri, Assam Jatiyatabadi Yuba Chhatra Parishad, bus associations, vice-chairman, Dhubri municipality NGOs along with all government officials participated in the seminar.

A S S A M T RIBUNE

30/1/93

Assam Tribune

28.2.93

Offered  
by  
Advocate  
on 21/2/93



CENTRAL ADMINISTRATIVE TRIBUNAL, GUNAHATI BENCH.

Original Application No. 390 of 1999.

Date of Order : This the 26th Day of February, 2001.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr K.K.Sharma, Administrative Member.

Shri Haren Chandra Das,  
resident of Sadilapur, Pandu,  
P.O. Pandu, Guwahati-12,  
Dist. Kamrup (Assam)

... Applicant.

By Advocate Shri P.K.Tiwari.

- Versus -

1. Union of India  
through the Secretary to the  
Government of India,  
Ministry of Human Resource Development,  
Government of India,  
New Delhi.

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

3. The Deputy Commissioner(Admn.)  
Kendriya Vidyalaya Sangathan,  
18 Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-16.

4. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office, Chayaram Bhawan,  
Maligaon Chariali,  
Guwahati-12.

... Respondents.

By Dr B.P.Todi, Standing counsel for KVS.

O R D E R

CHOWDHURY J. (V.C)

This application under Section 19 of the Administrative Tribunals Act 1965 has arisen and is directed against the order dated 2.2.99 passed by the Assistant Commissioner, KVS, respondent No.4, dismissing the applicant from service in exercise of powers under proviso of Rule 19(ii) of Central

*Admitted (Chowdhury)*  
*Surajit Baruah*  
*on 21/2/01/05*

contd...2

Civil Services (Classification Control and Appeal) Rules 1965 as well as the order dated 16.8.99 passed by the Deputy Commissioner, Administration, Kendriya Vidyalaya Sangathan, respondent No.3 dismissing the appeal of the applicant and upholding the order dated 2.2.99 in the following circumstances.

2. The applicant at the relevant time was holding the post of Upper Division Clerk under the respondents. The applicant joined the service on Kendriya Vidyalaya Sangathan on 9.7.73 as a Group D employee. He was thereafter promoted to the post of LDC in the year 1980 and appointed as UDC in the year 1983. He was actively involved in the Union activities and he was the Regional Secretary of Kendriya Vidyalaya Non-Teaching Staff Association from 1985 to 1990. He was also elected as Joint Secretary of the said association from 1990 to 1993. He was again elected as Joint Secretary and holding the post from 1993 to the date of filing this application. According to the applicant the Commissioner of the Kendriya Vidyalaya Sangathan, respondent No.2, visited the Kendriya Vidyalaya during the year 1999, the applicant alongwith other office bearers of the Association wanted to meet respondent No.2 for the purpose of submitting a memorandum to him comprising of certain demands of the employees and also for felicitating him. The respondent No.2 visited Kendriya Vidyalaya, Maligaon on 15.1.99 and the applicant alongwith other office bearers wanted to meet the respondent No.2 and sought for permission from the Principal, KV, Maligaon. However, the Principal, KV, Maligaon refused to do so. When the situation became ferocious, the respondent No.2 who was at the relevant time inside the room came out and called the applicant and his colleagues inside the room. The applicant and his colleagues thereafter felicitated the Commissioner and also submitted a memorandum

containing the grievances of the employees in regard to their pay scale. According to the applicant he left for New Delhi on 22.1.99 in response to a call letter dated 15.1.99 whereby he was requested to appear in a departmental examination for the post of Head Clerk to be held on 24.1.99. The applicant returned from Delhi and reported for duty on 30.1.99 since his leave was sanctioned upto 29.1.99. However, in the meantime he received an order No.F.14-2/99-KVS(GR)/11710-13 dated 25.1.99 passed by respondent No.4 placing him under suspension in contemplation of disciplinary proceeding. The applicant thereafter served with Order No.F.14-2/99-KVS(GR)/11896-902 dated 2.2.99 passed by respondent No.4 dismissing the applicant from service in exercise of powers under the provision of Rule 19(ii) of CCS (CCA) Rules 1965. The applicant preferred an appeal on 15.2.99 against the aforementioned order of dismissal. The applicant also moved this Tribunal assailing the legitimacy of the order dated 2.2.99 by an application which was numbered and registered as O.A.47/99. In the aforementioned O.A the respondents submitted its written statement and the applicant also submitted his rejoinder. The said O.A was finally disposed of directing the appellate authority to dispose of the appeal expeditiously after providing an opportunity of personal hearing to the applicant vide order dated 28.5.99. The respondent No.3 in due course disposed of the appeal vide order dated 16.8.99 dismissing the appeal and upholding the order of dismissal. Hence this application questioning the legality and correctness of the action of the respondents.

3. The respondents No.2 and 3 submitted their written statement denying and disputing the claim of the applicant. In the written statement the respondents stated that respondent No.2 paid his first visit to Guwahati on 15.1.99 to

discuss the problems of Kendriya Vidyalayas of Guwahati and to find out the ways and means of solving their problems. The respondents No.3 convened a meeting of the local members on 15.1.99 at Kendriya Vidyalaya, Maligaon which was attended by six Principals/Incharge Principals, Education Officers and Administrative Officers of Guwahati Region. Before the meeting could start, the applicant forcibly entered into the room of the Principal, Kendriya Vidyalaya, Maligaon forcing him to arrange a meeting with the respondent No.2. It was also stated that the applicant did not take prior permission from the host Principal or from his Principal, i.e. Principal of K.V.Borjhar to meet respondent No.2. For this situation the applicant has been found guilty of grave indiscipline and insubordination by creating atmosphere of violence and placed under suspension on 25.1.99. The respondents in the written statement also justified the action for taking aid of Rule 19(ii) of CCS(CCA) Rules at para 5 of the written statement, which shall be dealt in due course.

4. Mr P.K.Tiwari, learned counsel appearing for the applicant assailing the impugned order of dismissal in exercise of powers under Rule 19(ii) of the CCS(CCA) Rules submitted that the aforementioned exercise of power in the facts and circumstances of the case amounted to an illegal exercise of discretion and abuse of its power reposed on it. Mr Tiwari, the learned counsel submitted that power conferred under Rule 19 are exceptional power and those are to be exercised only in the circumstances as indicated in the rules. Referring to the order itself, the learned counsel submitted that the authority mechanically resorted to the provisions of Rule 19(ii) in the instant case without applying its mind. The learned counsel submitted that the respondents authority

in the instant case in a most illegal fashion took aid of Rule 19 though the condition precedent prescribed in the rules were absent. The applicant was dismissed from service only on the sole consideration that it was not reasonable to hold an enquiry due to the alleged practice of intimidation threats and posture adopted by the applicant. In the absence of any ground to hold that it was not reasonable and practicable to hold the enquiry in the manner provided by Rule 14 to Rule 18, the impugned exercise of power under rule 19 in the setting was unwarranted and unauthorised, submitted Mr Tiwari, learned counsel for the applicant.

5. Dr B.P.Todi, learned counsel appearing for the respondents argued that the order of dismissal was made strictly in conformity with the rules and therefore question of interference in exercise of power under Rule 18 does not arise. Dr Todi submitted that the appellate order itself gave indication as to the circumstances under which the respondents had to resort to Rule 19 of the CCS Rules and submitted that the records of the proceeding would indicate the relevant circumstances under which the respondents authority took aid of Rule 19(ii) and sought for time to produce the records. The records were produced before us to support the case of the respondents.

6. Rule 19 of the Rules contained the special procedure embodying three exceptional situations listed in clauses (i), (ii) and (iii) of the rule, dispensing with the enquiry in certain cases, the relevant provision of the rules are reproduced below :

"Notwithstanding anything contained in Rule 14 to Rule 18-

- 1) Where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or  
(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i);

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

The rule corresponds to the second proviso to Article 311 of the Constitution of India. The Rule 19 is a special procedure as indicated by the very rule itself. The procedure prescribed is an exception to the general procedure prescribed in Part VI of the Rules, for imposing penalties. As per the general procedure indicated in Rules 14 to 18 before imposing major penalties the authorities are required to provide a reasonable opportunity to the Government servant by holding a full fledged enquiry.

Rule 19 (ii) is a procedure conferred on the authority to take aid of the same only when there exist a situation which make holding of an enquiry contemplated under Rule 14 to 18 "not reasonably practicable." Reasonable practicability is the test for exercising the power. It contemplates a situation where holding of an enquiry is not reasonably practicable in the opinion of a reasonable man on a judicious view of the surrounding situation. There may be cases where because of the use of threat and intimidation of witnesses by the Government servant or through his associate may likely to prevent the witnesses to give testimony before the enquiry

against a Government servant for fear of reprisal. There may be also case where the Government officer either himself or through his associate put intimidation on a disciplinary authority or the members of his family so it affects the equanimity of the officer because of the act of commination of the charged officer to hold an enquiry. The grounds of intimidatory tactics or violence at the instance of the Government servant that may imperil equilabrium of the officer in holding a fair enquiry. These are only some of the instances cited by us. The situation is to be judged by the authority in exercising the power with care and caution. The power conferred is an exceptional power which is to be exercised only in the exceptional circumstances. It is not to be exercised lightly or casually. The impugned order dated 2.2.99 only indicated that the applicant allegedly created an unpleasant atmosphere of violence during a meeting on 15.1.99 by entering forceably in the room where the meeting was being held. The aforesaid ground did not indicate any circumstances for not holding enquiry. It only indicate about the things that was happened on 15.1.99. The order itself indicated that because of prevailing abnormal atmosphere no witnesses will co-operate with any proceedings in accordance with the provisions of CCS(CCA) Rule 1965 and it was not reasonable to hold the enquiry due to the practice of intimidation, threats adopted by the said UDC. Conclusion reached by the Assistant Commissioner for not holding the enquiry was that it would not be reasonable to hold an enquiry due to the practice of intimidation. There was no whisper in the order to indicate that it was not reasonably practicable to hold the enquiry. The appellate authority in its order sought to improve the same by indicating at para 5 that it was not possible to hold an enquiry under

normal rules, since crucial and material evidence would not have been available because the witnesses would not even come forward at the risk of their live, it might be treated peripheral. Since the applicant had been associated with union activities in one capacity or the other he had a client (sic) which would not permit the enquiry to proceed and the conditions prevailing in this part of the land where a bogey of local vs outsider was sure to be raised and pressurisation/threats were sure to be employed by vested interests at the instance of Shri Das. Hence it was not reasonably practicable to hold an enquiry. The aforementioned grounds given by the appellate authority were based on assumptions and presumptions. The records those were produced before us did not indicate any such thing nor any rustle or murmur to that effect was discernible from the records. The reasonings cited by the Assistant Commissioner in his order at Note Sheet dated 28.1.99 are re-produced below :

"Absence from school office during duty hours without the permission of the Principal,KV Borjhar and entry into the KV,Maligaon without permission of the Principal. It has been confirmed by the Principal,KV,Borjhar wherein Shri H.C.Das works in writing as well as Principal, KV,Maligaon through their written statements.

Intimidation of Shri Phoni Bora, Group 'D' of KV,Maligaon for sending the slip to Commissioner while the said meeting of the Principals was on.

Forced entry into the meeting room, picking up the slip from the Commissioner's table and shoving it in front of his face and using the foul language and tone for the venue Principal Shri J.P.Yadav when he objected to it.

Standing inside the meeting room while the meeting was on and had to be taken out by Commissioner as he stubbornly ignored all the procedure and by creating commotion and thus undermining the security cover provided to the Commissioner by the State Government.

The unbecoming behaviour took place in front of the appointing and Controlling Authority of Shri H.C.Das.

Unapologetic and non-repentant attitude when Commissioner met Shri H.C.Das after the meeting and giving him time to receive the representation he was carrying with him."

The reasonings cited in the appellate order does not find any support from the order cited above. The submission of Mr P.K. Tiwari, learned counsel for the applicant that the order passed by the appellate authority is only an improved version with a view to justify the order without support by any materials on record. The reasonings mentioned in the order dated 28.1.99 which the respondents authority came to a conclusion that it was not reasonably practicable to hold an enquiry due to the practice of intimidation threats adopted by the applicant was based only on the conclusion reached by the applicant on the basis of alleged act that took place on 15.1.99. There was no materials to show and establish that the Commissioner, KVS, six Principals, Education Officer and the Administrative Officers of Guwahati Region would not co-operate with any proceeding in accordance with the provisions of the CCS(CCA) Rules 1965 and that it was not reasonably practicable to hold the enquiry due to the practice of intimidation, threats and postures adopted by the applicant. The grounds mentioned in the order dated 28.1.99 was also cited in the para 5 of the written statement. There is no material to suggest that the threats, intimidation or atmosphere of violence or any of the indiscipline mentioned in the orders, written statement as well as in the appellate orders were subsisted at the time when disciplinary authority reached this conclusion on 28.1.99 or for that matter on 22.8.2000. The reasons indicated in the order lacks ostensible logic or comprehensible justification for avoiding the statutory enquiry as contemplated in Rule 14 of the rules. The reasons stated only lead to the inference of complete misapprehension of the powers and duties of the concerned authority.

7. From the conspectus of the materials we are of the opinion that the respondents fell into serious error in its decision making process. According to Dr Todi it was a pure case of bonafide exercise of the discretionary power by the respondents reposed by the Statute. There is no dispute as to the nature of the discretionary power. Rule of law is the basic feature of the Indian Constitution. The constitutional philosophy does not countenance absolute or unfettered exercise of discretion. Statutory powers are reposed on the public authority for public purpose as a measure of trust. Such powers are to be used lawfully for achieving the purpose designed by the maker of the Statute. Unfettered discretion is an anathema to a public authority. Discretion of a Statutory body, in the words of Lord Denning in Breen vs. Amalgamated Engineering Union reported in (1971) 2 QB 175 (190), "is never unfettered. It is a discretion which is to be exercised according to law. That means at least thus : the Statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith, nevertheless the decision will be set aside. That is established by Padfield vs. Ministry of Agriculture, Fisheries & Food, which is a land mark in modern administrative law."

Statutory discretion connotes good faith in public duty. There is always a perspective within which a statute is intended to operate- perceptible deviation from the statutory design is equally abhorrent if not obnoxious as fraud or corruption. A primary aim of legal policy is to do justice and courts assume that laws are not made to do injustice.

8. In the instant case the alleged events took place on 15th January 1999. The applicant was placed under suspension, ten days thereafter (on the 25th of January 1999) in contemplation of a departmental proceeding when the said order of suspension was passed on the 25.1.1999 in aid of Clause (a) of sub-rule (1) Rule 10 of the Rules, the officer was placed under suspension with the purpose coupled with the decisive intention to hold a disciplinary proceeding against the officer. It was a statutory decision presumed to have been taken after due application of mind on assessment of the surrounding circumstances and thought it conceivable to hold such enquiry. We fully agree with Dr Todi that the situation might not continue to be same- it could crumble, it could disintegrate. Such an environment might reach during the stage of enquiry, deterioration of the surroundings might take place after issuance of the order of suspension. No such materials were forthcoming to reasonably reach at such an inference. The alleged events/misconduct connecting applicant on 15.1.99 allegedly took place in presence of the Commissioner KVS, b) Assistant Commissioner KVS, KVS Region, c) Six Principals, Incharge Principals, Education Officers and Administrative Officers of the Regions. All those persons mentioned above were high officials discharging higher responsibilities. Those officers were the crucial and material witnesses in whose presence the alleged occurrence were allegedly taken. Their evidence could not be said to of peripheral nature. Materials produced did not even embrace any trace or undertone to the effect those high officials were ever threatened/terrorised and/or overawed by the applicant or any of his associates on his behalf. A disciplinary authority is required to act with full responsibility. It is not expected to dispense with the disciplinary enquiry whimsically and/or arbitrarily or out of ulterior motives.

The assessment of the situation is/was to be made by the disciplinary authority taking a reasonable view of the situation like that of a reasonable man. In the case in hand the decision making process of the respondents were flawed on the ground of disregard of the relevant considerations as well as for taking into consideration irrelevant and extraneous consideration which affected the final outcome of the decision.

9. We have given our anxious consideration on the matter and considering all the aspects of the matter we do not find any valid reason for exercising the power conferred under Rule 19(ii) of the CCS Rules. In the circumstances the impugned order dated 2.2.99 as well as the appellate order dated 16.8.99 are set aside and the respondents are directed to reinstate the applicant with full back wages.

The application is accordingly allowed. There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Certified to be true Cop,  
প্রাণাধির প্রতিলিপি

MS/ 12/3/2001

Notary Officer (S)

আনুমতি দাতা (S) : 12/3/2001  
Central Administrative Tribunal

কেন্দ্রীয় প্রশাসনিক বিধুত

Guwahati Bench, Guwahati  
অসম চৰকাৰ, ভাৰত

प्राप्ति का निश्चय की तिथि Date of decision for the copy.	संरक्षित संग्रहों का निश्चय तिथि Date fixed for notifying the requisite number of stamps and folios.	संरक्षित संग्रहों का निश्चय दोनों तरीख Date of delivery of the requisite stamps and folios.	दोनों तरीख गतिविधि तिथि, जो Date on which the copy was ready for delivery.	दोनों तरीख गतिविधि तिथि, जो Date of making over the "copy" to the applicant.
१३/१२/०३	१३/१२/०३	१३/१२/०३	१३/१२/०३	१३/१२/०३

10  
ANNEXURE - IV

**IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM : NAGALAND : MEGHALAYA :  
MANIPUR : TRIPURA : MIZORAM & ARUNACHAL PRADESH)**

**WRIT PETITION© NO.6071/2001**

1. Kendriya Vidyalaya Sangathan,  
Represented by the Commissioner,  
18, Institutional Area,  
Saheed Jeet Singh Marg,  
New Delhi-16.
2. The Deputy Commissioner(Admin),  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Saheed Jeet Singh Marg,  
New Delhi-16.
3. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office,  
Chayaram Bhawan,  
Maligaon Chariali,  
Guwahati-12.

Petitioners.

-Versus-

Shri Haren Chandra Das,  
Resident of Sadilapur, Paudu,  
P.O. Paudu, Guwahati-12,  
District: Kamrup(Assam).

Respondent.

*A. Deo  
Smt. Choudhury  
13/12/03*

P R E S E N T

THE HON'BLE MR JUSTICE D. BISWAS  
THE HON'BLE MR JUSTICE RANJAN GOGOI

For the petitioners	: Dr BP Todi and Ms D. Das Advocates.
For the respondent	: Mr P.K.Tiwari. Advocate.
Date of hearing & judgment	: 29.8.2001

JUDGMENT & ORDERS(ORAL)

Gogoi, J.

1. Heard Dr. BP Todi, the learned counsel for the writ petitioners and Mr P.K.Tiwari, the learned counsel for the respondent.

2. The instant writ petition has been filed against the order dated 26<sup>th</sup> February, 2001 passed by the learned Central Administrative Tribunal, Guwahati Bench in Original Application No.390/99. By the aforementioned judgment and order the learned Tribunal has allowed the Original Application filed by the sole respondent against an order of dismissal from service by invoking the provisions of Rule 19(ii) of Central Civil Service (Classification, Control and Appeal) Rules, 1965.

3. We have perused the judgment and order of the learned Tribunal and also heard the submissions advanced by the learned counsel for the parties. The order by which the disciplinary enquiry was dispensed with by invoking the

provisions of the aforesaid rules is available on record. The said order is extracted below:

“WHEREAS Shri H.C.Das, UDC, Borjhar has been found guilty of grave indiscipline and insubordination by creating an atmosphere of violence during a meeting which was being held at KV, Maligaon on 15.1.99 at 3 PM under the Chairmanship of Commissioner, KVS..

AND WHEREAS the undersigned is further satisfied that Shri H.C Das, UDC, KV, Borjhar has created an unpleasant scene by his unbecoming behaviour and insubordination by creating a violence scene by entering forcibly in the room where the meeting was being held.

AND WHEREAS the undersigned is satisfied that the prevailing atmosphere is so tense and abnormal that no witness will co-operate with any proceedings in accordance with the provisions of CCS(CCA) Rule, 1965 and that it is not reasonable to hold the enquiry due to the practice of intimidation, threats and posture adopted by the said UDC, Shri HC Das.

NOW, THEREFORE, in exercise of powers under provision of Rule 19(ii) of the CCS(CCA) Rule, 1965, the undersigned as the appointing and competent disciplinary authority do hereby dismiss Shri HC Das, UDC with immediate effect from the services of the Sangathan:

Sd/-  
(Dr. Lalit Kishore)  
Assistant Commissioner.”

The conclusion reached by the disciplinary authority is that on the facts recited in the order dated 2.2.99, it was not reasonable to hold the enquiry. The requirement of the Statute is a satisfaction to the effect that it is not reasonably practicable to hold the enquiry, which satisfaction is

*R.K.H*  
*JK*

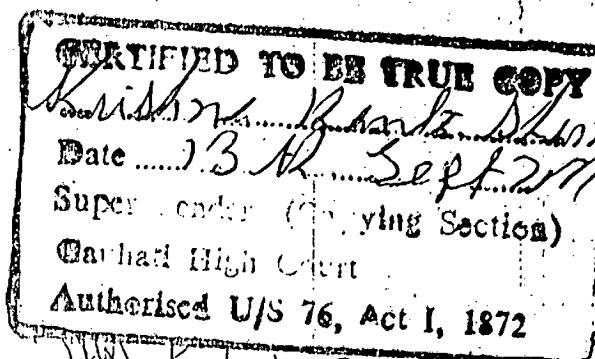
conspicuously absent in the order dated 2.2.99. The appellate authority in its order dated 16.8.99 has tried to make amends to overcome the deficiencies in the initial order dated 2.2.99, a course not permitted by law, and in any case unsupported by materials on record. The relevant part of the Note dated 28.1.99, which has ostensibly acted as a basis for the impugned satisfaction, has extracted by the learned Tribunal in its judgment presently under challenge. The Tribunal has come to the conclusion that the events recited being in relation to the incident that occurred on 15.1.99, the same cannot form the basis for the requisite satisfaction in absence of any materials that very many highly placed officials of K.V.S., in whose presence the alleged incident took place on 15.1.99, would not cooperate in the enquiry against the delinquent. The learned Tribunal has also held that there is no materials on record to suggest that any threat, intimidation or atmosphere of violence existed at any point of time to justify the conclusion reached by the authority. On the said finding, the learned Tribunal has thought it proper to conclude that the power conferred by Rule 19(ii) of the Rules being an extra-ordinary power to be exercised in exceptional cases, the facts and circumstances of the instant case do not justify resort to the power conferred by the Rule 19(ii) of the aforesaid rules.

5. We have given our anxious considerations to the submission advanced by the learned counsel for the parties and the reasoning of the learned Tribunal. A perusal of the order dispensing with the inquiry extracted hereinabove would clearly show that the condition precedent for the exercise of powers of dismissal from service after dispensing with the inquiry are conspicuously absent. The resort to such power can only be made in an exceptional situation when it is not reasonably practicable to hold an inquiry. Having regard to the totality of the facts of the case, as elaborately set out in the judgment of the learned Tribunal, we are unable to hold that the extra-ordinary power conferred by Rule

*13*

19(ii) of the Rules has been rightly exercised in the instant case. Therefore, in our considered view the impugned order of dismissal cannot be sustained and the conclusions reached by the learned Tribunal do not require any interference. We do not find any merit in the present petition and the same is hereby dismissed.

S. D. Bhatia  
S. D. Ramjan Gogoi Judge  
Judge



**KENDRIYA VIDYALAYA SANGATHAN**

Regional Office,  
Maligaon Chariali, Guwahati -12

No.F.14-2/99-KVS(GR) / 300 - 01.

Dated 02.01.2002

Registered Post

CONFIDENTIAL

**MEMORANDUM**

1. The undersigned proposes, to hold an Inquiry against Shri H.C. Das, UDC, Kendriya Vidyalaya, Tengavalley under Rule-14 of Central Civil Services(Classification, Control and Appeal) rules 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (ANNEXURE-I). A statement of imputations of misconduct or behaviour in support of each article of charge is enclosed ANNEXURE-II. A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (ANNEXURE-III & IV).
2. Shri H.C. Das is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. He is informed that an Inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.
4. Shri H.C. Das is further informed that if he does not submit his written statement of defence on or before the date specified in Para-2 above, or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of Rule-14 of the Central Civil Services(Classification, Control & Appeal) Rules 1965, or the orders/ directions issued in pursuance of the said rule, the Inquiring Authority may hold the inquiry against him ex-parte.
5. Attention of sh. H.C. Das is invited to Rule-20 of the Central Civil Services(Conduct) Rules,1964 under which no Government Servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri H.C. Das, UDC, Kendriya Vidyalaya, Tengavalley is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule-20 of Central Civil Services(Conduct) rules,1964.
6. The receipt of the Memorandum may be acknowledged.

*D. K. Jain*  
( D. K. JAIN ) 2/1/2002  
Assistant Commissioner

To

Shri H.C. Das, UDC  
Kendriya Vidyalaya,  
Tengavalley.

Copy to

The Principal, K.V. Tengi, make a request to forward the same to  
Sh. H.C. Das, UDC, under acknowledge.

STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI H. C. DAS, UDC, KENDRIYA VIDYALAYA, TENGAVALLEY(FORMERLY AT KENDRIYA VIDYALAYA, AFS BORJHAR, GUWAHATI).

ARTICLE : I

That the said Shri H. C. Das, UDC, Kendriya Vidyalaya, Tengavalley while working in Kendriya Vidyalaya, AFS Borjhar, Guwahati came to the office of Principal, Kendriya Vidyalaya, Maligaon without obtaining prior permission of his controlling officer on 15.01.1999 where a meeting of Principals and other officials of KVS was in progress chaired by the Commissioner, KVS, New Delhi.

Thus the said Shri H. C. Das by his aforesaid act committed a misconduct which is violative of rule 3(1)(i)(ii) and (iii) of Central Civil Services(Conduct) Rules, 1964 as extended to the employees of KVS.

ARTICLE : II

That the said Shri H. C. Das, UDC, Kendriya Vidyalaya, Tengavalley while working in Kendriya Vidyalaya, AFS Borjhar, Guwahati forced his entry in to the office of Principal, Kendriya Vidyalaya, Maligaon on 15.01.1999 at 3.00 p.m. during the conduct of the official meeting being conducted and chaired by Shri H.M. Caire, IAS, Commissioner, KVS, New Delhi. He forced the Principal, Kendriya Vidyalaya, Maligaon to arrange his meeting with the Commissioner immediately.

Thus the said Shri H. C. Das by his aforesaid act committed a misconduct which is violative of rule 3(1) (i), (ii) & (iii) of Central Civil Service(Conduct) Rule 1964 as extended to the employees of KVS.

ARTICLE : III

That the said Shri H. C. Das, UDC, Kendriya Vidyalaya, Tengavalley while working in Kendriya Vidyalaya, AFS Borjhar, Guwahati did not leave when asked to leave the office of Principal, Kendriya Vidyalaya, Maligaon after his forced entry in his office/meeting room during the continuance of the meeting conducted & chaired by Commissioner, KVS, New Delhi.

Thus the said Shri H. C. Das, by his aforesaid act committed a misconduct which is violative of rule 3(1), (i) (ii) & (iii) of Central Civil Services(Conduct) Rule 1964 as extended to the employees of KVS.

( 2 )

ARTICLE : IV

That the said Shri H. C. Das, UDC, Kendriya Vidyalaya, Tengavalley while working in Kendriya Vidyalaya, AFS Borjhar Guwahati behaved in a manner unbecoming of a Kendriya Vidyalaya employee with his superiors after being asked to leave the office of the Principal, Kendriya Vidyalaya, Maligaon on 15.01.1999.

Thus the said Shri H. C. Das by his aforesaid act Committed a misconduct which is violative of Rule 3(1) (i) (ii) & (iii) of Central Civil Services(Conduct) Rule 1964 as extended to employees of KVS.

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI H. C. DAS, UDC, KENDRIYA VIDYALAYA TENGAVALLEY, FORMERLY AT KENDRIYA VIDYALAYA, AFS, BORJHAR.

ARTICLE - I

That Shri H. C. Das, UDC, Kendriya Vidyalaya, Tengavalley while working as such at Kendriya Vidyalaya, AFS Borjhar, Guwahati on 15.01.99 at 3.00 p.m. during the conduct of the official meeting being conducted and chaired by the Commissioner and Senior officials from KVS(Hers) and Regional Office, Guwahati with the local Principals of Guwahati, came to the office of Principal, Kendriya Vidyalaya, Maligaon without obtaining prior permission of his controlling officer.

He was absent from his Vidyalaya Office during duty hours without permission of his controlling officer and entered into the Kendriya Vidyalaya, Maligaon without permission of the Principal, Kendriya Vidyalaya, Maligaon.

Thus, the said Shri H. C. Das by his aforesaid act failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of an employee of Kendriya Vidyalaya Sangathan and has thus violated the provision of rule- 3(1) (i), (ii) and (iii) of Central Civil Services(Conduct) Rules, 1964 as extended to the employees of Kendriya Vidyalaya Sangathan.

ARTICLE-II

That the said Shri H. C. Das, while working as UDC at Kendriya Vidyalaya, AFS, Borjhar, on 15.1.99 at 3 p.m. forcibly entered into the meeting room during the important meeting being conducted and chaired by Shri H. M. Cairae, IAS, Commissioner, Kendriya Vidyalaya Sangathan.

He entered into a heated argument with the Principal, Kendriya Vidyalaya, Maligaon and forced him to arrange a meeting with the Commissioner immediately. Shri H. C. Das had neither taken prior permission from the Assistant Commissioner or venue Principal to meet the Commissioner.

Thus the said Shri H. C. Das by his aforesaid act committed a misconduct which is violative of Rule-3(1), (i), (ii) & (iii) if Central civil Services(Conduct) Rules 1964 is extended to the employees of Kendriya Vidyalaya Sangathan.

### ARTICLE-III

That Shri H. C. Das, UDC, Kendriya Vidyalaya, Tengavally while working as such at Kendriya Vidyalaya, AFS Borjhar, on 15.1.99 during the official meeting being conducted and Chaired by the Commissioner, Kendriya Vidyalaya Sangathan at Kendriya Vidyalaya, Maligaon, he forcibly entered into the meeting room and did not leave the room when asked to leave by Shri J. P. Yadav, former Principal, Kendriya Vidyalaya, Maligaon.

Thus the said Shri H. C. Das by this act committed misconduct, showed lack of devotion to duty and has violated Rule-3(1), (i), (ii) & (iii) of Central Civil Services(Conduct) Rules,1964 as extended to employees of Kendriya Vidyalaya Sangathan.

### ARTICLE-IV

That the said Shri H. C. Das while working as UDC, in Kendriya Vidyalaya, AFS Borjhar on 15.1.1999 during the meeting being conducted and Chaired by the Commissioner, KVS forcibly entered into the meeting room and did not leave the room when asked to leave. He entered into a heated argument with Shri J. P. Yadav, Principal, Kendriya Vidyalaya, Maligaon. Not only this he behaved in a very defiant and arrogant manner with the Principal, KV, Maligaon forcing him to arrange his meeting with the Commissioner immediately. He was so violent that without realizing the solemnity of the occasion, he abused the Principal of Kendriya Vidyalaya, Maligaon in the presence of Commissioner, Dy. Commissioner(Acad), Asstt. Commissioner and local Principals of Guwahati.

Thus by this act of insubordination, unbecoming behaviour, Shri H. C. Das has committed a misconduct and has violated Rule-3(1), (i), (ii) & (iii) of Central Civil Services(conduct) Rules 1964 as extended to the employees of Kendriya Vidyalaya Sangathan.

ANNEXURE-III

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST SHRI H. C. DAS, UDC, KENDRIYA VIDYALAYA, TENGAVALLEY (FORMERLY AT KENDRIYA VIDYALAYA, AFS BORJHAR ARE TO BE PROVED.

1. Statement dated 25.01.99 of Group 'D' employee, Kendriya Vidyalaya, Maligaon.
2. Statement regarding the incident submitted by shri J. P. Yadav, the then Principal, Kendriya Vidyalaya, Maligaon dated 25.01.99.
3. Statement submitted by Shri P. A. Madapa, Principal, Kendriya Vidyalaya, Borjhar.
4. Minutes of the Meeting held on 15.01.99 at Kendriya Vidyalaya, Maligaon submitted by Shri S. Vijaya Kumar the then Education Officer, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati.

ANNEXURE : IV

LIST OF EVIDENCES BY WHOM THE ARTICLE OF CHARGE FRAMED  
AGAINST SHRI H.C. DAS, UDC KENDRIYA VIDYALAYA,  
TENGAVALLEY(FORMERLY AT KENDRIYA VIDYALAYA, AFS BORJHAR  
ARE TO BE PROVED.

1. Shri P. K. Tiwari, Dy. Commissioner(Retd), KVS(HQ).
2. Dr. Lalit Kishore, Ex-Assistant Commissioner, KVS(GR).
3. Shri S. Vijaya Kumar, Education Officer, Kendriya Vidyalaya Sangathan, (HQ),  
(formerly at KVS(GR)).
4. Shri Rakesh Sharma, Administrative Officer, KVS, Jaipur region (formerly at  
KVS(GR)).
5. Shri J. P. Yadav, Principal, Kendriya Vidyalaya, Maneuri, Allahabad, (Formerly at  
Kendriya Vidyalaya, Maligaon).
6. Shri G. S. C. Bose Babu, Principal, Kendriya Vidyalaya, AFS  
Bagunipet, (Formerly at KV, Narangi).
7. Mrs. J. Das Basu, Principal, Kendriya Vidyalaya, Khanapara.
8. Shri P. A. Madapu, Principal, Kendriya Vidyalaya, Borjhar.
9. Shri B. N. Lal, PGT(Hindi), Kendriya Vidyalaya, Nahara, (Formerly at Kendriya  
Vidyalaya, CRPF amerigog).
10. Shri A. Chakraborty, PGT(Maths), Kendriya Vidyalaya, IOC Noonmati.

Written Statement of Defence

- 52 -

Date : 15-4-2002

82

From : H.C. Das, UDC,  
Kendriya Vidyalaya, Tenga Valley,

ANNEXURE - VI

To : The Asstt. Commissioner,  
Kendriya Vidyalaya Sangathan,  
Malligaon Chariali, Guwahati-12.

In re : Memorandum No. F.14-2799-KVS(GR)1300-01 dated 2.1.2002.

Sub : Written statement of defence against the memorandum  
under reference.

Sir,

In reference to the memorandum dated 2.1.2002 containing four articles of charges, I submit my written statement of defence as follows :

Article-I :

That I deny the article of charge No.1. It is stated that at the relevant point of time, I was holding a responsible position in the Union. For redressal of the grievances of the employees, it was necessary for me to meet Commissioner, Kendriya Vidyalaya Sangathan who at the relevant point of time was visiting the Malligaon Kendriya Vidyalaya. After duly intimating my controlling officer at Kendriya Vidyalaya, Borjhar, I came to Kendriya Vidyalaya, Malligaon alongwith my few colleagues for submitting a representation to the Commissioner, Kendriya Vidyalaya Sangathan. It is stated that the allegation made against me that I did not obtain prior permission of my controlling officer for coming to Malligaon Kendriya Vidyalaya is false.

Be that as it may the allegation made against me in Article-I does not constitute a misconduct and the same does not fall within the ambit and scope of Rule 3(i) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

*Adarsh Chakrabarty  
Advocate  
on 21/12/05*

### Article-II

That I deny the allegations made against me in Article-II of the charge sheet. It is denied that I forced my entry into the office of the Principal, Kendriya Vidyalaya, Mailgaon on 15.1.99 at 3.00 P.M. It is denied that I forced the Principal, Kendriya Vidyalaya, Mailgaon to arrange my meeting with the Commissioner immediately. It is reiterated that in my capacity of a Union Leader, it was my duty to submit a representation to the Commissioner, Kendriya Vidyalaya Sangathan outlining the grievances of the employees. There was nothing wrong in my conduct. Senior officers are expected to know the grievances of their subordinates. Union activities are permitted in the Kendriya Vidyalaya Sangathan. My Union is a recognised Union. As a leader of the Union, I was well within my right to take a delegation to the Commissioner, Kendriya Vidyalaya Sangathan. In the presence of the Commissioner, Kendriya Vidyalaya Sangathan there was no untoward incident. The Commissioner was presented with a "Gamocha" and he was given the representation. The senior officers should not be hypersensitive and they should be sympathetic and understanding to the grievances of their subordinates. It is stated that the allegation made against me in Article-II does not constitute a misconduct and the same was not violative of Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

### Article-III

That the allegation made against me in Article-III of the charge sheet is denied. After presenting Gamocha and submitting the representation to the Commissioner, Kendriya Vidyalaya Sangathan, I left the premises of the Kendriya

-54-

84

Vidyalaya, Maligaon. As a Union leader, my only objective was to greet the Commissioner, Kendriya Vidyalaya Sangathan and to submit a representation to him. My objective having achieved, there was no reason for me to prolong my stay in the premises of Kendriya Vidyalaya, Maligaon. Nobody asked me to leave the premises. I on my own after submitting the representation to the Commissioner, left the premises with my colleagues. I have reasons to believe that the inflated egos of senior officers were badly hurt by this very action of a lowly Upper Division Clerk like me. To these senior officers, I was more a Clerk than a Union leader and they could not tolerate my conduct of entering the room and meeting the Commissioner. I reiterate that my action of meeting the Commissioner was bonafide and the same was for the purpose of redressal of grievances of the employees. It is reiterated that my aforesaid act cannot be construed as a misconduct and violative of Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

#### Article-IV

That I deny the Article-IV of the charge sheet. It is denied in categorical terms that I entered into a heated argument with J.P. Yadav, Kendriya Vidyalaya, Maligaon. It is true that Shri J.P. Yadav tried to prevent me from entering the meeting room, but I politely told him that in my capacity of Union leader, I am entitled to meet Commissioner, Kendriya Vidyalaya Sangathan. I had no bad intention in meeting the Commissioner. After meeting the Commissioner, I only presented a Gamocha to him and submitted the representation. There is no reason as to why senior officers should feel bad about such a thing. Whether

a given behaviour is arrogant or defiant may be dependent on one's perception. No reasonable man can treat my behaviour on the said date to be defiant and arrogant. There is nothing solemn about the meeting of the Commissioner, Kendriya Vidyalaya Sangathan. Commissioner is expected to know the grievances of his employees. Commissioner is neither a God nor an emperor. Unfortunately, the problem is with the mindset of the senior officers. For them, the very fact of an Upper Division Clerk entering into a meeting room and meeting the Commissioner with his head held high is an act of arrogance. I humbly submit that the allegations made against me in the charge sheet prima facie show the defiant and arrogant behaviour of the senior officers. I deny categorically that I ever abused the Principal, Kendriya Vidyalaya, Maligaon. I deny that my behaviour was unbecoming and my act was of insubordination. I reiterate that the allegation contained in Article-IV does not constitute misconduct and the same does not violate Rule (i), (ii), (iii) and (iv) of CCS (Conduct) Rules, 1964.

#### PRELIMINARY OBJECTIONS

After rebutting and denying the four articles of charges framed against me I also raised a preliminary objection against the memorandum of charges. In this connection, it is stated that four documents have been listed in the memorandum of charges on the basis of which charges are proposed to be sustained. However, copies of these documents have not been annexed with the memorandum of charges. Either I may be given copies of these documents or I should at least be allowed to inspect these documents to take notes from the same. Only after I know as to what

is contained in these documents, then only I would be in a position to file an adequate and effective written statement of defence. My present written statement of defence has been prepared on the basis of my memory of the aforesaid incident and the same is without the benefit of perusal of the documents listed in the memorandum of charges. Hence it is requested that I should be allowed to submit a proper and effective written statement of defence by either allowing me to inspect the listed documents or copies of the same may be furnished to me.

I would also like to remind the competent authority that till this very date, I have not been paid my back wages. Pursuant to the order of the Central Administrative Tribunal, Guwahati Bench followed by the dismissal of the Writ Petition of the Kendriya Vidyalaya Sangathan by the Division Bench of the Guahati High Court, I was reinstated to the post of Upper Division Clerk and was transferred to Kendriya Vidyalaya, Tengnaf Valley, but in violation of the order of the Central Administrative Tribunal, Guwahati Bench, I have not been paid my back wages till this very date.

On an earlier occasion, the competent authority on the same set of article of charges dismissed me from my service without holding an enquiry on the ground that it was not reasonably practicable to hold an enquiry. However, the order of my dismissal from service after dispensing with the enquiry, did not find favour with the Guwahati Bench of the Central Administrative Tribunal which set aside the order of dismissal and directed my reinstatement with back wages.

The Writ Petition filed by the Kendriya Vidyalaya Sangathan against the order of Guwahati Bench of the Central Administrative Tribunal was also dismissed by the Division Bench of the Guwahati High Court. Hence it is clear that the instant memorandum of charges has been issued with maleficent intention with an ulterior motive.

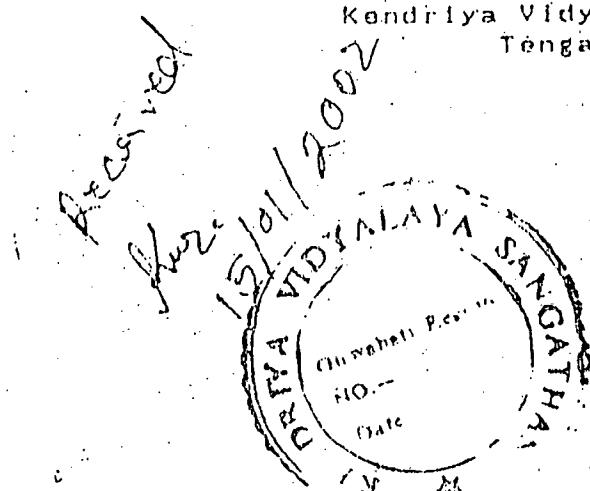
That the competent authority having failed to punish me which did not find favour with the High Court on an earlier occasion on the same set of charges has now issued the fresh memorandum of charges. The initiation of disciplinary proceeding is an empty formality inasmuch as the competent authority has a closed mind and it is keen to somehow punish me. I, therefore have a reason to believe that a fair and impartial enquiry is not possible under present dispensation.

Thanking you,

Yours faithfully,

CHAKMA  
15-1-2002  
( H.C. Das )

U.D.C.  
Kendriya Vidyalaya,  
Tenga Valley, C.H.P.)



KENDRIYA VIDYALAYA GANGA THAN

केन्द्रीय विद्यालय संसाधन

केन्द्रीय कार्यालय  
मालीगांव चारियारी  
गोपालगढ़ी : ७८१ ०१२

Regional Office  
Maligaon Chariali  
Gopalganj - 781 012

Phone : 2571799  
: 2571708  
Tele Fax : 2571797

No. F.:

14-2/99-KVS(GR)/ 14336 - 33.

दिनांक :  
Dated : 19-01-2005

MEMORANDUM

REGISTERED POST

WHEREAS, Shri H.C. Das, UDC, Kendriya Vidyalaya, Tawang was charge-sheeted under Rule 14 of the CCS(CCA) Rules, 1965 as extended to the employees of KVS, vide Memorandum dated 02.01.2002.

AND WHEREAS, Shri Kartar Singh, Assistant Commissioner, KVS(Rtd.) was appointed as Inquiry Officer to inquire into the charges framed against the said Shri Das vide order dated 08.08.2003. The said Inquiry Officer has completed the inquiry and submitted the report.

NOW, THEREFORE, the Disciplinary Authority before taking a suitable decision in this case would like to provide an opportunity to the Charged Officer to make any representation which he may like to do in writing to the Disciplinary Authority on the report of the Inquiry Officer, a copy of which is enclosed herewith.

Accordingly Shri H.C. Das is directed to submit his representation on the Inquiry report within fifteen days of receipt of this Memorandum failing which it will be presumed that Shri Das does not wish to make any written representation or submission and further action will be taken as per CCS(CCA) Rules, 1965.

*Karan*  
( U. N. KHAWAREY )  
ASSISTANT COMMISSIONER

To  
Shri H.C. Das,  
UDC,  
Kendriya Vidyalaya,  
Tawang.

Subject : As above.

Copy to : -

1. The Principal, Kendriya Vidyalaya, Tawang with a request to handover this memorandum to the person concerned under proper acknowledgement.

*Deputed  
by  
Adarsh  
09/01/05*

**REPORT OF INQUIRY IN THE DEPARTMENTAL INQUIRY UNDER RULE  
14 OF CCS(CCA) RULES 1965 IN THE MISCONDUCT COMMITTED BY  
SH. H. C. DAS, UDC, KENDRIYA VIDYALAYA, TAWANG (ARUNACHAL  
PRADESH)**

Sh. H.C. Das, UDC, Kendriya Vidyalaya, Tawang (Arunachal Pradesh) was issued chargesheet under Rule 14 of CCS(CCA) Rules 1965 for the misconduct committed by him while he was working as UDC in Kendriya Vidyalaya, AFS, Borjhar, Guwahati. He was chargesheeted by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati for the misconduct committed by him on the charges as spelt out in four charges in the chargesheet served upon him under Memorandum Number F. 14-2/99-KVS(GR)/300-01 dated 02-01-2002. He was chargesheeted on the following charges:

**A. CHARGES AS IN THE CHARGESHEET**

**ARTICLE-I**

1. Shri H. C. Das, UDC came to the Office of Principal, Kendriya Vidyalaya Maligaon without obtaining prior permission of his Controlling Officer on 15-1-99 where a meeting of Principals and other Officials of KVS chaired by the Commissioner, KVS was in progress.

**ARTICLE-II**

2. Shri H. C. Das, UDC forced his entry in the Office of Principal on 15-1-1999 during the conduct of meeting being conducted and chaired by the Commissioner.

**ARTICLE-III**

3. Shri H. C. Das during the continuance of the said meeting being chaired by the Commissioner, KVS did not leave the office of the Principal, Kendriya Vidyalaya Maligaon and forced his entry in his office despite asking him to do so.

**ARTICLE-IV**

4. Shri H. S. Das behaved in a manner of unbecoming an employee with his Superior Officers even after being asked to leave the office on 15-1-1999.

1.0

**B. APPOINTMENT OF INQUIRY AND PRESENTING OFFICER**

The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati appointed Dr. M. K. Krishnamurthy, Principal Kendriya Vidyalaya No.2 Tezpur as the Inquiring Authority to enquire into the charges. He after having heard part of the case ceased to exercise jurisdiction as he was transferred to Kendriya Vidyalaya No.2, Mangalore and was not available. Thereafter Shri Kartar Singh,

Assistant Commissioner (Retd.) Kendriya Vidyalaya Sangathan was appointed as Inquiring Authority in place of Dr. M. K. Krishnamurthy.

Sh. G. Rama Rao Principal, Kendriya Vidyalaya Missamari was appointed as Presenting Officer in the said case to present the side/case of department before the Inquiry Officer.

**C. DETAILS OF PROCEEDINGS OF INQUIRY:**

- (i) The undersigned in the capacity of Inquiry Officer held the Preliminary hearing of the case on 29<sup>th</sup> Sept. 2003 in Kendriya Vidyalaya, Maligaon, Guwahati.
- (ii) The Charged Officer during the course of Hearing on 29<sup>th</sup> September 2003 denied the charges and admitted to have received the chargesheet and also to have received the copies of Listed Documents as per Sl. No. 1 to 4 of Annexure III of the chargesheet. Inspection of the said Listed Documents was also got done with its marking as Ex. P1 to Ex. P4.
- (iii) The Charged Officer was asked to submit the List of Defence Documents and defence witnesses during the next hearing of the case.
- (iv) The undersigned decided to hold next date of hearing i.e. Regular Hearing on 13<sup>th</sup> November 2003 at Kendriya Vidyalaya Maligaon and accordingly summons were issued to all the Officials concerned with the case.
- (v)
  - (a) Summons to all the Prosecution witnesses as per annexure (iv) of the chargesheet were issued and seven witnesses of prosecution side for their depositions in the case from the side of Presenting Officer were also present.
  - ✓(b) Sh. R.S. Maurya, Ex-PGT(Chemistry) presented himself as the Defence Assistant of Shri H. C. Das, Charged Officer without relieving order of his employer as well as details of the cases in his hand as Defence Assistant. He was not allowed to appear as his Defence Assistant for the above mentioned point as well as for the reason he was no more a serving or a retired employee of Kendriya Vidyalaya Sangathan because he had been removed from the services of Kendriya Vidyalaya Sangathan. The Charged Officer was asked to nominate a valid Defence Assistant as per rules.
  - (c) Shri H. C. Das, Charged Officer attended the proceedings of enquiry on 13<sup>th</sup> November 2003. He raised an objection to para IV of the Daily Order Sheet dated 29-09-2003 and desired to have inspection of the documents of prosecution side once again through his Defence Assistant. Shri Das, Charged Officer was permitted to have inspection of the documents once again as and when he likes.
  - ✓(d) The request of Charged Officer to call the Commissioner, KVS as witness in the case was not acceded to and was rejected.

(c) The Inquiry Officer on being produced a list of additional witnesses by the Presenting Officer allowed Shri Phani Dhar Bora Group 'D' employee KV, Maligaon to be presented in the case.

(f) The Charged Officer assured to submit the list of documents and names of witnesses in the next hearing.

(g) Next date of hearing on the case was scheduled to be held on 16<sup>th</sup> and 17<sup>th</sup> Dec. 2003 in Kendriya Vidyalaya, Maligaon.

(h) The Charged Officer did not express any point of dissatisfaction/disagreement or etc. during the course of hearing but the Charged Officer after the close of hearing accepted the Daily Order Sheet under protest.

(vi) During the course of next Regular Hearing on 16<sup>th</sup> December, 03, the Inquiry Officer, Presenting Officer, and witnesses were present but Shri H. C. Das, Charged Officer was not present. The proceedings were adjourned for hearing to be held on 17<sup>th</sup> Dec. 2003. However, before adjourning the Hearing, the points raised by Shri H. C. Das Charged Officer about Shri R. S. Maurya his Defence Assistant were considered and the same were not found as valid and decision taken earlier was kept as unchanged.

(vii) On 17<sup>th</sup> Dec. 2003 also Inquiry Officer, Presenting Officer and Departmental witnesses were present but Sh. H. C. Das, Charged Officer did not turn up. However, the case was adjourned with next date of hearing to be held on 20<sup>th</sup> Feb. 2004.

(viii) Shri H. C. Das Charged Officer alongwith Presenting Officer was issued Summon to attend the hearing on 20<sup>th</sup> February 2004.

(ix) The Regular hearing of the case started on 20<sup>th</sup> Feb. 2004 and presenting officer with his three witnesses namely Smt. J. Dasbasu (PW-7) and Shri A. Chakraborty (PW-10) and Sh. Phani Dhar Bora (Additional Witness) were present but Shri H. C. Das, Charged Officer was not present. The depositions/evidences of these three witnesses were recorded in ex parte proceedings keeping continued absence of Sh. H. C. Das, Charged Officer in view. Thereafter the hearing in the case was adjourned for 6<sup>th</sup> and 7<sup>th</sup> April, 2004 to be held in Kendriya Vidyalaya, Maligaon, Guwahati after issue of notice to Sh. H. C. Das, Charged Officer.

(x) Next date of Regular Hearing was held on 6<sup>th</sup> and 7<sup>th</sup> April, 2004 and Inquiry Officer as well as Presenting Officer were present but Sh. H. C. Das Charged Officer was not present during the course of Regular Hearing. Therefore the depositions/evidences of Sh. J.P. Yadav (PW-5) Sh. P. A. Medappa (PW-8), Dr. P. K. Tiwari (PW-1), Sh. Rakesh Sharma (PW-4), Sh. B.N. Lal (PW-9), Sh. GSC Bose Babu (PW-6) were recorded on 6<sup>th</sup> and 7<sup>th</sup> April 2004 in ex parte proceedings. Thereafter the case was closed with next date of hearing to be held on 14<sup>th</sup> May 2004 in Kendriya Vidyalaya Maligaon, Guwahati after issue of notice of hearing to the Charged Officer.

(xi) This date of hearing scheduled to be held on 14<sup>th</sup> May 2004 was later on postponed to be held on 26<sup>th</sup> May, 2004 and Summons were issued to all the concerned.

*✓ 100% done*

*1.0*

*10/11/2005*

(xii) Regular Hearing in the case to record evidence of Sh. S. Vijaya Kumar, the then Education Officer KVS, Guwahati and presently working as Assistant Commissioner, KVS, Regional Office Jammu was held on 26<sup>th</sup> May 2004. Inquiry Officer, Presenting Officer and Charged Officer were present but Shri S. Vijaya Kumar (PW-3) could not attend the Hearing. Therefore the proceedings were adjourned for 25<sup>th</sup> June 2004. Accordingly summons were issued to the Presenting Officer and Charged Officer to attend the enquiry on the date with the further directions to Presenting Officer to ensure delivery of summon and attendance of witness. Next date of hearing in the case was decided to be held in KV Maligaon, Guwahati. The date of hearing scheduled to be held on 25<sup>th</sup> June, 2004 was again postponed to be held on 14<sup>th</sup> July, 2004 and summons were issued to all the concerned.

(xiii) Hearing was held on 14<sup>th</sup> July 2004, as scheduled for the purpose of recording of evidence of Sh. S. Vijaya Kumar (PW-3). the enquiry was attended by the Presenting Officer & Charged Officer. The Oral Evidence of Sh. S. Vijaya Kumar (PW-3) was recorded. After recording of Oral Evidence of Sh. S. Vijaya Kumar (PW-3) hearing in the case was adjourned for 9<sup>th</sup> August 2004 for General Examination of the Charged Officer namely Sh. H. C. Das. He was desired to attend the hearing either alone or accompanied by his Defence Assistant (but not Shri R. S. Maurya who had already been denied to act as his Defence Assistant).

(xiv) Sh. H.C. Das, Charged Officer appeared for his General Examination before the Inquiry Officer and his statement in General Examination was recorded. The Presenting Officer was also present during the course of General Examination.

(xv) Sh. S. Vijaya Kumar (PW-3) after his deposition made during the course of his evidence on 14-07-04 vide his letter dated 16/17-08-04 desired to make correction in his statement. The correction was about date in document as at Ex. P-4.

(xvi) During the course of Hearing Oral Evidences of nine witnesses of Prosecution Side (9PWs) with one additional Prosecution Witness i.e. in total 10 Prosecution Witnesses were recorded. However, the evidence of one Prosecution Witness (i.e. PW-2 - Dr. Lalit Kishore, Ex-Assistant Commissioner, KVS Guwahati) could not be recorded due to his non availability.

(xvii) The Presenting Officer and Charged Officer submitted their written briefs. With the submission of written briefs by both the parties, the proceedings of enquiry were over.

(xviii) In brief it is mentioned here that the enquiry was held and completed by holding hearings on 29<sup>th</sup> Sept. 2003, 13<sup>th</sup> November 2003, 16<sup>th</sup>, 17<sup>th</sup> Dec. 2003, 20<sup>th</sup> Feb. 2004, 6<sup>th</sup> & 7<sup>th</sup> April 2004, 26<sup>th</sup> May 2004, 14<sup>th</sup> July 2004 and 9<sup>th</sup> August 2004 (10 Sittings/Hearings) to complete the proceedings.

(xix) The Charged Officer did not submit the list of his defence documents and witnesses till the last date of hearing in the case. He also did not come to p and did not propose his valid Defence Assistant till the last date of hearing of the Inquiry.

**D. PROCEDURAL ASPECTS AND REQUIREMENTS:**

During the course of Inquiry all the procedural aspects and requirements as required and laid down in the CCS(CCA) Rules 1965 were followed and complied with in rules and spirit.

**E. SUBMISSION OF THE WRITTEN BRIEF OF PRESENTING OFFICER:**

The Presenting Officer in his Written Brief has stated that all the charges as leveled in the charge sheet have been proved very clearly and substantially with the documents on record and evidence of witnesses recorded during the course of Hearing held in the case.

**F. SUBMISSION OF THE WRITTEN BRIEF OF CHARGED OFFICER:**

Shri H. C. Das UDC, Kendriya Vidyalaya, Tawang (Arunachal Pradesh) and Charged Officer in his Written Brief has desired and requested to consider his submission and drop the proceedings on the following arguments/averments:

(a) He while working in Kendriya Vidyalaya Borjhar in the year 1999 being the Joint Secretary of Non-Teaching Association of KEVINTSA was to submit a memorandum incorporating the problem to the Commissioner, KVS during his visit and he was going to submit the same but he was prevented by Shri J. P. Yadav, Principal. He requested two minutes time. On being refused by the Principal, Sh. H. M. Cairac, Commissioner came out and asked him that he will go through the Memorandum.

(b) He was suspended followed by his dismissal on 02-02-99 for the incident of 15-1-99.

(c) He was not afforded reasonable opportunity to defend him. Aggrieved with this he moved to the Hon'ble CAT wherein the Order of dismissal was set aside by the Hon'ble CAT with the directions to reinstate him. Appeal filed by the Sangathan against the said dismissal Order was disposed off without interfering in it and he was reinstated in service.

(d) Thereafter the enquiry has been held against him and he appeared before the Inquiry Officer in pursuance of the directions of the Hon'ble Court..

(e) He has stated that the matter has already been tried by the Hon'ble CAT and High Court. Therefore, trial of the same, by the Inquiry Officer, de novo will cause prejudicial to him in all respect.

*10  
7/1/2005  
L.C.*

(i) He has requested to drop the present proceedings in the interest of justice.

#### **G. EVALUATION OF EVIDENCE:**

Shri H. C. Das, UDC and Charged Officer in his Written Brief has not put or tried to submit any plea which may prove his innocence from the misconduct committed by him. However, before arriving at any decision or conclusion, the evaluation of evidence, produced by the Presenting Officer to substantiate the charge or otherwise, is done for the impartiality of justice and for the sake of natural justice. The same is being done and evaluation of evidence for each charge is submitted as under:

#### **ARTICLE-I**

Shri H. C. Das, UDC came to the Office of Principal, Kendriya Vidyalaya Maligoan without obtaining permission of his Controlling Officer on 15-1-1999 where a meeting of Principals and other Officials of KVS chaired by the Commissioner, KVS was in progress.

Shri H. C. Das UDC and Charged Officer came to Kendriya Vidyalaya Maligaon where the meeting of local Principals of the Vidyalayas of Guawahati was being held under the Chairmanship of Shri H. M. Cairae, Commissioner, KVS and other Officers of KVS. The point that Shri H. C. Das, UDC and Charged Officer came to KV Maligaon to see the Commissioner, KVS without prior written permission of his Principal and immediate Controlling Authority had been confirmed by Shri P. A. Medappa, the then Principal, KV Borjhar (PW-8) in his statement (Exh. P-3). Besides this Shri Phani Dhar Bora Gr. 'D' employee KV Maligaon (Addl. PW), Sh. S. Vijaya Kumar (PW-3) as well as by Sh. J. P. Yadav (PW-5) the then Principal KV Maligaon have stated that Shri H. C. Das, Charged Officer tried to make his forceful entry where the meeting was going on at that time. Document as at Ex. P-2(ii) and P-4 also proves that he made his forceful entry.

Shri H. C. Das, UDC and Charged Officer in his General Examination in reply to questions also stated that he came to KV Maligaon on 15-1-1999 where meeting of local Principals and other Officers of KVS being chaired by the Commissioner, KVS was going on. He came to submit a memorandum to the Commissioner, KVS as a Joint Secretary of KEVINTSA (Central Committee). In reply to other question he stated that he was staying at PANDU SADILAPUR, Guwahati (about 20 Kms. Away from KV Borjhar). Hence he did not require prior permission.

*16/2/1999  
7/1/2000  
1.0  
Am's in not  
Change*  
It is now very clear that Shri H. C. Das himself in his General Examination has confessed that he came to KV Maligaon without obtaining any permission of the Controlling Authority to leave the station where the meeting was going on.

Hence, in view of above discussions and examination of evidence available on records, there remains no doubt in coming to a conclusion that the Charge as charged

against Sh. H. C. Das, UDC and Charged Officer in Article I of the Charge Sheet stands as fully proved beyond doubt.

#### ARTICLE-II

Shri H. C. Das, UDC forced his entry in the Office of Principal on 15-1-1999 during the conduct of meeting being conducted and chaired by the Commissioner.

Sh. Phani Dhar Bora, Gr. 'D' employee KV Maligaon (Additional witness) in his statement verified his earlier statement (Ex.P-1). He authenticated the document and put his signature in token of having verified the same.

He in his statement in reply to one of the questions stated that Shri H. C. Das entered the meeting room without the permission of Principal. Shri Bora (Additional witness) in his earlier statement (Ex. P-1) stated that he (Sh. H. C. Das, Charged Officer) forced him to hand over the slip. Document as at Ex. P-2(ii) and Ex. P-4 proves that he made forceful entry. The evidence of witnesses namely Smt. J. Das Basu, Principal (PW-7), Shri A. Chakraborty, FGT(Maths), KV Noonimati (PW-10) Sh. J. P. Yadav (PW-5), Sh. P. Meddappa (PW-8), Dr. P. K. Tiwari (PW-1) Shri Rakesh Sharma (PW-4), Shri B. N. Lal (PW-9), Sh. G.S.C. Bose Babu (PW-6), Sh. S. Vijaya Kumar (PW-3) in their statements also confirmed that he tried to do the forceful entry in the Office of Principal on 15-1-99 when the meeting of the local Principals of Kendriya Vidyalayas of Guwahati with the Commissioner, KVS was going on. Shri S. Vijaya Kumar (PW-3) in his statement has stated that heated exchange also took. Shri Lalit Kishore, Ex-Assistant Commissioner and Dr. P. K. Tiwari, Retd. DC(Acad.) tried him to be calm because he was continuously arguing with Shri J. P. Yadav. Thereafter, Commissioner took him out of the Chamber. From the statements of the witnesses recorded during the Inquiry as mentioned above, it is proved beyond doubt that Sh. H. C. Das, UDC and Charged Officer forced his entry in the Office of Principal on 15-1-1999 where the meeting was being taken by the Commissioner, KVS.

Shri H. C. Das, UDC and Charged Officer in his General Examination at Page 3 stated that he did not leave the room and when he reached the meeting did not start. From the said statements of witnesses, documents as well as going through the General Examination of the Charged Officer it is clear that Shri H. C. Das UDC and Charged Officer forced his entry in the room where the meeting chaired by the Commissioner, KVS was going on.

Hence, in view of above discussions and examination of evidence available on records, there remains no doubt in coming to a conclusion that the Charge as charged against Sh. H. C. Das, UDC and Charged Officer in Article II of the Charge Sheet stands as fully proved beyond doubt.

#### ARTICLE-III

Shri H. C. Das during the continuance of the said meeting being Charged by the Commissioner KVS did not leave the Office of the Principal, Kendriya Vidyalaya, Maligaon and forced his entry in his Office despite asking him to do so.

Document as at Ex. P-2 (ii) and reply of Sh. J. P. Yadav, Principal (PW-5) in reply to question No. 7 stated that the behaviour of Shri H. C. Das, Charged Officer was vulgar and unexpected. He got very much insulted because the (Charged Officer) did not follow his instructions to go out of the room during the meeting held on 15-1-99. Page 2 of Document as at Ex. P-4 speaks that the Principal, KV Maligaon instructed him (Charged Officer) to wait for a short while but he did not do so.

The evidence of Shri Phanidhar Bora, Group 'D' employee, KV Maligaon (Additional PW) is vital and more important in which he has clearly stated that Shri H. C. Das, UDC (Charged Officer) entered in the meeting room without the permission of the Principal. Statement of Smt. J. Das Basu (PW-7) at Para 1 clearly states that Shri Das (Charged Officer) forcefully entered into the Official meeting chaired by the Commissioner, KVS. Smt. J. Das Basu (PW-7) in her statement in reply to another question at P-2 stated that Shri H. C. Das, Charged Officer did not leave the meeting room when asked to leave the room. Shri A. Chakraborty (PW-10), Shri J. P. Yadav (PW-5), P. A. Medappa (PW-8), Shri P. K. Tiwari (PW-1), Shri Rakesh Sharma (PW-4), Shri B. N. Lal (PW-9), Sh. G.S.C. Bose Babu (PW-6), Sh. S. Vijaya Kumar (PW-3) in their statements have also stated that Shri H. C. Das, UDC (Charged Office) did not leave the Office of Principal, Kendriya Vidyalaya, Maligaon after his forced entry in his Office during the course of meeting being taken by the Commissioner, KVS.

Shri Das Charged Officer in his General Examination in reply to one of the questions himself has stated that:

"When I was going to submit the memorandum to the Commissioner, I was prevented by Shri J. P. Yadav, Principal, Kendriya Vidyalaya Maligaon Guwahati instructed me not to enter into the room. On this I told Shri Yadav I being the employee and Joint Secretary (AIKVINTS) and Shri H. M. Cairae, Commissioner, KVS, New Delhi being our higher authority (I am entitled to meet Shri Cairae, Commissioner, KVS, New Delhi to hand over the Memorandum and Congratulations letter and ultimately the memorandum and congratulation letter handed over to Shri Cairae Commissioner, KVS, new Delhi.)"

The above statement of Sh. H. C. Das, Charged Officer in his General Examination as well as statement of Shri P.K. Tiwari (PW-1) are very clear and in other words it can be said that this is the confessional statement about the charge as charged in the Article.

It is, therefore, submitted that there remains no doubt in saying that Shri H. C. Das forced his entry in the Office of Principal during the continuance of the said meeting being chaired by the Commissioner, KVS and did not leave the Office even after being asked by the Principal KV, Maligaon to leave the Vidyalaya. Thus, the charge as charged in Article III of the Charge Sheet stands as fully proved beyond any doubt.

#### ARTICLE-IV

Shri H. C. Das behaved in a manner of unbecoming an employee with his Superior Officers even after being asked to leave the Office on 15-1-99.

Behaviour of Sh. H. C. Das, UDC and Charged Officer with his superior officers for becoming an employee of KVS was not in accordance with the set rules as laid down in the rules as well as regulations, norms, and procedure. Not only this, the behaviour of Shri H. C. Das, UDC and Charged Officer was violative of all the set rules because he did not leave the office on 15-1-99 when he was asked to leave the office.

The charge as charged against Shri H. C. Das, UDC and Charged Officer in the article is proved from the followings:-

i. Shri H. C. Das, Charged Officer in his General Examination in reply to one of the question stated that:

"When I was going to submit the memorandum to the Commissioner, I was prevented by Shri J. P. Yadav, Principal, Kendriya Vidyalaya Maligaon Guwahati instructed me not to enter into the room. On this I told Shri Yadav I being the employee and Joint Secretary (AIKVINTS) and Shri H. M. Cairae, Commissioner, KVS, New Delhi being our higher authority (I am entitled to meet Shri Cairae, Commissioner, KVS, New Delhi to hand over the Memorandum and Congratulations letter and ultimately the memorandum and congratulation letter handed over to Shri Cairae Commissioner, KVS, new Delhi.)"

ii. Shri Phanidhar Bora Group 'D' employees KV Maligaon (Additional PW) in reply to one of the questions stated that Shri H. C. Das, UDC and Charged Officer entered in the meeting room without the permission of the Principal.

iii. Smt. J. Das Basu, Principal, Khanapara (PW-7) stated that Shri H. C. Das (Charged Officer) entered forcefully into the official meeting chaired by the Commissioner, KVS.

iv. Shri A. Chakrabarty, PGT(Maths), KV IOC, Noonmati, PW-10 stated that the behaviour of Shri H. C. Das, UDC and Charged Officer was not pleasant and it was unbecoming. In the meeting itself Shri H. C. Das, UDC and Charged Officer started heated arguments with Shri J. P. Yadav, Principal and behaved in a very rude manner. In reply to other question he stated that he (Sh. H. C. Das, UDC and Charged Officer) did not leave the meeting room. He was not at all polite and was much aggressive.

v. Shri J. P. Yadav (PW-5), Shri P. A. Meddappa (PW-8), Dr. P. K. Tiwari (PW-1), Shri Rakesh Sharma (PW-4), Shri B. N. Lal (PW-9), Shri G.S.C. Bose Babu (PW-6) and Shri Vijaya Kumar (PW-3) also confirmed and stated similar attitude and activities of behaviour on the part of Shri H. C. Das, UDC and Charged Officer in reply to questions put to them.

The statements of the aforementioned witnesses as well as reply of Sh. H. C. Das, Charged Officer in reply to General Questions put to him by the Inquiry Officer reveal, prove and establish that Sh. H. C. Das, UDC and

Charged Officer acted in a manner of unbecoming a KVS employee and acted in a very indecent manner as his behaviour towards Senior Officers of Sangathan, particularly when the meeting of Officers was going on, was contrary to all the set rules, regulations and norms. This also proves that the behaviour of Shri H. C. Das, UDC and Charged Officer during the course of meeting was unbecoming of a Govt./Employee of KVS.

The charge as charged in this article is proved fully with the evidence brought on record through the Oral Evidence of Witnesses as well as also through the statement of Sh. H. C. Das, UDC and Charged Officer in reply to General Examination before the Inquiry Officer. Therefore, the charge as charged in this Article is fully proved beyond doubt.

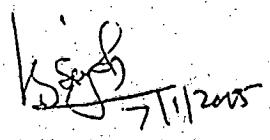
## H. DEFENCE OF THE CHARGED OFFICER

Though the Charged Officer on one hand in his Written Brief has negatived all the charges and has stated that the chargesheet may please be dropped in the interest of justice yet he on the other hand in his reply to the General Examination before the Inquiry Officer straightway and on clear terms has accepted the charges. Thus, there remains no doubt in saying and concluding that all the four charges as charged in the Charge-Sheet are fully proved beyond doubt. In other words, I have no hesitation in concluding and arriving the conclusion that all the four charges as charged in the Charge-Sheet are fully proved beyond doubt.

## I. FINDINGS:

In the end I once again would like to state, conclude and give my findings without any hesitation in saying that all the four charges as charged in the Charge-Sheet against Shri H. C. Das, UDC and Charged Officer are proved fully beyond any doubt.

Date: 07-01-2004

  
(KARTAR SINGH)  
INQUIRY OFFICER

ANNEXURE - VIII

To  
The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Majlisgan Chiriali,  
Guwahati - 781012, Assam.

Subject: Submission of representation  
on the Inquiry Report against  
Shri H. O. Das, UDC, Kendriya  
Vidyalaya, Tawang, Arunachal Pradesh.

Ref. : Your No. 14-2/99-KVS(Gil)/14336-37  
dated 19.1.2005.

Sir,

That the humble petitioner begs to  
submit as follows:-

1. That the petitioner was suspended by the authority on 25.1.1999 for an alleged incident that took place on 15.1.1999 at Kendriya Vidyalaya, Majlisgan, Guwahati and later on received dismissal order from the authority on 2.2.1999.
2. That the petitioner was not given reasonable opportunity by the authority to defend himself in regard to his alleged offence and was not given any Charge Sheet or Show Cause notice.
3. That being aggrieved by the dismissal order dated 2.2.1999 the petitioner moved the matter/case to the Central Administrative Tribunal, Guwahati and it. Central Administrative Tribunal was pleased to passed order on 26.2.2001 setting aside the dismissal order and directed to reinstate the petitioner to his post/service.

Contd....2...

Alleged  
Served  
Admitted  
on 21/2/03

That being aggrieved by such order, the Kendriya Vidyalaya Sangathan filed a Writ Petition before the Hon'ble High Court, Guwahati against the order dated 26.2.2001 passed by the Lt. Central Administrative Tribunal, Guwahati in original application No.390/99 and the Hon'ble High Court was pleased to pass judgement and order on 29.8.2001 without interfering order of the Lt. Court of the Central Administrative Tribunal.

5. That after this judgement, the petitioner was reinstated by the Kendriya Vidyalaya Sangathan in the post and transferred him to Tezga Valley, Arunachal Pradesh.

6. That, thereafter, all on a sudden, the Kendriya Vidyalaya Sangathan constituted an Inquiry Committee to hold inquiry against the petitioner on 2.1.2002 and also given Charge sheet on 3.1.2002.

7. That the petitioner appeared before the Inquiry Officer repeatedly in pursuance of having verdict of the Lt. Court of Central Administrative Tribunal and Hon'ble High Court, Guwahati in his favour in relation to alleged incident.

8. That, now, the Inquiry Officer has completed the inquiry and submitted the report against the petitioner and also given a chance for making representation on the Inquiry Report.

Contd....3...

9. That the petitioner begs to submit that he had given a paper slip for obtaining permission to the person who was standing in front of the room but due to delay in getting permission he enquired about the cause of delay and at this juncture Shri H. M. Cairns, Commissioner, Kendriya Vidyalaya Sangathan, New Delhi came out from the room and asked the petitioner to accompany with Memorandum and led to another room.

10. That the petitioner garlanded the Commissioner Shri H.M.Cairns and took the Memorandum prepared by the Union and also took " Gamocha " which was presented on his August visit. As such, the charge of entering the room without obtaining prior permission from the Controlling Authority is therefore not correct.

11. That the aforesaid fact submitted in para No.10, the charge containing in Article No.2 is also denied. Further, the witnesses taken on behalf of the prosecution are not all corroborated. One witness deposed that the petitioner tried to enter into the room and others deposed that the petitioner forcibly entered into the room.

12. That the petitioner denied the charge contained in Article No.3 as the Commissioner, Kendriya Vidyalaya Sangathan himself invited the petitioner to accompany him and received Memorandum, flower and Gamocha.

13. That the petitioner completely deny the charge contained in Article No.4, being an employee in the Koadriya Vidyalaya Sangathan for a long period of sincere service, the petitioner never received any adverse remarks in his long career of service.

14. That moreover, the petitioner has not given any chance to defend his case in spite of giving names of two defence witnesses. The two witnesses were not allowed to appear before this Inquiry Committee and thus it becomes an ex parte proceeding.

15. That lastly, petitioner had already given punishment by suspension, dismissal and again by giving posting to very hard station for more than two years in his service period career at the last stage of service even having won the Court verdict.

In the light of the above circumstances, it is therefore, requested that your godself be pleased to review the whole matter and drop the proceeding for the interest of inter alia natural justice.

And for this act of your kindness, the petitioner shall remain ever grateful.

Yours faithfully,

( H. C. Das )

UDO

Koadriya Vidyalaya, Tawang,  
Arunachal Pradesh.

Copy to:- The Principal, KV., Tawang,  
Arunachal Pradesh for kind  
Information please.

KENDRIYA VIDYALAYA SANGATHAN

Regional Office,  
Chayaram Bhawan, Maligaon Chariali,  
Guwahati-12

No.I.14-2/99-KVS (GR) / 17165

পাত্র পত্র  
**REGISTERED POST**

Dated: 03.03.2005

O R D E R

WHEREAS Shri H.C. Das presently working as UDC at KV, Tawang was charge-sheeted under the rule-14 of CCS(CCA) Rule, 1965 by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region vide Memorandum dated 02.01.2002.

WHEREAS on denial of charges by Shri H.C. Das, C.O., Shri R.K. Gautam, the then Principal, KV, Upper Shillong and Shri P.V.S. Ranga Rao, the then Principal, Kendriya Vidyalaya, No.1 Tezpur were appointed as Inquiry Officer and Presenting Officer to inquire into the charges against Shri H.C. Das. Subsequently due to transfer of the Inquiry Officer and Presenting Officer out of the region, Shri M.K. Krishnamoorthy, the then Principal, Kendriya Vidyalaya, No.2 Tezpur and Shri G. Rama Rao, Principal, Kendriya Vidyalaya, Missamari were appointed as Inquiry Officer and Presenting Officer to conduct the inquiry against Shri H.C. Das.

WHEREAS after having heard part of the case Shri M.K. Krishnamoorthy ceased to exercise his jurisdiction due to his transfer out of the region. Thereafter, Shri Kartar Singh, Assistant Commissioner (Retd). KVS has been appointed as Inquiry Officer in place of Shri M.K. Krishnamoorthy to conduct the inquiry against Shri H.C. Das.

WHEREAS the Inquiry Officer has completed the inquiry and submitted his report dated 07.01.2005. A copy of the inquiry report was forwarded to Shri H.C. Das vide Memorandum dated 19.01.2005 for making his representation against the Said inquiry report. He has submitted his representation dated 12.02.2005.

AND WHEREAS on a careful consideration of the case, findings of the inquiry officer and the averment made by the charged officer in his representation, it becomes apparent that

(i) Shri H.C. Das while working as UDC at Kendriya Vidyalaya, AFS Borjhar came to the office of the Principal, Kendriya Vidyalaya, Maligaon without obtaining prior permission of his controlling officer on 15.01.1999 where a meeting of Principals and other high officials of KVS was in progress chaired by Shri H.M. Cairac, the then Commissioner, KVS, New Delhi.

(ii) He forced his entry in to the office of the Principal, Kendriya Vidyalaya, Maligaon on 15.01.1999 during the conduct of the official meeting, conducted and chaired by the then Commissioner, KVS, New Delhi. He forced the Principal, K.V., Maligaon to arrange his meeting with the Commissioner immediately.

Alka Chakraborty  
Advocate  
on 21/12/05

(2)

(iii) Shri H.C. Das did not leave when he was asked to leave the office of the Principal, Kendriya Vidyalaya, Maligaon after his forced entry in the meeting room during the continuance of the meeting conducted and chaired by the then Commissioner, K.V.S, New Delhi.

(iv) The behaviour of Shri H.C. Das, UDC and Charged Officer with his superior officers was unbecoming of an employee of K.V.S and was not in accordance with the set rules, regulation, norms and procedures. His behaviour was in a manner which violated all the set rules/norms as he did not leave the office on 15.01.99 when he was asked to leave the office.

AND WHEREAS, on careful consideration of the records and taking into account the relevant facts and circumstances of the case including the written statement dated 12.02.2005 submitted by the Charged Officer, in which he has raised many irrelevant points which have no connection with the present inquiry proceedings, the undersigned has come to the conclusion that Shri H.C. Das has committed a serious misconduct by his aforesaid acts and violated Rules 3(I)(i)(ii) & (iii) of CCS(Conduct) Rules, 1964 as extended to the employee of KVS and is of the view that said Shri H.C. Das is not a fit person to be retained in KVS service and ends of justice would be met if the major penalty of compulsory retirement with 25% cut in pension is imposed upon him.

NOWTHEREFORE, the undersigned in his capacity as disciplinary authority orders imposition of major penalty of compulsory retirement with 25% cut in pension upon Shri H.C. Das, UDC, Kendriya Vidyalaya, Tawang with immeditate effect.

*[Signature]*  
03.03.05  
( U.N. KHawarey )  
ASSISTANT COMMISSIONER &  
DISCIPLINARY AUTHORITY

To

Shri H.C. Das, UDC,  
Kendriya Vidyalaya,  
Tawang(Arunachal Pradesh)



-75- 105  
केन्द्रीय विद्यालय, तावांग (अरुणाचल प्रदेश)

ANNEXURE - X

Ph: 03794-223239 (O)  
Mobile: 9436051190

## Kendriya Vidyalaya, Tawang

(Arunachal Pradesh) Pin - 790104

(An Autonomous Body under of Human Resource Development Govt. of India)

Ref. No. H.P.E.H.C.Das / KV1/2004-05/621

Date: 10-03-2005

Pear Book, P.G No. 108

### Office Order

Sh. H.C. Das UDC of this Vidyalaya is hereby relieved from his duties in this Vidyalaya w.e.f.

10-3-2005 A/N. Vide KVS (R.O) Gurukul letter No F. 14-2/99- KVS (G.R) /17165 dated 3-3-2005. on imposition of major penalty of Compulsory retirement with 25% cut in pension upon Shri H.C. Das UDC.

Sh. H.C. Das  
UDC

Kendriya Vidyalaya  
Tawang - (A.P.)

Sh. H.C. Das  
(03/03/05)  
Principal  
Kendriya Vidyalaya, Tawang  
Arunachal Pradesh

Copy to :- 1. The Deputy Commissioner (Adm.)  
Kendriya Vidyalaya Sangathan,  
New Delhi

2. To The Assistant Staff Commissioner  
KVS (R.O) Gurukul (ASCOM)  
3. The Assistant Regional Officer  
KVS (C.R) Gurukul (ASCOM)

[ D. S. P. K. KHWAJAH ]  
Principal  
Kendriya Vidyalaya, Tawang  
Arunachal Pradesh.

Alkael  
Surajit Choudhury  
Advocate  
on 21/12/05

ANNEXURE - XITO THE APPEALATE AUTHORITY

To,

The Commissioner  
 Kendriya Vidyalaya Sangathan,  
 18- Institutional Area.  
 Shahidjat Singh Marg.  
 New Delhi-110016.

Sub:- An appeal against the order of imposition of penalty of compulsory retirement with 25% cut in pension by the disciplinary authority issued under order dated 03.03.2005.

Respected Sir,

I like to draw your kind attention on the subject cited above and further beg to, say that the imposition of penalty of compulsory retirement and 25% cut in pension has been passed by the Disciplinary Authority following inquiry report against the memorandum of charge sheet dated 02.01.2002 issued by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati-22, disciplinary authority, are liable to be set aside and quashed at the threshold on the ground that the similar/ identical charges, was issued earlier under the proviso of Rule 19 (II) of CCS(CCA) Rules 1965 and thereafter order of removal from service was passed as a measure of penalty *angst me vide* order dated 02.02.1999 by the Disciplinary Authority, and the same was confirmed by your Honour *vide* appellate order dated 16.08.1999, but, I have challenged the aforesaid orders before the Hon'ble CAT, Gauhati Bench, Gauhati through original application no. 390 of 1999 and the Hon'ble Tribunal was pleased to set aside and quashed the order of penalty dated 02.02.1999 as well as the appellate order dated 16.8.1999 by the judgment and order dated 26.02.2001 of the learned Tribunal, but the same was carried on appeal by the authority before the Hon'ble High Court through the WPC No. 6071 of 2001. However the Division Bench of the Hon'ble Gauhati High Court on 29.08.2001 confirmed the judgment of the Hon'ble CAT and dismissed the writ Petition, without any liberty to the respondents Union of India for initiation of a further proceeding under Rule 14 of the CCS(CCA) Rules 1965 and as such further initiation of a disciplinary proceeding on the same/identical charges under memorandum dated 02.01.2002 is not sustainable under the law, and on that score alone the impugned order of penalty dated 03.03.2005 is liable to be set aside and quashed, that too without following the

*Agdekar  
 Sevajit Chaudhary  
 Advocate  
 on 20/12/05*

mandatory provision/procedure laid down in Rule 14 and 15 of the CCS (CCA) Rules 1965 and also without providing an adequate/reasonable opportunity to defend my case, even the inquiry officer in a most arbitrary manner rejected the entry of my Defence Assistant Sri R.S.Mourya to act on my behalf in the inquiry proceeding on the pretext that my Defence Assistant Sri R.S.Mourya has already been dismissed from service, which is evident from inquiry report. the relevant portion of inquiry report is quoted below:-

"(b) Sri R.S.Mourya, Ex PGT (Chemistry) presented himself as the Defence Assistant of Sri H.C.Das, charged officer without relieving order of his employer as well as details of the cases in hand as Defence Assistant. He was not allowed to appear as his Defence Assistant for the above mentioned point as well as for the reason he was no more a serving or a retired employee of Kendriya Vidyalaya Sangathan because he had been removed from the service of Kendriya Vidyalaya Sangathan. The Charged Officer was asked to nominate a valid Defence Assistant as per rules".

It is quite clear from the above that the inquiry officer has acted arbitrarily while refusing Sri R.S.Mourya, Ex PGT Teacher, to act as Defence Assistant on my behalf. On the plea that Sri Mourya is no more a serving Teacher or a retired employee of KVS, whereas the learned CAT vide judgment dated 04.02.2003 passed in O.A No. 384/02 set aside, the order of removal dated 01.05.2002 as well as Appellate order dated 15.11.2002 passed against Sri R.S.Mourya and further held in the said judgment that Sri Mourya should be treated as deemed to be in service. Therefore the inquiry officer acted deliberately in violation of rule when denied Sri R.S.Mourya to act as my Defence Assistant, that too after passing of the judgment of C.A.T and on that score alone the impugned order of punishment dated 03.03.2005 issued under letter bearing no. F.14-299-KVS (GR)/17165 is liable to be set aside and quashed.

That apart, from the aforesaid infirmities I like to point out that on 6/7-04-2004 inquiry was held ex-parte inspite of my objection raised on 19.03.2004 regarding change of inquiry officer as well as for not allowing Sri R.S.Mourya to act as my Defence Assistant, in the said representation dated 19.03.2004. I have specifically pointed out that, even the Hon'ble High Court has confirmed the judgment of the

Learned Tribunal in favour of Sri R.S.Mourya for his reinstatement. But surprisingly no decision has been taken against my representation dated 19.03.2004 till 05.04.2004 and even thereafter and accordingly I have submitted another representation on 05.04.2004 intimating the disciplinary authority that I have not received any reply to my letter dated 19.03.2004 regarding change of inquiry officer and further I have stated that I am not ready to take part in inquiry proceeding conducted by Sri Kartar Singh, inquiry officer who is biased as because he did not allow sri R.S.Mourya to act on my behalf as Defence Assistant but proceeded with Ex-Parte hearing and I further prayed to allow me to engage Sri R.S.Mourya as my Defence Assistant. I further prayed for postponement of the inquiry proceeding in view of my prayer made in representation dated 19.03.2004 and also representation dated 05.04.2004 addressed to disciplinary authority but surprisingly ex-parte inquiry has been held against me, without considering my representation as stated above, witnesses were examined in the inquiry proceeding at the instance of the presenting officer and no opportunity was provided after 6/7-04-2004 i.e after holding of ex-parte hearing for cross examination of the witnesses by me. Therefore the entire inquiry is vitiated for not providing any opportunity to cross-examine the witnesses who were present on 6/7-04-2004. Moreover inquiry was not adjourned when a specific request is made by the undersigned to that effect. Moreover no further decision was taken regarding Sri R.S.Mourya an employee of the Kendriya Vidyalaya Sangathan to act as my Defence Assistant and on that score alone the impugned order of penalty dated 03.03.2005 is liable to be set aside and quashed, since the penalty has been passed without following the procedure laid down in Rule 14 and 15 of the CCS (CCA) Rules 1965.

Apart from that on a mere perusal of the daily order sheet of inquiry proceeding held on 13.11.2003, 16.12.2003, 17.12.2003, 20.02.2004, 06.04.2004, 07.04.2004, 26.04.2004, 14.07.2004 and order sheet of the ex-parte hearing, it would be evident that the proceeding has been conducted in a very arbitrary manner the Defence Assistant of the applicant is restrained to act on behalf of me in the inquiry proceeding to assist me in a arbitrary manner and as a result the prosecution witnesses could not be examined by me. Moreover documents relied on by the prosecution side also not examined and no opportunity was provided to me to cross-examine the witnesses through my Defence Assistant. On a mere perusal of the inquiry report it would be evident that there is no

discussion of evidence but the findings and conclusion has been reached in a very casual and mechanical manner by the Disciplinary Authority.

It is relevant to mention here that on a mere perusal of the daily order sheet which were held ex-parte in my absence of the applicant on 28.02.2004, 06.04.2004 and 07.04.2004, a trend was there, while examining the prosecution witnesses to cut short method was adopted by the Inquiry Officer and with the assistance of the Presenting Officer straight way recorded that I have refused to leave the premises where the meeting was conducted by the commissioner but no attempt is made to ascertain the truth as to why the undersigned has proceeded to meet the Hon'ble Commissioner but it is recorded in the order sheet of the ex-parte proceeding, that I have entered into the arguments with Sri J.P. Yadav, Principal and had heated exchange but the reason for such arguments in fact no where recorded in the inquiry proceeding. Therefore it appears from the inquiry proceeding that all along an attempt is made with the help of prosecution witnesses to hold me guilty in a short way. Therefore by no stretch of imagination it can be said that a fair inquiry has been conducted by the Inquiry Officer. The applicant being a office bearer of the recognized Union and therefore made an attempt to submit a memorandum to the Hon'ble Commissioner, KVS. Hence the said attempt to meet the commissioner cannot be termed as misbehavior and as such the fact situation does not warrant initiation of a disciplinary proceeding under Rule 14.

I further beg to say that penalty imposed on me is disproportionate relating to the charges brought against me.

I categorically submit that I have been denied reasonable opportunity to defend my case and as such none of the charges leveled against me is proved and on that score alone your Honour be pleased to recall/cancel the impugned order of penalty dated 03.03.2005.

I also beg to say that the judgment of the Learned Tribunal dated 26.02.2001 passed in O.A 390 of 1999 has attained finality in view of the dismissal of the writ petition preferred by the respondents Union of India before the Hon'ble Gauhati high court as stated above as such the impugned order of penalty dated 03.03.2005 is liable to be set aside and quashed on that score alone.

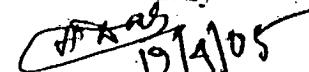
It is pertinent to mention here that as a result of such illegal order of penalty dated 2.2.1999, I have been removed from service and kept out of service w.e.f 02.02.1999 to 26.09.2001 and as such I have suffered irreparable loss, injury, enxiety, mental agony and financial hardship. However I have been reinstated in service on 27.09.2001 but posted me at K.V, Tengavally i.e in a very remote area of Arunachal Pradesh as a measure of penalty and thereafter again posted me at K.V, Tawang in the State of Arunachal Pradesh, therefore I have already undergone rigorous and severe punishment at the instance of the authority.

I further beg to say that I have got 2(two) children's, wife and a dependent mother aged about 85 years suffering from old age chronic diseases and my elder son is presently studying in class X at K.V, Borjhar and the daughter is also studying in class VI at K.V, Borjhar. I have no source of alternative employment and at present I am 51 years old, considering the aforesaid circumstances I hope and trust that your honour would be pleased to drop the charges leveled against me and further be pleased to exonerate me from the charges.

In the facts and circumstances stated above, Hon'ble commissioner be pleased to set aside and quash the impugned order of penalty issued under letter no. F.14-2/99-KVS(GR)/1765 dated 03.03.2005 issued by the Assistant Commissioner (Disciplinary Authority) K.V.S, Guwahati Region. And further be pleased to pass any order or orders as deem fit and proper.

Copy to:- The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office, khanapara campus,  
Khanapara, Guwahati-781022.

Yours faithfully

  
19/4/05

Sri Haren Chandra Das.  
Village and P.O- Pandu, Sadilapur,  
G.M.C ward No. 1,  
Guwahati-781012.

19  
Date:- 19/4/05

SC

KENDRIYA VIDYALAYA SANGATHAN

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

ANNEXURE-XII

F. 9-32/2005-KVS(Vig.)

Dated 17-10-2005

ORDER

WHEREAS Shri H.C.Das, Ex-UDC, Kendriya Vidyalaya, Twang was Charge-Sheeted under Rule-14 of the CCS (CCA) Rules, 1965 for the misconduct committed by him while he was working at Kendriya Vidyalaya, Borjhar vide Memorandum dated 02.01.2002 on the following counts:-

1. Shri H.C. Das, UDC came to the office of Principal, Kendriya Vidyalaya, Maligaon without obtaining prior permission of his Controlling Officer on 15.1.99 where a meeting of Principals and other officials of KVS chaired by the Commissioner, KVS was in progress.
2. Shri Das forced his entry in the office of Principal on 15.1.99 during the conduct of meeting being conducted and chaired by the Commissioner, KVS.
3. Shri Das during the continuance of the said meeting being chaired by the Commissioner, KVS did not leave the office of the Principal, Kendriya Vidyalaya, Maligaon and forced his entry in his office despite asking him not to do so.
4. Shri Das behaved in a manner unbecoming of an employee with his superior officers even after being asked to leave the office on 15.1.99.

On conclusion of the disciplinary proceedings, penalty of "Compulsory Retirement with 25% cut in pension" was imposed upon Sh. H.C.Das vide order dated 03.03.2005 by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati being the Disciplinary Authority.

WHEREAS the said Shri H.C.Das has preferred an appeal dated 19.04.2005 to the Appellate Authority being aggrieved by the above said order of the Disciplinary Authority, making the following submissions:-

1. That the penalty of Compulsory retirement and 25% cut in pension imposed upon him by the Disciplinary Authority are liable to be set aside and quashed at the threshold on the ground that the similar/identical charges were issued earlier and thereafter order of removal from service was passed as a measure of penalty against him vide order dated 02.02.1999 by the Disciplinary Authority and the same was confirmed by the Appellate Authority vide order dated 16.08.1999. But he challenged the aforesaid orders before the Hon'ble CAT, Guwahati and the Hon'ble Tribunal was pleased to set aside and quashed both the orders, but the same was carried on appeal by the authority before the Hon'ble High Court. However the Hon'ble High Court on 29.08.2001 confirmed the judgment of the Hon'ble CAT and dismissed the WP, without any liberty to the respondents for initiation of a further proceeding under Rule-14 of the CCS (CCA) Rules, 1965.

Contd.2..

*Abhishek Choudhury  
Advocate  
03/12/05*

2. For initiation of a further disciplinary proceedings under Rule-14 of the CCS (CCA) Rules, 1965 on the same /identical charges under Memorandum dated 02.01.2002 is not sustainable under the law and the impugned order of penalty dated 03.03.2005 is liable to be set aside and quashed, that too without following the mandatory provision/procedure laid down in Rule 14 & 15 of the CCS (CCA) Rules, 1965.

3. The Inquiry Officer in a most arbitrary manner rejected the entry of his defence assistant Shri R.S. Maurya to act on his behalf in the inquiry proceeding on the pretext that he has already been dismissed from service, whereas the Hon'ble CAT vide judgement dated 04.02.2003 set aside the order of removal from service as well as Appellate Authority order dated 15.11.2002 and further held that Shri Maurya should be treated as deemed to be in service.

4. The inquiry proceeding has been conducted in a very arbitrary manner, the defence assistant of the applicant is restrained to act on his behalf in the inquiry proceeding to assist him in an arbitrary manner and as a result he could not examine the prosecution witnesses. Moreover documents relied on by the prosecution side also not examined and no opportunity was provided to him to cross-examine the witnesses through his defence assistant.

5. On a mere perusal of the Inquiry Report it would be evident that there is no discussion of evidence but the findings and conclusion has been reached in a very casual and mechanical manner by the Disciplinary Authority. The applicant being an office bearer of the recognized Union and therefore made an attempt to submit a memorandum to the Hon'ble Commissioner, KVS. The said attempt cannot be termed as misbehaviour and as such the fact situation does not warrant initiation of disciplinary proceedings under Rule-14 of the CCS (CCA) Rules, 1965.

6. That the judgement of the Hon'ble Tribunal dated 26.02.2001 passed in OA No.390/99 has attained finality in view of the dismissal of the WP preferred by the respondents before the Hon'ble Guwahati High Court as such the order of penalty dated 03.03.2005 is liable to be set aside and quashed on that score alone.

WHEREAS, the undersigned being the Appellate Authority, after considering all the facts and circumstances of the case on records available and the submission made by the Appellant and observed that: -

1. In compliance to the judgement of the Hon'ble Court Shri H.C. Das was reinstated in service without prejudice to the right of KVS to take further action against him as per law. He was posted at Kendriya Vidyalaya, Tengavally and subsequently at Kendriya Vidyalaya, Twang.
2. He was Charge-Sheeted under Rule-14 of the CCS (CCA) Rules, 1965 by the competent Disciplinary Authority for misconduct committed by him while he was working at Kendriya Vidyalaya, Borjhar vide Memorandum dated 02.01.2002. On denial of the charges, Inquiry Officer & Presenting Officer were appointed to conduct the inquiry.

-3-

3. Shri Das has submitted the name of Shri R.S. Maurya, Ex-PGT(Chem.), Kendriya Vidyalaya, Khanapara as his Defence Assistant, but the Inquiry Officer did not allow Shri Maurya to act as Defence Assistant as he was at that time removed from the services of KVS. The Charged Officer had been instructed to nominate a valid Defence Assistant as per KVS rules, but he did not propose any valid Defence Assistant, except Shri R.S. Maurya till the last date of hearing of the inquiry.
4. As per the inquiry report dated 07.01.2005, all the four charges are proved fully beyond any doubt. A copy of the Inquiry Report was sent to the Charged Officer for making his submission and after considering the Inquiry Report & submission of the Charged Officer, a major penalty of "Compulsory Retirement with 25% cut in pension" was imposed upon him vide order dated 03.03.2005 by the Assistant Commissioner Guwahati Region being the Disciplinary Authority.

NOW THEREFORE, the undersigned being the Appellate Authority based on consideration of facts & circumstances of the case, contents in appeal has found no merit in the appeal of Shri H.C. Das and accordingly decides to uphold the orders dated 03.03.2005 of the Assistant Commissioner, KVS, Regional Office, Guwahati being the Disciplinary Authority and rejects the appeal of the said Shri H.C. Das.

The appeal dated 19.04.2005 of the said Shri H.C. Das stands disposed of accordingly.

*Om*

(Pragya Richa Srivastava)  
Joint Commissioner (Admn.)  
& Appellate Authority

Copy to :-

1. Shri H.C. Das, Ex-UDC, Kendriya Vidyalaya, Twang, Village and P.O.-Pandu, Sadilapur, G.M.C. Ward No.1, Guwahati-781012.
2. The Assistant Commissioner, KVS, Regional Office, Guwahati along-with the original disciplinary case files Vol.I (pages 1 to 62 & note portion 1 to 4) Vol.II (pages 1 to 137 & note portion 1 to 20) & Vol.III (pages 1 to 230) and two service books (Vol.I & II) of Shri H.C. Das, Ex-UDC.
3. The Principal, Kendriya Vidyalaya, Twang.
4. Guard file



KENDRIYA VIDYALAYA TENGA VALLEY  
DIST. WEST KAMENG (ARUNACHAL PRADESH) 790115

(1) Phone : 03782 - 73368, Army : 510

केन्द्रीय विद्यालय टैंगा वैली  
जनपद-परिचयी कार्यालय (अरुणाचल प्रदेश) 790115

Ref. No. ....70/KVIV/2001-2002/

Dated .....19-3-2002

TO WHOM IT MAY CONCERN

Shri H.C. Das, UDC who joined this Vidyalaya on 27th Sept. '2001 is relieved on 19-3-2002 (A/N) after his regular transfer to K.V. Tawang.

During the period his working and general conduct has remained appreciative. He has the potential to maintain the office routines very well.

I wish him success in life.

  
( G.S. SANDHU )

PRINCIPAL .

प्राचीन प्रिंसिपल/Principal  
केन्द्रीय विद्यालय/Kendriya Vidyalaya  
टैंगा वैली / TENGA VALLEY  
अरुणाचल प्रदेश / Arunachal Pradesh

Alkaled Choudhury  
Gurjot Advocate  
on 21/12/03

केन्द्रीय विद्यालय, तावांग (अरुणाचल प्रदेश) ८८

Kendriya Vidyalaya, Tawang

(Arunachal Pradesh)

PIN - 790104

16  
ANNEXURE-XIV

F.2/KVI/2002-2003/ ५३०-२

5-12-2002

Date.....

To  
The Chairman  
Vidyalaya Management Committee  
Kendriya Vidyalaya  
Tawang.

Sir,

As the undersigned will be away from station from 07-12-02 to 24-12-02 Sri H.C.Das, UDC, will be in charge of the Vidyalaya during his leave of absence.

Yours faithfully,

(Dr. K. Thambidurai)

Copy to:-

(1) The Assistant Commissioner KVS(GR) Guwahati-12  
(2) Sri H.C.Das, UDC, KV Tawang. For information and necessary action

*Dr. K. Thambidurai*  
(Dr. K. Thambidurai)

Attested  
Surjit Choudhary:  
Advocate  
on 21/12/02

W/o

(Typed copy)

Annexure- XV

Kartar Singh  
Assistant Commissioner (Retd.)  
K.V.S.

Phone (R) : 25083203

Flat No. D-102, Pancheel Apartments  
External Affairs E.C.G.H. Society  
Plot No. 24, Sector- 4, Dwarka  
New Delhi- 110075.

No. F.1-1/LO/KVS (GR)/Dwarka/2003

Dated 18/10/2003

REGISTERED  
CONFIDENTIAL

To

Shri R.S. Maurya  
PGT (Chemistry)  
Kendriya Vidyalaya, Khanapara  
Guwahati- 781022.

Subject: - Departmental Enquiry under Rule- 14 of the CCS (CCA) Rules, 1965  
against Shri H.C. Das, UDC, KV, Tawang.

Sir,

I am the Inquiry Authority in the Inquiry case under Rule 14 of the CCS (CCA) Rules, 1965 against Shri H.C. Das, UDC, K.V, Tawang. Shri Das has intimated to me vide his letter dated 10/10/2003 that you are his Defence Assistant in the case, but your willingness to work as Defence Assistant as well as the certificate regarding departmental case (s) with you on date is not received so far. You are required to submit the same on the date of hearing.

I shall hold further hearing in the case on 13<sup>th</sup> and 14<sup>th</sup> November, 2003 at 11.00 A.M. daily at K.V. Maligaon, Guwahati- 781011. You are, therefore, required to attend the proceedings with your willingness and desired certificate for assisting the charged officer.

You should apply well in time for getting yourself relieved by your controlling authority to whom a copy of this letter is endorsed.

Yours faithfully

Sd/-  
(KARTAR SINGH)  
Assistant Commissioner (Retd.), &  
Inquiry Officer.

Copy to:

Adarsh  
Sajit Chatterjee  
Advocate  
on 26/12/03

1. The Principal, Kendriya Vidyalaya, Khanapara, Guwahati- 781022 with request to relieve Shri R.S. Maurya, PGT (Chemistry) for attending the Regular Hearing.
2. Shri H.C. Das, UDC, Kendriya Vidyalaya, Tawang- 790104 (Arunachal Pradesh)

Sd/- Illegible  
(KARTAR SINGH)  
Assistant Commissioner(Retd.), &  
Inquiry Officer.

(Typed copy)

Annexure- XVI

Kendriya Vidyalaya, Khanapara  
Guwahati- 22

SPEED POST/CONFIDENTIAL

To

Shri Kartar Singh

Assistant Commissioner KVS (Retd) & Inquiry Officer,  
Flat No. D-102, Panchsheel apartments  
External Affairs E.C.G II Society  
Plot No. 24, Sector- 4, Dwarka,  
New Delhi- 110075.

Our Ref. No. F. 123/KVK/2003-04/2786

Date: Oct 23<sup>rd</sup> 2003

Subject: Departmental Enquiry under Rule- 14 of the CCS (CCA) Rules, 1965  
against Shri H.C. Das, UDC, KV, Tawang reg.

Sir,

With reference to your Registered Confidential letter No. F.1-1/LO/KVS (GR)/Dwarka/2003 dated 18/10/2003, I would like to inform you that Shri R.S. Maurya is no longer an employee of Kendriya Vidyalaya Sangathan in general and Kendriya Vidyalaya, Khanapara, in particular. He was removed from service with effect from 29/05/2000 vide letter no. F 14-5/99-KVS (GR)/1977-79 dated 29/05/2000 issued from Kendriya Vidyalaya Sangathan (Regional Office), Guwahati.

Hence, he is not in the rolls of Kendriya Vidyalaya, Khanapara as he has been removed from service in compliance with KVS (GR)'s directives, and as such the question of relieving him from this Vidyalaya viz. Kendriya Vidyalaya, Khanapara does not arise.

This is for your information and necessary action please.

Sd/- Illegible

(Mrs. J. Dasbasu)

PRINCIPAL

K.V. Khanapara,

Guwahati- 781022.

Alkael  
Sewajit Choudhury  
Advocacy  
09.11.08

(Typed copy)

Annexure- XVII (Series)

To.

The Inquiry Officer,

Camp: K.V, Maligaon,

Ghy- 11.

Date: 13.11.03.

Sir,

Kindly furnish the copy of the KVS, Circular about the Rules/law position in connection with the appointment of D.A.

Further, it is also requested to adhoc the provisions of Rule- 14 of CCS (CCA) Rules, 1965 in r/o my D.A. Sri R.S. Mauriya, P.G.T (Chemistry), K.V. Khanapara and also request not to reject the name of my D.A. in the basis of Mrs. J. DAS BASU letter dated 23.10.2003 which is forged.

Received

Sd/- Illegible.

Sd/- Illegible

13.11.03.

Sign of (C.O)

(H.C. Das)

A. Debed Choudhury  
Surjit Das  
01/11/03

(Typed copy)

Annexure- XVII (Series)

To.

The Inquiry Officer,  
Camp: K.V. Maligaon.  
GHY- 11.

Date: 13.11.03.

Sir,

As per your honour decision basing on the statements of the Principal, K.V. Khanapara, namely Mrs. J. DASBASU, the denial to allow Sri R. S. Maurya, as my D.A. is not true and correct, hence categorically denied. Please record my objection.

Further, the statements made in the letter dated 23.10.03 is totally false, untrue, incorrect and therefore, the said Principal, should be produced to prove the grievances and authenticity of the said letter relied by your honour.

Be it humbly stated that Mr. R.S. Maurya is very much in the service of K.V. Maurya is very much in the service of K.V. Khanapara in particular and K.V.S in general pursuance to an order and judgment dated 04/02/03 passed by the Hon'ble CAT, Ghy, in O.A. No. 384/2002. Therefore, your honour is requested to allow him as my D.A. to meet the ends of justice.

Sd/- Illegible  
13/11/03  
(C.O)

Mr. H. C. Das.

Annexure- XVIII

(Typed copy)

To

(1) Sri D.S. BIST  
Chief Vigilance Officer,  
&  
Jt. Commissioner (Admn.)  
K.V.S (H.Q)  
New Delhi- 16.  
(Appellate Authority)

(2) Sri S.S. Sahrawat  
Asstt. Commissioner,  
K.V.S. (C.R), Maligaon  
&  
Disciplinary Authority

Date- 16.12.2003

Subject: - To prevent entry at the gate of K.V. Maligaon by Mr. Phanidhar Bora, Gp. 'D' at the instance of Mr. Kartar Singh, I.O. and Mr. D. Venkataswari, Principal, K.V., Maligaon on 16.12.2003 regarding.

Reference: - Vide Memo. No. F. 1-1/I.O/KVS (GR)/Dwarka/2003/1430-12 dtd. 14.11.2003 issued by Mr. Kartar Singh (I.O).

R/Sir,

I most humbly state-

- (1) That in compliance with the aforesaid Memo dtd. 14.11.03 under reference I reported with my D.A. on 16.12.2003 at about 11.00 A.M in order to participate & fully co-operate in the said proceeding.
- (2) That, I was prevented to enter at the gate alongwith my D.A. by Mr. Phanidhar Bora, Gp. 'D' at the instance of I.O/Principal of the said School as stated by the said Gp. 'D'.
- (3) That thereafter, a request was also sent through another Gp. 'D', namely Mr. Kameshwar Kumar of K.V. Maligaon followed by another request to Mr. Rupankar Hazarika, Asstt. Supdt. of K.V. Maligaon to inform my arrival with my D.A. in order to co-operate & participate in the said proceeding but of no avail and the I.O/Principal of said K.V. Maligaon

*Addressed  
Srijit Choudhury  
18/12/03*

did not pass any orders to enter at the gate rather prevented him (me) from his (my) participation in the said inquiry with my D.A. on 16.12.2003 at 11.00 A.M.

- (4) That I waited till 12.00 AM with my D.A and thereafter, I intimated the said incidence to the local P.S. at 12:15 PM accordingly.
- (5) That the said manner of conducting the inquiry by I.O & prevention from participation with D.A. led to believe me that I may not get fair trial/justice from Mr. Kartar Singh who is biased & prejudiced from very beginning, which is obvious from the face of records of the proceeding dtd. 13.11.2003. The said I.O is to be changed to meet the ends of justice at the earliest.
- (6) That I have been denied reasonable opportunity to defend my case since very beginning by the said I.O who is working at the dictates of the Deptal. Authority.

So, your honour is requested to change the said I.O to meet the ends of justice & intimate action as per law against the erring officials.

- (7) That I demanded free, fair and just inquiry into the matter to meet the ends of justice by changing the said I.O.

It is for your kind information and action please.

Enclosure

Memo dtd. 14.11.03 issued by  
I.O Mr. Kartar Singh.

Yours faithfully  
Sd/- Illegible

(H.C. Das)  
U.D.C.  
K.V. Tawang  
(A.P.)

Date 16/12/2003.



# KENDRIYA VIDYALAYA SANGATHAN

## केन्द्रीय विद्यालय संगठन

क्षेत्रीय कार्यालय  
मालीगांव चारिआली  
गुवाहाटी : ৭৮১ ০১২

Regional Office  
Maligaon Chariali  
Guwahati - 781 012

Phone : 2571799  
: 2571798  
Tele Fax : 2561797

मात्रांक  
No. F. : १५/१०८

दिनांक :  
Dated :

14-2/99-KVS(GR)/ 17, 144

06-01-2004

वृत्तिग्रन्थ छात्र  
REGISTERED POST

### OFFICE ORDER

**SUBJECT : PREVENTION OF ENTRY AT THE GATE OF KENDRIYA VIDYALAYA, MALIGAON - REPRESENTATION DATED 16-12-2003 - REGARDING.**

The matter was enquired into. Shri H.C. Das, C.O. was never prevented at the gate of Kendriya Vidyalaya, Maligaon on 16-12-2003. Instead he was permitted to enter the Vidyalaya for attending the enquiry proceedings fixed on that date. He was not permitted to take Mr. R.S. Maurya, who has no connection with the enquiry, alongwith him. Instead of insisting to take Shri R.S. Maurya with him, without the prior approval of the Inquiry Officer he should have sought the permission of the Inquiry Officer for a proper procedure in this regard.

Further, it is noted that the inquiry proceedings are conducted as per procedure and he has been given ample opportunity to defend himself. The allegation raised by him in his representation dated 16-12-2003 has been found to be baseless and denied.

Lastly he is hereby advised to co-operate with Inquiry Officer to complete the inquiry proceedings at the earliest.

*(S. S. Sehrawat)*  
( S. S. SEHRAWAT )  
ASSISTANT COMMISSIONER

To

Shri H. C. Das,  
UDC & C.O.,  
Kendriya Vidyalaya,  
Tawang.  
(Through the Principal, Kendriya Vidyalaya, Tawang).

21/1/04

*Alka (Signature)*  
Surjit Chaudhury  
Advocate  
on 21/12/03

To,  
Mr. S.S. Sehrawat,  
Assistant Commissioner,  
&  
(Disciplinary Authority)  
K.V.S. (G.R.), Maligaon,  
Gauhati - 12.

Dated :- 23.01.2004

Subject:- Prayer to change I.O. (Mr.Kartar Singh).

Reference:- 1) Your Office Order No.14-2/99-KV.S(GR)/17,144 dated 06.01.04.

2) Vide my three (03) representations dated 16.12.2003.

Respected Sir,

1. That Sir, I received an office order dated 06.01.2004 through the Principal, K.V, Tawang(A.P.) on 22/01/2004 and I have gone through the contents of the instant office order in question, I do not admit anything which is not borne out of records save and except which has been specifically admitted.

2. That Sir, the statements made in paragraph - 1 of the said order is totally false, baseless and hence categorically denied. It is further submitted that when the C.O. alongwith his valid D.A. as per Rule - 14 of C.C.S.(C.C.A.) Rules 1965 reached at the entry gate of the K.V, Maligaon, they both were prevented by the said Group 'U' namely Mr.P.Bora from entry at the instance of the said I.O. namely Mr.Kartar Singh and the venue Principal.

Further, kindly be it submitted that Mr.R.S.Maurya, PGT (Chemistry) of K.V, Khanapara is my valid D.A. as per Rule 14 of C.C.S.(C.C.A.) Rules 1965 and the said I.O. has no right to

Abulal Choudhury:  
Sujit Bhattachary  
on 21/1/05

prevent the entry of my valid D.A. at the instance of a doctoring/fabricating/furnishing false information via forged, unauthentic and non-genuine documents without subjecting to cross - examination of the authors of the said documents who is a P.W. - 7 in the instant case and therefore the statement made by your honour in this paragraph that Mr.R.S.Maurya (my valid D.A.), who has no connection with the enquiry alongwith him(C.O.) is absolutely false, baseless and thus categorically denied. Moreover, the so called enquiry conducted by your honour into the matter is ex parte and hence unsustained in law.

Further, it is also submitted that as per Rule - 14 of C.C.S.(C.C.A.) Rules' 1965 no prior approval of I.O. is to be sought for valid D.A. and it is the duty of the C.O. to take the assistance of D.A. of his own choice to defend his case properly, effectively and reasonably but from the records it is manifest that Mr.Kartar Singh(I.O.) is biased, prejudiced and is working at the dictate of the K.V.S. authorities in gross violation of provisions of law as well as principle of natural justice. Thus, the statements made about my valid D.A. is also absolutely baseless, false and hence categorically denied and Mr.R.S.Maurya shall continue as my valid D.A.

Further the statements made in sub-para of paragraph - 1 is already been replied above. It is also categorically denied that the C.O. has been given ample opportunity to defend himself in absence of D.A. In this respect it is stated that the I.O. is working at the dictate of the K.V.S. authorities and in clear violations of the provisions of law etc. and as such I never expect any free, fair and just enquiry from him and therefore I.O. must be changed to meet the ends of justice.

- 3 -

Further, I humbly submit that I am a law/male abiding and bonafide employee of K.V.S. and the K.V.S. could not get favour from the Hon'ble High Court Gauhati as well as from the Hon'ble C.A.T. Gauhati in the same charges and K.V.S. further has decided to drag me into false departmental proceeding to implicate into malicious prosecution without any basis and thus your honour is requested to drop the proceeding at this stage itself. I also ensure full cooperation wherever needed for the interest of justice.

Kindly be it submitted that the said order dated 06.01.04 did not whisper about the change of the said I.O. as prayed for in my representations dated 16/12/2003 on various grounds and hence I reserve my right for the same and to defend my case alongwith my valid D.A. Sri.R.S.Maurya.

( All the documents supporting the statements etc. are enclosed herewith and marked as Annexure - A collectively.)

Prayer

In the facts and circumstances as stated above it is therefore prayed that your honour would be pleased to change the I.O. (Mr.Kartar Singh) at the earliest by passing a reasoned and speaking order on the representations to meet the ends of justice within a period of ten(10) days from today and would also be pleased to drop the proceedings at this stage as per law as well as in the light of the judgments and orders passed by the Hon'ble High Court as well as Hon'ble C.A.T,Gauhati whereby the penalty order of dismissal was set aside and quashed.

Enclosures:-

Total numbers of document (C9) <sup>Nine</sup> ~~Eight~~

Copy to:-

1. Sri.D.S.Bist/Sri.V.K.Gupta,  
C.V.O./D.C.(Admin.),  
K.V.S.(H.Q.),  
New Delhi - 16, for kind information  
and necessary action please.

2. Mr.Kartar Singh(I.O.),  
at present disputed I.O., for kind  
information and necessary action (without annexures)

3. The Principal,  
K.V,Tawang,  
(A.P.) in connection with office order dated 15.01.2004,  
for kind information (without annexures).

Yours faithfully,  
*(H.C. JAS)*  
23/1/04 C.O., and  
U.D.C.,  
K.V,Tawang, (A.P.)

N.B.:- This representation should be directed to both the  
Officers i.e., C.V.O. and the competent appellate authority  
for U.D.C. for information and n/a please.

*(H.C. JAS)*  
( H.C. JAS )

1 MAY 2006

गुवाहाटी न्यायपीठ  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: GUWAHATI.

IN THE MATTER OF

O.A. No. 316/2005

H.C. Das,

... Applicant

- Versus -

Union of India and Ors.

... Respondents.

- AND -

IN THE MATTER OF :

Written statement filed by the Respondents.

- AND -

IN THE MATTER OF :

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

The humble written statement on behalf of the Respondents are as follows:

I Sri U.N. Khaware, the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region, Guwahati to hereby solemnly affirm and say as follows :

- That the deponent states that copies of the Original Application have been served upon all the official respondents. On receipt of the copy of the O.A. I have gone through the averments along with relevant records pertaining to the case. I understood the contents thereof and on being supplied with parawise comment from the Head Quarter I file this written statement

128  
Filed by Respondent  
Through Md. Md. Md. Md. Md.  
Standing Counsel K. K. Sangathan  
1/5/06

on behalf of the Respondents being acquainted with facts and circumstances of the case.

- 2) That save and except what is specifically admitted in this written statement and the statement which have not been referred to in this written statement and the statement which are contrary to and inconsistent with the records shall be deemed to have been denied.
- 3) That the deponent begs to apprise the brief fact of the case before controverting the statement and averments made in the O.A.

BRIEF HISTORY OF THE CASE :

Shri H.C. Das, UDC was dismissed from Kendriya Vidyalaya, Borjhar for alleged misconduct by invoking the Provisions of rule 19(ii) of CCS(CCA) Rules, 1965 by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati vide order No.- 14-2/99-KVS(GR), dated 02-02-1999.

He challenged the said order before the Hon'ble CAT, Guwahati Bench vide O.A. No.390/99 in turn Hon'ble CAT, vide its order dated 26-02-2001 set aside the penalty order as well as appellate order dated 16-08-99. On behalf of KVS appeal was filed before the High Court Gauhati against the said order vide W.P. (C) No.6071/2001. However the Hon'ble High Court vide Judgement dated 29-08-2001 confirmed the order of CAT Guwahati and dismissed the writ petition.

In compliance with the orders of the Courts Shri H.C. Das was reinstated in service without prejudice to the right of KVS to take further action as per law and posted at Kendriya Vidyalaya, Tengavalle vide this office order No. F.10-6/2001-KVS(GR)/15983-86, dated 19-09-2001 and subsequently at Kendriya Vidyalaya, Tawang.

Shri H.C. Das, UDC, was charge sheeted under Rule 14 of CCS(CCA) Rules 1965 by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Guwahati Region i.e. the competent Disciplinary authority for misconducted committed by him while he was working as UDC in Kendriya Vidyalaya, AF S Borjhar under Memorandum No.F.14-2/99-KVS(GR)/300-01, dated 02-01-2002.

On denial of charges by Shri H.C. Das, C.O. Shri R.K. Gautam, the then Principal, Kendriya Vidyalaya, Upper Shillong and Shri P.V.S. Ranga Rao, the then Principal, Kendriya Vidyalaya, No. 1 Tezpur were appointed as Inquiry Officer & Presenting Officer respectively to inquire into the charges. Subsequently due to transfer of Shri R.K. Gautam, out of this Region Shri M.K. Krishnamoorthy, the then Principal, Kendriya Vidyalaya, No. 2 Tezpur and Shri G. Rama Rao, Prinaipal, Kendriya Vidyalaya, Missamari were appointed as Inquiry Officer & Presenting Officer respectively to conduct the Inquiry against Shri H.C. Das.

After having heard part of the case Shri M.K. Krishnamoorthy ceased to exercise his jurisdiction due to his transfer to Kendriya Vidyalaya No. 2 Mangalore

i.e. out of the region. There after, Shri Kartar Singh, Assistant Commissioner (Retd.) Kendriya Vidyalaya Sangathan was appointed as Inquiry Officer in place of Shri Krishnamoorthy.

Shri Kartar Singh, Inquiry Officer completed the inquiry and submitted his report dated 07-01-2005. A copy of the Inquiry report was sent to Shri H.C. Das vide Memorandum dated 19-01-2005 for making his representation against the said inquiry report. Shri H.C. Das has submitted his reply, vide representation dated - 12-02-2005.

The competent disciplinary authority, after considering the facts and circumstances of the case including the representation made by the Charged Officer came to the conclusion that the inquiry was held properly and in accordance with the prescribed rules and was also satisfied that the Charged Officer was given sufficient opportunity and scope to defend his case.

The disciplinary authority came to the conclusion that Shri H.C. Das, Charged Officer, committed serious misconduct and violated rule 3(1) (i), (ii) & (iii) of CCS (Conduct) Rules, 1964 as extended to the employee of KVS and imposed the major penalty of compulsory Retirement with 25 % cut in pension up on Shri H.C. Das.

4) That as regards the statements made in paragraph 1,2,3, 4.1 and 4.2 of the Original Application the deponent states that these are matter of records and the deponent does not admit anything which are contrary to and inconsistant with the same.

5) That as regard the statement made in paragraph 4.3 of the original application the deponent states that the Commissioner KVS, New Delhi visited Guwahati and convened a meeting of the local Principal & high officials on 15.1.99 at Kendriya Vidyalaya, Maligaon. Shri H.C. Das, UDC, Kendriya Vidyalaya, Borjhar came to the office of Principal, Kendriya Vidyalaya, Maligaon on that day at 3 P.M. without obtaining prior permission of his controlling Officer i.e. from Principal, Kendriya Vidyalaya, Borjhar and forced the Principal, Kendriya Vidyalaya, Maligaon to arrange a meeting with the Commissioner. It is also confirmed that the applicant did not take prior permission for that (Ref. Exhibit-P/2(i) & Page 122).

6) That as regard the statement made in paragraph 4.4 the deponent states that the averment of the applicant is not true. The applicant forcibly entered into the room of the Principal Kendriya Vidyalaya, Maligaon on 15.1.99 where an official meeting was in progress chaired by Commissioner, KVS, started heated arguments with the Principal, Kendriya Vidyalaya, Maligaon in the Presence of KVS Officials to arrange a meeting

with the Commissioner, KVS. He did not have the patience to wait till the meeting was over and rather he created an atmosphere of violence and presented a scene of indiscipline and in subordination even at the intervention of the Commissioner in the meeting for which the Commissioner himself had to intervene to avoid the development of a disorderly situation.

7) That as regard the statement made in paragraphs 4.5, 4.6, 4.7, 4.8, 4.9, 4.10 and 4.11 the deponent states that Shri H.C. Das was dismissed from Kendriya Vidyalaya, Borjhar for alleged misconduct by invoking the provisions of rule 19(ii) of CCS(CCA) Rules 1965 by the Assistant Commissioner, Guwahati being the Competent disciplinary authority, vide Order No. - 14-2/99-KVS(GR), dt. 2/2/1999.

He challenged the said order before the Hon'ble CAT, Guwahati Bn. vide O.A. No.390/99 in turn Hon'ble CAT, vide order dt. 26/2/2001 set aside the penalty order as well as appellate order dt. 16/8/99.

W.P.(C) No.6071/2001, was filed by KVS against the said order of the CAT. However the Hon'ble High Court vide judgement dt. 29/8/2001 confirmed the order of CAT & dismissed the writ petition.

The charges framed against Shri Das were sustained during the inquiry (refer to inquiry reports & Proceedings).

Shri H.C. Das was reinstated in service without prejudice to the right of KVS to take further action as

as per law vide order dt. 19.09.2001 (refer order of the Hon'ble Tribunal & High Court Guwahati).

8) That with regard to the statement made in para 4.12 the deponent states that the Inquiry Officer completed the inquiry and submitted his report dated- 7.1.2005. A copy of the report was sent to Shri Das for making his representation against the said inquiry report.

The Competent disciplinary authority after considering the facts and circumstances of the case including the representation made by the C.O. came to the conclusion that the inquiry was held properly and in accordance with the prescribed rules and was also satisfied that the C.O. was given sufficient opportunity and scope to defend his case.

Thereafter the disciplinary authority came to the conclusion that Shri Das, C.O. committed serious misconduct and violated rules 3(1)(i)(ii) & (iii) of CCS(Conduct)Rules, 1964 as extended to the employees of KVS and imposed the major penalty of C.R. with 25 % cut in pension upon him vide order dt. 7.10.2005.

9) That with regard to the statement made in para 4.13 the deponent states that Shri H.C. Das, Ex. UDC, Kendriya Vidyalaya, Tawang filed an appeal dated 19.04.2005 to the Commissioner, KVS against the order dated 03.03.2005 passed by the Assistant Commissioner, Guwahati Region imposing the penalty of

"Compulsory retirement with 25 % cut in Pension". Since as per rule Joint Commissioner (Admn.) is the Appellate Authority in case of UDC (Group 'C' employee). Therefore the appeal was forwarded to Joint Commissioner (Admn.) on 25.04.2005 by Commissioner for disposal.

- 10) That with regard to the statement made in para 4.14 the deponent states that the averment of the applicant is not true as the Joint Commissioner (Admn.) being the Appellate Authority based on the consideration of facts & circumstances of the case. Contents in the appeal and applying her mind, found no merit in the appeal and rejected the appeal of Shri H.C. Das and passed the order dated 07.10.2005.
- 11) That with regard to the statement made in para 4.15 the deponent states that the averment of Shri Das that he has not committed any misconduct or restored to any sort of indiscipline during his long tenure of service and worked upto the satisfaction of his superiors, does not absolve him from proven misconduct. The charges framed against him were also sustained during the inquiry.
- 12) That with regard to the statement made in para 4.16 the deponent states that in compliance with the orders of the Hon'ble Court Shri H.C. Das was reinstated in service without prejudice to the right of KVS to take further action as per law vide order

- 9 -

dated 19.09.2001. He was charge-sheeted under Rule 14 of CCS(CCA) Rules, 1965 by the Assistant Commissioner, Guwahati Region being the competent disciplinary authority for misconduct committed by him while he was working as UDC at Kendriya Vidyalaya, AFS Borjhar vide memorandum dated 02-01-2002. As such, the order of the disciplinary authority & Appellate Authority are not to be set aside and quashed.

13) That with regard to the statement made in para 4.17 and 4.18 the deponent states that the averments of the applicant is not true, as the inquiry was conducted by the I.O. as per procedures laid down in rule 14 and 15 of the CCS(CCA) rules, 1965.

As per records of the inquiry/evidences proved that the C.O. was given sufficient opportunity and scope to defend his case.

The applicant submitted that Shri R.S. Maurya, Ex.PGT(Chem.), Kendriya Vidyalaya, Khanapara was his defence Assistant, but the I.O. did not allow Shri Maurya to act as Defence Assistant as he was at that time out of service (Removed from Service of KVS).

Shri H.C. Das, C.O., had been instructed to nominate a valid Defence Assistant as per KVS rules, but he did not propose any valid Defence Assistant, except Shri R.S. Maurya till the last day of hearing of the inquiry Proceedings. (Ref. Daily order sheet dt. 13/11/2003, page- 32).

14) That with regard to the statement made in para 4.19 the deponent states that in compliance with the orders of the Courts Shri H.C. Das was reinstated in service without prejudice to the right of ~~KK~~ KVS to take further action as per law and posted at Kendriya Vidyalaya, Tengavalley vide Transfer Order dt. 19.9.2001 and subsequently posted at Kendriya Vidyalaya, Tawang since Shri Jay dev Barman, UDC had to be accommodated at Kendriya Vidyalaya, Tengavalley as per direction of the Tribunal.

15) That with regard to the statement made in para 4.20 the deponent states that the averment of the applicant is not true, as the action of the respondents is not arbitrary and illegal. Hence the penalty order dated 03-03-2005 and Appellate Authority's order dated- 07-10-2005 rejecting the appeal of Shri Das may not be set aside and quashed.

16) That with regard to the statements made in para 4.21 and 4.22 the deponent states that the averment is not true. The I.O. vide his letter dt. 18.10.2003 instructed Shri R.S. Maurya, to attend the inquiry proceedings with his willingness alongwith relieving Order from his controlling office i.e. from Principal, Kendriya Vidyalaya, Khanapara. It was confirmed by the Principal, Kendriya Vidyalaya, Khanapara, vide her letter dated 23/10/2003 that Shri R.S. Maurya was not

in Service with effect from 29/5/2000 (Removed from Service).

Shri H.C. Das, C.O. was not permitted to enter into the room of enquiry with Mrs. R.S. Mauarya, who has no connection with the enquiry without approval of the I.O. (Ref. Letter dt. 31/12/2003, Page- 60 of Voll. II).

The disciplinary authority vide his letter dt. 6/1/2004 disposed of the representation dt. 16/12/2003 of the C.O. in this connection and advised to Co-operate with the inquiry office (Ref. Daily order sheet dated 13/11/2003).

17) Para ~~8~~ - 4.23 - NIL.

18) That with regard to the statement made in para 4.24 the deponent states that the averment is not true. The representation dt. 23/01/2004 of Shri H.C. Das regarding change of I.O. was examined and found unlawful and disposed of by the disciplinary authority vide order dt. 18/02/2004 (Ref. Memo. dt. 18/02/2004, Page 86, Voll. II).

19) That with regard to the statement made in para 4.25 the deponent states that It is not true. (Refer Daily order sheet dt. 20/02/2004 and submission of the I.O. Vide his report dt. 07/01/2005). In this connection it is submitted that during the course of inquiry proceedings

oral evidences of 10 witnesses of Prosecution side (9+1) were recorded and the I.O. concluded that all the four charges as made out in the charge-sheet were fully proved beyond doubt.

20) That with regard to the statement made in para 4.26 the deponent states that the Appellate Authority considered all facts and circumstances of the case and available records of the inquiry proceedings while disposing of his appeal. The enquiry against Shri H.C. Das by holding hearings was completed on 9th August, 04 and Shri R.S. Maurya had joined his duties on 15.10.2004 at Kendriya Vidyalaya, Dharchula on reinstatement in compliance to the directions of the Hon'ble Tribunal. Hence the penalty order dated 3.3.05, the appellate order dated 7.10.05 and the entire enquiry proceedings are not to be set aside and quashed.

21) That with regard to the statement made in para 4.27 the deponent states that the Appellate Authority rejected the appeal of Shri Das and passed an order dated 07.10.2005 after going through all the facts & circumstances of the case, findings of the Inquiry Officer and the contents in the appeal and after being found no merit in appeal.

22) That with regard to the statement made in para 4.28 the deponent states that the applicant was found guilty during the inquiry and all the four charges

leveled against him are proved beyond doubt as per the Inquiry Report. Hence the Appellate Authority's order dated 7.10.05 may not be set aside and quashed.

The Applicant has submitted his reply, vide representation dated 12.02.2005.

The competent disciplinary authority, after considering the facts and circumstances of the case including the representation made by the Charged Officer came to the conclusion that the inquiry was held properly and in accordance with the prescribed rules & was also satisfied that the Charged Officer was given sufficient opportunity and scope to defend his case.

The disciplinary authority came to the conclusion that Shri H.C. Das, Charged Officer, committed serious misconduct and violated rule 3(1) (i), (ii) and (iii) of CCS(Conduct) Rules, 1964 as extended to the employees of KVS and imposed the major penalty of compulsory Retirement with 25 % cut in pension upon Shri H.C. Das.

GROUND FOR RELIEF(S) WITH LEGAL PROVISIONS :-

23) That with regards to the statement made in para 5.1 the deponents denied the same hence offered no comments.

24) That with regards to the statements made in para 5.2 to 5.4 the deponent states that Shri H.C. Das was reinstated in service without prejudice to the right of KVS to take further action as per law. In

compliance with the orders of the Hon'ble Tribunal/ High Court Gauhati he was reinstated in service with full benefits.

25) That with regard to the statement made in para 5.5 the deponent states that Shri H.C. Das was reinstated in service as per direction of Hon'ble Court without prejudice to the right of KVS to take further action against him as per law.

The applicant was found guilty during the inquiry and all the four charges were proved beyond doubt as per inquiry report.

26) That with regard to the statement made in para 5.6 the deponent denied the same. The inquiry was held properly and in accordance with the prescribed rules.

27) That with regard to the statement made in para 5.7 the deponent denied the same and states that Shri H.C. Das was given sufficient opportunity and scope to defend his case.

28) That with regard to the statement made in para 5.8 the deponent denied the same and states that the charged officer had been instructed to nominate a valid defence Assistant as per KVS rules but he did not come up and did not propose any valid Defence Assistant, except Mr. R.S. Maurya till the last date of hearing of the inquiry.

29) That with regard to the statement made in para 5.9 the deponent states that the Appellate Authority duly considered the factual detail of the allegations leveled against him and found no merit in his appeal. The action of the appellate Authority is not arbitrary and unfair manner. The penalty imposed upon him is proportionate to the offence committed by him.

30) That with regard to the statement made in para 5.10 the deponent denied the same.

31) That with regard to the statement made in para 5.11 the deponent states that the charges leveled against Shri Das have been proved fully during the inquiry and appropriate penalty has been imposed upon him for which he deserved and that is fair & legal.

32) That with regard to the statement made in para 5.12 the deponent states that as per provisions contained in the Education Code for KVS/CCS(CCA) Rules 1965, an employee of KVS can take the Assistance of an employee belonging to the KVS.

Shri R.S. Maurya was not in service on that time for which he was not permitted to act as his defence assistance as per KVS rule.

As per direction of the Hon'ble High Court Gauhati vide judgement dt. 4/3/2004 in W.P.(C) No.- 2392/03, Shri R.S. Maurya was ~~in~~ reinstated in service

by the KVS(H.Q.) and joined on 15.10.2004 at Kendriya Vidyalaya, Dharchula.

33) That with regard to the statement made in para 5.13 the deponent states that as per records/ daily order sheets of the inquiry proceedings that the inquiry was completed by holding total 10 sittings/ hearings.

Shri H.C. Das attended the Proceedings of inquiry on 13/11/2003. He had been instructed by the I.O. & D.A. to Co-operate with the authority to complete the proceedings but he did not till the last day of hearing.

34) That with regard to the statement made in para 5.14 and 5.15 the deponent states that the charges were proved fully with the evidence brought on record before the Inquiry Officer and after going through all the facts and circumstances of the case, findings of the Inquiry Officer and the contents in the appeal the appellate Authority rejected his appeal vide order dated 07.10.2005.

35) That with regard to the statement made in para 5.16 the deponent states that the averment of the applicant is not true. The Appellate Authority considered all the points raised by the applicant while disposing of his appeal and passed a detailed Speaking order dated 07-10-2005 considering all the points raised by the appellant in his appeal.

36) That with regard to the statement made in para 5.17 the deponent states that the Joint Commissioner (Admn.) being the Appellate Authority passed an order dated 07-10-2005 after following the provision laid down in sub rule (2) (a) (b) (c) of Rule 27 of CCS(CCA) Rules, 1965 and it is not passed in arbitrary manner.

37) That with regard to the statement made in para 5.18 the deponent states that it is not true that the appellate order is cryptic, non-speaking and violated the provision of CCS(CCA) Rules, 1965.

38) That with regard to the statement made in para 5.19 the deponent states that the charges levelled upon Shri H.C. Das have been proved fully during the inquiry and appropriate penalty has been imposed upon him for which he deserved. Hence the orders may not be set aside and quashed.

DETAILS OF REMEDIES EXHAUSTED :

39) That with regard to the statement made in para 6 the deponent states that Shri H.C. Das has not availed the opportunity of revision Petition under Rule 29 of CCS(CCA) Rules, 1965. Therefore the O.A. may be dismissed at the admission stage itself, having alternative remedy of Revision Petition.

MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT.

40) No comments.

RELIEF SOUGHT FOR

That with regard to the statement made in para 8.1 to 8.5 the relief sought by the applicant, may not be granted to him in view of the fact that the order dated 03-03-2005 imposing the penalty of "Compulsory Retirement with 25 % cut in pension" imposed upon him by the disciplinary authority and the order dated 07-10-2005 of the Appellate Authority rejecting his appeal are in order and justified.

INTERIM ORDER PRAYED FOR :

In view of the facts and circumstances of the case stated above the Hon'ble CAT may be pleased to dismiss the O.A. Filed by Shri H.C. Das.

.... Verification.

19/146

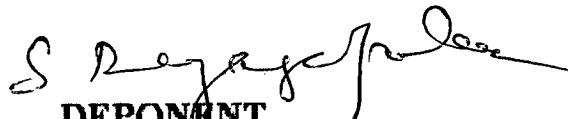
AFFIDAVIT / VERIFICATION

I Shri S. Rajagopalan, Son of Seshamachariar, aged about 58 years, presently working as Officiating Assistant Commissioner in the Regional Office of Kendriya Vidyalaya Sangathan, Khanapara, Guwahati, do hereby solemnly affirm and declare as follows :

1. That I am the Officiating Assistant Commissioner of the Kendriya Vidyalaya Sangathan, Khanapara, 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 to 16, 18-22 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 28<sup>th</sup> day of April, 2006 at Guwahati.

Identified by

  
S. Rajagopalan  
DEPONENT

Advocate's Clerk

गुवाहाटी न्यायालय

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

In the matter of:-

O.A.No. 316 of 2005

Shri Haren Chandra Das.

... Applicant.

-Versus-

Union of India and others.

... Respondents.

-And-

In the matter of:-

Rejoinder submitted by the applicant reply to the written statement submitted by the respondents.

The applicant abovenamed most humbly and respectfully begs to states as under:-

1. That with regard to the brief history of the case stated in paragraph 3 of the written statement, the applicant begs to submit that the applicant was dismissed from the services of the Kendriya Vidyalaya vide order dated 02.02.1999 on the ground of some false and unfounded allegations in an arbitrary manner without providing any reasonable opportunity to the applicant to defend. The applicant challenged the order of dismissal before the Hon'ble CAT vide its order dated 26.02.2001 set aside the penalty order as well as the appellate order with further direction to reinstate with full back wages. The respondents filed appeal before the

137  
Filed by the applicant  
through N. Sarker, Advocate  
on 18.11.06

Hon'ble Gauhati Court against the order of the Tribunal through WP © No. 6071/2001 and the Hon'ble Court dismissed the appeal and upheld the judgment and order of the CAT. Accordingly, the applicant was reinstated in service.

Therefore, the respondents being vindictive against the applicant not only transferred the applicant to hard stations but issued another memorandum on 02.01.2002 against the applicant alleging the same charges again which were already adjudicated upon and quashed by the CAT and the Hon'ble High Court as stated above. Pursuant to their said memorandum, the respondents conducted inquiry against the applicant without following the procedures established by law and even without allowing the Defence Assistant of the applicant to participate in the inquiry. The inquiry officer conducted the inquiry violating all procedures and submitted his report wherein the alleged charges were held to be proved. Acting on the inquiry report, the disciplinary authority issued the impugned order dated 03.03.2005 imposing the major penalty of compulsory retirement with 25 % cut in pension upon the applicant, and discharged him on 10.03.2005. The applicant submitted appeal on 19.04.2005 to the Appellate Authority against the order of penalty but the appellate authority, without any application of mind and acting most mechanically, rejected the appeal and upheld the order of penalty.

Hence, this application before this Hon'ble Tribunal.

2. That the applicant categorically denies the statements made in para 5 and 6 of the written statement and begs to submit that the newly appointed commissioner of Kendriya Vidyalaya Sangathan (KVS), New Delhi visited Assam in January 1999. During his visit to KVS, Maligaon on 15.01.1999, the applicant in his capacity of Joint Secretary of the "Kendriya Vidyalaya Non-Teaching staff association" (for short KEVINSTA), accompanied by few other office bearers of the KEVINSTA, went to K.V. Maligaon for availing the opportunity of meeting the Commissioner and felicitating

him on behalf of KEVINSTA and submitting a memorandum to him relating to some genuine grievances of the employees of Kendriya Vidyalayas. The applicant prior to his proceeding for KV, Maligaon obtained due permission from the Principal, K.V, Borjhar who was his controlling officer at the relevant time.

After reaching KV, Maligaon the applicant and his colleagues sought for permission from the Principal, KV, Maligaon for meeting the Commissioner but the Principal refused to grant permission. The applicant and his colleagues were then trying to explain the purpose of their proposed meeting with the Commissioner for a short while to the Principal and were insisting on him for his kind permission maintaining all decency and politeness. At this stage, The commissioner himself came out of the room and called the applicant and his colleagues inside the room. The applicant and his colleagues thereafter entered the room, felicitated the Commissioner with "Phulam Gamocha" and submitted a memorandum containing some grievances of the employees to him which the Commissioner was pleased to accept and he assured to consider the demands also, which took no time. Then the applicant and his colleagues left the room happily. This was subsequently reported in the local dailies also.

There was no heated arguments at all nor the applicant forcibly entered into the room as stated by the respondents which is their thought and misrepresentation of facts only.

3. That the applicant categorically denies the statements made in para 7,8,9,10,11,12,14 and 15 of the written statement and begs to submit that the applicant was dismissed from services of the Kendriya Vidyalaya vide order dated 02.02.1999 on the ground of some false and unfounded allegations in an arbitrary manner without conducting any disciplinary proceeding and without providing any reasonable opportunity to the

applicant to defend. Eventually, the said order of dismissal and the appellate order thereto was set aside by this Tribunal with further direction to reinstate the applicant with full wages. The order of this Tribunal was then challenged before the Hon'ble Gauhati Court and the Hon'ble High Court vide its order dated 29.08.2001 in WP (C) No. 6071/2001 dismissed the appeal and upheld the judgment and order of the CAT. Accordingly, the applicant was reinstated in service. But thereafter the respondents conducted a fresh disciplinary proceeding on the same charges which were already adjudicated upon by the CAT and the High Court as stated above and the charges were rejected. The enquiry proceedings conducted fresh, were vitiated by irregularities which held the charges as proved and the major penalty of compulsory retirement with 25 % cut in pension has been imposed upon the applicant. The applicant submitted an appeal against the order of penalty to the appellate authority, which has been rejected, by the appellate authority in an arbitrary manner and with a pre-set mind. As such the order of the Disciplinary authority and the Appellate authority are liable to be set aside and quashed.

4. That the applicant categorically denies the statements made in para 13,16,18,19 and 22 of the written statement and begs to submit that the inquiry against the applicant was conducted under Rule 14 and 15 of the CCS (CCA) Rules, 1965. But the same has been conducted without following the procedures laid down in Rule 14 and 15 of the CCS (CCA) Rules, 1965.

As per rules, the charged official (applicant herein) is entitled to nominate his defence assistant for attending the enquiry proceedings on his behalf. Accordingly, the applicant nominated one Shri R.S.Mourya as his defence Assistant on 10.10.2003 but the Inquiry officer did not allow Sri Mourya to participate in the inquiry on the ground that Sri Mourya

was already removed from the services of KVS and he is no more an employee of KVS. The applicant informed the Inquiry officer vide his letter dated 13.11.2003 that Sri R.S.Mourya was very much in service in terms of the judgment and order dated 04.02.2003 passed by this Tribunal in O.A No. 384/2002, but even thereafter the inquiry officer did not allow the Defence Assistant to participate in the inquiry which is arbitrary, illegal, malafide and unfair.

Due to illegal rejection of the Defence Assistant by the Inquiry officer, neither the prosecution witnesses could be cross-examined nor the documents relied on by the prosecution could be examined during the enquiry proceedings which is evident from daily order sheet and the enquiry was conducted ex-parte, without giving reasonable opportunity to the applicant whatsoever to defend his case, and the inquiry officer unilaterally held the charges as proved. As such the action of the inquiry officer is arbitrary, malafide, unfair and against the provisions of CCS (CCA) Rules and opposed to the principles of natural justice.

Further, the applicant vide his representation dated 23.01.2004 addressed to the disciplinary authority, prayed for change of enquiry officer since the said enquiry officer was biased and was conducted the inquiry ex-parte by eliminating the defence assistant nominated by the applicant. But the disciplinary authority neither disposed the representation dated 23.01.2004 nor informed the applicant anything and allowed the inquiry officer to act as per his own whims. As such the enquiry conducted by the inquiry officer suffered from serious procedural infirmities and on this score alone, the same is liable to be set aside and quashed.

Further, the disciplinary authority has acted on the inquiry report without any application of mind and without taking into consideration the material facts and records of enquiry and imposed the penalty which is not only unfair but disproportionate to the offence alleged against the

applicant. The appellate authority also has not discussed any grounds raised by the applicant in his appeal filed against the order of penalty most mechanically which is cryptic, non-speaking and opposed to the provisions of CCS (CCA) Rules, 1965.

The alleged charges on which the penalty has been imposed, was already examined and quashed by this Hon'ble Tribunal vide its judgment and order dated 26.02.2001 in O.A.no. 390/99, which was also upheld by the Hon'ble High Court, vides judgment and order dated 29.08.2001 in WP (C) No. 6071/2001 and as such the matter attained finality. But even thereafter, the respondents being vindictive, transferred the applicant to remote localities like Tenga Valley, Tawang in Arunachal Pradesh and further initiated fresh disciplinary proceedings on the same charges which already withstood judicial scrutiny and inflicted the most harsh penalty on the applicant. It is relevant to mention that on the same charges, the applicant was once kept out of service for a long period from 02.02.1999 to 26.09.2001 and only after the intervention and orders of this Hon'ble Tribunal and the Hon'ble High Court, the applicant was reinstated. Now again, pursuant to their vindictive fresh disciplinary proceedings, the respondents have inflicted the penalty of compulsory retirement and 25 % cut in pension on the applicant which violates the doctrine of "double jeopardy" enshrined in article 20 of the Constitution of India. On this score alone, the fresh disciplinary proceedings against the applicant and the penalty imposed thereon are liable to be set aside and quashed.

5. That the applicant emphatically denies the statements made in para 20,21,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37 and 38 of the written statement and begs to submit that the disciplinary authority acted on the illegal inquiry report without taking into consideration the material facts and records of enquiry and acting with a pre-set mind imposed the penalty on the applicant. The appellate authority also acted most

mechanically and rejected the appeal without any speaking order which is mandatory under the CCS (CCA) Rules. The inquiry officer, the disciplinary authority and the appellate authority acted malafide and violated all procedures established by law, principles of natural justice and without following the procedures prescribed under CCS (CCA) Rules and in defiance to the orders of this Tribunal and Hon'ble High Court which is arbitrary and illegal.

6. That the statements made in para 39 and onwards in the written statements are not sustainable in law and the reliefs and interim order sought for in the application are all bonafide and justified which the applicant is entitled to get and the actions of the disciplinary authority and appellate authority suffer from serious illegality for the reasons stated hereinabove and are liable to be set aside and quashed.
7. That in the facts and circumstances stated above, this O.A deserves to be allowed with costs.

154

VERIFICATION

I, Shri Haren Chandra Das, Son of Late Jalliram Das, aged about 52 years, Resident of Sadilapur, Pandu, P. O- Pandu, Guwahati- 12, Dist- Kamrup, Assam, do hereby verify that the statements made in Paragraph \_\_\_\_\_ and \_\_\_\_\_ are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 16<sup>th</sup> day of November 2006.

Haren Ch. Das.