

50/100  
**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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FORM NO. 4  
(SEE RULE 42 )  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

ORDER SHEET

Original Application No: 97/2005

Misc. Petition No.

Contempt petition No.

Review Application No.

Applicant(s) Sri Vijay Bhattraj

### Respondents

401 2028

Respondents \_\_\_\_\_  
Advocate(s) for the Applicant(s). MR. M. Khatrias  
MR. P.P. Baruah.

Advocates) for the Respondents KVS.

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. F. for Rs. 50/- deposited vide IPC/BD No. 209/160603 Dated 28/4/05</p> <p><i>[Signature]</i> 1/e Dy. Registrar 27-4-05</p>	2.5.05.	<p>Present: Hon'ble Mr.G.Justice G.Siva- rajan, Vice-Chairman. Hon'ble Mr.K.V.Prahladan, Administrative Member.</p> <p>Heard Mr.P.P.Baruah, learned counsel for the applicant and Mr. M.K.Mazumder learned counsel for the Respondents. The learned counsel for the applicant submits that in view of clarification issued by the C.V.C. produced alongwith a commu- nication dated 1.2.2005 (Annexure H), the applicant challenges the appoint- ment of <u>the</u> retired employee as Enquiry Officer in the Disciplinary Proceedings initiated against him. According to the learned counsel for the applicant <u>the</u> retired person cannot be appointed as Enquiry Officer for which he relies on <u>by</u> a communication dated 18th Nov., 04 (Annexure F) communication issued by the Central Vigilance Commission. The counsel for the Respondents submits that the clarification is</p>

2.5.05. sought from the Deputy Secretary, C.V.O. in the matter by letter dated 1.4.05. The enquiry will be proceeded against after obtaining the clarifications. In the circumstances the matter be posted on 2.6.05. The enquiry by the present Officer will be deferred till date for one month.

  
Member

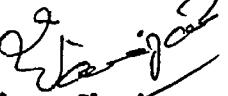
  
Vice-Chairman

lm

2.6.05.

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

  
Member

  
Vice-Chairman

Received a copy of the order



lm

6/6/05

Received a copy of the same  
from the Vice-Chairman  
6/6/05

7/6/05

CENTRAL ADMINISTRATIVE TRIBUNAL ::GUWAHATI BENCH.

O.A. No 97 of 2005.

DATE OF DECISION:02-06-2005.

Shri Vijay Bhatnagar.

APPLICANT(S)

Mr. M. Khataniar, Mr.P.P Baruah

ADVOCATE FOR THE  
APPLICANT(S)

- VERSUS -

U.O.I. & Ors.

RESPONDENT(S)

Mr. MK.Mazumda, KVS .

ADVOCATE FOR THE  
RESPONDENT(S)

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether the judgment is to be circulated to the other Benches?

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 97 of 2005.

Date of order: This the 2<sup>nd</sup> Day of June, 2005.

HON'BLE MR.JUSTICE G.SIVARAJAN, VICE-CHAIRMAN  
HON'BLE MR.K.V.PRAHLADAN, ADMINISTRATIVE MEMBER

Sri Vijay Bhatnagar  
S/O Late Jagadamba Prasad  
Principal(Under suspension)  
Kendriya Vidyalaya(Assam)  
Nazira, Sivsagar.

Mr.M.Khataniar, Mr. P.P.Baruah

Applicant

-Versus-

1. Union of India,  
Represented by the Secretary to the  
Government of India, Department of Education,  
New Delhi
2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
New Delhi
3. Sri M.M.Lal,  
(Retired Assistant Commissioner)  
Inquiry Officer,  
D-163, Ashok Vihar Phase-1  
New Delhi.

Respondents.

By Advocate Mr.M.K.Mazumdar, KVS.

ORDER(ORAL)

SIVARAJAN,J(V.C.):

The applicant who was the Principal of KVS in Nazira was kept under suspension pending disciplinary proceedings. The Commissioner, KVS (Vigilance Section) has issued an order dated 14.12.04(Annexure E) appointing one Shri M.M.Lal (Retired Assistant Commissioner) as the Enquiry Officer to inquire into the charge framed against the applicant. According to the applicant under Rule



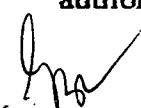
14(2) of the CCS (CCA) Rules, 1965 a retired person can not be appointed as Inquiry Officer.

2. Mr. P.P.Baruah, learned counsel for the applicant submits that Rule 14(2) of the Rules mentioned above clearly provides that whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government Servant, it may itself inquire into, or appoint under this Rule or under the Provisions of the Public Servants (Inquiries) Act, 1850, as the case may be an authority to inquire into the truth thereof. The counsel also submits that a retired person is not an authority contemplated under this rules.

3. Mr.K.Upadhyaya learned counsel appearing on behalf of Mr.M.K.Mazumdar, learned Standing counsel for KVS on the other hand submits that the CVC has issued office order No.70/11/04 in the matter based on which communication dated 1.4.05 was issued by the Education Officer (Vig), KVS stating that direction has already been issued by the CVC in the matter to review the service rules to the C.V.Os of the Organisations (other than those, which follow CCS(CCA) Rules 1965 to review their service rules. It is also noted that Article 80 of Education Code for Kendriya Vidyalayas, CCS(CCA) Rules, 1965 amended from time to time will apply mutatis mutandis to all members of the staff of the Sangathan except when otherwise decided.

The counsel also submits that clarification was also sought for from the Deputy Secretary, CVC in the matter

4. We have considered the matter. The grievance of the applicant is against the appointment of a retired person as Inquiry Officer, Rule 14(2) of the Rules has already been noted enables the disciplinary authority to appoint an authority to act as Inquiry Officer. There cannot be any doubt that the authority



contemplated under Rule 14(2) must be an Officer of the Government or the Institution concerned. It is also necessary to leave in mind that while appointing Enquiry Officer adequate care should be taken to ensure that only such officials are chosen as enquiry officer who are sufficiently senior in rank as compared to the defending officials and also who cannot be suspected of any prejudice or bias against the defending officials. In the instant case the Commissioner, KVS had appointed a retired Assistant Commissioner Mr.M.M.Lal, as inquiry Officer only under the provisions of Rule 14(2) of the Rules. In that view of the matter since Mr. M. M. Lal is a retired Assistant Commissioner <sup>as per the</sup> he can not be appointed as Inquiry Officer, since he is not an authority contemplated under Rule 14(2).

5. In the facts and circumstances of the case we quash the impugned order dated 14.12.04 (Annexure E) in this application. The Commissioner, KVS, Respondent No.2 is <sup>free</sup> to appoint any authority other than a retired person as Inquiry Officer.

O.A. is accordingly allowed as above.

  
(K.V.PRAHLADAN)  
ADMINISTRATIVE MEMBER

  
(G.SIVARAJAN)  
VICE-CHAIRMAN

DISTRICT: SIBSAGAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH: GUWAHATI.

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Filed by the applicant  
Sri Vijay Bhatnagar  
for Vijay Bhatnagar  
through: Attorney Shantanu  
Ahuja

Original Application No. /2005

IN THE MATTER OF:

Sri Vijay Bhatnagar

S/O Late Jagadamba Prasad

Principal (Under suspension)

Kendriya Vidyalaya (Assam)

Nazira, Sibsagar.

Vijay Bhatnagar

Applicant.

-Vs-

1. Union of India,

Represented by the Secretary to the  
Government of India, Department of  
Education, New Delhi.

2. The Commissioner,

Kendriya Vidyalaya Sangathan,  
New Delhi,

Contd.

3. Sri M. M. Lal,

(Retired Assistant Commissioner)

Inquiry Officer,

D-163, Ashok Vihar Phase-I

New Delhi.

..... Respondents.

DETAILS OF APPLICATIONS:

1. Particulars of the order against which the application is made:-

The application is made against order dated 14-12-2004 issued vide No. 8-18/2001 KVS (Vig) part appointing Sri M.M. Lal, Assistant Commissioner (Retd.) as the Inquiry Officer and Order dated 21-03-05 issued vide No. F8-18/2001-KVS (Vig.) Part under the signature of R.L. Jamuda, Commissioner, Kendriya Vidyalaya Sangathan, New Delhi and the Order dated 22-03-2005 vide Order sheet No. 7 issued under the signature of Sri M.M. Lal, Inquiry Officer fixing 03-05-2005 as the date of regular hearing of the Disciplinary Proceedings against the applicant.

(ANNEXURE-E Page 24)

2. Jurisdiction of the Tribunal:-

The applicant declares that the subject matter of the applicant is within the jurisdiction of the Hon'ble Court.

3. Limitation:-

Contd.

The applicant declares that the application is within the period of limitation under Section 21 of the Administrative Tribunal Act, 1983.

4. Facts of the case:-

a. The applicant is a citizen of India and a resident of Nazira in the District of Sibsagar. The applicant is as such is entitled to all the rights and privileges guaranteed under the Constitution of India and the laws framed thereunder.

b. The applicant was initially appointed as Principal Kendriya Vidyalaya, Kokrajhar on 08-08-89 and thereafter he was transferred to Nazira where he joined in the post of Principal, Kendriya Vidyalaya Sangathan (KVS) Nazira.

c. That the applicant while he was serving as Principal, Kendriya Vidyalaya, ONGC, Nazira, he has placed under suspension under Sub Rule (1) of Rule 10 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 in contemplation of the disciplinary proceedings by order dated 26-04-2002 issued by Respondent No.2.

A copy of the said Order dated 26-04-2002 placing the applicant under suspension is annexed herewith and marked as  
ANNEXURE-A, Page- 15

d. The applicant begs to state that he filed O.A. No. 148/2002 before this Hon'ble Tribunal assailing that part of the

Vijay Mohanpur

Order dated 26/29-04-2002 in which the Head Quarter of applicant was fixed at Silchar. That this Hon'ble Tribunal on 06-09-02 disposed of the O.A. No. 148/2002 by holding that the impugned decision of the authority to shift the head quarter of the applicant cannot be said to be perverse, unlawful and unjustified. However the respondents were directed to dispose of the two representations dated 07-05-02 filed by the applicant by one of which the applicant questioned the propriety of changing his Head Quarter was not in public interest and on the other hand the applicant explained and countered the allegations against him in Memorandum dated 26/29-04-02 and prayed for exoneration from all the charges.

A copy of the Order dated 06-09-02 passed by this Hon'ble Tribunal in O.A. 148/02 is annexed herewith and marked as  
ANNEXURE-B, Page- 16-20

e. That the applicant begs to state that the respondent authority in pursuant to the Order dated 06-09-02 of this Hon'ble Tribunal on 05-11-2002 disposed off the grievances of the applicant raised in the two representations dated 07-05-02 by rejecting the same without assigning any reason thereof. Thereafter the respondents on 20-6/7-2004 issued a Memorandum of charges vide No. F.8-18/2001-KVS (Vig) Part alleging that the applicant has not complied with order dated 26/29-04-2002 passed by the Respondent No.2. That since the applicant has never denied reporting to the changed Head Quarter at Silchar. Therefore he denied the charges as continued in the Memorandum of charges dated 20-6/7-2004 by making detailed and reasoned representation dated 18-01-2005. In

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Vijay Bhambhani  
S/o

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the aforesaid representation the applicant has requested for withdrawal of charge sheet dated 20-07-04 on the ground that the allegation made in the Memorandum of charges dated 20-6/7-2004 do not constitute any misconduct. As the respondent authority has not released/sanctioned advance of pay of Traveling Allowances (TA) which a Government servant is entitled to under the General Financial Rules, 1963 for which he is not able to proceed to his headquarter at Silchar in terms of the Order dated 26/29-04-2002.

A copy of the Order dated 05-11-02 issued by the Respondent no.2 and a copy of Memorandum of charges dated 20-6/7-04 issued by the respondent No. 2 is annexed hereto and marked as ANNEXURE- C and D respectively.

f. That the applicant begs to state that he thereafter approached before the Principal Bench at Delhi of this Hon'ble Tribunal assailing the Order dated 20-6/7-2004 by which the memorandum of charges were issued against him for non-compliance of the Order dated 26/29-04-2002 issued by the Respondent No.2. Thereafter the Hon'ble Principal Bench, New Delhi dismissed the application filed by the applicant on 16-02-2005 only on the ground that the Departmental Proceeding has already started.

g. That the applicant begs to state that the Respondent No. 2 on 14-12-04 appointed Sri M.M. Lal, Assistant Commissioner (Retired) (Respondent no. 3) as the inquiry officer in pursuance to the charges frame against the applicant issued vide memorandum

Contd.

Vijay Bhattacharya

dated 20-07-2004. It is pertinent to mention here that the petitioner was of the view that the charges against him will be stopped and submitted a representation dated 18-02-05 for withdrawal of the order appointing Respondent No. 3 who is a retired person as the same goes against the mandate of law in as much as in terms of the order No. 70/11/04 dated 18-11-04 issued by the Central Vigilance Commission, whereby it was opined that the Commission vide its Order No. 34/7/2003 dated 01-08-2003 directed for suitable amendment in the provisions for appointment of Retired Officer, as inquiry authorities by PSEs. In the said Order it is also further directed that Chief Vigilance Officers of Organisations other than those which follows Central Civil Service (Classification, Control and Appeal) Rules and Regulations of their organisation and take necessary measure to amend the provision relating to appointment of inquiry authorities if they are inconsistent with the provisions under Rule 14(2) of the Central Civil Service (Classification, Control and Appeal) Rules 1965. If any Service/Departmental Rules are in conflict with the appointment of Retired persons as inquiry authorities, they should be suitably amended before any such appointment is made.

A copy of the impugned appointment Order dated 14-12-04 appointing Respondent No. 3 as inquiry officer and the copy of the Order dated 18-11-04 issued by Deputy Secretary, Central Vigilance Commission, Government of India and a copy of the representation dated 18-02-2005 filed by the petitioner praying for withdrawal of the order

Contd.

Vijay Pratapgar

appointing Respondent No. 3 as inquiry officer are annexed herewith and marked as ANNEXURE - E, F & G respectively.

h. That the applicant begs to state that Education Officer (Vigilance) of the Kendriya Vidyalaya Sangathan vide letter dated 01-02-05 being No. F.11-4/1999-CVS (Vig) address to the Assistant Commissioner, Kendriya vidyalaya Sangathan, Regional Officers forwarded the office order No. 70/11/04 dated 18-11-2004 and directed it to be circulated to the Vidyalayas of the region. Thereafter the Assistant Commissioner Vide its letter dated 16-03-05 being No. F.15-1/2005KVS (GR/ADMN/18259-303) address to the Principal of all Kendriya Vidyalaya of Guwahati Region on the subject of appointment of retired officers as inquiry authority forwarded it for information and necessary actions.

Copies of the letter dated 01-02-2005 issued by Education Officer, Vigilance, Kendriya Vidyalaya Sangathan and letter dated 16-03-05 issued by Assistant Commissioner, Kendriya Vidyalaya Sangathan to the all Principals, Kendriya Vidyalaya Sangathan, Guwahati Region are annexed herewith and marked as ANNEXURE-H & I respectively.

i. That the applicant begs to state that he on 12-03-05 filed a representation before the Respondent No. 2 challenging the appointment of the Respondent No. 3 as inquiry officer who is a

retired person and express his views that inquiry officer i.e. respondent no. 3 is biased. That, thereafter on 21-03-05 the Respondent No. 2 vide Order No. F-8/18-2001/KVS (Vig) Part while considering the representation of the petitioner in a most illegal and arbitrary manner held that the office Order dated 18-11-2004 of the Central Vigilance Commission is not applicable to the Kendriya Vidyalaya Sangathan (KVS) as it follows Central Civil Service (Classification, Control and Appeal) Rules 1965. However the order dated 18-11-04 of the Central Vigilance Commission points out that as per Rule 14 (2) of the Central Civil Service (Classification, Control and Appeal) Rules 1965 for the purpose of inquiry appoint an Inquiry Officer under the Rule or under the Provisions of Public Servants (Inquiries) Act, 1850. As such in view of the matter as per the Hon'ble Apex Courts Judgement the person appointed as Inquiry Officer must be a servant of Public and not a person who was a servant of Public. The same principle is also applicable to all the Rule 14(2) CCS (CCA) Rules in as much as the definition of inquiry officer pertains to a public servant. As such the appointment of Respondent No. 3 as Inquiry Officer is bad in law and liable to be set aside and quashed. The order of the appointment of the Inquiry Officer who is a retired person by the respondent authorities is *prima-facie* and illegal.

Copy of the representation dated 12-03-05

of the applicant is annexed herewith and marked as ANNEXURE-I

Copy of the Order dated 21-03-05 issued by the Disciplinary Authority is annexed herewith and marked as ANNEXURE-K

Contd.

Vigilance  
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j. That the applicant begs to state that Respondent No. 3 on 22-03-05 fixed the date of hearing on 03-05-2005 at 10:00am in KVS, RO (Regional Office) Guwahati in view of the rejection of the applicants representation dated 12-03-05 by the order dated 21-03-2005 passed by the Disciplinary Authority.

Copy of the order dated 22-03-05 issued by the Respondent No. 3 (Inquiry Officer) is annexed herewith and marked as ANNEXURE-L.

**5. GROUND FOR RELIEF:**

5.1 For that the action of the respondent authorities in appointing Sri M.M. Lai (Respondent No. 3) as the Inquiry Officer who is a retired person and the order dated 21-03-05 the Respondent No. 2 vide Order No. F-8/18-2001/KVS (Vig) Part are arbitrary, illegal and violative of the settled principles of Service Jurisprudence.

5.2 For that the action of the respondent authorities is violative of 14 and 21 of the Constitution of India.

5.3 For that the appointment of the respondent no. 3 who is a retired person as the Inquiry Officer for conducting the Disciplinary proceedings against the applicant and the order dated. 21-03-05 the Respondent No. 2 vide Order No. F-8/18-2001/KVS (Vig) Part is malafide and biased and is a calculated design of the respondent authorities to harass the applicant and deprive him from fair conduct of the trial and does not stand an scrutiny of law and liable to be set aside and quashed.

5.4 For that the appointment of the respondent No. 3 as Inquiry Officer and the order dated. 21-03-05 the Respondent No. 2 vide Order No. F-8/18-2001/KVS (Vig) Part is highly illegal in view of the office order dated 18-11-04 vide No. 70/11/04 by the Central Vigilance Commission which categorically stated that retired persons cannot be appointed as Inquiry Officer in disciplinary proceedings in view of the Hon'ble Apex Courts Judgement passed in Civil Appeal No. 4481 of 2004 in Rani Malik -Vs- National Film Development Corporation. As such the appointment of the respondent No. 3 who is a retired person is illegal, arbitrary, malafide and violative of the direction of the Hon'ble Apex Court's direction and liable to be set aside and quashed.

5.4A For that the impugned order dated 14-12-2004 appointing the Respondent No. 3 as Inquiry Officer is itself in contradiction to the stand taken by the respondent authorities by holding that the Order dated 18-11-2004 issued by the Central Vigilance Commission is not applicable in the instant case but at the same time the respondent authorities have sought clarification from the Central Vigilance Commission as to the legality of already appointed retired Officer as Inquiry Officer and at the same time appointing a retired officer (Respondent No. 3) in the instant case much after the aforesaid Order dated 18-11-2004 issued by the Central Vigilance Commission as such the impugned Order dated 14-12-2004 in appointing Respondent No. 3 as Inquiry Officer is bad in law and liable to be set aside.

5.5 For that under the CCS (CCA) Rules 1965, is no provision for appointment of retired persons as Inquiry Officer. As such the impugned orders of appointment of the respondent No. 3 and the order dated. 21-03-05 the Respondent No. 2 vide Order No. F-8/18-2001/KVS (Vig) Part is without the force of law and liable to be set aside.

Vijay Bhakarekar

5.6 For that the order of Central Vigilance Commission being order dated 18-11-04 was circulated to all the heads of Kendriya Vidyalaya Sangathan for necessary information and action. But inspite of such information the respondent authorities is a most arbitrary manner appointed respondent No. 3 who is a retired person as the Inquiry Officer is nothing but a malafide decision to deprive the applicant of a fair trial. As such the impugned order of appointment appointing the Respondent No. 6 as inquiry Officer is bad in law and liable to be set aside.

5.7 For that the action of the respondent authority in appointing respondent No.3 as the Inquiry Officer, whose appointment was challenged by the applicant on grounds of biasness is bad in law in as much as while rejecting the applicants appeal by impugned order dated. 21-03-05 the Respondent No. 2 vide Order No. F-8/18-2001/KVS (Vig) Part is without any reasons and not tenable under the law. As such the impugned order appointing the respondent No. 3 as the inquiry officer and the order dated. 21-03-05 the Respondent No. 2 vide Order No. F-8/18-2001/KVS (Vig) Part is liable to be set aside and quashed.

5.8 For that no reasonable persons properly instructed in law would have taken the action in appointing the respondent No. 3 who is a retired person as the inquiry officer as has been done in the instant case. As such the impugned order appointing respondent No. 3 as the Inquiry Officer is bad in law and liable to be set aside.

5.9 For that in any view of the matter the impugned order dated 14-12-04 vide No. 8-18/2001-KVS[Vig] part and the order dated 21-03-05 the Respondent No. 2 vide Order No. F-8/18-2001/KVS (Vig) Part issued by the Disciplinary Authority is illegal, arbitrary, malafide and liable to be set aside and quashed.

#### 6. DETAILS OF THE REMEDIES EXHAUSTED:

There is no remedy under any Rule and this Hon'ble Tribunal is the only forum for redressal of the grievances.

**7. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:-**

The applicant declares that he had not filed any other case in any Tribunal Court or any forum against the impugned order.

**8. RELIEFS SOUGHT:-**

Under the above facts and circumstances of the case, the applicant prays for following reliefs :-

8.1. That the impugned order dated 21-03-05 the Respondent No. 2 vide Order No. F-8/18-2001/KVS (Vig) Part issued by the Disciplinary Authority thereby rejecting the prayer of the petitioner in is bad in law, be declared illegal and the same be set aside and quashed.

8.2. That the impugned order dated 14-12-04 vide No. 8-18/2001-KVS [Vig] part issued by the Disciplinary Authority in appointing Sri M.M. Lal (retired Assistant Commissioner) is bad in law, be declared illegal and the same be set aside and quashed.

8.3. That the respondent authority be directed not to harass the applicant by inviting him to participate in the proceeding till the appointment of the Respondent No. 3 persists.

Contd..

Bhagyalakshmi  
Vijay

8.4. That the Hon'ble tribunal may be pleased to pass any other relief or relieves as it deem fit and proper,

9. INTERIM RELIEF PRAYED FOR:-

In the interim pending disposal of the original Application the Hon'ble Tribunal may be pleased to stay the operation of the impugned Order dated 14-12-04 vide No. 8-18/2001-KVS [Vig]part issued by the respondent authority and further be pleased to stay the operation of the order dated 22-03-05 issued by the Respondent No. 3 (Inquiry Officer) fixing 03-05-05 as the date of hearing of the disciplinary proceedings at KVS Regional Office, Guwahati.

10. This application has been filed through Advocate.

11. PARTICULARS OF THE POSTAL ORDER:-

IPO No. - 206 160603

Date 28-4-05

Payable at - Guwahati GPO

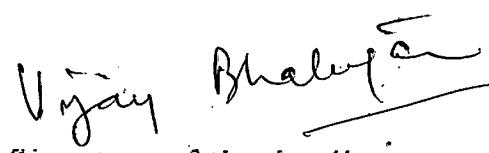
12. LIST OF ENCLOSURES:-

An index in the INDEX.

VERIFICATION:

I, Sri Vijay Bhatnagar, S/O Late Jagadamba Prasad, aged about years, Principal (Under suspension), Kendriya Vidyalaya (Assam), Nazira, Sibsagar, do hereby verify that the contents of paragraphs 4 (a) are true to my knowledge, and paragraphs 4 (b, c, d, e, f, g, h, i, j) belief to be true on legal advice and that I have not suppressed any material facts.

And I set my hand on this verification today the 29<sup>th</sup> April, 2005 at Guwahati.



Signature of the Applicant.

-15-

BY SPEED POST/CONFIDENTIAL

KENDRIYA VIDYALAYA SANGATHAN  
 (VIGILANCE SECTION)  
 18 INSTITUTIONAL AREA  
 SHAHID JEET SINGH MARG  
 NEW DELHI-110016

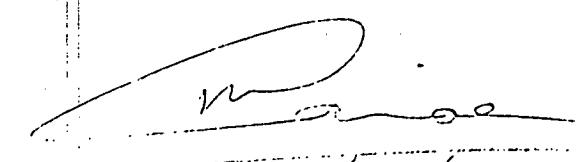
No. F 8-18/2002-KVS(Vig.)

Dated: 26 -04-2002  
26ORDER

WHEREAS a disciplinary proceeding against Shri Vijay Bhatnagar, Principal, Kendriya Vidyalaya, ONGC, Nazira is contemplated.

NOW, THEREFORE, the undersigned, the Appointing Authority, in exercise of powers conferred by Sub-rule (I) of Rule-10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby places the said Shri Vijay Bhatnagar, Principal, Kendriya Vidyalaya, ONGC, Nazira under suspension, with immediate effect.

It is further ordered that during the period that this order shall remain in force, the headquarters of the said Shri Vijay Bhatnagar, Principal, shall be at Kendriya Vidyalaya Sangathan, Regional Office, Silchar and the said Shri Vijay Bhatnagar, Principal, shall not leave the headquarters without obtaining the previous permission of the undersigned.



26/03/2002

(H. M. CAIRAE)

COMMISSIONER

Copy to:-

- ✓ 1. Shri Vijay Bhatnagar, Principal, Kendriya Vidyalaya, ONGC, Nazira
2. The Chairman, VAC, Kendriya Vidyalaya ONGC Nazira.
3. The Assistant Commissioner, KVS, Regional Office, Silchar.
4. The Assistant Commissioner (Admin.), KVS [Hqrs.], New Delhi.
5. Guard file.

Certified to be True Copy

Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.148 of 2002

Date of decision: This the 6th day of September 2002

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

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

Shri Vijay Bhatnagar,  
Working as Principal,  
Kendriya Vidyalaya,  
Nazira. ....Applicant  
By Advocates Mr S. Dutta and Mrs.U. Dutta.

— versus —

1. The Union of India, represented by the  
Secretary to the Government of India,  
Department of Education,  
New Delhi.

2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
New Delhi.

3. The Joint Commissioner (Admn.),  
Kendriya Vidyalaya Sangathan,  
New Delhi.

4. Shri S.P. Bawri,  
Assistant Commissioner (HQrs.),  
Kendriya Vidyalaya Sangathan,  
New Delhi.

5. Shri Ranveer Singh,  
Education Officer,  
Kendriya Vidyalaya Sangathan,  
Silchar Regional Office,  
Silchar.

..... Respondents  
By Advocates Mr S. Sarma and  
Mr M.K. Mazumdar.

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

By order dated 26/29.4.2002 the applicant,  
Principal, Kendriya Vidyalaya Sangathan, ONCG, Nazira was  
placed under suspension under Sub-rule (I) of Rule 10 of  
the Central Civil Services (Classification, Control and  
Appeal) Rules, 1965 in contemplation of a disciplinary

Certified to be true Copy

Advocate.

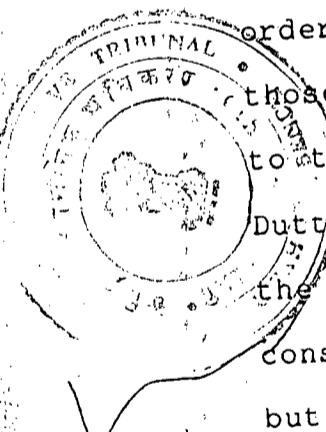
proceeding. By the said communication it was also ordered that during the period of operation of the aforementioned order, the Headquarters of the applicant would be shifted to Silchar and he was advised not to leave the Headquarters without obtaining previous permission of the Commissioner. The respondents also issued a Memorandum dated 26/29.4.2002 mentioning certain financial and administrative lapses during the tenure of the applicant at Kendriya Vidyalaya Lekhapani and ONCG Nazira. The applicant was accordingly advised to explain the alleged misconduct as mentioned in the Notification within the time specified. The applicant submitted two representations on 7.5.2002. By one representation the applicant questioned the propriety of changing his Headquarters and contended that the change of headquarters was not in public interest. By the other representation, the applicant explained and countered the allegations made against him in the Memorandum dated 26/29.4.2002 and asked the authority to exonerate him from the alleged charges. When the matter was pending as such the applicant moved this application assailing that part of the order dated 26/29.4.2002 shifting his Headquarters. The points raised in the representation were stated in this application and the applicant contended that the respondents acted illegally and arbitrarily in shifting his headquarters and thereby put him to great financial hardship. The applicant stated that by virtue of his entitlements he was enjoying certain facilities in Nazira and the moment he leaves Nazira he would miss those.

2. The respondents did not submit any written statement, but they have filed a Misc. Petition No.123 of 2002 praying for modification/alteration/cancellation of

the.....

the interim order dated 10.5.2002 passed in the O.A. whereby this Tribunal suspended that part of the order shifting the headquarters of the applicant. The learned counsel for the respondents submitted that the Misc. Petition may be treated as the written statement. In the Misc. Petition the authority has stated that the representation submitted by the applicant on 7.5.2002 was under consideration and before giving sometime to the authority to look into the matter the applicant rushed to the Tribunal and obtained the interim order. The respondents also stated that shifting of headquarters of the applicant was made so that a free and fair enquiry could be conducted. They have mentioned some of the instances involving the applicant after passing of the interim order, which could affect the disciplinary proceedings.

3. We have heard Mr S. Dutta, learned counsel for the applicant and also Mr M.K. Mazumdar, learned counsel for the respondents at length. Mr M.K. Mazumdar in the course of hearing mentioned some complaints filed by the officers as to the activities of the applicant after the interim order was passed. We are, however, not inclined to go into those allegations. We are, at this stage only concerned as to the legitimacy of the order dated 26/29.4.2002. Mr S. Dutta, learned counsel for the applicant submitted that the authority no doubt is within its jurisdiction to consider the allocation of headquarters of the officer, but such order is to be passed lawfully, reasonably and on public interest.



24-24

4. The whole object of placing a person under suspension is to conduct an enquiry without any impediment. While on the one hand the officer should be given an opportunity to defend his case, the department on the other hand also must be allowed to proceed with the enquiry, unhindered and unobstructed without being intermeddled by any quarter. In the Misc. Petition the respondents mentioned about some of their apprehension and in fact cited certain instances. The learned counsel for the applicant stated that the subsequent events relied upon by the respondents cannot be a valid ground for upholding the order dated 26/29.4.2002. The validity of the order is to be adjudged as on 26/29.4.2002. The learned counsel for the applicant submitted that on that day there was no such complaint before the authority. The question is not as to whether there was existence of any complaint on that day. The authority is to pass an order and find a workable solution while suspending an officer. In such a situation, it is also to act on the basis of some guess work and probabilities. The whole exercise is to conclude the enquiry or investigation. Subsequent materials were relied upon only to lend support to its apprehension. The impugned decision of the authority to shift the headquarters of the applicant, therefore, on the basis of the materials on record cannot be said to be perverse, unlawful or unjustified. The authority apprehended that the presence of the applicant at Nazira was likely to affect the enquiry proceedings. It cannot be said to be totally absurd or perverse.

5. At this stage we do not like to go further into the merits of the allegations, more so in view of the fact that the applicant has already submitted a representation

which.....

which is under seisin of the authority. We accordingly direct the authority to pass appropriate order on the representation on assessing all facts and circumstances. It would also be open to the authority, if the authority considers to modify the order dated 26/29.4.2002 shifting the headquarters of the applicant. The authority is directed to complete the above exercise with utmost expedition, preferably within a month from the date of receipt of the order. It is also made clear to the authority that while deciding the representation of the applicant the authority will not be influenced by any of the observations made above in course of the proceedings.

6. With the above observation the application stands disposed of. There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN  
Sd/ MEMBER (Adm)

nkm

21/9/02

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8-18/2001-KVS [VIG]

DATED: 05-11-2002

ORDER

WHEREAS, Shri Vijay Bhatnagar, Principal, Kendriya Vidyalaya, ONGC Nazira was placed under suspension vide order dated 26/29.4.2002 with his Headquarters at Kendriya Vidyalaya Sangathan, Regional Office, Silchar.

WHEREAS, vide his representation dated 7.5.02, the said Shri Bhatnagar has requested for change of his headquarters from Silchar to Nazira for the under-mentioned reasons:

1. The change in headquarters from Nazira to Silchar would entail financial hardship by setting a third establishment at Silchar.
2. It would cause loss of payment of DSRA, free LPG supply, Medical facility which he enjoyed at Nazira.
3. Vacation of accommodation at Nazira would involve transportation of household effects to Silchar.
4. Cause irreparable injury to his status and reputation, which he had earned at Nazira by way of dedicated work and conduct.
5. His stay at Silchar would not be purposeful and in fact injurious to him.
6. Change of Headquarters is not in the public interest and is against the Principle of natural justice.

WHEREAS, while the matter was still under consideration, the said Sh Bhatnagar filed an OA 148/02 in CAT[Guwahati]. The Hon'ble CAT, vide order dated 6.9.2002 has passed an order directing the authority to pass appropriate order on the representation of the applicant on assessing all facts and circumstances after considering modification of the order dated 26/29.4.2002 regarding shifting the headquarters of the applicant within one month of the receipt of the order.

AND WHEREAS, in consideration of the said representation and facts and circumstances of the case, the undersigned being the Disciplinary Authority has come to the conclusion that there is ample justification in placing him under suspension with his headquarters at KVS, Regional Office, Silchar. The gross financial, admission and administrative irregularities reported against the applicant in the Preliminary Inquiry Report and the audit reports are facts in the case. There has been no intention to cause undue suffering to the applicant as averred by him. In fact retention of Shri Vijay Bhatnagar at Nazira will not be conducive to the interest of the Sangathan for the following reasons:

1. The allegations made against him are grave in nature and his presence in the vicinity of the Vidyalaya would hinder procurement of the document as evidence and would also influence the staff of the Vidyalaya who may be required as witness in the Disciplinary Proceedings to be initiated against him: hence Sh Bhatnagar was attached at KVS, Regional Office, Silchar as his HQ in the interest of the organisation.

P.T.O

suspension

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Advocate

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2. In KVS service is transferable and that posting to north eastern Region is tenure posting of three years after which incumbent is to be posted to other station, as such he can not enjoy the benefit of free ship through out his service.
3. A regular Principal has been posted at Kendriya Vidyalaya, ONGC Nazira for smooth functioning of the Vidyalaya but Sh Bhatnagar is reported to be interfering in the administration of the Vidyalaya. Further, Sh Bhatnagar has also not vacated the ear-marked quarter for occupation of the new incumbent inspite of repeated request in this regard which is causing problems for the present Principal.
4. His Headquarter has been fixed at Silchar to avoid embarrassment to him.
5. His activities after his suspension such as threatening the office staff of dire consequences and illegally trying to procure some documents of the Vidyalaya have proved the apprehension of the department and hence he was attached at Regional Office, Silchar.
6. Change of HQ is within the power vested with the Competent Authority and also to avoid tampering with records/ causing influence over witnesses.

NOW, THEREFORE, the undersigned hereby disposes of the representation dated 7.5.2002 of Sh. Vijay Bhatnagar, Principal [under suspension], C/o Regional Office, Silchar accordingly:

  
[H.M. CAIRAE] 05/11/2002  
COMMISSIONER, KVS

Copy for information to:

1. Shri Vijay Bhatnagar, Principal [under suspension], C/o Regional Office, Silchar.
2. The Assistant Commissioner, KVS, Regional Office, Silchar
3. The Deputy Commissioner (Admin.), KVS [Hqrs.], New Delhi.
4. EDUCATION OFFICER [L & C], KVS [HQ], New Delhi
5. Guard file.

FAX / SPEED POST/CONFIDENTIAL

KENDRIYA VIDYALAYA SANGATHAN  
(VIGILANCE SECTION)  
18, INSTITUTIONAL AREA, SJS MARG  
NEW DELHI-110016.

No. F.8-18/2001-KVS (Vig.) Part

Dated: 20-06-2004

MEMORANDUM

The undersigned proposes to hold an Inquiry against Shri Vijaya Bhatnagar, Principal (under suspension) Kendriya Vidyalaya, Nazira now attached at KVS Regional office Silchar under Rule-14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehavior 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 the imputations of misconduct or misbehavior 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 is also enclosed (ANNEXURE-III & IV).

2. Shri Bhatnagar, 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 Bhatnagar, 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 CCS (CCA) 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 Shri Bhatnagar 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 Bhatnagar 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 CCS (Conduct) Rules, 1964.
6. The receipt of the Memorandum may be acknowledged.

Sd/-

(SUNIL KUMAR)  
COMMISSIONER

Shri Vijaya Bhatnagar  
Principal (under suspension)  
KVS Regional Office  
SILCHAR.

Copy to:

1. The Assistant Commissioner, KVS, Regional Office, Silchar.
2. The Deputy Commissioner (Perm.), KVS (HQ), New Delhi.
3. Guard file.

Certified to be True Copy

*M*

Advocate

By Speed post/confidential

KENDRIYA VIDYALAYA SANGATHAN

(VIGILANCE SECTION)

18, INSTITUTIONAL AREA

SHAHEED JEET SINGH MARG

NEW DELHI-110016

No. 8-18/2001-KVS [Vig.] Part

Dated 14-12-2004

ORDER

WHEREAS, an inquiry under Rule 14 of the CCS (CCA) Rules 1965 is being held against Shri Vijay Bhatnagar, Ex-Principal, Kendriya Vidyalaya, Nazira.

AND WHEREAS, the under signed considers that an Inquiry Officer should be appointed to inquire to the charges framed against the said Shri Vijay Bhatnagar issued vide memorandum dated 20-07-2004.

NOW THEREFORE, the undersigned, in exercise of the powers conferred by Sub-Rule (2) of rule 14 of the CCS (CCA) Rules, 1965, hereby appoints Shri M.M. Lal, Assistant Commissioner (Retd.) as the Inquiry Officer to inquire into the charges framed against the said Shri Vijay Bhatnagar.

Sd/- illegible

Commissioner

Copy to:

1. Shri M.M. Lal, Assistant Commissioner (Retd.) D-163, Ashok Vihar Phase -I, Delhi-110052 together with a copy of memorandum dated 20-07-2004 issued to Shri Vijay Bhatnagar.
2. B.N. Vidyasagara, Administrative Officer, KVS, Regional Office, Patna, Presenting Officer.
3. Shri Vijay Bhatnagar, Principal, (Under suspension), Kendriya Vidyalaya, Nazira, C/O M/S Sigma Main Road, Nazira, Assam, PIN-785685.
4. Guard file.

Certified to be True Copy



Advocate.

24/1

Annexure E<sub>1</sub>

By Speed post/Confidential

KENDRIYA VIDYALAYA SANGATHAN  
(VIGILANCE SECTION)  
18, INSTITUTIONAL AREA,  
SHAHEED DEET SINGH MARG,  
NEW DELHI-110016.

No. 8-18/2001-KVS [Vig.] part

Dated: 14-12-2004

ORDER

WHEREAS, an inquiry under Rule-14 of the CCS (CCA) Rules 1965 is being held against Shri Vijay Bhatnagar Ex- Principal, Kendriya Vidyalaya, Nazira.

AND WHEREAS, the undersigned, considers that an Inquiry Officer should be appointed to inquire into the charges framed against the said Shri Vijay Bhatnagar issued vide memorandum dated 20.07.2004.

NOW, THEREFORE, the undersigned, in exercise of the powers conferred by Part - Rule (2) of Rule-14 of the CCS (CCA) Rules, 1965, hereby appoints Shri M.M.Lal, Assistant Commissioner(Rtd) as the Inquiry Officer to inquire into the charges framed against the said Shri Vijay Bhatnagar.

(Signature) *M.M.Lal*  
COMMISSIONER

抄送:

1. Shri M.M.Lal, Assistant Commissioner(Rtd) D - 163, Ashok Vihar Phase - 1, Delhi - 110052 together with a copy of Memorandum dated 20.07.2004 issued to Shri Vijay Bhatnagar.

2. Shri B.R.Vidyashankar, Administrative Officer KVS, Regional Office Patna, Presenting Officer.

✓ 3. Shri Vijay Bhatnagar, Principal, (under suspension) Kendriya Vidyalaya, FR205, C/O M/S Gigmaintain Road, Nazira, Assam. Pin 786035.

Shri Lal

Certified to be True Copy  
Utkarsh  
Advocate

No.004/VGL/63  
Government of India  
Central Vigilance Commission  
\*\*\*\*\*

Satarkta Bhawan, Block'A'  
GPO Complex, INA,  
New Delhi - 110 023  
Dated the 18<sup>th</sup> November 2004

Office Order No.70/11/04

To

All Chief Vigilance Officers

Subject : Appointment of retired officers as Inquiring Authority.

The Commission vide its Office Order No.34/7/2003 dated 1.8.2003 had directed for suitable amendment in the provisions for appointment of retired officers as Inquiring authorities by PSEs.

2. In recent case (Ravi Malik Vs. National Film Development Corporation Ltd. Civil Appeal No.4481 of 2004), the Supreme Court in their judgment delivered on 23.7.2004 have inter-alia held that "the words 'public servants' used in Rule 23(b) of the NFDL Service Rules and Regulations, 1982 mean exactly what they say namely that the person appointed as an Inquiring Officer must be a servant of the public and not a person who was a servant of the public. Therefore, a retired officer would not come within the definition of 'public servant' for the purpose of Rule 23(b)".

3. Rule 14(2) of the CCS (CCA) Rules, 1965 provides that "whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government Servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850 as the case may be an authority to inquire into the truth thereof,

4. CVOs of organizations (other than those, which follow CCS (CCA) rules, 1965) may review the service rules and regulations of their organizations and take necessary measures to amend the provisions relating to appointment of Inquiring Authorities, if they are inconsistent with the provisions under Rule 14(2) of the CCS (CCA) rules, 1965. If any Service/Departmental Rules are in conflict with appointment of retired persons as Inquiring authorities, they should be suitably amended before any such appointments are made.

*Certified to be True Copy*  
*Advocate (Anjana Dube)*  
*Deputy Secretary*

Sd/-

VIJAY BHATNAGAR  
Principal (under suspension)  
K.V. Nazira (Assam).

100% GENUINE  
Main Road, NAZIRA  
Assam 785 685

Dated 18<sup>th</sup> Feb. 2005

To,  
The Commissioner  
Kendriya Vidyalaya Sangathan  
New Delhi.

Sub: WITHDRAWL OF ORDER APPOINTING Sh M.M.LAL AS INQUIRY OFFICER  
&  
WITHDRAWL OF PRE-MATURE CHARGE SHEET

Ref: F.8-18/2001/KVS (Vig) Part dt. 20.7.2004 & dt. 14.12.2004 and my representation dt 18.01.05\*  
---0---  
(Copy enclosed)

Sir,

With due regards I would like to submit regarding:-

A. WITHDRAWL OF ORDER No. F.8-18/2001/KVS(Vig.) Part dated 14.12.2004

Vide said order Shri M.M.Lal a retired person was appointed as Inquiry Officer, but in terms of the order No. 70/11/04 dated 18.11.2004 issued by the Central Vigilance Commission, Govt. of India, the said order appointing Shri M.M.Lal, a retired person as Inquiry Officer, is Void-Ab-Initio and hence NULL & VOID in the eyes of Law and thus needs to be withdrawn immediately

B. WITHDRAWL OF PRE-MATURE CHARGE SHEET issued vide order dt. 20.7.2004

1. The said charge sheet has been issued only for non-reporting at KVS/RO/Silchar.
2. The disciplinary authority wants that I should report at KVS/RO/Silchar.
3. I am also absolutely ready and willing to comply the orders and to report at Silchar.
4. There is no dispute over this issue of reporting at KVS/RO/Silchar.
5. The only hindrance is Non-Payment of advance TTA by the AC/KVS/RO/Silchar.
6. My readiness and willingness to comply with your orders to report at Silchar exist at KVS/RO/Silchar and KVS Hqrs, in form of my demand applications for advance TTA.
7. I am still ready and willing to report at Silchar provided advance TTA is paid to me, for which I am entitled as per Rule 223 of GFR 1963.
8. The A.C/ KVS/RO/Silchar may please be directed to release an amount of Rs. 40,000/- as an advance TTA in compliance to Rule 222 of GFR 1963 so as enable me to report at Silchar.
9. In view of above and my representation dated 18.01.2005, the said pre-mature charge Sheet needs to be withdrawn immediately.

Submitted for favour of further necessary action please.

Copy forwarded to:-

1. Shri M.M.Lal A.C. (Retd.) - In reference to my letter dated 11-02-05 and letter circulated by KVS Hqrs New Delhi vide No. F. 11-4/1919-KVS (Vig.) dt. 01-02-05 with a request to not to pursue the proceedings further and refer the question raised by me in my letter dt. 11-02-05 to the Commissioner, KVS, to let him decide.
2. Shri B.N. Vidya Bhawan, P.O & Ac/Copys/RO/Patna with a request to get the issues raised by me in my letter dt. 11-02-05 clarified from KVS Hqrs New Delhi.

Yours Faithfully

J - S

(VIJAY BHATNAGAR)

Certified to be true in my letter dt 11-02-05  
Affd  
Advocate

J - S  
(VIJAY BHATNAGAR)

- 27 -

H 45  
Annexure - 'H'

KENDRIYA VIDYALAYA SANGATHAN  
18, Institutional Area  
Shaheed Jeet Singh Marg  
New Delhi : 110 016.

No.F.11-4/1999-KVS(Vig.)

Dated : 01-02-2005

The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Officers.

Subject : Appointment of retired Officers as Inquiring Authority  
Regarding.

Sir/Madam,

I am directed to enclose herewith a copy of the Office Order  
No.70/11/04 received from the Central Vigilance Commission for information and  
necessary action at regional Office and Vidyalaya level. The said order may be  
circulated to the Vidyalayas of your region immediately.

Yours faithfully,  
Sd/-  
( M.S. Chauhan)  
Education Officer(Vig.)

Enclosure : As stated.

Copy to :-

1. Deputy Secretary, Central Vigilance commission for information and with  
a request to clarify the position of the existing cases where the Retired  
Officers are already appointed as Inquiry Officer prior to receipt of the  
said letter but the inquiry is yet to be completed from their end.
2. Director, ZIET for information and necessary action.

Sd/-  
Education Officer

Certified to be True Copy  
M. Khan  
Advocate

KENDRIYA VIDYALAYA SANGATHAN  
REGIONAL OFFICE  
GUWAHATI

No.F.15-1/2005-KVS(GR)/Admn./ 18259 - 303 Dated : 16-03-2005

To

The Principal,  
All Kendriya Vidyalayas,  
Guwahati Region.

Subject : Appointment of retired Officers as Inquiring Authority-  
Regarding.

Sir/Madam,

On the subject cited above, I am to enclose herewith the copy of  
the office order No.70/11/04 received from the Central Vigilance commission,  
vide KVS(Hqrs) letter dated 01/02/2005 for information and necessary action.

Hindi version follows.

Yours faithfully,

Sanjiv

( U. N. KHawarey )  
ASSISTANT COMMISSIONER

Copy to :-

1. The Education Officer(SO, KVS(GR)).
2. The Audit and Accounts Officer, KVS(GR).

ASSISTANT COMMISSIONER

Sanjiv

Certified to be True Copy

M. A. Mohanta  
Advocate.

VIJAY BHATNAGAR

Principal (under suspension)  
K.V.NAZIRI

- 29 -

Annexure - J

5/3

C/O M/s SIGMA  
Main Road, Nazira  
Assam 785 685

To,  
The Commissioner,  
Kendriya Vidyalaya Sangathan,  
New Delhi.

Dated 12<sup>th</sup> March 2005

Sub: BIASED INQUIRY OFFICER Shri M.M.LAL (A RETIRED PERSON)  
Ref: E. 8-18/2001/KVS (Vig.) Part dated 20-7-2004 and dated 14-12-2005.

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Sir,

In connection with the above cited subject, I would like to bring to your kind notice that:-

1. Through my representation dated 11-02-2005 (copy enclosed), I raised a very substantial issue relating to the appointment of RETIRED PERSON as Inquiry Officer and requested Shri M.M.Lal that the said question may please be forwarded to the competent authority to let him decide. I also emphasized in the said representation that "the rules exist in the vigilance section of the KVS that retired employee can not be an IO". But Shri M.M.Lal has not acted judiciously and deliberately ignored this material issue. Such attitude of Shri M.M.Lal proves that he is a biased man and intending to vitiate the inquiry for his personal vested interests/gain of getting lump-sum honorarium along with other facilities in conducting the inquiry.

Whereas the Central Vigilance Commission, Govt. of India has made this issue crystal clear vide Order No. 70/11/04 dated 18-11-2004 (copy enclosed). In view of such order of CVC the order dated 14-12-2004 appointing Shri M.M.Lal, a retired person as Inquiry Officer is Void-ab-initio and thus stands Null & Void in the eyes of Law and therefore deserves to be withdrawn immediately.

2. Through my said representation dt. 11-02-05, I also requested Shri M.M.Lal to not to pursue further in my inquiry till the competent authority does not decide the questions raised by me. But Shri M.M.Lal did not act judiciously, rather threatened me to conclude the inquiry Ex-Parte. Such attitude of Shri M.M.Lal proves that he is certainly a biased man.

3. Through my representation dated 18-02-05 (copy enclosed), I again requested Shri M.M.Lal to not to pursue the proceedings and to refer the questions raised by me to the Commissioner KVS to let him decide. But despite my repeated requests and also the rule position Shri M.M.Lal deliberately and unilaterally acted in furtherance of the inquiry proceedings and issued the order sheet dated 01-3-05 ordering for regular hearing to be started from 22-3-2005 along with so many other orders. Such act of Shri M.M.Lal again proves that he is a biased man and working with his personal vested interest/gain of getting the lump-sum honorarium along with other facilities in conducting the inquiry.

Sir, the prudence and wisdom of Shri M.M.Lal could have been visualized if he would have, at his own, renounced and repudiated with discharge of such assignment in view of the relevant orders of CVC. But since Shri M.M.Lal, who is a biased man, has not been acting judiciously and engaged in furtherance of the inquiry proceedings just for his personal vested interests/gain, ignoring the orders issued by the CVC, it is requested that action may please be taken in accordance with the Govt. of India's Instruction No. 16 under Rule 14 of CCS (CCA) Rules 1965. Further the order No. E.8-18/2001/KVS (Vig.) Part, Dated 14-12-2004 appointing Shri M.M.Lal as IO which is Void-ab-initio also deserves to be withdrawn in view of the order No. 70/11/04 dated 18-11-2004 issued by the CVC.

*Certified to be true copy* Submitted for favour of further necessary action Sir.

*Copy forwarded to*

1. Advocate Shri M.M.Lal A.C. (Retd) & I.O.

D-163, Ashoka Vihar, Phase-I, Delhi-110 052

2. Shri B.N. Vidyashankar P.O. & AC/KVS/RO/Patna

P.S. Copy of order of CVC is being enclosed with the request that the inquiry proceeding may please be withheld (VIJAY BHATNAGAR)

Yours Faithfully

(VIJAY BHATNAGAR)

FAX/SPEED POST/CONFIDENTIAL

**KENDRIYA VIDYALAYA SANGATHAN**  
 18, Institutional Area,  
 Shaheed Jeet Singh Marg,  
New Delhi-110016.

F.8-18/2001-KVS(Vig.)Part

Dated 21-03-2005

ORDER

Whereas Shri Vijay Bhatnagar was Charge-sheeted under Rule 14 of CCS [CCA] Rules, 1965 vide Memorandum dated 20.07.2004.

Whereas on denial of the Charges Shri M.M.Lal, Assistant Commissioner, KVS (Retd) was appointed as Inquiry Officer vide Order dated 14.12.2004.

Whereas Shri Vijay Bhatnagar filed an OA No. 350/2005 at Hon'ble CAT, Principal Bench Delhi and the same was dismissed vide order (Oral) dated 16<sup>th</sup> February 2005.

Whereas Shri Bhatnagar submitted a representation dated 18<sup>th</sup> January, 18<sup>th</sup> February 2005 and biased petition against the Inquiry Officer date 12<sup>th</sup> March 2005 by stating the following:-

With-drawal of the order dated 14.12.2004 in which Shri M.M.Lal, a retired person was appointed as Inquiry Officer. He has stated that vide order dated 18.11.2004 issued by the Central Vigilance Commission the said order of appointing a retired person as Inquiry Officer is null and void in the eyes of law and needs to be withdrawn immediately.

With drawal of premature Charge-sheet issued vide order dated 20.7.2001 The said Charge-sheet has been issued only for non-reporting at KVS Regional Office Silchar.

2. He is also absolutely ready and willing to comply the orders and to report at Silchar. There is no dispute over the issue of reporting at KVS Regional Office Silchar. The only hindrance is non-payment of TTA by the Assistant Commissioner. Assistant Commissioner Silchar may be directed to release an amount of Rs 40,000 as an advance TTA// In view of the above it is a premature Charge-sheet needs to be withdrawn immediately.

He has raised the issue regarding the appointment of retired person as Inquiry Officer, which according to him stands null & void in the eyes of law and deserves to be withdrawn immediately.

He requested not to pursue further in his inquiry till the competent authority does not decide the question raised by him. But Shri Lal did not act judiciously, rather threatened him to conclude the inquiry ex-parte. Such attitude of the Inquiry Officer proves that he is certainly a biased man.

He again requested not to pursue the proceedings and to refer the question raised by him to the Commissioner KVS to let him decide. But despite his repeated request and also the rule position Shri M.M.Lal deliberately and unilaterally acted in furtherance of the inquiry proceedings and issued the order sheet dated 1.03.05 ordering for regular hearing to be started from 22.03.2005 along with so many other orders. Such act of the Inquiry Officer again proves that he is a biased man and working with his personal vested interest/ gain of getting lump-sum honorarium along with other facilities. And he requested to withdraw the order of appointment of the Inquiry Officer.

Certified to be True Copy

Advocate

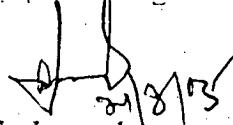
Contd-2

Whereas the undersigned being the competent authority after going through the submissions made by the Charged Officer in the above said representations has observed that as per the Central Vigilance Commission circular dated 18th November 2004 it was directed to the CVO of the organizations (other than those which follow CCS [CCA] Rules, 1965) may review the service

rules and regulations of their organizations and take necessary measures to amend the provisions relating to appointment of Inquiry Authorities, if they are inconsistent with the provisions under Rule 14(2) of the CCS [CCA] Rules, 1965.

Whereas Shri Bhatnagar was Charge-sheeted under Rule 14 of the CCS [CCA] Rules, 1965 and the office order dated 18<sup>th</sup> November 2004 issued by the Central Vigilance Commission is not applicable to the KVS as KVS follows the CCS [CCA] Rules, 1965 mutatis mutandis except when otherwise decided. Hence, the change of Inquiry Officer on this ground is not possible. Secondly no bias of any nature as pointed by the Charged Officer is found. In the absence of the Charged Officer / Defence Assistant, during the inquiry proceedings, the Inquiry Officer can conduct the ex-parte inquiry. Moreover once the inquiry has been instituted by the competent authority, it may not be possible to withdraw the Charge-sheet.

Now, therefore, the undersigned being the competent authority rejects all his petitions with the direction to co-operate with the Inquiry Officer for smooth conduct of the Inquiry proceedings.

  
(R.L.Jamuda)

Commissioner

Shri Vijay Bhatnagar, Principal (UNDER SUSPENSION)

Attached at KVS Regional Office Silchar

Copy to

Shri M.M.Lal, Inquiry Officer

D-163, Ashok Vihar, Phase I, Delhi 110052

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Annexeure-L'

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Order Sheet No - 7  
22.3.2005

Disc. Proceeding against Shri Vijay Bhatnagar, Principal  
(U/S), KV, Nazira

Whereas The Commissioner, KVS, Disciplinary Authority vide order No. F-8-18/2001-KVS(Vig) Part dated 21.3.2005 has considered and rejected the CO's representation dated 12.3.2005.

Now, the R. H. is fixed on 3.5.2005 at 10.00 a.m. in KVS, R.O. Gauhati wherein the statement of PW - 1 will be recorded, C.O. will be generally examined and other work as per CCS(CCA) rules will be taken up.

C.O. and P.O. are directed to attend the R.H. on the date, time & venue as mentioned above, failing which proceedings are likely to be held ex-parte. No adjournment will be considered.

*C. M. Latif*  
(M. M. Latif)  
Inquiry Officer

~~Distribution:~~

1. C. O.
2. P. O.
3. The Commissioner, KVS, w.r.t. his order mentioned above.
4. Dr. E. Prabhakar, A.C., KVS, Silchar will be requested to attend R.H. on 3.5.2005 at 10.30 a.m.

*W. B.*  
Certified to be True Copy

*Advocate*