

FORM NO. ③
(Sec Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 40/06

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) E.M. Reddy

Respondent(s) K.V.S. (W.O.D) Jom

Advocate for the Applicants A.K. Roy, L. Wapang

Advocate for the Respondent(s) K.V.S. CGSC
Rly St. Counsel

Notes of the Registry Date _____

Order of the Tribunal

13.2.2006 Present : Hon'ble Sri K. V.
Sachidanandan, Vice-Chairman.

This application is an appeal
is filed/C.F. for Rs. 50/-
deposited
No. 266319149
Dated 7.2.06

The claim involved in this ~~is~~ case
is for expunging the adverse remarks entered
in the ACR. Considering the issue
involved, issue notice to the respondents

Post on 13.3.2006.

Vice-Chairman

Steps taken with
envelops.

mb
13.3.2006

Mr. M.K. Majumdar, learned
standing counsel for the KVS submits
that he would like to have four weeks
time to file reply statement. Let it
be done.

Post on 26.4.2006.

Vice-Chairman

Pl. comply order dated
13.2.06.

Notice & order sent to
D/Section for issuing
to resp. nos. 1, 2, 3 by
regd. A/D post.

6/2 D/No-240, 239, 238
D/2 22/2/08.

Contd.....

26.4.2006

Learned counsel for the respondents submitted that w two weeks further may be granted for filing reply statement. Granted.

Post on 18.5.2006.

9-3-06

① Service report awaited.

② No Reply has been filed.

mb

mb

Vice-Chairman

Notice duly served on resp. nos. 1,2.

18.05.2006

No reply has been filed. Post on 13.06.2006.

23/3/06

25-4-06

No Wls has been filed.

mb

mb

Vice-Chairman

17-5-06

No Wls has been filed.

mb

13.06.2006

Through three chances have been granted to the respondents, none appears for the respondents and no reply has been filed. However, further four weeks time is granted to the respondents to file reply statement.

Post on 13.07.2006.

12-6-06

No Wls has been filed.

mb

mb

Vice-Chairman

12-7-06

No Wls has been filed.

mb

mb

Vice-Chairman

31-7-06

No Wls has been filed.

mb

13.07.2006

None for the parties. No reply is filed. Further three weeks time is granted to file reply statement. Post on 01.08.2006.

01.08.2006

Written statement has been filed by the respondents. Considering the issue involved in this case we are of the view that the O.A. has to be admitted. Admit.

Post on 05.09.2006. In the meantime, the learned counsel for the applicant may file rejoinder, if any.

The learned counsel for the respondents is also directed to produce the relevant records pertaining to the ACR and other aspects.


Member


Vice-Chairman

mb

04.09.2006

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

Learned Counsel for the Applicant submitted that he has filed additional statement (rejoinder). Let it be brought on record if otherwise in order. Let the case be posted on 19.10.2006.



Vice-Chairman

/mb/

06.11.2006

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

Learned Counsel for the parties submitted that pleadings are complete. Let the case be posted on 05.12.2006 in the hearing list.


Vice-Chairman

/mb/

1-8-06

W/s filed by the Respondents.

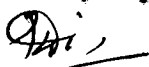


No Rejoinder has been filed.

Ms
1.9.06

5.9.06

Rejoinder submitted by the Applicant.



The case is ready.

Ms
3.11.06

1.12.06. Mr.M.K.Mazumdar learned counsel for the respondents prays for adjournment due to his personal inconvenience. Prayer is allowed. Post the matter on 8.12.06.

Vice-Chairman

The case is ready for hearing.

7.12.06.

08.12.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

Learned Counsel for the Respondents submitted that he has got some personal inconvenience and sought for time. Post on 12.01.2006.

Vice-Chairman

The case is ready for hearing.

11.1.07.

/mb/

12.1.07. Mr.M.K.Mazumdar counsel for the respondents prays for adjournment due to his personal difficulty. Prayer is allowed. The counsel for the Respondents will produce the relevant records. Post the matter on 15.2.07.

Vice-Chairman

lm

The case is ready for hearing.

8.3.07

15.2.07 It is stated that the counsel for the respondents is in bereavement and adjournment is sought.

Post on 9.3.07 for order.

Vice-Chairman

30.3.07

The case ready for hearing.

pg

09.03.07.

Respondents are directed to produce the records pertain to dispute. post the matter on 2.4.07.

Vice-Chairman

lm

O.A.40/2006

4

2.4.2007

post the matter on 11.04.2007. In the meantime Respondents are directed to produce the ~~xxxx~~ relevant document as directed.

The case is ready for hearing.

23
7.5.07.

L

Vice-Chairman

bb

8.5.2007

None appeared for the Respondents. Mr.A.K.Roy, learned counsel for the Applicant is present. The records as directed to be produced are not produced. It is a sorry state of affairs. However, as a matter of last chance the Respondents are granted one more opportunity. It is made clear that if the Respondents' counsel is not present and does not produce the relevant records, as already directed, on the next date the matter will be proceeded accordingly.

The case is ready for hearing.

20
14.5.07.

Post the matter on 15.05.2007.

L

Vice-Chairman

/bb/

15.5.2007

Counsel for the respondents submitted that he did not get the original record. He wanted to have further time to submit the original record. He is directed to file all the original record on the next date.

The case is ready for hearing.

20
5.6.07.

Post the matter on 6.6.07 for hearing.

L

Vice-Chairman


/pg/

O.A. 40/2007

6.6.2007

Heard Mr.A.K.Roy, learned counsel
for the Applicant and Mr.M.K.Mazumdar,
learned Standing counsel for the KVS.
Hearing concluded.

Hearing concluded. Reserved for orders


Vice-Chairman

/bb/

2.7.2007

Judgment pronounced in open Court,
kept in separate sheets. The O.A. is
dismissed in terms of the Order. No costs.


Vice-Chairman

/bb/

Received back the
Xerox copies of record
MK Majumdar
Advocate
17.07.07

Received True
copy of
document
MK Majumdar
16/7/07

Received copy of
MK Majumdar
17.07.07

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No.40 of 2007

DATE OF DECISION:02.7.2007

E.M.Reddy

.....Applicant/s

Mr.A.K.Roy

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

- Versus -

U.O.I. & Ors

.....Respondent/s

Mr.M.K.Mazumdar, KVS Standing Counsel

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

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 to be forwarded for including in the Digest Being compiled at Jodhpur Bench & other Benches ? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Vice-Chairman

4/7/07

db

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

Original Application No. 40 of 2006.

Date of Order: This, the 2nd day of July, 2007.

HON'BLE MR. K.V.SACHIDANANDAN, VICE-CHAIRMAN

Edunari Mounendar Reddy
PGT Kendriya Vidyalaya, Kokrajhar
P.O: & Dist: Kokrajhar
Assam.

..... Applicant.

By Advocates Mr. A. K. Roy & Mr. L. Wapang.

- Versus -

1. Kendriya Vidyalaya Sangathan
Represented by it's Commissioner
18, Institutional Area
Sahid Jeet Singh Marg
New Delhi - 110 016.

2. Deputy Commissioner (Pers)
Kendriya Vidyalaya Sangathan
18, Institutional Area
Sahid Jeet Singh Marg
New Delhi - 110 016.

3. Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office
Silchar-788 001.

..... Respondents.

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

L

ORDER

SACHIDANANDAN, K.V. (V.C.) :

The Applicant, who was initially appointed as Post Graduate Teacher (PGT in short) in the Kendriya Vidyalaya Sangathan (KVS in short) in the year 1986, was deputed as Principal in Navodaya Vidyalaya during the period from July, 1997 to July, 2001. He claimed that he has got a very good service record and he took several measures to promote the educational atmosphere and administrative function and also took a number of measures to eliminate the corruption and indiscipline in the school which was prevailing long back. The Respondents have reverted him from the post of Principal vide memorandum dated 24.6.2003 to the post of PGT and posted him at Kokrajhar. In the month of September, 2003, he received a memorandum dated 4.9.2003 communicating some adverse remarks for the year ending 31.03.2003 (Annexure-C). Applicant submitted representation dated 14.10.2003 (Annexure-D) before the reviewing authority for expunging the adverse remarks. According to him, no show cause was served to him at any point of time and entries were made with bias attitude. No irregularities were ever mentioned in any Panel Inspection

Report and thereby requested to expunge the adverse remarks. The adverse remarks were not based on record and the same was entered without considering the relevant materials. The representation was disposed of by the reviewing authority vide order dated 27.1.2004 (Annexure-E) rejecting his claim. Being aggrieved, Applicant approached this Tribunal by way of O.A. No.120 of 2004 and the said O.A. was disposed of vide order dated 9.8.2005 (Annexure-F) directing the third Respondent to forward Applicant's representation dated 14.10.2003 (Annexure-D) with his remarks to the second Respondent and the second Respondent was directed to consider the same and pass reasoned order. The second Respondent vide order dated 24.10.2005 (Annexure-G) rejected the prayer of the Applicant which according to the Applicant was not a reasoned order and violative of the orders of this Tribunal. Aggrieved by the said action on the part of the Respondents Applicant has filed this O.A. seeking the following main reliefs:-

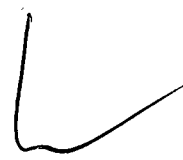
- "i) To expunge the adverse of the Review Authority as entered in the A.C.R. for the year ending 31.3.2003 (Annexure-C)
- ii) To quash and set aside the memorandum dated 24.10.2005 issued by the Appellate Authority (Annexure-G)."



2. The Respondents have filed a detailed reply statement contending that pursuant to the direction of this Tribunal they have issued a reasoned order dated 24.10.2005 stating that after considering plea of the Applicant in his appeal vis-a-vis other material available on record it was found that his representation to expunge the adverse remarks has no merit. In the fact finding enquiry so conducted on 3rd & 4th April, 2002 by the office of the third Respondent it was found that some of the charges were proved and therefore, the adverse remarks recorded based on the charges proved by Inquiry Committee are justified and as per the rules. Communicating the adverse remarks by the competent authority is for the betterment of Kendriya Vidyalaya and for the employee too improve himself so that he can progress in his career by rectifying the lapses and short comings. The Chairman, VMC, KVS, Panisagar has discretely inquired the matter and found that no doubt the Applicant is a man of egoist type due to which he could not maintain good relation with the nominee Chairman. These views were expressed by the Chairman before the Inquiry Committee. Almost all the charges framed against the Applicant stood proved which included appointment of his wife as teacher in the same school on




contract basis in violation of codal provisions as per Article 46 of II Edition and Article 41B of III Edition of Education Code of KVS. Subsequently, as per direction of this Tribunal his representation was disposed of in terms of Article 91 of the Education Code rejecting his claim based on the facts/materials available on record. During his tenure as Principal, various irregularities had taken place such as he has appointed teacher on contractual part time basis violating KVS norms and the purchases were made by violating the prescribed purchase procedure as per the report of the Inquiry Committee. Appointment of his wife by him on contractual part time basis in the same school where he was functioning as Principal is a serious irregularity and against the established principle. Purchases were made without the approval of the Chairman. For such type of lapses the Applicant can't expect the Respondents to be a silent spectator. As such, recording of adverse entries in his ACR is perfectly in order. He did not maintain financial propriety, and therefore, retention of the adverse remarks is very much justified and no bias can be attributed on the part of the reviewing officer or the appellate authority. Therefore, the




Respondents claimed that the O.A. being devoid of merit is liable to be dismissed.

3. The Applicant has filed a rejoinder reiterating his contentions made in the O.A. and further submitted that on 19.3.2002 one nominee Chairman came to the school for one week in absence of regular Chairman, and said Chairman raised certain false allegations against him before the fact finding enquiry but the same were not proved in as much as no such adverse enquiry report was ever communicated to him. More than hundreds of parents of the students submitted their statement in writing in support of the Applicant which clearly proves that all the allegations of the nominee Chairman were false and baseless. His wife was selected by the Committee and forwarded her name, and therefore, Applicant allowed her to join. Respondents have served two memorandums of charges i.e., dated 16.01.2003 and 28.07.2003 on the same charge against which Applicant approached this Tribunal by way of O.A. No.310/2004 which was disposed of on 17.03.2005 with certain directions upon the Respondents. Pursuant to this Tribunal's directions the Respondents vide order dated 27.05.2005 exempted the Applicant from the charges. Therefore, according



to the Applicant, the same cannot be taken into consideration while writing the ACR for the period 01.04.2002 to 31.03.2003. Applicant claimed that there is no basis for recording adverse entries in the ACR and the Respondents are taking all irrelevant factors to mislead this Tribunal without annexing any relevant document. If the allegations of the Respondents are correct they could have initiated appropriate disciplinary action against him but the same was not done.

4. Heard Mr. A. K. Roy, learned counsel for the Applicant and Mr. M. K. Mazumdar, learned Standing counsel for the KVS. Both the counsel have taken my attention to the various pleadings, materials and evidence placed on record. Learned counsel for the Applicant would argue that the adverse remarks in the ACR communicated to him are not in conformity with the provisions of the Education Code of the KVS and since Applicant was exempted from the charges vide order dated 27.05.2005 the charges could not have been a material in writing the ACR for the year 01.04.2002 to 31.03.2003. Learned Standing counsel for the Respondents, on the other hand, persuasively argued that so many irregularities including



financial irregularities done by the Applicant culminated into writing adverse remarks which cannot be faulted.

5. I have given due consideration to various pleadings, materials and evidence placed on record and to the arguments advanced by the counsel for the parties. The claim of the Applicant is for expunging adverse remarks that have been entered by the Reviewing Authority in the ACR for the year ending 31.03.2003. The Applicant has also prayed for setting aside the memorandum dated 24.10.2005 issued by the Appellate Authority. For better elucidation the adverse remarks communicated to the Applicant vide memorandum dated 04.09.2003 (Annexure-C) is quoted herein below:-

Part-III:	Remarks of the Reviewing Officer
Over all performance	
Fitness	A below average Officer
Fitness for promotion	Unfit
Has the Officer any special characteristics and or any outstanding merits or abilities which would justify his advancement and Spl, selection for higher appointment and Spl. Selection out of turn	He has poor administrative ability and done various irregularities in contractual appointment and management of finance.




Earlier Applicant had approached this Tribunal in O.A. No.310/2004 for quashing of the disciplinary proceeding in which this Court had directed to consider his appeal and dispose of the same within a time frame. Accordingly, orders have been passed by the Respondents on 24.10.2005 and the appeal of the Applicant was found having no merit on the basis of the materials available on record and hence the same was dismissed. Learned counsel for the Applicant would argue that the adverse remarks are unwarranted and he tried to established that granting of basic amenities by constructing toilets, making library functional, organizing Annual Sports Day and Annual Day celebrations with great success, settled all audit objections allotment of land to Vidyalaya etc. were possible only because of his initiative as Principal, and therefore, the adverse entries have to be expunged. The Respondents, on the other hand, stick on to the averment that on fact finding enquiry some of the charges were proved against the Applicant and he is a man of egoistic type due to which he could not maintain good relation with the nominee Chairman. The Committee enquired the same and found to be correct. Various irregularities had taken place during his tenure as Principal like in appointment of teachers on




contract basis, purchase made violating the purchase procedure which were enquired by the Committee. Even assuming that his contentions that he had no hand in appointment of his wife as teacher on contract basis is true, the other charges remained proved. Supply orders were placed without the approval of the Chairman, and therefore, the Respondents contended that the adverse remarks are perfectly justified. Order of penalty of censure was set aside by the Appellate Authority on account of the dictum laid down by the Apex Court in one of its decision that "*one selected candidate can not be denied to give appointment on the ground that the relative is working is working in the same organization*". According to the Respondents, adverse entries in the ACR are the culmination of various irregularities committed by him and therefore, the same cannot be expunged.

6. Learned counsel for the Applicant has taken my attention to a decision of the CAT, Jabalpur Bench in the case of *S.C.Vaish, IAS vs. U.O.I. & Ors.*, reported in AISLJ VII-1991(2) 187 in which the Court held that so many achievement and self laudatory statement cannot be taken into consideration in ACRs but only records. In another decision of the CAT, Chandigarh



Bench cited by the learned counsel for the Applicant in the case of **S.C.Jain vs. State of Punjab & Another**, reported in AISLJ II-1994 (CAT) 245 held that adverse remarks must be based on some material and cannot be arbitrary. On going through the records I find that the said procedure had been adopted in this case – explanation was called for and finally adverse remarks had been recorded based on solid materials.

7. Learned counsel for the Applicant tacitly admitted that the Applicant was an egoistic person. He further argued, "I am egoistic, he is egoistic and you are also egoistic" and further submitted that ego per-se does not conceive bad character, which cannot be accepted. The simple meaning of 'Ego' in the Chambers English Dictionary is "*I or self - that which is conscious and thinks: an image of oneself: Doctrine of egoism: one who thinks and speak too much of himself: self-exaltation.*" The philosophical meaning of meaning of 'egoistic' is, "*the theory of self-interest as the principle of morality*". Thinking and speaking about oneself is the characteristic of boasting and exaggerating one's ability which is not good in any person much less to a teacher. Hence the natural corollary is that Applicant



still is not free from taint behaviour and hence the adverse remarks recorded cannot be faulted.

8. Counsel further argued that the recording of adverse remarks is not in conformity with the Articles 86(2)(vii) & 90 of the Education Code of the KVS. Articles 86(2)(vii) & 90 of the said Code are reproduced below:-

"86(2)(vii)

Every warning/reprimand/displeasure issued in writing not automatically find a place in the confidential report. Only cases in which despite such warning etc. the officer/official has not improved, appropriate mention of such warning etc. shall be made in the confidential report."

"Article 90

All adverse entries in the Confidential Report shall be communicated by the Reviewing Officer along with a mention of good points within one month of this being recorded"

Learned counsel submitted that warning, reprimand or displeasure were never issued to the Applicant and hence the adverse remarks are against the above Articles of the Education Code. But the facts remain that adverse remarks were communicated to the Applicant asking to submit his



representation against the same within a specified time and the same was done after the conduct of the fact finding enquiry. It is worth mentioning that various commendations of the Applicant have taken into consideration while judging his performance and that is why a minor penalty of censure was imposed upon him. It was reported that though the Applicant was reverted to PGT (Bio) again he was promoted as Principal, KVS, Hyderabad and now he is holding such post. Therefore, the cloud has now vanished and he has been restored to the post of Principal. On going through the previous arguments and materials placed on record, I am of the view that the authority has acted bonafide and adverse remarks recorded are not unfounded and vague. Therefore, I do not find any reason to expunge the adverse remarks recorded for the year ending 31.03.2003. The O.A. is devoid of any merit and is liable to be dismissed.

Accordingly, the O.A. is dismissed. There shall, however, be no order as to costs.



(K.V.SACHIDANANDAN)
VICE CHAIRMAN

/BB/

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION

40/06

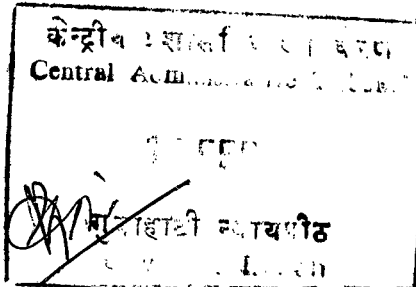
1. a) Name of the Applicant:- E M Reddy
b) Respondents :- Union of India & Ors
c) No. Of applicant:-
2. Is the application in the proper form :- Yes/No.
3. Whether name & Description and address of all the papers been furnished in cause title:- YES/NO.
4. Has the application been duly signed and verified: YES/NO.
5. Have the copies duly signed :- YES/NO.
6. Have sufficient number of copies of the application been filed:- YES/NO.
7. Whether all the annexures parties are impleaded:- YES/NO.
8. Whether English translation of documents in the Language:- YES/NO.
9. Is the application is in time :- YES/NO.
10. Has the Vakalatname/MEMO of Appearance/Authorisation filed:- YES/NO.
11. Is the application by IPO/ED/FOR Rs. 50/-: 269319149
12. Has the application is maintainable :- YES/NO.
13. Has the impugned order original duly attested been filed:- YES/NO.
14. Has the legible copies of the annexures duly attested filed:- YES/NO.
15. Has the Index of documents been filed all available:- YES/NO.
16. Has the required number of enveloped bearing full address of the respondents been filed :- YES/NO.
17. Has the declaration as required by item 17 of the form:- YES/NO.
18. Whether the relief sought for arises out of the Single:- YES/NO.
19. Whether the interim relief is prayed for :- YES/NO.
20. In case of condonation of delay is filed is it supported:- YES/NO.
21. Whether this case can be heard by SINGLE BENCH/DIVISION BENCH:
22. Any other points :-
23. Result of the scrutiny with initial of the Scrutiny Clerk:-

The application is in order

JOINT OFFICER

DEPUTY REGISTRAR
10/2/06

NO union or
India made party



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 40 / 2006

EDUNARI MOUNENDAR REDDY

....APPLICANT

- VERSUS -

KENDRIYA VIDYALAYA SANGATHAN & OTHERS

.....RESPONDENTS

LIST OF DATES

<u>Sl. NO.</u>	<u>Dates</u>	<u>Particulars</u>	<u>Para</u>	<u>Annx.</u>	<u>Page</u>
1.	1986	Applicant appointed as PGT in KVS	4(i)		2
2.	July 1997 to July 2001	Worked as principal in Novodaya Vidyalaya on deputation	4(i)		2
3.	7.7.01	Letter of Chairman of Novodaya Vidyalaya to retain applicant in the school due to his good performance	4(ii)	A	3
4.	2.7.03	Letter of reporting officer praising applicant service and thereby requested not to take strict action	4(iii)	B	3 - 4
5.	4.9.03	Adverse remarks of Reviewing authority	4(v)	C	4
6.	14.10.03	Representation / appeal of applicant against adverse remarks	4(vi)	D	4 - 5
7.	27.1.04	Order of reviewing officer rejecting prayer of applicant	4(viii)	E	6
8.	2004	Applicant filed O.A NO 120/04	4(ix)		6 - 7
9.	9.8.05	Order of this Hon'ble Tribunal disposing O.A. 120/04 directing Respondent NO2 to pass reasoned order and dispose of the representation	4(ix)	F	6 - 7
10.	24.10.05	Representation disposed of by Respondent NO.2 without any speaking order	4(x)	G	7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI Bench

(An application under section 19 of the Administrative
tribunal Act 1985)

Original Application NO 40 /2006

Eduhari Mounendar Reddy

.....APPLICANT

-VERSUS -

Union of India & Others

.....RESPONDENTS

I N D E X

Sl. NO.	Particulars	Page
1.	Application	1 - 15.
2.	Verification	16.
3.	Annexure -A	17.
4.	Annexure -B	18.
5.	Annexure -C	19.
6.	Annexure -D	20 - 21.
7.	Annexure -E	22.
8.	Annexure -F	23 - 24.
9.	Annexure -G	25 - 29.

For use in the office

Signature -

Date -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GURUJATI BENCH

(THE APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE
TRIBUNAL ACT 1985)

Filed by the applicant
through -
24
Ashok Kumar Ray
Advocate.

Original Application NO 40 /2006

- BETWEEN -

Edunari Mounendar Reddy
P.G.T , Kendriya Vidyalaya
Kokrajhar , P.O & Dist - Kokrajhar
(Assam)

.....APPLICANT

- AND -

1. Kendriya Vidyalaya Sangathan
represented by It's Commissioner,
18 Institutional Area , Sahid Jeet Singh Marg,
New Delhi - 110 016
2. Deputy Commissioner (Pers)
Kendriya Vidyalaya Sangathan ,
18, Institutional Area, Sahid Jeet Singh Marg,
New Delhi -110 016.
3. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office ,Silchar -788 001

.....RESPONDENTS

1. PARTICULARS OF ORDER AGAINST WHICH THIS
APPLICATION IS DIRECTED

This application is made against :

Handwritten signature

1. Memorandum dated 4.9.2003 (Annexure-C) through which the Assistant Commissioner, i.e., Reviewing Authority has entered and communicated the adverse remarks against the applicant .

ii. Memorandum dated 24.10.2005 (Annexure-G) issued by the Deputy Commissioner (Pers) through the said authority rejected the representation of the applicant without giving any reason whatsoever .

2. JURISDICTION :

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

3. LIMITATION :

That the applicant also declares that this application is made within the time limit as has been prescribed under Section 21 of the Administrative Tribunal Act 1985.

4. FACT OF THE CASE :

i) That the applicant was appointed as Post Graduate Teacher (in short P.G.T) in the Kendriya Vidyalaya Sangathan in the year 1986 and thereafter w.e.f July 1997 to July 2001 he was on deputation as principal in Navodaya Vidyalaya , where he earned a very good service record without any black shadow.

[Handwritten signature]

ii) That the applicant states that when he was in the Novodaya Vidyalaya ,he earned very good service record as an able administrator and due to his able guidance and hard work the school showed very good performance in every sphere and hence when he was appointed as Principal in the Kendriya Vidyalaya ,the Chairman of the Novodaya Vidyalaya vide his letter dated 7.7.2001 wrote to the high authority to retain him in the school. He also states that since his joining in the year 1986 in the Kendriya Vidyalaya ,he earned either good or excellent service records through the years .

Copy of the letter dated 7.7.2001 is annexed herewith as ANNEXURE - A

iii) That ,since his joining in the post of principal in the Kendriya Vidyalaya , Panisagar ,he took several measures to promote the educational atmosphere and administrative function and also took a number of measures to eliminate the corruption and mis-discipline of the school which was prevailing since long back . Due to his sincere service,the applicant earned a good service record for the year 2001 -2002 . But ,as the applicant took strict steps to eliminate the corruption ,the disruptive elements^{were} trying to their best to remove the applicant from the school . As the disruptive elements around the vidyalaya were trying to demoralise any trail to set the things right and was trying to

fw

to remove the applicant from the post ,the reporting officer wrote a letter dated 2.7.2003 to the Commissioner , K.V.Sangathan requesting that the applicant does not deserve an adverse punishment and also requested to conduct through enquiry about the matter .

Copy of the letter dated 2.7.2003 is annexed herewith as ANNEXURE - E

iv) That the applicant states that though he had rendered his service as a principal for the over all well being of the school, the respondents reverted him from the post of principal vide memorandum dated 24.6.2003 to the post of Graduate post and posted at Kokrajhar .

v) That ,in the month of September 2003 ,the applicant received a memorandum dated 4.9.2003 whereby the Assistant Commissioner i.e., the Respondent NO3 communicated some adverse remarks for the year ending 31.3.2003

Copy of the memorandum dated 4.9.2003 is annexed herewith as ANNEXURE -C


vi) That the applicant states that he submitted one representation dated 14.10.2003 for expunge of adverse remarks ,to the Respondent NO3 i.e, the reviewing authority . In the said representation the applicant stated in details about the works did by him during the relevant period . He also pointed out

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that about the matter as has been stated by the Reviewing Authority in the Annual Confidential Report, no show cause notice was served to him at any time and the entries were made with bias attitude. The applicant also stated that for the relevant period the Reporting Officer send the Confidential Report which clearly shows the very good administrative performance and there was no adverse remark against any colouan. The applicant also requested to compare his work with the panel inspection report, internal Audit Report and the reply submitted by the applicant from time to time in respect of various reports and also by the Reporting Officer. Be it stated here that no irregularities has ever been mentioned in any Panel Inspection Report and thereby requested to expunge the adverse remarks.

Copy of the representation dated 14.10.2003 is annexed herewith as ANNEXURE - D

vii) That the applicant states that the afore-said entries in Annual Confidential Report (in short A.C.R.) are not at all based on the record and the same has been entered without considering the relevant materials and the report of the Reporting Officer. Be it stated that for the relevant period, the report submitted by the Reporting Officer clearly shows the very good administrative performance and there is no adverse remark in any respect. Besides the above,



the Report of the Annual Accademic Inspection 2002-2003 which was conducted by a team of three member, shows good performance of the applicant . ~~But~~ Be it stated here that as and when the higher authorities and /or any Inspection authority suggested any thing to do for the benefit of the school , he immediately complied with the same within the time frame and submitted his compliance report to the effect and defect was ever been detected and /or informed to him. The applicant further states and affirm that during the relevent period no irregularities whatsoever have been reported and /or proved by any enquiry authority . Hence ,the adverse remarks as written by the Reviewing authority has no ~~basis~~ basis and has been written in a bias manner without following the relevent Rules .

viii) That ,the applicant states that the said representation was disposed of by the Reviewing Authority vide order dated 27.1.2004 and thereby rejected the prayer of the applicant illegally and without any authority besides the fact that the same was rejected without any reason and without condidering the relevent records .

Copy of the said rejection order dated 27.1.2004 is annexed herewith as

ANNEXURE - E.

ix) That being aggrieved with the said rejection



- 7 -

order dated 27.1.2004 ,the applicant approached this Hon'ble Tribunal by filing an Original Application NO. 120 of 2004 and this Hon'ble Tribunal was pleased to disposed of the said application by an order dated 9.8.2005 directing the Respondent NO 3 to forward the representation dated 14.10.2003 submitted by the applicant with his remarks to the next heigher authority i.e., Respondent NO 2 within a period of one month and the Respondent NO.2 was directed to consider the same and pass a reasoned order within the time specified as per Article 91 of the K.V. Education Code.

Copy of the order dated 9.8.2005 passed by this Hon'ble Tribunal is annexed herewith as ANNEXURE -F

x) That the applicant states that after the aforesaid order of this Tribunal ,the Respondent NO2 has disposed of the representation dated 14.10.2003 vide memorandum dated 24.10.2005 and thereby rejected the prayer of the applicant by a simple stroke of pen without stating any reason to the effect .

Copy of the memorandum dated 24.10.2005 is annexed herewith as ANNEXURE - G

xi) That the applicant states that though this Hon'ble Tribunal directed the Respondent NO 2 to pass a reasoned order ,but the said authority simply rejected the prayer by a non-speaking order in complete violation of the direction of this Hon'ble Tribunal .



Tribunal . The applicant also states that in his representation ,he has raised a number of points and has particularly mentioned all the works completed by him during the relevent period and requested the authority to confirm the same by Panel Inspection Report ,Internal Audit Report andthe replies submitted by him and also by the Reporting Officer which will confirm that there are no question of any anomalies in any respect . But the said authority without showing any reason whatsoever on the points raised by him ,simply rejected the prayer by a stroke of pen illegally which clearly shows that the said Respondent did not at all considered all the materials on records and points raised by him .

xii) That the applicant states that the adverse remarks as has been entered and communicated to the applicant itself is illegal in as much as the same is against the provisions as laid down under Article 36 (2)(v) of the K.V.Education Code . As per the said Article ,all entries should be based on established facts and not on mere suspicion. In the instant case no such allegations have ever been proved by any enquiry authority , Had there was any irregularities in respect of any matter including contractual appointment and /or management of finance ,that could have been established by serving one notice to the applicant ,but the same was never done. Hence the remarks as has been entered are tdtally illegal and

fwd

and whimsical.

The applicant herein quote the Article 86(2)(v) for ready reference of the Hon'ble Tribunal:-

'86(2)(v)

There shall be no hesitation on the part of the Reporting Officer to record adverse remarks in justified cases. Such entries shall however, be based on established facts and not on mere suspicion Remarks like 'doubtful character' 'complaints received about taking illegal gratification' shall be avoided ''.

xiii) That the applicant states that the entries of adverse remarks in the A.C.R. for the year ending 31.3.2003 are illegal in as much as it goes against the provision of Article 86(2)(vii) of the Education code which read as follows :-

'86(2)(vii)

Every warning /reprimand/displeasure issued in writing not automatically find a place in the confidential report. Only cases in which despite such warning etc. the officer/official has not improved, appropriate mention of such warning etc. shall be made in the confidential report ''.

It is pertinent to mention that in the instant case, no such warning, reprimand and /or displeasure were ever been issued to him and hence the remarks as has been entered are illegal and against the Code.

[Handwritten signature]

xiv) That the applicant states that the entries of adverse remarks are illegal in as much as the same has been written and communicated in violation of the provision as laid down under Article 90 of the K.V. Education Code which clearly reveals that all adverse entries in the Confidential Report shall be communicated by the Reviewing Officer alongwith a mention of good points within one month of being recorded .But in the instant case the Reviewing Officer has communicated only the adverse entries which are not based on fact .
Relevant portion of Article 90 of K.V.Education code read as follows :-

"Article 90

All adverse entries in the Confidential Report shall be communicated by the Reviewing Officer alongwith a mention of good points within one month of this being recorded....."

xv) That the applicant states that rejection of his representation by the appellate authority is illegal and not based on records. The appellate authority has disposed of the representation without stating any reason whatsoever and hence the same is violative of various verdicts of this Hon'ble Tribunal and also of the Apex Court .

xiv) That the applicant states that the Adverse remarks as has been entered by the Reviewing authority




and confirmed by the Appellate authority are fully contrary to that of the Reporting authority and are not based on the records and fact . The applicant also ~~states~~ states that adverse remarks have been entered with biased attitude only with intention to justify the reversion order which has been challenged by this applicant and still pending before the Hon'ble High court .

xvii) That the applicant states that as the adverse entries has been made in complete contrary to that of the Reporting Officer , the Reviewing Officer as well as the Appellate authority are required to express clearly and more particularly the reason of disagreement but the same has not been done and hence the same are not sustainable in the eye of law.

xviii) That the applicant states that during the relevant period his performance was very good and to the satisfaction of his reporting officer and hence question of adverse remarks does not arise at all more particularly when he had carried out all the suggestions as were extended to him from time to time by the inspection authority and/or any higher authority .

Being aggrieved with the adverse remarks of the Reviewing authority and ~~rejection~~ order dated 24.10.2005 issued by the Appellate authority , the



applicant prefer this application on the following grounds amongst others :-

5. GROUND FOR RELIEFS :

- i) For that the action of the respondents is biased and not based on fact and records and hence the same is not sustainable in the eye of law.
- ii) For that the Reviewing authority has ^{entered}~~entered~~ the adverse remarks without any prior warning /reprimand / displeasure at any time as is required under Article 86(2)(vii) of Education Code and hence the same is not sustainable in the eye of law.
- iii) For that the adverse remarks are untenable in as much as no irregularities in any contractual appointment and in the management of financial matter has ever occurred during his tenure as principal in the Kendriya Vidyalaya ,Panisagar, and no such allegation have ever been proved ,more particularly during the period starting w.e.f. 1st April to 31.st March 2003 and hence the adverse remarks should be expunged .
- iv) For that the remarks have been recorded and communicated in violation of the statutory Rule as provided in the Kendriya Vidyalaya Education Code and hence the same are not maintainable .
- v) For that the representation of the applicant



against the adverse remarks has been considered in a perfunctory manner without comparing with the relevant records and report of the Reporting Officer.

vi) For that the order of the appellate authority whereby the representation of the applicant has been rejected is illegal in as much as the same does not bear any reason for ~~the~~ such rejection as is required as per the direction of this Hon'ble Tribunal and also as per verdicts of several courts .

vii) For that the action of the respondents are whimsical and biased and hence is not tainable .

viii) For that the action of the respondents are against the principle of natural justice and administrative fair play and hence is liable to be quashed .

ix) For that the action of the Respondent NO2 in disposing the representation is against the settled principle of law and hence is not maintainable in the eye of law.

x) For that the action of the respondents are violative of Article 14 ,16 and 21 of the Constitution of India .

xi) For that at any rate the action of the respondents are not maintainable in the eye of law and liable to be quashed and set aside .

J. S. D.

6. DETAILS OF REMEDIES EXHAUSTED :

That the applicant states that he has availed all the remedies as stated in paragraph 4 of this application and hence there is no other alternative remedy available to him other than to approach this Hon'ble Tribunal.

7. MATTER NOT PREVIOUSLY FILED OR PENDING BEFORE ANY COURT

That the applicant further declares that the applicant has not filed any application, writ petition or suit regarding the matter before any court or any other bench of this Hon'ble Tribunal nor any such petition or suit is pending before any of them.

8. REMEDIES SOUGHT FOR :

Under the facts and circumstances stated above the applicant prays the following reliefs :

- i) To expunge the adverse remarks of the Review Authority as entered in the A.C.R. for the year ending 31. 3.2003 (ANNEXURE -C)
- ii) To quash and set aside the memorandum dated 24.10.2005 issued by the Appellate Authority . (ANNEXURE -G)
- iii) To pass any other order or orders as Your Lordships may deem fit and proper.
- iv) Cost of the application.

9. INTERIM RELIEF PRAYED FOR :

Under the fact and circumstances stated



above ,the applicant does not pray any interim relief whatsoever .

10.

11. PARTICULARS OF I.P.O. :

- i) I.P.O NO. : 26 & 319149
- ii) Date of issue : 7/2/06
- iii) Payable at : Gussahatti .

12. LIST OF ENCLOSURES :

As stated in the index above .

[Handwritten signature]

V E R I F I C A T I O N

I, Shri Edunari Mounendar Reddy , son of Shri Ranga Reddy , aged about 43 years , resident of Ram Krishna Mission , Kokrajhar , P.O & Dist :- Kokrajhar (Assam) at present working as Post Graduate Teacher , Kendriya Vidyalaya , Kokrajhar do hereby verify that the statements made in paragraphs 1 to 12 of the application are true to my personal knowledge and submissions made therein , I believe the same are true as per legal advice and I have not suppressed any material fact of the case .

And I sign this verification on this the 20th day of January 2006 at Guwahati .

Date : 20.1.2006

Place : Guwahati

Edunari Mounendar Reddy

- 17 -

No. PA/34 Bn/KV/2003/ 8098-100
 HQ 34 Bn BSF
 Panisagar
 Dist-Tripura(N)

01 July 2003

To

The Commissioner
 Kendriya Vidyalaya Sangathan
 18- Institutional area
 Shaheed Jeet Singh Marg
 New Delhi-110016.

Sir,

In reference to your letter No; F.7-7/2002.KVS (Estt-1) dated 24/26-06-2003 delivered to Mr. E.M.Reddy (Principal, KV-Panisagar, North Tripura) I would like to mention a few words of my conviction in consultation with the actual Chairman of the Vidyalaya Management Committee-KV-Panisagar.

This is our personal and general observation that the Vidyalaya has witnessed a tremendous progress under the able guidance of Mr. E.M.Reddy especially in the matters of eliminating the corruption and indiscipline. The Vidyalaya is now in a pace of progressing firmly. I also understand that there are certain disruptive elements in and around the Vidyalaya who are trying to demoralize any trial to set the things right in the Vidyalaya.

Therefore this is my opinion that Mr. E.M.Reddy doesn't deserve such an adverse punishment and your dignity may look into the matter personally so as to conduct a thorough Inquiry about the matter accordingly.

Yours faithfully,

(A K SINHA)
 DY COMMANDANT
 OFEG COMDT FOR CHAIRMAN/VMC

G1 17 2003

Copy to :-

1. Jt Commissioner(Adm)
 K V S New Delhi
2. Sh E M Reddy
 Principal K V Panisagar.

Attested by

Advocate
 28/1/06
 Advocate.



मुनीर मुजावर

भा.प्र.से.
जिल्हाधिकारीजिल्हाधिकारी कार्यालय,
वाशिम

7th July-2001

Dear Sir,

It was brought to my notice that, Mr.E.M.Reddy, Principal,JNV-Washim has been promoted to the post of the Principal in his parent organisation. He is a very able administrator and under his guidance and hard work this vidyalaya has brought glory to Washim District. He has rendered excellent service to this vidyalaya by providing consistantly good results in the Board Examinations. If he is retained in this vidyalaya this institution will become a pride of this district. Otherwise, you are requested to send a dynamic Principal to uphold the dignity and integrity of the vidyalaya which Mr.Reddy has established.

With regards,

Yours sincerely,

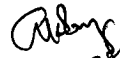

(Munir Mujawar)

Collector & Chairman,VMC

To,

Mr.S.P.Gaur,IAS,
Director,
Navodaya Vidyalaya Samiti,
A-39, Kailash Colony,
New Delhi - 110 048.

Affected by


Advocate.

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ANNEXURE - C

22

KENDRIYA VIDYALAYA SANGATHAN
REGIONAL OFFICE: SILCHAR-788001

CONFIDENTIAL
REGD. POST

No.F.ACR/2003/KVS(SR)/

Date : 04-9-2003.

M E M O R A N D U M

Entries recorded in the Annual Confidential Reports for the year ending 31-03-2003 in respect of Sri/~~Smx~~ E. M. Reddy Ex-Principal, KV, Panisagar now reverted as PGT (Chem), KV, Kokrajhar, Kendriya Vidyalaya are reproduced below for his/her information and necessary improvement.

Part-III: Remarks of the Reviewing/~~Reporting~~ Officer

Over all performances

Fitness - A below average Officer.

Fitness for promotion - Unfit.

Has the Officer any special characteristics and or any outstanding merits or abilities which would justify his advancement and Spl. selection for higher appointment and Spl. selection out of turn?

He has poor administrative ability and done various irregularities in contractual appointment and management of finance.

The undersigned wishes to give Sri/~~Smx~~/~~Max~~ E. M. Reddy, Ex-Principal (now reverted as PGT) an opportunity to represent against the above mentioned entries made in the ACRs for the year 2002-03 for expungement, if justified.

Hence Sri/~~Smx~~/~~Max~~ E. M. Reddy should submit his/her representation along with justification to this office within a month of the receipt of this communication. In the absence of any representation it will be presumed that he/she has nothing to say against the adverse entry.

The receipt of this memorandum should be acknowledge.

(M. M. JOSHI)
ASSTT. COMMISSIONER

~~EDUCATION OFFICER~~

To
Shri E. M. Reddy, Ex-Principal,
(now reverted as PGT (Chem))
KENDRIYA VIDYALAYA Kokrajhar.

- Copy to:-
1. ACR/Dossier in respect of Shri E.M. Reddy, KV, Kokrajhar.
 2. The Principal, KV, New Delhi.
 3. The Asstt. Commissioner, KVS (RO), Guwahati.

ASSISTANT COMMISSIONER
~~EDUCATION OFFICER~~

Attested by

Advocate

14th October 2003.

To,
The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office
Hospital Road Silchar
PIN 788001.

**THROUGH PROPER CHANNEL
PRINCIPAL KENDRIYA VIDYALAYA KOKRAJHAR**

Subject: - Expunge of the adverse remarks entered by the Reviewing officer request.
Reference: - No. F. ACR/2003/KVS (SR)/11304-07 Dated 4th September 2003 and received on 17th September 2003.

Sir,

With due respect, I do hereby state that I have received on 17th September 2003, the remarks of the reviewing officer, vide memorandum No F. ACR/2003/KVS (SR)/11304-07 Dated 4th September 2003. I submit this representation for your kind consideration and request to expunge the adverse remarks.


The adverse remarks, as communicated vide memorandum dated 4.9.2003, has been entered whimsically and thought in as much as, the irregularities as has been mentioned, has neither been proved by any enquiry committee nor I was given any show cause notice for the same during the relevant period and the said entries is bias and after thought which has been made after filing the case in CAT. Be it stated that at the relevant period my reporting officer also sent the annual confidential report which also clearly shows that very good administrative performance and there was no adverse remark in any column of the report and hence the remarks entered by the reviewing officer is not at all justified and is liable to be quashed.

I earned good name and fame to the Kendriya Vidyalaya Panisagar and to the Sangathan by providing corruption free administration, which were appreciated by all except corrupt people who were mismanaged and defamed the institution. This may please be confirmed from The Chairman VMC, who had regularly supervised the activities and Vidyalaya Management Committee Members who were seen the progress of the Institution. Moreover reporting officer in recognition of my works reported well where as the reviewing officer with out Applying mind entered adverse remarks with out any basis. The following are my works during the period under report.

1. Purchased eight computers, started computer Education and also imparted computer aided learning to the students by purchasing required software.
- 2/ Provided basic amenities for primary children by constructing toilets, which was neglected for several years.
3. Developed primary resource center.

(Continued on Page-2)

Attested by


Advocate

4. Library is made functional by opening the sealed cupboards. Made available nearly thirty periodicals and magazines for the benefit of students and staff members. (When I took the charge the library was under locked cupboards, not even a single magazine or news paper was available)
5. Constructed a platform for morning assembly and for cultural programmes these programmes were organized effectively and appreciated by all including inspection teams.
6. Internal and external white wash carried out. (Which was not done earlier).
7. Electrical repairs carried out.
8. Provided running water supply to the students by purchasing and fixing a water pump set to the Vidyalaya.
9. By providing fencing given a shape to the Vidyalaya and also Developed a beautiful Vidyalaya garden which was appreciated by the panel inspection team.
10. Implemented all the suggestions given by the panel inspection team and surprise inspections with true spirit.
11. Carried out regular classroom supervision.
12. Constituted VMC, VEC, VAC and PTA (These fundamental bodies were not functional since a decade) and also conducted regular meetings of these committees).
13. Planned the Vidyalaya Budget and effectively utilized for the benefit of the students.
14. Organized annual Sports Day and Annual Day celebrations with great success
15. First time in the history of K.V.Panisagar Vidyalaya Broacher was brought out.
16. Vidyalaya Patrika was brought out.
17. Most of the outstanding audit objections were settled (these were pending since a decade).
18. Purely because of my efforts 13 Acres of land has been allotted to the Vidyalaya which was pending since more than a decade.

These works may please be confirmed by comparing panel inspection reports of the year 2001 and 2002, also internal audit reports and the replies submitted, and also from the reporting officer. Be it stated that the panel inspection report and internal audit report nowhere mentioned any irregularity in any work done by me and hence these adverse entries are not sustainable.

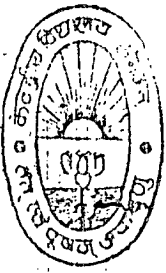
By considering all the above-mentioned facts I pray your honor to expunge the adverse remarks entered by the reviewing officer.

Yours faithfully

E.M. REDDY
Principal {reverted to PGT}
Joined Under Protest against the Reversion.
Kendriya Vidyalaya Kokrajhar-783370.

Attested by

[Signature]
Advocate



- 22 -

Phone

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केन्द्रीय विद्यालय संगठन KENDRIYA VIDYALAYA SANGATHAN

ANNEXURE-E

अध्यापक कार्यालय
अस्पताल रोड,
सिलचर - 788 001

Regional Office
Hospital Road,
Silchar 788 001

पत्रांक
F.No

2-8(ACR)/2003-KVS(SR)/ 21376-79

Dated 27-01-2004

ORDER

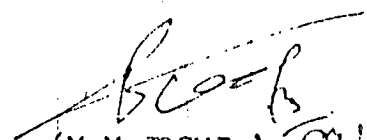
Rajd. Cont. Cont.

Whereas Shri E.M.Reddy, Ex-Principal, KV, Panisagar (reverted to the post of PGT and posted to KV, Kokrajhar) was communicated adverse remarks from his ACR for the period ending 31.3.03 vide memorandum No. ACR/2003/KVS(SR)/11304-07 dated-04.9.2003.

And, whereas Shri E.M.Reddy made a representation dated 14.10.2003 against the adverse remarks.

Now after careful consideration, the undersigned has come to the conclusion that there is no ground/justification for expunction of adverse remarks conveyed from the ACR of Shri E.M.Reddy, Ex-Principal and presently working as PGT(Chem), KV, Kokrajhar.

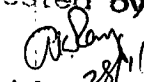
His representation to expunge the adverse remarks is therefore rejected.


(M.M. JOSHI.)
ASSISTANT COMMISSIONER,

Copy to:

1. Shri E.M.Reddy, Ex-Principal, KV, Panisagar presently working as PGT at KV, Kokrajhar on reversion.
2. The Deputy Commissioner (Pers), KVS (HQRS), New Delhi.
3. The Asstt. Commissioner, KVS, RO, Guwahati.
4. The Principal, KV, Kokrajhar.

Attested by


28/1/04
Advocate.

Original Application No. 120 of 2004

Date of Order: This, the 9th Day of August, 2005.

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

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

Eduhari Mounendar Reddy
P.G.T. Kendriya Vidyalaya, Kokrajhar
P.O. & Dist: Kokrajhar
Assam.

..... Applicant.

By Advocates S/Shri A.K.Roy, I. Gogoi & L. Wapang.

- Versus -

1. Kendriya Vidyalaya Sangathan
Represented by its Commissioner
18, Institutional Area
Shahid Jeet Singh Marg
New Delhi - 110 016

2. Dy. Commissioner (Pers)
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shahid Jeet Singh Marg
New Delhi - 110 016

Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office
Silchar - 788 001

..... Respondents

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

ORDER (ORAL)

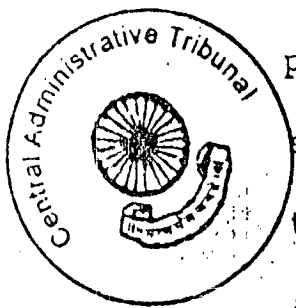
SIVARAJAN, J. (V.C.)

The applicant is a Post Graduate Teacher in the Kendriya Vidyalaya, Kokrajhar, Assam. He is aggrieved by the adverse remarks made in the ACR

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for the year ending 31.3.2003 by the Reviewing Officer. Pursuant to the communication of the said adverse entries by memo dated 4.9.2003 (Annexure-C) by the 3rd respondent, the applicant made representation dated 14.10.2003 (Annexure-D) for expunging the adverse remarks to the 3rd respondent. The said representation was rejected by order dated 27.1.2004 (Annexure-E) by the 3rd respondent himself. The applicant is aggrieved by the said order and hence this O.A.

2. After several opportunities, a written statement was filed on 15.3.2005. Thereafter the parties the parties were heard on 17.3.2005. On such hearing it was felt that the then incumbent of the 3rd respondent was not fair to the applicant and he had given a go by to relevant rules. Therefore we thought of giving an opportunity to him explain the position. He was asked to appear in person on the next posting date. The incumbent of the 3rd respondent is presently at Bombay. Advocate Mr. S.C.Biswas appeared on behalf of the said person on 11.4.2005. Since the affidavit already filed was not satisfactory, by order dated 19.5.2005, respondents were directed to file a



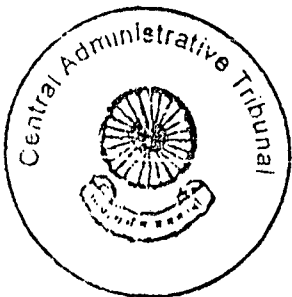
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proper affidavit containing the relevant rules and the authority who is competent under the rules to write the ACR and also to consider the representation of the applicant. The then incumbent has now filed an additional affidavit on 27.6.2005 wherein he had admitted the mistake in passing the impugned order overlooking the provisions of the Rules 89 (A) of the Education Code. It is stated as follows:-

"There was an inadvertent mistake of the answering deponent, but by the time when the applicant filed his representation on 14.10.2003 he was reverted to PGT. Moreover, the applicant has addressed the representation to the Assistant Commissioner, KVS, Silchar Region to expunge the adverse remark entered by the Reviewing Officer. It may be pertinent to mention here that in respect of PGT, the Reviewing Officer is the Education Officer and the present deponent is the Appellate Authority as the Assistant Commissioner, as such the answering deponent on good faith and bonafide belief held that since the applicant is holding the post of PGT, the answering deponent is entitled to expunge the ACR. This is the mistake of answering deponent for choosing the forum of expunging the ACR by the applicant as PGT addressing the Assistant Commissioner."

It is also stated that for this technical error whatever loss has been suffered by the applicant is

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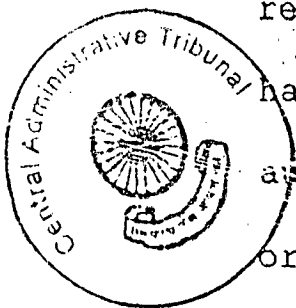


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reparable at this stage by the direction of this Tribunal.

3. We have heard Mr. A.K.Roy, learned counsel for the applicant and Mr.M.K.Mazumdar, learned Standing counsel for the Kendriya Vidyalaya. Now the respondents had admitted that the impugned order was passed without following the provisions under Rule 89 (A) of the Education Code. In other words, under Rule 89 (A) of the Education Code the 3rd respondent who have issued Annexure-C memo, on receipt of the representation (Annexure-D) should have forwarded the same to the next higher authority with his own remarks for passing the order on the same, but he himself has rejected the same. Since this is plainly against the provisions under Rule 89 (A) (ii) & (iii) of the Education Code the impugned order at Annexure-D is set aside. The present incumbent of the 3rd respondent is directed to forward the representation (Annexure-D) submitted by the applicant with his remarks to the next higher authority, namely, the 2nd respondent - the Deputy Commissioner within a period of one month from today and the 2nd respondent is directed to consider the representation as mandated under



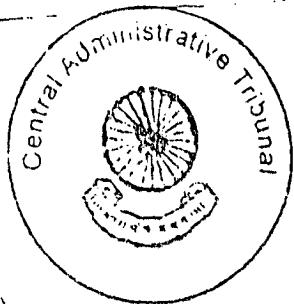
for

the provisions of Rule 89 (A) (iii) of the Education Code. Mr. M. K. Mazumdar, counsel for the KVS has brought to our notice that Education Code has been recast and the relevant Rules in place of Rule 89 (A) is Article 91 which is in pari materia. In the circumstances, the 2nd respondent will consider the applicant's representation as mandated under Article 91 particularly sub-rule (iii) thereof and pass a reasoned order within the time specified therein.

The Original Application is disposed of as above. The reasoned order to be passed on the representation will also be communicated to the applicant without delay.

SD/VICE CHAIRMAN

SD/MEMBER (A)



TRUE COPY

प्रतिरूपि

अनुभाग अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
गुजराती न्यायपीठ
ज. न्या. अ. न्या. पीठ
ज. न्या. अ. न्या. पीठ-5
22/8

- 28 -

ANNEXURE - B G

KENDRIYA VIDYALAYA SANGATHAN
18, INSTITUTIONAL AREA,
SHAHEED JEET SINGH MARG,
NEW DELHI-110016

Ref. No. 1-1/2005-KVS(CCPU)/2111 Date: 24th October, 2005

MEMORANDUM

Whereas, the adverse entries in the ACR for the year 2002-2003 of Sh.. E.M. Reddy, Ex-Principal, Kendriya Vidyalaya Panisagar were conveyed to him vide KVS (Silcher Region) letter NoF.ACR/2003/KVS(SR)/11304-07 dated 04-09-2003.

Whereas, a representation dt.14.10.2003 against the adverse entries was made by Sh.. E.M. Reddy, Ex-Principal, which was disposed off by the Assistant Commissioner, KVS, Silcher Region vide letter No. 2-8(ACR)/2003-KVS(SR)/21376-79 dt. 27.01.2004 at his level instead of forwarding the matter to the appellate authority i.e. Dy. Commissioner (Pers.) in the instant case.

Whereas, Sh.. E.M. Reddy, Ex-Principal, filed an O.A. No. 120/2004 in the Central Administrative Tribunal, Guwahati bench against the adverse entries recorded in his ACR for the period from 1.4.2002 - 31.3.2003. The Hon'ble CAT has pronounced its judgment on 9.8.2005, the operative part of which is reproduced hereunder:-

"In other words, under rule 89(A) of Education Code the 3rd respondent who have issued Annexure-C memo, on receipt of the representation (Annexure-D) should have forwarded the same to the next higher authority with his own remarks for passing of order on the same but he himself has rejected the same. Since this is plainly against the provisions under Rule 89(A) (ii) & (iii) of the Education Code the impugned order at Annexure-D is set aside. The present incumbent of the 3rd respondent is directed to forward the representation (Annexure-D) submitted by the applicant with his remarks to the next higher authority, namely, the 2nd respondent - the Deputy Commissioner within a period of one month from today and the 2nd respondent is directed to consider the representation as mandated under the provisions of Rule 89 (A) (iii) of the Education Code. Mr. M.K. Mazumdar, counsel for the KVS has brought to our notice that Education Code has been recast and the relevant Rules in place of Rule 89(A) is Article 91 which is in pari materia.

Contd...p/2

Received on 31/10/05

Attested by
[Signature]
Advocate
28/11/06

In the circumstances, the 2nd respondent will consider the applicant's representation as mandated under Article 91 particularly sub-rule (iii) thereof and pass a reasoned order within the time specified therein."

Whereas, The Assistant Commissioner, KVS(Silcher Region) has forwarded the representation dt 14th October,2003 of Sh. E.M. Reddy to the competent appellate authority vide letter No.F.4-1/2005/KVS/(SR)/11982-85 dt. 21.9.2005 in compliance with the order dt. 09.08.2005 of the Hon'ble CAT.

Whereas, the undersigned after due consideration of the plea put forth in his appeal Vis-à-Vis other material available on the record has come to the conclusion that his representation to expunge the adverse entries has no merit.

Now, therefore, the undersigned being the competent authority in the instant case, disposes the appeal of Sh. E.M. Reddy, Ex-Principal, Kendriya Vidyalaya Panisagar, with the order to maintain the status quo.



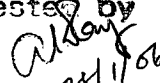
(RAJVIR SINGH)
DY.COMMISSIONER(PERS.)

Sh. E.M. Reddy, Ex-Principal
(Now reverted as PGT(Chem))
Kendriya Vidyalaya , Kokrajhar

Copy to:

1. The Asstt.. Commissioner, KVS (Silcher Region.) for further necessary action.
2. Section Officer (L&C) – for information.

DY.COMMISSIONER(PERS.)

Attested by

21/1/06
Advocate.

SL NO. 199
DIST:



IN THE GAUHATI HIGH COURT
[THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH]

O. A NO. 60 OF 2006

E. M. Reddy - - - Applicant
Versus
Kendriya Vidyalaya Sangathan Vrs.
Respondent
Opposite-party

Know all men by these presents that the above named applicant do hereby nominate, constitute and appoint Sri/Smt. A. K. Ray & L. Wapang,
Advocate and such of the undermentioned Advocates as shall accept this Vakalatnama to be my/our true and lawful advocates to appear and act for me/us in the matter noted above and in connection there with and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filing in or taking out papers, deeds of composition etc. for me/us and on my/our behalf and we agree to ratify and confirm all acts to be done by the said advocates as mine/ours for all intents and purpose of non-payment of the stipulated fee in full. no Advocate will be bound to appear and act on my/our behalf.

In Witness Whereof/We hereunto set my/our hand on this 20th day of Jan 2006

MR. ASHOK KUMAR RAY ✓
MRS. SAKUNTALA RAY
MR. INDRANIL GOGOI
MR. S. C. DUTTA ROY
MR. R.K. PAUL
MR. TAPAN KUMAR DAS
MR. SANJEEB SEAL
MR. JOON SENAPATI
MR. ABHIJIT BHATTACHARYA
MR. LIMAWAPANG

Received from the executant
satisfied and accepted.

Advocate

Mr. will lead
me/us in the case.

Advocate

And Accepted

Advocate

And Accepted

Advocate

And Accepted

Advocate

53
Edunari Mounendar Reddy

Notice

From: L. Wapang
Advocate
C.A.T.

To,

Mr. S.C. Biswas/M.K. Mazumdar.
Standing counsel
K. V. S.

Sub: O. A. No. — / 2006.

E.M. Reddy.

--- Applicant.

- vs -

K. V. S & ors.

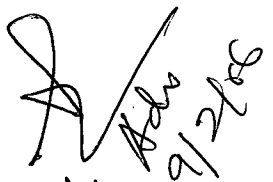
--- Respondents.

Sir,

please find herewith a copy of the
abovementioned Original Applications
and kindly acknowledge the receipt
thereof.

Thanking you.

Received by:


21/2/06
Standing Counsel

K. V. S.

Yours sincerely

L. Wapang
Advocate.

C. A. T.

- 1 AUG 2006

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH - GUWAHATI

O.A. No.40/2006

Shri E.M. Reddy,

.... Applicant

- V E R S U S -

Commissioner, KVS & Others

.... Respondents

- AND -

IN THE MATTER OF :

Written Statement filed by
the Respondents.

- AND -

IN THE MATTER OF :

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

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

- 1) That I, Sri M. Radhakrishnan, Assistant Commissioner, Kendriya Vidyalaya Sangathan, Silchar Region being served the copy of the Original Application, I have gone through the contents thereof. I am competent to serve this Written Statement on being supplied with para-wise comments from the Head-quarters on behalf of the respondents, they being official respondents. I am fully acquainted with the facts and circumstances of the case.

contd.... p/2.

Filed by the Respondents
Through MK Majumdar
Advocate
Standing Counsel K.V. Sangathan
1.8.06

2) That the deponent states the allegations/averments which is not borne out by records are denied and not admitted. Any averments/allegations which are not specifically admitted hereinafter is deemed to be denied.

3) That the deponent begs to apprise that the grievance of the applicant is that Sh. E.M. Reddy, Ex-Principal, Kendriya Vidyalaya Panisagar (Now reverted as PGT(Chem) Kendriya Vidyalaya, Kokrajhar was conveyed the adverse remarks in his ACR for the year 2002-03 vide KVS, Silchar Region Memorandum dt. 4.9.2003. He represented against the adverse entries on 14.10.03 which was rejected by Assistant Commissioner, Silchar vide order dated 27.1.04. He filed O.A. No.120/04 before CAT, Guwahati which was disposed of vide order dated 9.8.2005 with direction to the respondents to consider the applicant's representation as mandated under the provision of Rule 89 (A)(iii) of the Education Code. In compliance with the order of Hon'ble CAT, the appellate authority vide Memorandum dated 24.10.05 issued a reasoned order stating that the plea put forth in his appeal Vis-a-vis other material available on the record has come to the conclusion that his representation to expunge the adverse entries has no merit. Aggrieved by this order dated 24.10.2005, the applicant filed this O.A. No. 40/2006.

Therefore there is no merit in the applicant's case which may be dismissed. The para-wise comments of the O.A. are submitted as under :

contd.... p/3.

Para-wise Comments

4) That with regard to the statements made in part (i) and (ii) of Sl.No.4 the respondent says that these are matter of records and does not forward any comment..

5) That with regard to the statement made in para(iii) of Sl.No.4, the respondent states that the contention is denied. Lot of complaints were received against the applicant. In nominee Chairman of Kendriya Vidyalaya Panisagar vide his letter dt. 19.3.2002 intimated the respondent No. 1 & 3 about various alarming facts observed by him relating to the functioning of applicant as Principal Kendriya Vidyalaya Panisagar. A fact finding inquiry was conducted on 3rd & 4th April, 2002 by the Office of A.C. KVS (Silchar) and on the conclusion, it was found out that some of the charges stood proved. Hence, the adverse remarks were recorded based on the charges proved by Inquiry Committee which are justified and as per the rules. Communicating the adverse remarks by the competent authority is for the betterment of Kendriya Vidyalaya and for the employee too to improve himself so that he can progress in his career by rectifying the lapses and short comings.

6) That with regard to the statements made in para (iv) & (v) the respondent says that these are matter of records and does not forward any comment.

contd.... p/4.

7) That with regard to the statements made in para (vi) and (vii), the respondents states that the contention of the applicant is denied. The respondent No. 3 has categorically stated that Chairman, VMC, Kendriya Vidyalaya Panisagar has discretely inquired the matter and found that no doubt that Sri E.M. Reddy, the present Principal, Kendriya Vidyalaya, Panisagar is a man of egoist type due to which he could not maintain good relation with the nominee Chairman. These views were expressed by the Chairman before the inquiry committee who met him in connection with charges framed by the Chairman's nominee and the committee was inquiring into the facts. It is further to submit that most of the charges framed against the applicant stood proved, which included appointment of the applicant's wife in the same Kendriya Vidyalaya as teacher on contract basis in violation of codal provisions as per article 46 of II edition and article 41 B of III edition of Education Code of Kendriya Vidyalaya.

8) That with regard to the statements made in para (viii) & (ix), the respondents states that, the contention of the applicant is denied as in compliance with the direction of the Hon'ble CAT, Guwahati Bench dt. 9.8.2005, the Assistant Commissioner, KVS (Silchar Region) forwarded the representation of Sh. E.M. Reddy, Ex-Principal Kendriya Vidyalaya, Panisagar for expunction of adverse remarks and the same was disposed as per article 91 of the Kendriya Vidyalaya Education Code by

contd.... p/5.

the respondent No. 2 by rejecting the representation based on the facts/material available on records.

9) That with regard to the statements made in para (x) and (xi), the respondents states that the contention of the applicant is denied as he tries to assess his own performance such as he earned good name and fame to Kendriya Vidyalaya, Panisagar and to Sangathan. However, from the records it is evident that during his tenure as Principal, various irregularities had taken place such as he has appointed teachers on contractual part time basis violating the KVS norms and the purchases were made by violating the prescribed purchase procedure as per the report of the Inquiry Committee. In fact appointment of the applicant's spouse on part time contractual basis by him in the same Vidyalaya where he was functioning as Principal is a serious irregularity and against established principles.

10) That with regard to the statements made in para (xii) and (xiii), the respondents states that it is pertinent to state that by appointing his spouse at Kendriya Vidyalaya Panisagar as part time contractual teacher, the applicant committed serious misconduct. Like wise placing of supply order without getting the approval of the Chairman, VMC on the comparative statement is a serious lapse on the part of the applicant. For such type of lapses the applicant can't except the respondent to be a silent spectator meaning thereby simply issue a warning etc. As such recording adverse entries in his ACR is perfectly in order.

contd.... p/6.

11) That with regard to the statement made in para (xiv) the respondents states that the communication of adverse entries to the applicant is perfectly in order as the reviewing officer didn't agree with the remarks of the reporting officer.

12) That with regard to the statements made in para (xv) and (xvi), the respondent states that the rejection of the representation by the respondent No. 2 is based on the material available on the records. As already stated above, the applicant committed serious misconduct by appointing his wife at Kendriya Vidyalaya Panisagar on part time contract basis in violation of instructions contained in Education Code. He also didn't follow the prescribed purchase procedure. He didn't maintain financial propriety. Hence the retention of the adverse remarks is very much justified no bias can be attributed on the part of the reviewing officer or the appellate authority.

13) That with regard to the statement made in para (xvii) the respondents states that it is once again submitted that there were lot of complaints against the applicant from the vidyalaya level as well as from the parents side, which after verification were found to be true, to certain extent. The reviewing officer has clearly stated in the ACR about the nature of lapses committed by the applicant which itself justified the ~~xxjxj~~ rejection of his representation.

contd.... p/7.

14) That with regard to the statement made in para (xviii), the respondents states that as per the report of the reviewing officer related to various information which couldn't be compiled at R.O. Silchar in time, it is seen that the applicant was not furnishing the required details to the concerned R.O. in time, which has cause delay at the R.O. level to furnish the data etc. to KVS (Hqr.). It is also informed by the reviewing officer about the various other complaints issued against the applicant are as follows :

- i) Shri Reddy did not release the annual increments as well as payment of salary of 50 days in respect of Sh. Vinay Kumar, Ex-TGT (Maths), resulting to dilatory/ harassing tactics for clearance of medical bills and causing heavy and burdensome recovery on Shri Vinay Kumar, alleged unjustified stoppage of payment of DHRA to him.
- ii) Complaints were made by Sh. Amal Mukherjee, Ex-UDC, Kendriya Vidyalaya, Panisagar regarding abuse of official position :
 - (a) Alleged granting of EL in conjunction with winter break w.e.f. 2.01.03 to 10.01.03 to Sh.B.Suresh, WET without any power to sanction leave in conjunction with winter break.
 - (b) Imposing heavy and burdensome recoveries on innocent employees against two alleged missing

batteries, which were later found in the Vidyalaya itself in damaged condition.

(c) Alleged drawl of salary for self at a higher basic Rs.11,300/- for 18 days for the month of July 2001 as against his actual basic pay of Rs.10,000/-

iii) Removal of Shri Khupai Lal Group 'D' belonging to ST community from service by abusing the provision of article 81 (d) of Education Code by not exhausting the procedure completely before removing a person from the service by issuing an order dated 02.05.2003. The appellate authority later reinstated the service of Shri Khupai Lal.

There were no good remarks recorded by the reviewing officer in the ACR of the applicant warranting the communication to the applicant.

15) That with regard to the grounds made in the application the respondent states that these are not good grounds for considering the case of applicant and further states that the Principal of a Vidyalaya is expected to follow the rules and regulations without violating the same. He should be a role model. However in the instant case, lot of complaints were pouring in against the applicant and most of them were found to be true. By appointing his wife as part time contract teacher in the same Vidyalaya, the applicant committed

contd.... p/9.

serious misconduct. He did not follow the financial propriety laid down in the Accounts Code of the Kendriya Vidyalaya. Warning, reprimand etc. can be issued in cases where the lapses are inconsequential in nature but in the instant case, the lapses committed by the applicant were serious in nature. As such, the rejection of his appeal by the appellate authority is perfectly in order.

16) Under the fact and circumstances stated above it is prayed that O.A. No. 40/2006 dt. 23.2.2006 filed by applicant may please be dismissed by the Hon'ble Central Administrative Tribunal, Guwahati Bench being devoid of merits.

Verification.....

VERIFICATION

I Shri Uday Narayan Khawarey, Son of Shri Jagat Narayan Khawarey, aged about 45 years, presently working as Assistant Commissioner in the Regional Office of Kendriya Vidyalaya Sangathan, Jawaharnagar, Khanapara, do hereby verified that the statement made in paragraphs 4, 6, 7-13, 15 and 16 are true to my knowledge and those made in paragraphs 3, 5 and 14 are based on records.

And I sign this verification on this the day of 1st Aug, 2006 at

Guwahati

Uday Narayan Khawarey

DEPONENT

Place : Guwahati
1.8.06

Date :

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO. 40/2006

IN THE MATTER OF:
Shri. E.M. Reddy

- VERSUS -

Kendriya Vidyalaya Sangatham & ors.

- AND -

IN THE MATTER OF: *Rejoinder*
~~An additional statement~~ on behalf of
the applicant against the written statement
filed by the Respondents.

The applicant most humbly begs to state as follows: -

1. That the applicant has been served with a copy of written statement filed by the Assistant Commissioner, Silchar Region, through his advocate and after going through the same, have understood the contents thereof and hence save and accept those statement which have been specifically admitted herein below all other statements of the written statements may be deemed to be denied and also those statements which do not born on the records may also be deemed to be denied.

2. That with regard to the statements made in paragraph 3 of the written statement the applicant states that though the respondent No.2 disposed of the representation submitted by this applicant, but failed to comply with the direction of this Hon'ble Tribunal and the same

Filed by the applicant
through: L. S. S. S.
4/9/06
Advocate

is evident from the order of the Respondent No.2 . From the order dated 24.10.2005 of the Respondent No.2, it is very much clear that the said Respondent did not consider all the points raised by this applicant against the adverse remarks. The applicant also states that the respondents have considered irrelevant matters as is evident from the written statement itself, and accordingly rejected representation denying to expunge the adverse entries for the year 2002-2003.

3. That with regard to the statements made in paragraphs 5 and 7 of the written statement, the applicant strongly deny the same and states that nothing have ever been proved in any fact finding enquiry. The applicant also states that from the date of the letter dated 19.3.2002, it is very much clear that the fact is related to for the year 2001-2002 which cannot be counted for ACR relating w.e.f. 2002-2003. It is pertinent to mention that at the relevant time i.e. on 19.3.2002 one nominee chairman came to the school for one week in absence of regular chairman, and the said chairman raised some false allegations against the applicant but before the fact finding inquiry same were not proved in as much as no such adverse enquiry report was ever communicated to the applicant. The applicant also states that before the said fact finding enquiry, more than hundred parents of the student submitted their statement in writing in support

of the applicant which will clearly prove that all the allegations of the nominee chairman were false and baseless and hence the respondents may be directed to produce all the statements of the parents. The applicant states that in para 7 of the written statement, the respondent has indirectly accepted that the Nominee Chairman was annoyed with the applicant due to applicant's egoist. But all the allegations which were made by the said chairman were related to the period 2001-2002. It is pertinent to mention here that during in session 2001-2002, his wife was selected by the committee and forwarded her name and hence the applicant allowed her to joint. In this connection, the respondents served two memorandum of charges - one dated 16.1.2003 and another dated 28.7.2003 - on the same charge and accordingly the applicant approached this Hon'ble Tribunal by filing O.A. No.310/2004 and this Hon'ble Court disposed on 17.3.2005 of the same with certain direction to the respondents. On the basis of the direction of this Hon'ble Court, the respondents exempted the applicant from the charges by an order dated 27.5.05 and hence, the respondents cannot take the same under consideration for ACR for the period w.e.f. 1.4.2002 to 31.3.2003. In fact, there is no basis for writing adverse remark in the ACR and hence the respondents taking all the irrelevant matter to mislead this Hon'ble Tribunal without annexing any relevant documents whatsoever.

Copy of the order 27.5.2005 is annexed
herewith as ANNEXURED - H.

4. That with regard to the statements made in paragraph 8 of the written statement, the applicant states and reiterate that the respondents have violated the settled position of law and also the direction of this Hon'ble Tribunal.

5. That in respect to the statements made in paragraphs 9, 10 and 12 of the written statement, the applicant deny the same and reiterate all the statements made in original application. He also states that all the allegations are concocted and baseless. No allegations have even been proved by the committee and no adverse report have ever been communicated to the applicant as per requirement of law. Had any irregularity was proved, the applicant could have been punished at the relevant time after being proved by the committee but same has not been done and hence all the allegation as stated in the written statement are after thought and concocted. The applicant also states that contractual appointment of his wife as has been stated in written statement is for the year 2001-2002, moreover, the same was done as per the relevant Rules and procedure and hence the applicant has been exempted from the same charge. The applicant have neither violated any Rule of the Education Code nor violated any procedure of the Sangatham.

6. That with regard to the statement made in paragraph 11 of the written statement, the applicant

states that reviewing officer cannot go totally against all the entries of the reporting officer, more so, without any incriminating document and without following the relevant Rules as has been done in the instant case.

7. That in respect to the statements made in paragraph 13 of the written statement, the applicant deny the same and states that no complaint has ever been made by the parents which can be claimed to have proved during the relevant period. The reviewing officer as well as the appellate authority acted whimsically and illegally in recording the ACR in as much as no lapses committed by the applicant. It is pertinent to state that before the fact finding committee which was held in the month of April, 2002, more than hundred parents submitted their statements in support of the applicant and hence the statements of the respondents are totally false and that has been made with intention to mislead this Hon'ble Tribunal. Besides, the Reviewing Officer has entered the adverse remarks in gross violation of the relevant Rules and hence the same is liable to be set aside and quashed.

8. That in respect to the statements made paragraph 14 of the written statement, the applicant deny the same in toto and states that if that is so how the same can be the basis for writing adverse remarks by the Reviewing authority for the year 2002-2003. In fact, the applicant have furnished all the informations in due time

and what ever steps he had taken, the same were taken with full knowledge of the Assistant Commissioner. He also states that all the allegations as have been made in paragraph 14 are totally false and there was no fault of the applicant. Had there was any fault of the applicant, the respondents could have taken appropriate disciplinary action against him, but the same has not been done. Even, besides above, the respondent never made any communication to the applicant giving any warning in respect of those matter.

That in respect to the allegation made in sub paragraph (i) of paragraph 14, the applicant states that the same is related to the period 2001-2002 and after the same, audit was conducted and as per Audit report there was no illegality.

That in respect to the allegation made in sub-para (ii) (a) of paragraph 14 of written statement, the applicant state that there was no illegality in as much as whatever action was taken by the applicant, same was done with prior approval of the Assistant Commissioner, more so the said Shri. Amal Mukharjee, was terminated by the Assistant Commissioner himself due to his continuous and habitual unauthorised leave. Hence, now the burden cannot be shifted on the applicant without proper enquiry.

Regarding sub-paragraph (ii)(b) of paragraph 14, this applicant deny the same in as much as the same are concocted and baseless. In fact all the allegations have been leveled only with intention to substantiate the action of the respondents.

So, far the allegation made in sub-paragraph (ii)(c) of paragraph 14 is concerned, this applicant states that he drawn the higher basic only on the basis of the last pay certificate, but when audit directed to draw @ Rs.10,000/- till the basic is fixed, he accepted the same. The applicant also states that the same is related to the year 2001 and hence cannot be taken into consideration.

That in respect to the allegation made in sub-para (iii) of paragraph 14, the applicant states that there was no illegality and the same was done by following the Education Code. Moreover, the said Shri. Khupai Lal had accepted the same in as much as he did not filed any appeal what so ever for the said action.

The applicant also reiterate and states that in respect of the above allegations, the respondents neither communicated to the applicant nor have taken any action and hence the same cannot be taken into consideration for adverse entry in ACR.

9. That in respect to the statements made in paragraphs 15 and 16 of the written statement, the applicant states that all the grounds set forth in the original application are good ground to set aside the adverse remark. He always acted as a Role Model. The allegations which have been leveled in the written statement are false and baseless and the same never been proved and for the same communication and/or warning was given to the applicant. In this connection, the applicant pray this Hon'ble Tribunal to direct the respondents to produce all audit report of the relevant period to justify the claim.

Under the circumstances, the applicant submits that there is sufficient grounds in the original application for which this Hon'ble Tribunal may interfere granting all the reliefs as prayed for.

VERIFICATION

I Shri. Edunari Mounendar Reddy, son of Shri. Ranga Reddy, aged about 49 year, residing at Ram Krishna Mission, Kokrajhar, P.O. & Dist- Kokrajhar (Assam) at present working as PGT, KV, Kokrajhar do hereby verify that the statements made in paragraph 1 to 9 of this additional statements are true to my personal knowledge and submission made therein, I believe the same are true as per legal advice and I have not suppressed any material fact of case.

And I sign this verification on this the 6th day of August, 2006 at Guwahati.

Edunari Mounendar Reddy

By Speed Post/Confidential

KENDRIYA VIDYALAYA SANGATHAN

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

F. 9-54/04-KVS(Vig.)

Dated — 27 — 05-2005

ORDER

WHEREAS Shri E.M. Reddy, PGT(Chem.), Kendriya Vidyalaya, Kokrajhar has been charge-sheeted under Rule-16 of the CCS [CCA] Rules, 1965 vide memorandum dated 28.07.2003 for appointing his wife Smt. E. Sree-devi on part-time contractual basis in the year 2001 while functioning as Principal on deputation basis at Kendriya Vidyalaya, Panisagar and on conclusion of the Disciplinary Proceedings he has been awarded the penalty of "Censure" vide order dated 31.3/2.4.2004 by the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Guwahati being the Disciplinary Authority.

WHEREAS the said Shri E.M. Reddy has preferred an appeal dated 26.04.2004 to the Appellate Authority being aggrieved by the above said order of the Disciplinary Authority, making the following submissions:-

1. That when he was functioning as Principal on deputation at Kendriya Vidyalaya, Panisagar an advertisement was made for part-time/contractual-teachers for the Vidyalaya. A number of candidates applied and appeared before the selection committee. The selection committee selected a number of candidates including Smt. E. Sree Devi i.e. his wife. As the selection committee selected Smt. E. Sree Devi as top in the merit list and recommended her name, he was bound to appoint her on contractual basis for one year and there was no wrong in as much as the Apex Court in one case has given verdict that "one selected candidate can not be denied to give appointment on the ground that the relative is working in the same organization" the said judgement has been reported in AIR 1997 SC 272.
2. As per the circular dated 26.11.99 of KVS(HQ) clearly empowers the Principal to make appointment on contractual basis including part-time and hence there is no illegality in appointing the said candidate and there is no violation of any rule or provision.
3. He was served with a Charge-Sheet under Rule-16 of CCS (CCA) Rules, 1965 vide Memorandum dated 28.07.2003 with allegation that he appointed his wife Smt. E. Sree Devi as part-time contractual basis in the year 2001 violating the provisions in the Article 41(B) of the Education Code for Kendriya Vidyalayas. But in the fact the allegation has no basis in as much as the selection committee selected the said candidate and recommended her for appointment, he can not over look the merit list.

He submitted his reply but the Disciplinary Authority without applying his mind imposed the minor penalty of "Censure" vide order dated 31.3./2.4.2004.

Attested
for
6/8/06
Advocate

contd.2.

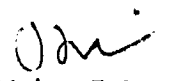
- 5 Vide Memorandum dated 6.12.2002 the same allegation was brought against him, but later on after his reply dated 16.1.2003, nothing was done by the authority for a long time and after a lapse of about 7/8 months, the Disciplinary Authority issued another Memorandum without any justification and with malafide intentions. He approached the Hon'ble CAT, Guwahati challenging the illegal reversion order, the Disciplinary Authority passed the impugned order of censure on the same ground for which earlier no action was taken

WHEREAS, the undersigned after considering all the relevant facts, circumstances of the case on records available and the submission made by the Appellant observed the following :-

Charge-Sheet under Rule-16 of CCS (CCA) Rules, 1965 was issued to him vide Memorandum dated 28.07.2003 for appointing his wife Smt. E. Sreedevi on part-time contractual basis in the year 2001 while functioning as Principal on deputation basis at Kendriya Vidyalaya, Panisagar. After considering his representation a penalty of "Censure" was imposed upon Shri E.M. Reddy by the Assistant Commissioner, KVS, Regional Office, Guwahati vide order dated 31.3/2.4.2004.

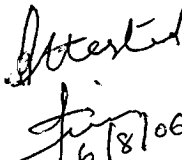
NOW THEREFORE, the under-signed being the Appellate Authority based on consideration of facts & circumstances of the case and contents in the appeal, accepted the appeal of Shri E.M. Reddy on the legal ground of the judgement of the Apex Court reported in AIR 1997 SC 272 that one selected candidate can not be denied to give appointment on the ground that the relative is working in the same organization and decided to set aside the order dated 31.3/02.04.2004 issued by the Assistant Commissioner, KVS, Regional Office, Guwahati being the Disciplinary Authority.

The appeal of Shri E.M. Reddy stands disposed of accordingly.


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

Copy to :-

1. Shri E.M. Reddy, PGT(Chem.), Kendriya Vidyalaya, Kokrajhar.
2. The Assistant Commissioner, KVS, Regional Office, Guwahati.
3. The Principal, Kendriya Vidyalaya, Kokrajhar.
4. Guard file


6/8/06
blw o ate

Notice.

76

From: L. Wapang,
Advocate.

(To,

Mr. S.C. Biswas
Standing Counsel K.V.S.

Sub: O. A. 410 / 2006.

Shri. E.M. Reddy
- vs -
Union of India & ors.

Sir,

please find herewith a copy of the
Additional Statement in reply to the
written statement filed by the Respondent
in the abovementioned original application
and kindly acknowledge the receipt thereof.
Thanking you.

Received by:


1/8/06

Yours sincerely,

L. Wapang,
Advocate.

and gross injustice resulting in prejudice to the delinquent employee alone the question of Courts or Tribunal's interference in the disciplinary action arises, and that too in public interest to meet out justice in individual case. Otherwise, the public damage and disadvantage that results on account of such interference on disciplinary actions may be of great consequence to the department or the establishment which really wants to proceed with the inquiry."

12. A Full Bench of Karnataka High Court in a decision reported in 1975 (2) 11 J 553 T.V. Gauda v. State of Mysore has held that there is no bar for holding disciplinary proceedings even after acquittal in criminal case. This view has been confirmed by the Hon'ble Supreme Court in a case reported in AIR 1984 S.C. 626, *Corporation of the City of Nagpur v. R.G. Modak*. The Ernakulam Bench in the said case observed, that

"It would be difficult to hold when departmental inquiry is not barred even after acquittal, the same is barred before acquittal."

13. On a conspectus of the discussion hereinabove, we are not persuaded that a case for grant of the relief prayed for is made out. The O.A. is liable to be dismissed. There will be no orders as to costs. The interim Order passed earlier is vacated.

Application dismissed

Central Administrative Tribunal—Bombay
The Hon'ble Mr. N.K. Verma, Member (A)

Arvind Balkrishna Bhargava

Versus

State of Maharashtra and Anr.

—Respondents

Decided on 8.11.1995
ACR—Adverse entry by Reviewing Officer—Reviewing Officer did not accept good ACR as recorded by 3 officers and made adverse entry—Neither recorded reasons for this nor communicated adverse remarks to the applicant—Held adverse entry be ignored for the promotion etc.

For the Applicant : Mr. S.P. Patankar, Advocate.

For the Respondents : Mr. G.K. Neelkanth & Mr. V.S. Masurkar, Advocates.

IMPORTANT POINTS

Reviewing Officer must record reasons for making adverse entry in a good C.R.

JUDGMENT

N.K. Verma, Member (A)—Applicant's case is that he was working as the Deputy Conservator of Forests at Dahamu and his case for selection to the higher post was not considered by the respondents during the year 1991-92 whereupon he approached this Tribunal for unfair discrimination. Thereafter he received a confidential letter from Respondent No. 1 wherein certain adverse remarks for the year 89-90 were conveyed to him. His information, The remarks reads as follows :
"The Officer has grossly neglected the inspection of field works. He has practically made no efforts to take effective measures to prevent large scale

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illicit fellings in his jurisdiction. His performance both in the office and field has been mediocre. He should not be promoted unless he shows clear improvement in field and office works."

The applicant thereafter made representations against these adverse remarks and as per letter dated 3.12.1993 from respondent No. 1 the following adverse remarks were expunged from his ACR.

"The Officer has grossly neglected the inspection of field works. He has practically made no efforts to take effective measures to prevent large scale illicit fellings in his jurisdiction."

and

"He should not be promoted unless he shows clear improvement in field and office works."

Subsequently the applicant made further representation on 25.1.1994 saying that the adverse remarks "His performance both in the office and field has been mediocre," be expunged. However, to this he has been replied by impugned order at page 8 dt. 5th September, 1994 that his request cannot be granted. Being aggrieved by this order the applicant in this O.A. has prayed for directions to the respondents to consider his representation in a comprehensive manner and also has brought to my notice the delay in communicating the adverse remarks to him within the reasonable time which is in violation of Rule No. 8(i) of the All India Services (Confidential Rolls) Rules, 1970. He has also brought to the notice that by keeping the portion of the adverse remarks regarding his performance being mediocre the result of expunction of major portion of adverse remarks has been negated as the sting of adverse remarks continued inspite of expunction. Therefore the applicant has prayed that the entire adverse remarks communicated to him should be expunged.

2. As per the prayer of the applicant in the O.A. and the submission of the learned Counsel for the applicant the ACR file of the applicant was requisitioned for perusal of the Court. On the points reiterated by the Counsel for the applicant was that the reviewing officer who had given the adverse remarks was not supposed to review the ACRs of the applicant in view of the Govt. of Maharashtra notification dt. 20.4.1990 whereby the Principal Conservator of Forest has been designated as the reviewing authority and the Secretary Forest has been designated as accepting authority. In any case the applicant has served under three Conservator of Forest who had given positive report in his favour. It was the Chief Conservator of Forest who had disagreed with the observation of three other reporting officers and given a adverse remark without any foundation. That action had not been communicated to him in time. But for the applicant's own alertness and vigilance in the matter the same would have gone up communicated and would have caused grievous injuries to his interest in selections which were held in the past and which would be held now. In view of these irregularities the adverse entries made for the year 1989-90 should be expunged.

3. Shri Nilkanth and Shri V.S. Masurkar brought to my notice that the circular issued on 20.4.90 was not actually implemented by the respondents and the Chief Conservator of Forest reviewed the ACRs as per the previous Orders on the subject. There was a deliberate delay in communicating the adverse entries and there is no contradiction to the remarks now as it stands.

4. I have given serious consideration to both the averments and submissions of the parties. A perusal of the ACR file indicates that the applicant has generally a good

for all the years. Even the year under reference, the three reporting officer have given him favourable entries without any reservations. One of the officers has graded him Very Good and also said that he was an excellent officer. This was the CR for the period 7.11.89 to 31.3.90. Normally the reviewing officer should have taken into account the latest observation on the performance of the officer concerned and even if he would have disagreed with the observations recorded, he should have taken pains to find out and record the reasons for opinion which were not complimentary to the officer. Not only he did not do that, he did not even consider it necessary to inform the officer on his own that he had occasion to record adverse entries regarding his performance so that the officer could take proper steps to improve his performance. It is also rather unfortunate that the Accepting Officer who happened to be Principal Conservator of Forest agreed with the reviewing officer without indicating or recording any decision of communication the entries to the applicant. This decision of the reviewing and accepting authority to record uncomplimentary remarks about an officer without communicating the same to the concerned party is totally incorrect and improper. What pains more is that even when the applicant sought intervention of this Tribunal to ascertain the reasons for his non inclusion in the select list the entire adverse reports recorded by the reviewing officer was not communicated. There was one complete paragraph in the ACR for the period 3.7.89 to 31.3.90 at para 4 which is not complimentary and which will act against him all the time to come. The reviewing officer has recorded that:

"I do not agree. The officer has not assigned adequate priority to field work and inspection of forest for preventing illicit felling. The general assessment given by the reporting officer is not based on facts."

This part of the adverse entry was not at all communicated to the officer and he was not made aware why the reviewing officer was not in tune with the reporting officer. Even after the expunged portion of the ACR for the year is overlooked the sting left in the remaining part is good enough to cause harm for any promotion which he would be getting in years to come or later in his career.

5. While the system of reviewing and acceptance of the ACR enjoined by Order dt. 20.4.90 is yet to take proper implementation in the subordinate units of Govt. of Maharashtra the existing Orders relating to the writing of ACRs and communication of adverse entries have not been followed in the letter and spirit as would be evident from the discussions above. The officer has already suffered prejudice on account of adverse entries made in his ACR and he would continue to suffer unless a remedy is found regarding this. In the totality of the circumstances I am constrained to order that the entire reviewed CR for the year 89-90 recorded by the then Chief Conservator of Forest Shri R.L. Chowdhary should be ignored for the purpose of any selection/DPC to be held in respect of this officer. The Secretary of the Department of Forest who has now been designated as the accepting authority should call for the CR of the officer and make proper observation in this regard so that the anomaly created by the order dated 20.4.90 is also removed. The Department of Forest must also ensure that the orders issued under that Govt. circular are complied with fully without any violation thereof so that no undue prejudice and injury are caused to members of this cadre.

The O.A. succeeds to the extent that the entire adverse entry which were not communicated to the applicant even on 10.2.92 should be ignored for the purpose of any selection procedure to which he would be subjected hereafter. There will be no order as to

Application partly allowed

pay for the ticket. The respondents while acknowledging the letter dated 10.8.1987 specifically called upon the applicant to admit or deny each charge within 30 days from date of issue of memo. "otherwise it will be presumed that he has admitted the charge levelled against him and ex parte decision in the matter will be taken resulting in dismissal or removal from service." To this letter, the applicant has sent the letter dated 31.10.1988 explaining that because of his physical and financial problems he was not able to discharge the duties as D/Man Grade II and he, therefore, sought voluntary retirement. Respondent No. 3 after examining all aspects of the case and reply sent by the applicant came to the conclusion that his request for voluntary retirement cannot be agreed to. He also stated that in the circumstances, the reasons given by him are not convincing and he had not applied for extension of leave beyond 5.11.1987. In the circumstances, he held that the charge against him was proved and he passed the impugned penalty order of dismissal with immediate effect and the period of unauthorised absence from 5.11.1987 to date be treated as dies-non for all purposes.

4. We heard Shri C.B. Pillai, learned Counsel for the applicant at great length. He appeared for the respondents though called twice.

5. The main contention of Shri Pillai, learned Counsel for the applicant is that the conditions attached to the permission granted to the applicant for going abroad are unconscionable and bad in law. He submits that the O.M. No. VI/401/40/83 dated 14.6.1985 relied upon by the respondents for imposing on him the conditions, which the respondents termed as 'undertaking' are not supported by the O.M. The other ground raised by Shri Pillai is that no Inquiry Officer had been appointed to carry out the inquiry which is contrary to the rules. In this connection, he has referred to the reply filed by the respondents in which they have stated that the disciplinary authority had taken the decision ex parte since the applicant neither appeared in person nor represented his case before the 'Inquiry Officers'. According to learned Counsel, this shows that there were Inquiry Officers, although he was not informed of any is having been appointed as per the rules. The next point he has taken is that the respondents have also admitted that he had given a reply to the memo. of charges by his letter dated 10.8.1987 and, therefore, reply of the respondents to the fact that he did not make any representation in his case before the Inquiry Officers is wrong. He also relies on the judgments in the matter of *UOI v. Giriraj Sharma* reported in (1995) SSC (L&S) 290 and in the matter of *Dr. Puzhankara Kamalan v. D.C. ICAR* reported in 1989 ATC (9) 26 CAT, Madras. We have carefully considered the arguments of Shri Pillai and perused the records.

6. In this case, the impugned penalty order has been passed by Respondent No. 3, who is the competent disciplinary authority in this case. It is seen that the memos dated 26.11.1986 and 29.12.1986 and the chargesheet dated 6.7.1987 have been issued by Respondent No. 3 himself. The replies and representations to the chargesheet and extension of leave submitted by the applicant have also been addressed to the disciplinary authority. In the circumstances, the disciplinary authority has, after perusal of the records, passed a detailed and speaking order giving reasons for arriving at the conclusion that the applicant's request for voluntary retirement cannot be agreed to and that the charges have been proved. Under Rule 14(4) of the CCS (CCA) rules it is not mandatory for the disciplinary authority to appoint an Enquiry Officer in all cases. In this case, the disciplinary authority had himself passed the penalty order after perusing the relevant documents. Merely because in the reply the respondents have loosely referred to the fact that the applicant had not represented his case before the 'Inquiry Officers' does not necessarily mean in the circumstances of the case that an Inquiry Officer had been appointed. The disciplinary authority has himself inquired into the matter and passed an appropriate order.

there is no legal infirmity in the procedure adopted by the disciplinary authority and the impugned order is valid.

The conditions given in the undertaking before the applicant was sanctioned the leave have been accepted by the applicant. In the circumstances, it is not open to him at this stage to challenge the validity of the same. Further these conditions are neither arbitrary or unreasonable. We do not also find the cases relied upon by the applicant relevant to the facts of the case.

In the facts and circumstances of the case, we find that there is no ground to grant any interference in the matter. The application is without any merit and it is hereby dismissed. No costs.

Application dismissed

Central Administrative Tribunal—Allahabad

The Hon'ble Mr. S. Das Gupta, Member (A)

The Hon'ble Mr. T.L. Verma, Member (J)

Sri. Kamla Devi

—Applicant

Versus

Union of India & Ors.

—Respondents

No. 1363 of 1992

Decided on 24.8.1995

Ex parte Enquiry, Reasonable opportunity, Removal, Presumption by CAT—Applicant's husband's life was under threat at Allahabad, had fallen sick and gone to hospital, had sent medical certificate, had requested for transfer, had ultimately died, but Govt. forgetting everything charged for absence—Requested to hold enquiry away from Allahabad also not heeded & ex-parte held—No written statement by govt., in CAT, so all the above averments remained unchallenged & accepted by CAT—Held he was denied reasonable opportunity so enquiry was deficient—Set aside removal.

Referred :

1. C.S. Rouyee v. State of Andhra Pradesh, A.I.R. 1964 S.C. 692.
2. Arbind Das v. State of West Bengal, 1983(2) SLR 612.
3. Ram Chandra v. Union of India, A.I.R. 1968 S.C. 1173.

For the Applicant :

Mr. A.K. Sinha, Advocate.

For the Respondents :

Mr. A.S.F. Naqvi, Advocate.

IMPORTANT POINTS

1. Appellate authority must consider and dispose of all the points raised in appeal.
2. Employees points should be looked into and dealt with in proper perspective.

JUDGMENT

S. Das Gupta, Member (A).—This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 by the widow of late Bansh Raj Sharma, Ex-Railway

Employee seeking the relief of quashing of the charge sheet dated 25.11.1986, the report, the order dated 29.2.1988 removing the applicant's husband from service and appellat order dated 19.5.1988 by which this appeal was rejected, with all consequential benefits. It has also been prayed that the respondents be directed to pay to the applicant retiral benefits with interest at the rate of 18% per annum and also to give to one of the children of the deceased employee appointment on compassionate ground. A further prayer is for direction to the respondents to pay with interest salary and allowances of the deceased employee from 1.5.1986 till his death treating him to be on sanctioned leave.

2. The applicant's husband, who was a travelling ticket examination and was posted at Allahabad, was served with a major penalty charge-sheet and after an ex-parte inquiry the disciplinary authority passed the impugned order dated 29.2.1988 removing him from service. The deceased employee submitted an appeal to the respondent No. 3 which was rejected by the impugned appellate order dated 19.5.1988. He submitted a revision petition dated 25.8.1988 to the respondent No. 2 but no decision was taken on the same by the respondents. The deceased employee, thereafter, met with a train accident at Sultanpur station on 23.2.1989 and died on the spot. The respondents did not pay any retiral benefits to the widow of the deceased who is the applicant in this case and had allegedly held back even the provident fund deposits of the deceased employee. The applicant made two representations to the respondents for being granted retiral benefits and also the provident fund deposits vide her representations dated 3.5.1989 and 10.9.1989. Since these evoked no response, she filed an O.A. at Lucknow Bench of the Tribunal. As, however, the applicant had started living at Allahabad and it was difficult for her to go to Lucknow to pursue the matter, he filed an application at the Lucknow Bench seeking permission to withdraw the case and to file a fresh petition at Allahabad. It is stated that the Lucknow Bench by an order dated 26.8.1992 allowed this application but the applicant has not been able to obtain a copy of the same. Thereafter, he filed the present application seeking the reliefs aforementioned.

3. The case which has been set up by the applicant is that her husband had developed a serious difference with his cousins who had usurped his landed property by unfair means and this developed into a family feud. It is alleged that the cousins threatened to liquidate the applicant's husband and even hired professional killers to assassinate him. These persons had allegedly made at least two serious attempts on his life but he escaped on both the occasions. Because of the threat to his life, the applicant's husband decided to leave Allahabad and, therefore, submitted an application to the respondents to transfer him to some other place, far away from Allahabad, in Allahabad Division or in any other Division. A photo copy of the application dated 5.1.1985 has been annexed at Annexure-A 1. Not receiving any response to the said representation, he made another application dated 31.1.1985 for transfer to any place in Northern Railway. A photo copy of this application has also been annexed as Annexure-A 2. Thereafter, the deceased met the respondent Nos. 3 & 4 personally but to no avail. Meanwhile, the continuous tension told on his health and he fell seriously ill. Since he was living alone at Allahabad and there was none to look after him, his neighbours arranged to send him to his native village in Faizabad on 1.5.1986. The Doctor attending on him advised him complete rest. He sent a certificate from the private medical practitioner recommending leave from 2.5.1986 to 24.5.1986 and the same was received by the Chief Inspector of Tickets. As his condition did not improve, he was advised rest upto 31.8.1986. A certificate from the private Medical Practitioner was sent to C.I.T. along with the leave application requesting extension of leave upto 31.8.1986 by registered post. A photo copy of the said application along with the receipt of the registered letter has been annexed as Annexure-A 3. Meanwhile, he had sent more representations to the

respondents for his transfer from Allahabad and since the respondents did not pay any heed to him, out of frustration, the deceased sent a letter of registration dated 26.7.1986 stating that his resignation be accepted w.e.f. 1.9.1986. A copy of this letter is at Annexure-A 4. The respondents allegedly did not pay any heed even to this letter and sanctioned his leave nor accepted or rejected the request for resignation. Instead, he served a major penalty charge-memo dated 25.11.1986, which was sent to his village for unauthorisedly absenting from duty w.e.f. 1.9.1986. He replied to the charge-sheet stating that he had submitted resignation to take effect from 1.9.1986 and there was no objection of it even after a lapse of 6 months, the case may be closed and he may be allowed to retire with the pensionary benefits due to him. No action was taken on this letter and an inquiry officer was appointed. On receipt of the communication dated 20.5.1987 from the inquiry officer, the deceased replied that he was willing to participate in the inquiry and defend his case provided the sittings were arranged at any station away from Allahabad as at Allahabad his life was threatened. A photostat copy of the letter dated 20.5.1987 is at Annexure-A 7. The respondents paid no heed to this request and held the ex-parte inquiry. The inquiry officer submitted his report holding the deceased guilty of unauthorised absence w.e.f. 25.7.1986. A copy of the inquiry report is at Annexure-A 8. The finding was accepted by the disciplinary authority and the penalty of removal was imposed. The deceased submitted an appeal and the same was rejected allegedly by an unreasoned order. His revision petition was not acted upon.

4. In the conspectus of the above circumstances, the applicant has pleaded that the removing the applicant's husband from service was wholly arbitrary and unjustified and should, therefore, be quashed. It has been contended that the respondents most arbitrarily and illegally did not consider the request of the deceased for transfer out of Allahabad; that the issuance of the charge-sheet was unwarranted as the period in dispute was fully covered by the certificate from private medical practitioner and that the applicant's request to hold the disciplinary inquiry outside Allahabad, was not considered arbitrarily and illegally. It has been further contended that the disciplinary authority did not consider the circumstances arising out of the predicament in which the deceased employee was placed due to threat to his life and passed the order of penalty in an arbitrary and illegal manner. Similarly, the appellate authority did not consider the various facts brought out in the appeal and passed an unreasoned order.

5. The respondents did not file any counter affidavit. The ordersheet discloses that the case came up for admission for the first time on 9.9.1992, Sri S.F.A. Naqvi, Assistant Secretary on behalf of the Railways accepted notices on behalf of the Respondents. Thereafter, he had also filed his Vakalatnama duly signed by an officer of the responding respondent. Since then number of opportunities were afforded to the respondents to file a counter affidavit and finally an order was passed on 12.8.1994 to the effect that in case a counter affidavit was filed within 4 weeks, the application shall be taken up for ex-parte disposal. Despite this order, no Counter Affidavit was filed nor anyone appeared on behalf of the respondents when the case was came up for hearing on 1.5.1995. We, therefore, heard learned Counsel for the applicant and proceeded to decide this matter on the basis of the materials on record.

6. The averments made by the applicant not having been rebutted by the respondents and the applicant having been given enough opportunity to file the counter reply, in these circumstances, we have to hold that the un rebutted averments of the applicant are admitted. In this regard we were guided in our view by the rationale of the decision of the Apex Court in the case of *C.S. v. State of Andhra Pradesh*, A.I.R. 1964 S.C. 692.

7. The above decision was followed by the High Court of Calcutta in the *Arbind Das v. State of West Bengal*, 1983 (2) SLR 612, in which it was held that in the absence of the counter affidavit, the averments made in the writ petition are to be taken as admitted. We are then required to see only whether the averments made in the writ petition constitute sufficient ground for us to interfere in the disciplinary action taken by the respondents against the husband of the applicant.

8. The applicant had been repeatedly representing to the respondents that his life was in danger on account of some family feud and he requested for transfer out of Allahabad. If there was a danger to his life, his request was quite reasonable and the respondents should have seriously considered it. They could have at least made an inquiry into the truth of his otherwise of his contention that his life was in danger and thereafter could have accepted or rejected his representation. Apparently, they did not take any action on his representation. The certificates from the private Medical Practitioner in Allahabad in favour of the applicant that the applicant had fallen ill and so advised rest. In fact, though the charge levelled against him was for unauthorised absence from 1.5.1986, the inquiry officer took no notice of the fact that Sri S. Prasad, the Chief Inspector of Tickets, had admitted that the charged employee had sent a certificate from Private Medical Practitioner covering the period from 2.5.1986 to 24.7.1986 and that he was absent since 25.7.1986 without any intimation. It is thus, amply clear that the respondents were aware that the applicant was unwell and, therefore, if they had any doubt about the veracity of the medical certificate, they could have been directed to appear before medical board or to submit medical certificate from authorised medical attendant. In spite of that, they chose to serve a charge on the deceased employee for unauthorised absence. The applicant had requested for holding the inquiry at a place out side Allahabad which cannot be considered as an unreasonable request keeping in view the fact that he was apprehending danger to his life at Allahabad. The respondents should have had no difficulty in arranging the sitting of inquiry at a place out side Allahabad. They, however chose to proceed ex-parte against the applicant. There is no doubt that if a charged officer refuses to participate in the inquiry, the ground which is unreasonable, the inquiry officer shall be free to proceed ex-parte. However, in the present case, the circumstances were such which would amply justify the refusal of the charged employee to participate in any inquiry which is held at Allahabad. In these circumstances, the holding of inquiry ex-parte, in our view, was unwarranted.

9. There is another factor which requires to be considered. It is that the applicant submitted a letter of resignation. It is clear from the findings of the inquiry officer that the respondents were seized of the fact that he had submitted his resignation. This resignation itself should have been sufficient cause for any responsive administrative enquiry why an employee who had put in 25 years of service was tendering resignation. An inquiry into this would have disclosed the circumstances which led the applicant to take this extreme step of submitting a letter of resignation and thereby jeopardy the benefits accruing to him from his long period of service under the respondents.

10. It is a settled position of law that the courts/Tribunals have a limited jurisdiction with regard to the disciplinary action taken by the competent authority. It is not the court which is normally justiciable but the manner in which the action is taken. The manner in which the inquiry was held against the applicant bears eloquent testimony to the fact that the charged officer was not given adequate opportunity to defend himself. The inquiry was not justified in the circumstances attending upto this case. There is a gross violation of the Rules of natural justice vitiating the entire disciplinary action against the charged officer. We have, therefore, no manner of hesitation in declaring the disciplinary action as wholly arbitrary and illegal. Similarly, we

order that the points which were made out in the appeal dated 25.8.1988 have not been considered by the appellate authority. The only point which has been considered is relating to the letter of resignation submitted by the charged employee. Under Rule 11 of the Railway Servant (D&A) Rule, 1968 the appellate authority has a duty cast upon it to consider several aspects while disposing of an appeal. Unless all these aspects are considered, there is a failure to discharge statutory duty rendering the appellate order to be quashed. In this regard, we are fortified by the view taken by the apex court in *Ram Chandra v. Union of India*, A.I.R. 1968 S.C. 1173.

In view of the foregoing, we find that both the impugned orders dated 29.2.1988 by the disciplinary authority and the appellate order dated 19.5.1988 are bad in law and cannot be sustained. We, accordingly set aside both these orders. Consequently, the applicant shall be deemed never to have been removed from service and to have continued in service till the date of his accidental death. The period from 1.5.1986 till the date of his death shall be regularised by grant of leave as due. The applicant and the other heirs of the deceased employee shall be entitled to all terminal benefits admissible to him or one of her children shall also be eligible for consideration for employment on the same ground. Any application in this regard, if submitted within one month from the date of this order shall be considered in accordance with law and action taken thereon within a period of 6 months from the date of receipt of the application. The arrears of salary shall be paid to the applicant and the other legal heirs within a period of 4 months from the date of communication of this order.

The application is allowed on the above terms. Parties to bear their own costs.

Application allowed

Central Administrative Tribunal—Guwahati

The Hon'ble Mr. Justice M.G. Chaudhari, Vice-Chairman

The Hon'ble Mr. G.L. Sanglyine, Member (A.)

Manojit Chakraborty

—Applicant

Versus

Union of India & Ors.

—Respondents

19/94

Decided on 7.9.1995

Article 311(1) of Constitution—Appointing authority—Applicant was removed from service by Assistant Station Engineer and challenged on ground that he was not a Station Engineer. Records show appointment order was signed by Assistant Engineer "for Station Engineer" which means Station Engineer appointed him—No other rules were that powers of appointing authority were vested in Asstt. Engineer—Asstt. Engineer was subordinate to Station Engineer so could not remove the applicant under Article 311(1).

Applicant : Mr. B. Das and Mr. T.R. Dey, Advocates.

Respondents : Mr. S. Ali, Sr. C.G.S.C.

IMPORTANT POINTS

Appointment order must be signed by the competent authority

KENDRIYA VIDYALAYA SANGH (KVS) REGIONAL OFFICE, SILCHAR

NO. F. 5-8/KVS (SR)/2002-2003/

DATE: 19/09/2002

REPORT OF ANNUAL ACADEMIC INSPECTION: 2002-2003

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VIDYALAYA INSPECTED: KV-PANISAGAR

DATE OF INSPECTION: 17/09/2002 AND 18/09/2002

INSPECTION TEAM:

1. SHRI. P. DEYAKUMAR, HO, KVS (RO), SILCHAR
2. SHRI. S. NEELANATHAN, PRINCIPAL, KV-PANISAGAR
3. SHRI. ATAR SINGH, PRINCIPAL, KV-MALASAGAR

ABOUT THE VIDYALAYA:

Kendriya Vidyalaya, Panisagar established in 1964 under civil sector (BSF, Panisagar). It is a single section school having classes up to X with strength of 229 students as on 18/09/2002. The post of PGT (Hindi), TGT (Skt), TGT (S. SU) and four posts of PRI are lying vacant. Contractual Teachers are engaged for the above vacant posts except for the post of PGT (Hindi) due to the non-availability of suitable candidate. One post of Lab. Attendant is surplus as per the current year's staff fixation.

1) INFRASTRUCTURE: -

The Vidyalaya is running in a temporary building provided by BSF authorities. Number of rooms available is insufficient. The separate rooms are not available for Computer Lab, SUPW, Music, Junior Science lab, Activity Room for Primary Students. Three Primary Classes (Class I & II) are located about 200 meters away from the main block.

SUGGESTIONS: -

1. Plastering of the walls of classes IV, V & VI block has to be done.
2. Tube Lights frames in class rooms do not have tubes. Connecting wires are loosely hanging out in almost all frames. The entire building needs re-wiring and replacement/repairing of electrical fittings & fixtures.
3. Fans are insufficient in classes IV, V & VI. Four fans available in the lab may be redistributed.

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4. Water seepage is noticed in many walls of class rooms. Necessary roof treatment to stop this may be explored.
 5. The primary block which is about 200 meters away from the main block has no toilets. The constructions of toilets left half-way need to be completed immediately.
 6. Open switch boxes at the entrance may be covered to avoid any possible untoward incident and ensure the safety of the students.
 7. Two TV Sets lying unused should be utilized for the benefit of students.
 8. Efforts may be made to construct three more class rooms through chairman, VMC.

II) LABORATORY: -

One Laboratory with two long working tables is available. Enough equipments and chemicals are available. Fans and instruments kept outside need regular dusting.

III) COMPUTER EDUCATION: -

Three Computers are available and functioning without any UPS. A Computer Literacy Programme has been arranged for Class III to X. Sri. B. Suresh, SUPW Teacher is teaching in computer classes. As the SUPW teacher does not pass any computer diploma, a qualified computer instructor may be engaged. It was observed that, there were no sufficient stools/chairs available in the computer lab to accommodate the students. Efforts may be made to purchase more stool/chairs and also recommended to go for seven more computers with UPS.

IV) LIBRARY: -

It has been observed that sufficient number of periodicals and books are available in the library. The librarian seems to be enthusiastic and takes interest to inculcate reading habits among the students by issuing books. The reading room is well maintained. The library is functioning well. One computer may be provided to the library to computerize the library services effectively. The librarian has been asked to organise book exhibition, display of new arrivals etc. for the benefits of students & staff. Magazine display board can be procured to display all the magazine systematically.

V) BEAUTIFICATION AND UPKEEP OF VIDYALAYA: -

The Cleanliness of School Premises was found satisfactory. School Garden and House Garden are being maintained separately. The Principal was asked to buy some more flowerpots to beautify the interior area of the School Building. Portraits of eminent Scientist displayed in front of Principal's Chamber may be displayed in the convenient places all over the School building.

VI) GAMES AND SPORTS ACTIVITIES: -

The students are using the BSF Parade Ground to practice all games and sports activities. The activities are being conducted as per the Vidyalaya Schedule and Annual Sports Day was conducted on 31st August 2002. The Vidyalaya has identified two games viz. Basket ball and Volley Ball.

VII) CCA AND OTHER ACTIVITIES: -

The CCA activities are planned and the activities are being conducted as per the schedule among four houses. An expert is conducting Yoga Classes for 120 students of classes III to VII.

The PFA has been reconstituted as per KVS new guidelines and the General Body Meeting was conducted on 15th September 2002. The Principal is advised to take all possible steps for the promotion of Games & Sports and other non-academic activities/skills.

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VIII) ACADEMICS: - ✓

The result of the academic year 2001-2002 is as follows:

Class I to VIII 100%; IX 88% and X 91%. While comparing the previous year's Board Result (i.e. 66.6%), the result of the year 2001-2002 was found satisfactory. The Principal assured that the efforts are being initiated to produce 100% result in Class X during this academic year. The Principal said that zero periods had been arranged for eliminating the weak areas of slow learners and weekly time schedule is given to the teachers for effective implementation.

The following observations were made by the Inspecting Team during the Annual Academic Inspection.

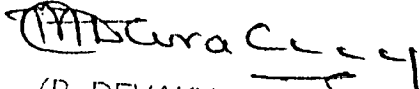
- i) Teacher's Diary was not written objective based in some case, systematically and in true spirit.
- ii) Separate HW copy was not maintained by some students.
- iii) Some Teachers are lagging behind in coverage of course as per KVS Split-Up of syllabus.
- iv) Casual attitude has been observed in the correction of CW & HW notebooks.
- v) Student's participation in some of the classes was found very poor.

The above points are discussed in the staff meeting & the Teachers were advised to rectify their deficiencies/weak areas. The Principal was further asked for monitoring the teaching - learning activities and give guidance to the contractual / part-time teachers to make their teaching methodology more effective.

IX) OFFICE RECORDS: -

It was noticed during the sample checking of school records that the office staffs have not maintained the C. L. Register & Staff Attendance Register in a proper way. The Service Books of Some of the Teachers were not found up to date & the numbering of pages in personal file was not done. The Principal should take necessary steps to maintain all the office records up to date and also ensure proper keeping of records in a systematic way.

The Principal should send a compliance report within 30 days from the receipt of this report detailing the action planned / taken with regard to the suggestion made in the report.


(P. DEVAKUMAR) 20.9.02
Education Officer
KVS, Regional Office
Silchar

P. DEVAKUMAR
Education Officer
KVS Regional Office
Silchar-788 001

दूरभाष-०३८२२-६१२५९

केन्द्रीय विद्यालय

पानीसागर, उत्तरी त्रिपुरा

पिन कोड - ७९९२६०



03822 - 61259

KENDRIYA VIDYALAYA

PANISAGAR

NORTH TRIPURA

TRIPURA - 799 260

Ref :

ACTION TAKEN REPORT AGAINST THE PANNEL INSPECTION'S SUGGESTIONS

1. INFRASTRUCTURE

Fans available in the laboratory are shifted in to the classes and exposed wiring is properly concealed under plastic beading.

Water seepage problem is taken-up and the repair work is under progress.

Open switch boxes were replaced by closed ones to ensure the prevention of any mishap.

However the major works like the construction of more classrooms and cement-plasting of walls is not yet started as the regular chairman of the Vidyalaya is expected here on 9 November, 2002.

The in complete toilets are now under completion and a report of the progress will be sent once it is thorough.

COMPUTER EDUCATION

We are happy to inform you that the computer lab is well furnished now with 33 plastic stools. We also bring to your kind notice that our loan requisition against procuring more number of computers is now at Our Honorable Assistant Commissioner and once we obtain the said amount we will certainly take up the expansion programme of the Technical Laboratory. As we said above, a contractual teacher to teach computers will be recruited as soon as the regular Chairman of the Vidyalaya Management Committee arrives.

BEAUTIFICATION & UPKEEP OF VIDYALAYA

Placed an order for a bulk number of flowerpots and plants and the school garden is under renovation.

ACADEMICS

i) All the teachers are thoroughly advised to maintain the teacher's diary in its true spirit and a circular of the same has been distributed. I am personally supervising the work.

ii) Students and teachers are directed to understand the need of separate notebooks for HW and CW, measures are taken to realize the instruction consequently.

iii) Special classes have been arranged to cover the syllabus in the case of lagging classes.

However there is a problem in the completion of syllabus in Hindi and Social Studies of VII & VIII classes because of the non-availability of teachers.

OFFICE RECORDS

Necessary steps are taken in the matters of maintaining office records. The office staff has been thoroughly directed to maintain updated records.

Service books are given page numbering and the maintenance is up to date.

Remaining pending works will taken up soon after the arrival of regular Chairman

Submitted for your kind perusal and guidance.

(E.M.Reddy)

PRINCIPAL - K.V. PANISAGAR