RP 512
(18)

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Applications Nos.1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1035, 1036, 1037, 1038, 1039, 1053, 1054, 1070 and 1157 of 2004

Jabalpur, this the 17th day of May, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

(1) **Original Application No. 1024 of 2004**

Mrs. Pallavi Sharma
W/o Shri Pravin Sharma
D.O Birth 23.9.1963
Principal KVS Dhana(Army Camp)
Sagar, R/o PE-a/I Officer's
Quarter(Army Camp) Dhana Distt-
Sagar(M.P.) Applicant

(By Advocate – Shri S.Paul)

(2) **Original Application No. 1025 of 2004**

Salil Saxena
S/o M.M Saxena
D.O. Birth 8.8.1962
Principal K.V.-1Sagar, M.P
R/o Qr. No. 1 KV Staff Quarter, 10 Mall
Road Opposite Cantt. Board.
Office Distt. Sagar(M.P.) Applicant

(By Advocate – Shri S.Paul)

(3) **Original Application No. 1026 of 2004**

Ms. H.K. Sanhotra
D/o Lt. Col S.S. Sanhotra
Aged about 48 years
Principal,
Kendriya Vidyalaya, VFJ,
Jabalpur(M.P.) Applicant

(By Advocate – Shri Manoj Sharma)

(8) **Original Application No. 1031 of 2004**

M.L. Agrawal
S/o Shri Babu Lal Agrawal;
D.O. Birth 12.4.1954, Principal
KVS No.5 Gwalior, R/o C-10
Purushottam Vihar, Bhind
Rd. Gwalior(M.P.) Applicant

(By Advocate – Shri S.Paul)

(9) **Original Application No. 1035 of 2004**

Mr. J.M. Rawat
S/o G.R. Rawat
Aged about 48 years,
Principal,
Kendriya Vidyalaya, No.-2 G.C.F.,
Jabalpur(M.P.) Applicant

(By Advocate – Shri M.Sharma)

(10) **Original Application No. 1036 of 2004**

Rajendra Kamlakar Lale
S/o Shri K.G. Lale,
Aged about 43 years,
Principal,
Kendriya Vidyalaya No.2,
Sagar (M.P.) Applicant
(By Advocate – Shri Manoj Sharma)

(11) **Original Application No. 1037 of 2004**

1. Mr. K.V.V. Ramamurty
S/o Shri K.Suryanarayana
Aged about 54 years,
Principal, Kendriya Vidyalaya,
Kirandul, Chattisgarh.

2. Mrs. P.V.V. Prasanna
W/o Shri I Ravi Shankar
Aged about 45 years,
Principal, Kendriya Vidyalaya,
K.V. No.1-1, Raipur(C.G.) Applicants

(By Advocate – Shri Manoj Sharma)

1. Miss N. Getta Rao
D/o Shri R.Narayana Rao
Aged about 45 years,
Principal Kendriya Vidyalaya,
Mahasamund, Chhattisgarh.

2. D.S. Sastry
S/o Shri D.Purushottam,
Aged about 54 years,
Principal Kendriya Vidyalaya,
Balco, Korba(C.G.)

3. S.K. Awasthy
S/o Shri K.K. Awasthy,
Aged about 56 years,
Principal Kendirya Vidyalaya,
Raigarh.

4. R.Leela Bai
W/o Shri M. Ramaswamy
Aged about 54 years
Principal Kendriya Vidyalaya,
Bilaspur.(C.G.)

5. Smt. Hemlata Rajan
W/o Shri R.S. Rajan
Aged about 5 years
Principal Kendriya Vidyalaya,
NTPC, Korba,
(C.G.)

6. Dr. B.N. Singh
S/o Shri S.D. Singh,
Aged about 56 years
Principal Kendriya Vidyalaya,
Balaghat

7. V.K. Gaur
S/o Shri D.L. Sharma,
Aged about 45 years,
Principal, Kendriya Vidyala,
Satna.

8. K.R. Nakulan
S/o Shri K.K. Ramakrishnan
Aged about 54 years
Principal Kendriya Vidyalaya,
Dhanpur Dist.-Shahdo(M.P.) Applicants

(By Advocate – Shri Manoj Sharma)

(13) **Original Application No. 1039 of 2004**

Deepak Roy
S/o Shri M.M. Roy,
Aged about 54 years,
Principal
Kendriya Vidyalaya CWS,
Jayant Colloery,
District – Sidhi (M.P.) Applicant

(By Advocate – Shri Manoj Sharma)

(14) **Original Application No. 1053 of 2004**

1. Akhilesh Chouhan,
Aged about 57 years,
S/o Laxman Rao Chouhan,
K.V. No.1 R/o Principals
Bungalwa, K.V, Teachers,
Colony, Residency Club
Road, Naukakha, Indore.

2. Ranir Kishore,
Aged about 55 years,
S/o Surajbhan, Principal
K.V. MHOU, R/o K.V. Staff
Colony, Mhow, Distt.
Indore.

3. M.L. Paneri,
Aged about 56 years,
S/o C.L. Paneri,
Principal, K.V.
R/o K.V. Campus,
C.R.P.F.
Road, Neemuch, M.P.

4. Smt. Rashimi Mishra,
Aged about 48 years,
W/o Dipak Mishra,
Principal, K.V. No.2, R/o
101, Vallabh Nagar,
Indore.

5. Smt. Madhuri Sharma,
Aged about 56 years,
W/o Shri V.K. Sharma
Principal, K.V. R/o K.V. Campus,
Dhar, M.P.

6. Keshav Prasad Mishra,
Aged about 51 years,
S/o the late M.L. Mishra,
Principal, K.V., R/o D-1,
K.V. Campus, Sagod Road,
Ratlam. Applicants

(By Advocate – Shri Manoj Sharma on behalf of Shri R.Tiwari)

1. Kendriya Vidyalaya Sangathan,
18, Institutional Area
Shahee Jeet Sing Marg,
New Delhi-110016.
Through it's Commissioner,

2. The Chairman,
Kendriya Vidyalaya Sangathan,
18, Institutional Area
Shahee Jeet Sing Marg,
New Delhi-110016

3. The Union of India,
Through the Secretary to
The Ministry of Human
Resources, New Delhi Respondents

(By Advocate – Shri M.K. Verma)

(15) <u>Original Application No. 1054 of 2004</u>

1. Joy Joseph,
Aged about 41 years,
S/o the late P.J. Joseph,

Principal K.V. Sarani,
Distt. Betul, R/o B.09
M.P.S.E.B. Colony,
Sarani, Distt. Betul.

2. M.Vellai Chamy,
Aged about 39 years,
S/o Shri S. Muthu,
Principal K.V.,
Barkuhi, Chandametta,
Distt. Chhnidwara. R/o
Dr's Colony, Barkuhi,
Chandametta, Chhindwara.

3. Bashir Ahmad,
Aged about 54 years,
S/o the late Mushtak
Ahmad, Principal, K.V.
Security Paper Mills,
Hoshangabad, R/o School
Campus, Hoshangabad. Applicants

(By Advocate – Shri Manoj Sharma on behalf of Shri R.Tiwari)

VERSUS

1. Kendriya Vidyalaya Sangathan,
18, Institutional Area
Shahee Jeet Sing Marg,
New Delhi-110016.
Through it's Commissioner,

2. The Chairman,
Kendriya Vidyalaya Sangathan,
18, Institutional Area
Shahee Jeet Sing Marg,
New Delhi-110016

3. The Union of India,
Through the Secretary to
The Ministry of Human
Resources, New Delhi Respondents

(16) **Original Application No. 1070 of 2004**

Mr. P.S. Prabhakara
S/o Late Shri P.Shivaramaiah
Aged about 53 years,
Principal,Kendriya Vidyalaya,
Chirmiri(M.P.) Applicant

(By Advocate Shri Majoj Sharma)

VERSUS

1. Kendriya Vidyalaya Sangathan,
18, Institutional Area
Shahee Jeet Sing Marg,
New Delhi-110016.
Through it's Commissioner,

2. The Chairman,
Kendriya Vidyalaya Sangathan,
18, Institutional Area
Shahee Jeet Sing Marg,
New Delhi-110016

Respondents in all the OAs except OAs Nos 1053, 1054 and 1157 of 2004

(17) **Original Application No. 1157 of 2004**

Dr. A Ngamani
W/o Shri K.S. Sharma,
Aged about 42 years,
PGT(Economics),
Kendirya Vidyalaya,
Balaghat (M.P.)
(Ex-principal, Kendriya Vidyalaya,
Samba)

Applicant

(By Advocate -- Shri Manoj Sharma)

VERSUS

1. Kendriya Vidyalaya Sangathan,
18, Institutional Area
Shahee Jeet Sing Marg,
New Delhi-110016.
Through it's Commissioner,

2. The Chairman,
Kendriya Vidyalaya Sangathan,
18, Institutional Area
Shahee Jeet Sing Marg,
New Delhi-110016

3. The Union of India,
Through the Secretary to
The Ministry of Human
Resources, New Delhi Respondents

(By Advocate Shri M.K. Verma respondents in all the OAs)

Common (O R D E R)

By Madan Mohan, Judicial Member -

As the facts, law and reliefs claimed by the applicants in all the aforesaid OAs are identical, therefore, we proceed to dispose of all these OAs by passing a common order.

2. By filing the Original Applications Nos 1024, 1025, 1027, 1029, 1030, 1031, 1036, 1037, 1038, 1039, and 1070 of 2004 the applicants have sought the following main reliefs:-

> "(ii) Quash and set aside the impugned order dated 18.11.2004, Annexure A/1, so far as it relates to the applicant.
>
> (iii) Restrain the respondents from affecting the applicant in any manner whatsoever as a consequence of the order impugned dated 18.11.2004."

3. By filing the Original Applications Nos 1026, 1028 and 1035 of 2004 the applicants have sought the following main reliefs :-

> "(ii) Quash and set aside the impugned order dated 18.11.2004, Annexure A/1, so far as it relates to the applicant.
>
> (iii) Restrain the respondents from affecting the applicant in any manner whatsoever as a consequence of the order impugned dated 18.11.2004."
>
> "8(v) .....to declare that the applicant is a confirmed principal in the KVS as she has successfully completed the maximum probationary period provided under the Recruitment Rules of 1971 and therefore, could not be reverted without following due procedure in law."

3.1. By filing the Original Applications Nos 1053 & 1054 of 2004 the applicants have sought the following main reliefs :-

> "8.1 That by issuance of writ in the nature of Certiorari the orders of cancellation reported orders of cancellation reported in Annexure A/1, A/2, A/3, A/4, A/5, A/6 and A/7 may pleased be quashed in their intirety.
>
> 8.2 That by issuance of writ in the nature of Mandamus the respondents may be commanded not to cancel the orders of the petitioners from the post of Principal K.Vs.
>
> 8.3 That issuance of writ in the nature of prohibition the respondents be restrained from giving effect to the cancellation orders, removing the petitioners from the post of Principals and making them P.G.T. under their junior in the same schools."

> "8.1 That by issuance of writ in the nature of Certiorari the orders of cancellation reported orders of cancellation reported in Annexure A/1, A/1, A/1-E, A/1-F, A/1-G, A/1-J and A/1-0 may pleased be quashed in their intirety"

3.2. By filing the Original Application No 1157/04 the applicant have sought the following main reliefs :-

> "ii) Quash and set aside the impugned order dated 27.8.2004, Annexure A/1.
>
> iii) Direct the respondents to grant all consequential benefits in respect of pay, perks & status after quashing Annexure A/1 and arrears thereof".

4. The OA No.1024 of 2004 will be treated as leading case. The brief facts of the OA No.1024/04 are that the applicant is presently working as Principal, Kendriya Vidylaya(for short 'KV'). She joined the respondent-organization (KVS) as Post Graduate Teacher in pursuance to open competition through open market and was posted as PGT in KVS. According to the applicant in the year 1999 & 2000 in pursuance to an all India advertisement in the employment news given by K.V.S., soliciting Principals on deputation, the applicant being fully eligible and applied for the same. The written

examinations were conducted by the respondent-department in which the applicant appeared and qualified. She was called for interview and was also declared successful in the interview. The successful candidates who were recommended by the Selection Committee and after approval of the competent authority the order of offer of appointment Annexure-A-4 was issued. The applicant states that as it is clear from Annexure-A-4, the applicant in pursuance to her selection as Principal was posted as Principal, K.V.S.(M.P.) against a vacant post. She joined at place of her posting and continuously working as such till date. Since her appointment on the post of Principal, the applicant has had an excellent all round performance giving good results. The applicant further states that vide order dated 29.5.2001 the applicant along with other similarly situated Principals has been appointed as Principal on regular basis i.e. his/her services as Principal have been regularized meaning thereby that the lien on the post of PGT that the applicant has been holding the meanwhile came to an end and the applicant became a regular Principal vide order dated 29.5.2001(Annexure-A-5). However to utmost surprise and dismay only on Sunday, 21.11.2004, it came to her knowledge that en masse over 300 Principals who were recruited during the erstwhile regime are sought to be subjected to cancellation of appointments. The applicant was shocked when this fact came to her knowledge that such orders indeed have been passed, wherein not only the order of regular appointment to the post of principal has been cancelled, but the applicant has been subjected to the extreme ignominy of joining/reporting in the same school on the post of PGT before Principal Incharge, after handing over charge of Principal to Vice Principal/Senior most PGT(who shall be the Principal in charge). By her own means and efforts, the applicant could manage to get a copy of the impugned order dated 18.11.2004 (Annexure-A-1)which is yet to be officially received at the school and served upon the applicant. The applicant further states that a bare perusal of the impugned order it makes absolutely clear that the order has been passed by the

Commissioner, KVS, the appointing authority under directions of the Chairman, KVS. As there is no departmental recourse as the matter has emanated from the highest authority. The action of the respondents is totally illegal and unjustified. Hence, this Original applications.

5. The respondents have filed their reply, contending therein that the present OA is not maintainable, it is a public interest litigation and the applicant has not submitted any appeal/review against the impugned order dated 18.11.2004 therefore, the OA is not maintainable. They further contended that the rights of the applicant has not been violated inasmuch as in the advertisement it is clearly mentioned that the term of deputation shall be for a period of one year extendable from year to year upto a maximum period of 5 years and will be governed by the existing instructions of the Government of India relating to deputation and that the Kendirya Vidyalaya Sangathan reserves the right to repatriate the deputationist at a time even before the completion of the approved deputation period without assigning any reason since there was no time period prescribed in the order. The offer of appointment itself has made clear that they will be appointed on deputation for fixed tenure and no principles of natural justice have been violated inasmuch as the contract of employment itself makes it very clear that the applicant has no right to be regularized because the applicant was appointed on deputation basis on fixed term which is extendible from year to year upto a maximum period of 5 years. The applicant's appointment therefore as Principal on regular basis is void ab initio. The respondents further submitted that the applicants who have been regularized as Principals have been regularized in violation of the recruitment rules. The advertisement issued by the Kendriya Vidyalaya Sangathan in the Employment News dated 2/8.10.1999 clearly specifies that no one can be regularized and it is also made clear therein that the Kendriya

Vidyalaya Sangathan reserved the right to repatriate the service of all deputationists at any time even before completion of the approved deputation period. Since the then Commissioner acted beyond the powers conferred upon him under the recruitment rules, it is not necessary in law to issue a show cause notice inasmuch as the regularization of the Principals have been done by violating the said rules and therefore, the appointments of some of the applicant as regular Principals are bad from the very beginning and void ab initio. No promise extended to the applicant that they will be regularized contrary to the rules nor has it been promised that some of the deputationists will be continued beyond the fixed period/tenure The names of the illegally appointed Principals found place in the seniority list of Principals. Now that their appointments have been cancelled, their names would be deleted from the seniority list published earlier as a consequence thereof. Hence, no actions have been taken contrary of law by the respondents and the actions hav been taken in accordance with rules and law. Accordingly, the OA be dismissed.

6. Heard the learned counsel for the parties and carefully perused the records.

7. It is admitted facts that all the applicants were appointed on deputation in Kendriya Vidyalayas on different spells. However, vide impugned order dated 18.11.2004/27.8.2004 they have been directed to hand over the charge of principal to Vice Principal/Sr. Most PGT of the concerned Kendriya Vidyalaya. We find that the present cases have already been heard at a very great leanth on 6.12.2004 while considering the question of interim relief, the order passed by the Tribunal on 6.12.004 which is relevant is reproduced here :-

> "6. During the course of arguments, the learned counsel for the applicants have stated that there is no mode of appointment by way of deputation. He has produce a copy of the recruitment rules and we have perused the same. We find that

the mode of recruitment for appointment of the Principal is 62 2/3rd % by direct recruitment on the basis of all India advertisement and 33&1/3% by way of promotion. Therefore, we find that the post of Principal can be filled up only by way of direct recruitment or by way of promotion. There is no other method or mode of recruitment to fill up the post of Principal. Therefore, the submission made by the learned counsel for the respondents that the applicants have been appointed on deputation basis, does not appear to be correct. More over, we find that the applicants who are alleged to have been appointed by way of deputation are from the same organization. As per the rules issued by the Govt. of India, a persons from the same department appointed on a higher post or equivalent post, cannot be appointed by way of deputation. The basic principle is that in a selection where departmental candidates and outsiders both are permitted to participate then if a person is selected from outside he is treated on deputation whereas the departmental candidates are treated as promotees. This principle is followed when the recruitments is made by way of composite method. The KVS is also required to follow the basic rules framed by the Govt. of India. Therefore, to appoint a departmental candidate by way of deputation is the same department does not appear to be correct as per rules. This issue has been analysed, considered and discussed by the Hyderabad Bench of the Tribunal in the case of Liziamma Daniel (supra) vide order dated 23.11.2004 wherein it has been held as under-

> "2. The learned counsel for the applicants contended that the applicants have been working as PGTeachers in the KVS and were promoted on adhoc basis on deputation. Their period of deputation has been extended by the respondents. The learned counsel maintained that there is no concept of deputation for promotions in the same organization. He further pointed out that while appointments have been made on the decision of the Board of Governors in its 65th meeting held on 10.3.1999, the decision for termination of the appointments of the applicants has been made at the level of the Chairman of the Board of Governors, which is illegal. The learned counsel stated that the applicants' appointments cannot be cancelled merely on the presumption that policy of reversion has been violated in the matter of appointing these persons as Principal. He stated that they have been promoted against the general vacancies.
>
> 3. The learned counsel of the respondents brought to our notice the terms and conditions stated in the orders of the appointment, by which the applicants where

appointed as Principal, contending that they were appointed on deputation basis and their deputation could be terminated. The recruitment rules are filed as Annexure 16 in OA 1227/04. The recruitment rules state that the method of recruitment against the post of Principal is 66.2/3% by direct recruitment on the basis of all India advertisement and 33.1/3% by promotion. Rule 11 deals with the cases of recruitment by promotion/by deputation/transfer grades from which promotion/deputation/transfer to be made. It states, if suitable candidates are not available, on the principle of merit-cum-seniority from the amongst the Vice Principals, who have rendered a minimum of five years service and at least three years in the grade of Vice Principal, the Commissioner may fill up the vacancies on deputation basis from amongst employees of the Govt. of India/State Govts./Autonomous organizations including KVS, provided the candidates fulfill all the qualifications prescribed for direct recruitees. The learned counsel maintained that under these provisions, the applicants were taken on deputation.

4. In these rules, itself, the respondents have clarified the connotation of the term of deputation. Under these provisions, Vice Principals of KVS could be taken on deputation as Principals. This facts has been mentioned in the appointment orders of the applicants and also that they are being taken on deputation. The applicants had accepted the terms of their appointments. As such, they were on deputation and they cannot be allowed to turn around and state that they were not on deputation.

5. Basically, the Deputation/extended deputation can be terminated at any time as specified in the terms and conditions stated in the appointment letters. However, in the present case, although the extended deputation was available for a few months, the respondents have terminated their deputation mid-stream and suddenly. The reason stated for termination of deputation is violation of the constitutional provision in their appointment. This has to be seen whether there has been any violation of constitutional provisions in termination of their deputation.

6. The respondents shall file their reply to the OA within a week's time. The applicants shall have one week's time to file rejoinder thereafter. The case be listed for final hearing after two weeks.

7. The operation of order terminating the deputation of the applicants shall remain stayed till the date of final hearing as stated above..."

We respectfully agree with the interim order granted by the Hyderabad Bench of the Tribunal in the aforesaid OA."

We further find that the Principal Bench of this Tribunal has finally disposed of a similar matter on 21.12.2004 in OA No.2801/04 in the case of **Mrs. Radha G. Krishan & Ors.Vs. Kendriya Vidyalaya Sangathan & Ors.** wherein it has been held as under :-

"50. These facts which we have analysed, clearly indicate that so far as the post of the Principal is concerned, the appointing authority is the Commissioner of KVS and he is also the disciplinary authority to impose all penalties. So far as the Chairman, KVS is concerned, the powers are circumscribed by the Rules that have been framed. It does not give him the power to remove the concerned person as against the requirement of the rules. It is true that under Rule 25 to which we have referred to above, the Chairman can exercise such powers as may be delegated by the Sangathan or the Board. But our attention has not been drawn to any such delegation of power by the Sangathan or the Board by amending the relevant rules conferring the powers of the appointment and of the disciplinary authority or any such other power which is vested with the Commissioner of KVS.

51. Once it is clear that the order has been passed on the dictate of the Chairman and not by the Commissioner applying his own mind as is clear from the tenor of the order, the orders in both the cases, on this ground, are liable to be quashed.

52. For these reasons, we allow the present application and quash the orders of each of the applicants with liberty to the respondents to take action, if deemed appropriate, only in accordance with law and the procedure.

53. For these reasons, we allow the present application and quash the orders of each of the applicants with liberty to the respondents to take action, if deemed appropriate, only in accordance with law and the procedure."

8. After hearing the learned counsel for both the parties and on careful perusal of the records, we find that the present cases are fully covered by the aforesaid decision of the Principal Bench of this Tribunal and also we find that the issue involved in these OAs has finally been decided by the Principal Bench. We are in full agreement

with the decision of the Principal Bench and we are of the considered opinion that the present OAs can be disposed of in the same terms as has been decided by the Principal Bench of this Tribunal in the case of Mrs. Radha G. Krishan(supra).

9. In the result, we allow the present OAs and the impugned order quashed and set aside with a liberty to the respondents to take action, if deemed appropriate, only in accordance with law and the procedure. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

skm