THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 27/2005 with M.A 62/2005
T.A. No.

DATE OF DECISION 18.4.05

Dr. Amita Chandra & ORS. Petitioner

Mr. Manish Bhandari, Advocate for the Petitioner(s)

Versus

Union of India & ORS. Respondent

Mr. V.S. Gurjar Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

(A.K. Bhandari)
Adm. Member

(J.K. Kaushik)
Judicial Member

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

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

ORIGINAL APPLICATION No. 27/2005.

Jaipur, this the 18th day of April, 2005.

CORAM :
HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER.
HON'BLE MR. A. K. BHANDARI, ADMINISTRATIVE MEMBER.

1. Dr. Amita Chandra W/o Col. Subhash Chandra,
   Aged about 50 years, R/o Principal Quarter,
   KV No.1, Kota.

2. Arvind Gaur S/o Late Shri C. B. S. Gaur,
   Aged about 43 years, R/o Teachers Colony,
   KV No.2, Jaipur.

3. Mrs. Kiran Awasthi w/o Shri Arun Kumar Awasthi,
   Aged about 41 years, R/o 34/339, Sector-3,
   Pratap Nagar, Sanganer, Jaipur.

4. Mrs. Kiran Mishra W/o shri Dinesh Mishra,
   Aged about 38 years, R/o Principal Quarter,
   KV No.1, Bajaj Nagar, Jaipur.

5. Ghan Shyam Das S/o Shri Nebraj,
   Aged 50 yars, R/o Principal Quarter,
   KV Baran.

6. Kumaran C.P. S/o Late Shri M. Achuttan Nair,
   Aged about 52 years, r/o Principal Quarter,
   KV No.1 Ajmer.

.... Applicants.

By Advocate : Shri Manish Bhandari.

Versus.

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

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

3. The Assistant Commissioner, KVS, Regional Office,
   Bajaj Nagar, Jaipur.

... Respondents.

By Advocate : Shri V. S. Gurjar.

: O R D E R :

By J. K. Kaushik, Judicial Member.

Dr. Amita Chandra and five others have filed this OA under Section 19 of the Administrative Tribunals Act, 1985, wherein they have prayed for the following reliefs :-

> "(i) This Original Application may kindly be allowed and by an appropriate order or direction the impugned order dated 20.1.2003 may kindly be declared to be illegal and the same may be quashed and set aside.
>
> (ii) By further appropriate order or direction the action of the respondents making out discrimination between the similarly selected candidates be held to be violative of Articles 14 and 16 of the Constitution of India and, therefore, on this ground also the impugned order be quashed and set aside.
>
> (iii) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also kindly be issued in favour of the applicant."

2. The abridged material facts, considered necessary for resolving the controversy involved in the instant case, are that the applicants were initially appointed to the post of Post Graduate Teacher (for brevity, PGT) in different subjects in various Kendriya Vidyalayas. They have been discharging their duties as PGTs for sufficient length of time. An advertisement came to be issued by the respondents for appointment to the post of Principal after getting through a selection vide recruitment notice in the Employment News 6-12 October 2001. The said notice came to be issued in furtherance of similar selections and appointments as were done in the year 2000

itself. Same method of selection was to be adopted. All the applicants faced the requisite selection and were appointed as Principal in Kendriya Vidyalaya Sangathan initially for a period of one year or till further orders. The period of deputation was further extended and the letter of appointment in the issued are connected as Annexure A/12 and A/13 of the Paper Book.

3. Further case of the applicants is that some other similarly situated persons were appointed through the similar advertisements and were regularized on the post of Principal. Some of the orders in respect of these persons are on forming part of records of this case. While issuing the order of appointments, the respondents had imposed arbitrary and illegal conditions otherwise the advertisement was not containing any such condition, rather the bare perusal of the advertisement reveals that it was clearly mentioned that the employees would be appointed on probation and, therefore, it becomes clear that the appointment of the applicants was made on regular basis and by way of regular mode of selection meant for direct recruitments or otherwise. As per rules of recruitment, the post of Principal is required to be filled in either by promotion or by direct recruitment from open market. It is further averred that one of the leading News Paper namely Hindu shows that all appointments made at the time of previous regime are being ordered to be cancelled irrespective of the fact that those appointments were made otherwise in accordance to rules and the allegations of violation of Rule is not only incorrect but also fallacious as well and, therefore, even while issuing any order or

taking a decision for cancellation of the order of appointment of the applicants and other, no reason specifying violation of any particular rule has been forthcoming. Thus, the whole decision is based on vague assertion. It has been averred that as per the reservation there remains 86 posts unfilled and that could not be said to be back log vacancies since after three recruitment years, the vacant reserved post cannot be carried forward. At an early occasion terminations order came to be passed which was successfully challenged before the Hon'ble Tribunal. The Tribunal gave clear directions that action has to be taken as per the provision of law but the respondents did not adhere to the same and orders have been passed as if the case of the applicants is simply that of a deputation . There has been lot of repetition in the facts and the grounds have been intermixed with factual aspects of the case.

4. Per contra, the respondents have contested the case and filed a very detailed reply including that of the preliminary objections. The facts and grounds raised in the OA have been generally refuted. The same is followed by the rejoinder which has been filed on behalf of the applicants almost reiterating the facts and grounds raised in the OA and also refuting the defence of respondents . Certain developments in the similar matters and the decision of Hon'ble High Court of Delhi and that of PB have also been referred to. A seniority list has also been annexed with the rejoinder.

5. We have heard the elaborate arguments advanced by both the counsel representing the parties at a great length and have anxiously considered the pleadings and records of this case.

6. Both the Learned Counsel have reiterated the facts and pleadings mentioned in respect of their facts and grounds. Learned Counsel for the applicants has endeavored to demonstrate that the applicants were in fact appointed as direct recruitee and not on deputation. He has also submitted that there was an open advertisement. The applicants being eligible applied for the same and they faced the selection and were appointed on getting through the same. No such selection is conducted in cases of appointment by deputation. They were performing their duties without there being any unusuality. The only thing that has happened that there was a change of the government and the new government with a view to undo what has been done by the previous government, terminates the services of all the applicants in particular and other similarly situated persons in general. The terminations orders were issued in respect of all the candidates including the individuals who were absorbed on regular basis.

7. Learned Counsel for the applicant has next contended that the respondents seems to have got irked and wanted to fulfill their unfulfilled desired goal and for this purpose they took recourse to adopt the divide and rule policy and issues orders of termination/reversion in respect of the persons who were yet to be regularised, meaning thereby that the candidates who had been regularised were left aside and have not so far been

disturbed. He has termed this action of the respondents as a clear cut discrimination and submitted that, even if, the appointment of the applicants were void ab initio as being contended by the respondents, the applicants were entitled to the similar benefits as is being extended to other similarly situated persons. Learned Counsel for the applicant was at pains to submit that the other similarly situated persons were travelling in the same boat but they have been protected by providing them an umbrella and the applicants have been made as escape goat for no fault attributable to them.

8. He has also submitted that the applicants were in inferior position and the respondents in dominating position and they could not protest against the terms and condition stipulated in their letters of appointment. He has tried to show us that the appointment letters containing certain adhesive terms which were against the verdict in the case of **CENTRAL INLAND WATER TRANSPORT VS BROJO NATH GANGULY & ANR. CENTRAL INLAND WATER TRANSPORTCORPORATION LTD. & ANR. ETC. vs BROJO NATH GANGULY & ANR. 986 AIR 1571** In this view of the matter, such terms and conditions cannot be thrust upon the applicants and the same shall be ignored being unconscionable . He has also contended that the applicants have been ordered to be repatriated in an unceremonial way and the charge was taken from them and given to the vice principals who are not even selected for the post in question. He contended that had the respondents have fair enough, the applicants would been continued till replaced by regular selected persons. Since such protection is even available

to the candidates who are employed on ad hoc basis. He has next also contended that a grave injustice has been done to the applicant inasmuch as their complete service career is going to be jeopardised. The applicants were aspiring to get regularisation as per the practice of the respondents and for that purpose certain restrictions were also put on them regarding other employments but all seems to be in vain.

9. On the other hand, Learned Counsel for the respondents has made to traverse through the various documents relating to the applicants. He has submitted that their appointments of the applicants have been made in unequivocal terms on deputation; in the first instance for a period of one year which was further extended by one year, and in this way up to four years and thereafter, they can be granted extension with the permission of the Ministry as per rules in force. He has also demonstrated that as per their advertisement the posts advertised were only to be filled in by deputation. He has referred to certain portion of the reply and has submitted that the very appointment of the applicant was beyond rules and therefore, void ab initio not in the eyes of law. This is for the reason that the Recruitment Rule for the post of Principles do not envisage the mode like filling up the post by deputation and the only mode that has been provided is by promotion or by direct recruitment.

10. He has further submitted that there has been lot of irregularities inasmuch as the applicants were selected against the back log vacancy of reserved category. For this purpose, he

also drawn our attention to the relevant portion of the circular wherein it has been mentioned that the vacancies were to be filled by deputation as well as the vacancies were to be filed in as back log vacancies from SC/ST categories. He has tried to stretch a little further and has submitted that if the applicants are treated as appointee against the direct recruitment, the fundamental rights of the persons who would have applied against the open recruitment, would be infringed inasmuch as there is a clear distinction between deputation and the direct recruitment inasmuch as the appoint by deputation is generally made from one department to another form the employees who have their lien on the particular posts in their respective parent departments, whereas in case of direct recruitment even the unemployed person if he otherwise fulfills the requisite conditions could compete and get selected/appointed. He has also contended that in particular the rights of the person belonging to reserved category are also going to be jeopardized in case the applicants are allowed to occupy the posts which in fact are meant for the reserved category candidates.

11. Learned Counsel for the respondents has next contended that there is absolutely no question of visiting the applicants with any discrimination. He, on instructions from the officer in charge present in the Court , has asserted that show cause notice prior to termination have already been issued in respect of the persons who came to be regularised while working on deputation. He has also submitted that the respondents have taken a policy decision to scrap of all of such appointments which have been made de hors the rules and submitted that the

apprehension of the applicants is ill founded, having no basis. In this view of the matter, the action of the respondents cannot be termed as illegal or arbitrary.

12. In the rejoinder, Learned Counsel for the applicant has submitted that had the respondents been fair enough, they would have stated so in the reply and by now so many months have elapsed, nothing prevented them to place on record a copy of any such notice which is said to have been issued to the incumbents who came to be regularised while working on deputation. But such course of action has been found expedient to the respondents and their action smacks of some fowl play or hostile discrimination. He has lastly contended that whatever is the case may be the applicant would be satisfied if they are given the similar treatment as is being given to the said persons. He has, however, submitted that while deciding the OA this Hon'ble Tribunal may be pleased to take into consideration the treatment of intervening period. Since other similarly situated persons are being continued whereas the applicants in particular and some others in general from the category of so called deputation have been ousted by singling them out for no good reason than that of arbitrariness.

13. We have considered the rival submissions put forth on behalf of both the parties. As far as factual aspects of the matter, the material facts are not in dispute. There were certain vacancies to be filled in by deputation against which the applicants have been appointed. The appointment letters indicate that the appointments have been made on deputation.

The other terms of deputation have also been fully annotated therein. It is also true that at an earlier occasion also similar appointments were made and such persons have been subsequently ordered to be regularised against the existing vacancies and are being continued on the pots of principals on which they were so appointed. It is also true that there is a mention of filling up of back log vacancies of SC/ST in the advertisement. The respondents have however, been keeping pin drop silence as regards the actual short fall of the reserved candidates or to that effect, the correct position of the cadre strength and the deficiencies thereof etc. There is no dispute that the recruitment rules provides only two mode of appointment i.e. either by promotion or through direct recruitment. The mode of recruitment by deputation has not been prescribed under the rules. It is also true that the respondents have not made any averment to the effect that any notice of termination has been issued in respect of the persons who came to be regularised while working on deputation and no copy of such notice has been placed on records. We have also not been furnished with any reason as to why such material fact has not been disclosed in the reply despite the fact that the very reply contains two parts without their being any such provision under the rules and the law has been pleaded in extensio which has almost resulted in plethora of pleadings, which could have been and should have been conveniently avoided.

14. We notice that the applicants are quite highly educated persons and very well understand the recruitment rules, the language of the advertisement envisaged in all their appointment

letter. Knowing fully well and keeping their eyes open they have accepted the terms and conditions of the appointment and joined on deputation. They also knew pretty well that no appointment by deputation could be made on the post of Principal. It pains us, when we hear that a plea of adhesive contract is adduced in their cases who belong to elite group of society We are not at all impressed with the submission that the applicants were in any way compelled to accept any unusual terms and the very plea to this effect is nothing but groundless and is only to be rejected.

15. Now we will advert as to whether when certain mode of doing a thing is prescribed whether any other mode could be adopted. In this particular case there was no mode of appointment by deputation but the post had been filled in by deputation. The law on this point in the case of well settled holding therein that once a particular mode of doing a thing is provided, other modes of doing it are necessarily forbidden and that thing is required to be done through the mode provided or not at all. In this view of the position we have absolutely no hesitation in terming the appointment to the post of Principal by deputation as de horse of the rules, void ab initio and therefore, having no legal existence. The impugned termination of the applicants cannot be interfered on this point.

Before adverting further, we would also like to clear that having come to the conclusion that very appointment by applying the mode of deputation is void ab initio, further regularisation of such appointments can have not legal existence. Since once the very order is not having any legal

existence or is ex facie illegal, the same cannot be legalised by any higher authority by passing a legal order. We find support of our view from the verdict of Apex court in the case of **Baradakanta Mishra vs High Court of Orissa & Another AIR 1976 SC 1899 = 1976 SCR 561,** wherein their Lordships of supreme court were dealin with a penalty case and have been pleased to hold as under:

> "There is no question of merger of the orders of the High Court in the orders passed by the Governor. If the order of the initial authority is void an order of the appellate authority cannot make it valid. The confirmation by the Governor in appeal cannot have any legal effect because it is only that which is valid that can be confirmed and not that which is void"

The aforesaid observation of the Apex court is a complete answer to the submissions of the learned counsel for aprehension of the learned counsel for the applicants that the person who came to be appointed on deputation and have been regularised are going to be treated differently by treating their appointment as regular. We may observe that the regularisation of such employees cannot give them any better status and once their very appointment is held to be void, no better title can be given to them basing on such intila appointments which have no legal existence at all. At the cost of repeatition, if the aforesaid proportion is applied to the cases of the persons who came to be appointed on deputation and were regularised subsequently, they do not get any better status than that of the applicants and can aptly be said to be travelling in the same boat in which the applicants have been travelling.

16. Now as regards the grant of similar benefits to the applicants as that of the persons who came to be appointed on deputation and came to be regularised subsequently, while we cannot disbelieve the version of the respondents especially when the statement has been made at Bar by the Learned Counsel for the respondents that positive action is being taken against them, we cannot extend the benefits of equality clause to the applicants since the Article 14 cannot be allowed to applied in such cases where there is no enforceable right of the parties. We cannot be forced to perpetuate the illegality on this count and we find support of this proposition from the verdict of Supreme Court in the case of State of Haryana v. Ram Kumar Mann, (1997) 3 SCC 321 : (1997 AIR SCW 1574), their Lordships of Supreme Court observed (Para 3) as under:

> "The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement ? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

In view of the aforesaid proposition of law laid down by the Apex court of this countery, no relief can be granted to the applicants on the ground infraction of article 14 of the constitution.

17. There is yet another ground which has been stressed upon is that the applicants have been repatriated while the charge has been directed to be given to the Vice Principals. On this ground, there is hardly any deliberation required, since the very appointment of the applicants have been held to be de hors the rules; having no legally existence. They cannot be said to be at a better footing than that of an ad hoc employee. More so, it is not a case of regularisation where the principle that ad hoc employee should not be replaced by another ad hoc employee, should be applied. The post of the principal is required to be filled in either by direct recruitment or by promotion. In this view, we are not impressed with the submissions of the Learned Counsel for the applicants since the same does not appeal to the reason and the original application cannot be sustained on any of the grounds.

18. Before parting with the case, we would enter into a caveat with the respondents that some stern action ought to have been taken against the erring official in such grave matters. We inquired as to whether any action has been taken against official (s) responsible for the episode, from the Learned Counsel for the applicant who, after consulting the officer in charge, pleaded ignorance. We hope and trust that they shall do well if they take some deterrent action/measure even now so as to curb such

episode as well as ensure their recurrence in future. We also find that the respondents should have not withheld from this Tribunal, the vital information relating to the cadre strength indicating the vacancy position in respect of various categories especially that of reserves points and also regarding the action being taken against the similarly situated persons who were on deputation and came to be regularised.

19. The upshot of the aforesaid discussion leads us to inescapable conclusion that the OA is devoid of any merits and substance. The same fails and stands dismissed accordingly. However, in the facts and circumstances of this case, the parties are directed to bear their own costs.

(A. K. BHANDARI)
ADMINISTRATIVE MEMBER

(J. K. KAUSHIK)
JUDICIAL MEMBER

P.C./