

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 268/2012

This the 18th day of September, 2015

Hon'ble Mr. Justice B.P. Katakey, Member (J)

Hon'ble Mr. K.N. Shrivastava, Member (A)

Mr. Dinesh Chandra Pathak,
DOB: 1.8.1954,
s/o Sh. Laxmi Narain Pathak,
R/o Flat No. 204, Pocket-I,
Sector-6, Dwarka,
New Delhi-110075
(Working as Vice Principal,
K.V. No. 2, Delhi Cantt.-110010)

-Applicant

(By Advocate : Shri M.K. Bhardwaj for Ms. Priyanka Bhardwaj)

Versus

1. Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
(through: The Commissioner)
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. Shri R.B. Sharma,
Working as Principal,
K.V.: Ordnance Factory, Varangaon.

-Respondents

(By Advocate : Shri S. Rajappa)

ORDER (ORAL)

By Shri B.P. Katakey, Member (J):

The applicant, who was selected for appointment as Principal in Kushmunda, Korba, in the State of Chhattisgarh vide order dated 13.10.2009 issued by the Deputy Commissioner (Pers.), has filed this present OA for declaring the memorandum dated 01.08.2011 issued by the Sr. Admn. Officer (Estt.) Kendriya Vidyalaya Sangathan, as illegal and being arbitrary and also for declaration that action of the respondents in considering the applicant's juniors for promotion to the post of Principal without considering his request for modification of his place of positing is illegal and arbitrary. The applicant has also prayed for a declaration that the respondent No. 1 is duty bound to give effect to the memorandum dated 13.10.2009 and also to modify the place of posting in terms of the representation dated 25.11.2009 filed by him.

2. We have heard Mr. M.K. Bhardwaj, proxy counsel appearing for Ms. Prinyanka Bhardwaj, learned counsel for applicant and Mr. S. Rajappa, learned counsel appearing for the respondents.

3. Learned counsel for the applicant has submitted that since the representation dated 25.11.2009 has been filed by the applicant seeking change of place of posting, the authority is duty bound to consider the same and cannot sit over the same without attending to it. It has also been submitted that the persons junior to the

applicant have been posted as Principal in the subsequent year, i.e. in the year 2011, without considering his request of change place of posting pursuant to the promotion made vide order dated 13.10.2009, which action, according to learned counsel, is illegal and arbitrary, more so when the said order dated 13.10.2009 has not been withdrawn.

4. Per contra, the learned counsel for the respondents submits that the respondents authority vide order dated 28.10.2009 has rejected the request of the applicant for change of place of posting, by which order the applicant was also directed to join his place of posting by 07.11.2009. The learned counsel further submits that since the applicant has failed to join his place of posting by the aforesaid date, the order of promotion dated 13.10.2009 stands withdrawn. It has also been submits by learned counsel that in the subsequent year i.e. 2011, the applicant though was again considered for promotion to the post of Principal, he could not be promoted as the DPC did not recommend his name, he having not secured the required benchmark. Learned counsel further submits that the applicant's case for promotion to the post of Principal was not considered for the year 2010 because of he is failure to accept the order of promotion made on 13.10.2009 issued by the Deputy Commissioner (Pers.).

5. In para 4 of the said order of promotion it has been provided that if the applicant declines to accept the promotion, he will not be

considered for promotion for a period of one year from the date of refusal. It also appears from the Memorandum dated 28.10.2009 issued by Sr. Administrative Officer (Estt.) that the applicant's request for change of his place of posting has been rejected by the respondents' authority. By the said order the applicant was directed to join his duty at Kushmunda, Korba, on or before 07.11.2009, failing which the applicant has been informed that the offer of appointment will be withdrawn.

6. The applicant admittedly did not join his place of posting pursuant to the aforesaid order of promotion dated 13.10.2009, despite the aforesaid order dated 28.10.2009 and hence the order of promotion dated 13.10.2009 stands withdrawn.

7. The applicant's case for promotion to the post of Principal in the year 2010 was not considered because of his refusal to join his place of posting as Principal. The same was done in terms of the order dated 13.10.2009 as well as the relevant Rules. The applicant, however, was considered for promotion in the year 2011. The DPC did not recommend the name of the applicant for promotion to the post of Principal in the year 2011, he having not secured the required benchmark.

8. The applicant having refused to join his place of posting vide order of promotion dated 13.10.2009, is not entitled to the relief claimed. The persons junior to the applicant having been

recommended for promotion were promoted. The said proceeding of the DPC and the consequently promotion made in the year 2011 has not been challenge by the applicant.

9. The applicant having refused to join his place of posting cannot now claim that he should be promoted pursuant to the aforesaid order dated 13.10.2009, as the said order of promotion stands automatically withdrawn after 07.11.2009 i.e. the date on or before which the applicant was directed to join his place of posting.

10. The prayer made by the applicant for declaration of the office memorandum dated 08.07.2011 as well as 01.08.2011 promoting the persons junior to the applicant to the post of Principal also cannot be allowed, in view of the aforesaid discussion.

11. In view of the above, we do not find any merit in the OA and hence it is dismissed. No costs.

(K.N. Shrivastava)
Member (A)

(Justice B.P. Katakey)
Member (J)

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