

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.2363/2008

Reserved on 02.05.2016
Pronounced on 17.05.2016

HON'BLE MR P.K. BASU, MEMBER (A)
HON'BLE DR B.A. AGRAWAL, MEMBER (J)

Edunuri Moundenar Reddy
S/o Sh. R. Reddy,
Posted in Kendriya Vidyalaya,
Central University, Hyderabad.
R/o H.No.201-2/11, Saraswati Colony,
Uppal-39, Hyderabad.

...Applicant

(By Advocate: Mr. Yogesh Sharma)

VERSUS

1. Kendriya Vidyalaya Sangathan
Through Commissioner,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi.
2. The Commissioner,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi.
3. Deputy Commissioner (Personnel)
18, Institutional Area
Shahid Jeet Singh Marg,
New Delhi.

...Respondents

(By Advocate: Mr. S. Rajappa)

:ORDER:**DR BRAHM AVTAR AGRAWAL, MEMBER (J):**

The instant OA, as amended through the MA No.1779/2015, vide our order dated 27.05.2015, is the third OA in the series of cases initiated by the applicant. The applicant is a Postgraduate Teacher (PGT) in Chemistry since 1986, who, like many others, had in 2001 applied for the post of Principal and was appointed as such on deputation basis in 2002. His deputation was terminated and he was repatriated to his substantive post of PGT. The applicant filed the OA No.163/2003 before the Guwahati Bench, challenging his repatriation, which was dismissed on 02.12.2004. He then filed the CWP No.2007/2005 before the Hon'ble Gauhati High Court, which was also dismissed on 20.02.2007. The second OA, i.e., the OA No.2165/2007 was filed before the Principal Bench after the issuance of the Kendriya Vidyalaya Sangathan's Circular dated 19.09.2007 (Annexure A-2), seeking its benefit, aiming at restoration as a Principal. The said Circular reads as under:

"A decision was taken by the Chairman, KVS in November, 2004 that the appointments of 322 PGTs/Vice Principals as Principals on deputation basis made by the then Commissioner, KVS were illegal because the then Commissioner had not followed Articles 14 & 16 of the Constitution of India in so far as filling up of the post of Principals meant for SCs, STs, OBCs and unreserved categories both by way of direct recruitment and also through promotion. The then Commissioner had also regularized the services of such deputationist Principals against the posts meant for direct recruits. To set this position right, Chairman, KVS had taken the decision as stated above. Accordingly, a number of Principals who were appointed as such were reverted to their substantive posts namely as PGTs/Vice Principals and also repatriated to their parent organizations.

That various persons had challenged this decision of the Chairman, KVS in various courts/CATs. Some of the courts have rendered judgment in favour of the aggrieved persons to the effect that they ought to be treated as regularly recruited Principals from the date they were initially appointed as Principals on deputation basis. However, many of the courts including certain High Courts have yet to decide on the issue as the matters are still pending consideration.

That in order to give a quietus to the entire issue the Chairman, KVS has now taken a decision to comply with the decision of the courts/CATs which have rendered judgments in favour of the aggrieved Principals and also to withdraw those cases filed by KVS which are pending before High Courts.

It is further stated that the decision of the Chairman, KVS which affected 322 Principals in effect means that all those persons who were appointed as Principals in various KVs and who were reverted to their substantive posts would be considered as regularly appointed Principals with effect from the date they were initially appointed as such.

Accordingly, it is hereby notified by issuing this circular that in order to give effect to the decision of the Chairman, KVS, the undersigned, being the Appointing Authority for Principals in KVS, grants approval for regularizing the services of 306 Principals {(1)Repatriated to substantive posts 32+4=36; (ii) Promoted to the post of Principal 1+4=5; (iii) Regularised deputationists = 119; (iv) Yet to be regularized 145+1-146)} who were initially appointed on deputation basis and who continued to work as such or as PGTs/Vice Principals on their reversion. It is further approved that those Principals who were regularized to the post of Principal by the then Commissioner, KVS and who were reverted to their substantive posts and who have either got judgments in their favour from courts or not would be accorded the same treatment of being recognized as regularly appointed Principals. It is further stated that wherever court cases filed by KVS are pending on the issue of regularization of Principals, they will be allowed to be withdrawn paving way for the regularization of party respondents in those cases. It is further clarified that all those persons referred to in this circular would be eligible for all consequential benefits upon regularization in KVS from the date of joining on initial appointment on deputation basis and a separate communication to this effect would be issued to the individuals concerned.

It is also stated that the undersigned is competent to give further instructions to give effect to this circular."

2. The aforesaid second OA was disposed of on 30.04.2008 (Annexure A-8) with the following order:

"This OA is disposed of with a direction to the respondents to treat the present OA as a representation of the applicant and to consider his claim by way of extending the benefit of Circular dated 19.09.2007, by passing a speaking order within a period of two months from the date of receipt of a copy of this order."

3. The respondents then passed the order dated 10.06.2008 (Annexure A-1), which, *inter alia*, reads as under:

"Whereas the applicant in OA No.2165/07 has prayed for extending the benefit of circular no.F-7-7/2002-KVS(Estt.I)PF-A dated 19.9.2007 to the applicant by way of restoring the applicant to the post of Principal with all the consequential benefits as granted to the similarly situated persons.

Whereas the request of the applicant was considered by the undersigned but could not be acceded to as the benefits under circular dated 19.09.2007 are applicable to those candidates (323) who were affected by the decision of the Hon'ble Chairman, KVS in November, 2004 as quoted in the Para 1 of the said circular. As Shri E.M. Reddy was repatriated to his feeder post of PGT(Chem.) in 2003, the circular dated 19.09.2007 is not applicable in his case. It is clarified that the case of Shri E.M. Reddy does not fall within the scope of consideration of circular dated 19.09.2007 and, therefore, no benefit could be granted to him."

4. Thereafter was filed the present OA, wherein on 08.05.2009 the following order (Annexure A-9) was passed:

"Heard the learned counsel for the parties.

2. We have been told by learned counsel for respondents that when a similar view was taken to extend the benefits of circular dated 19.9.2007 to the persons falling beyond the ambit of 322 Principals by this Tribunal and was further affirmed by the High Court of Delhi, SLP (K.V.S. v. Pramod Saxena) was filed by the respondents in which the Apex Court has stayed the operation and SLP is awaiting disposal.

3. In the light of above, we dispose of this OA with a direction to the respondents to extend the benefits of aforesaid circular upon the applicant on outcome of the *sub judice* SLP before the Apex Court. It is, however, observed that the applicant shall be at liberty to revive the present OA on non-compliance. No costs."

5. The aforesaid SLP was dismissed on 29.10.2012 (order at Annexure A-10) and a detailed representation was submitted. Thereafter was filed the CP NO.2363/2008, during the pendency whereof the respondents passed the order dated 29.01.2014 (Annexure A-11), which reads, *inter alia*, as under:

"Whereas the contempt petition filed by the applicant was heard by the Hon'ble CAT, New Delhi, Principal Bench on 16.12.2013 and 06.01.2014. Hon'ble CAT directed KVS to pass an order as to why the petitioner's case cannot be considered for regularization and how his case is different from Smt. Pramod Saxena's case.

In view of the above direction of the Hon'ble CAT, New Delhi, the request of the applicant has been considered by the Competent Authority but could not be acceded to as his case is different from Smt. Pramod Saxena's case on the following grounds:-

- i) Though both Smt. Pramod Saxena and Sh. E.M. Reddy had been reverted to their feeder post of PGT on the basis of their poor performance, yet the case of Sh. Reddy is different from that of the case of Smt. Pramod Saxena. No adverse report was ever communicated to Smt. Pramod Saxena since her assuming the charge of Principal on 06.06.2000 till her reversion to the post of PGT (Chemistry) on 19.12.2000. On the other hand in the case of Sh. E.M. Reddy, he was served Memorandums dated 12/13.11.2002 and 12/13.12.2002 warning him to be careful about his responsibility as Principal particularly with regard to his academic responsibilities as he was accountable to the students entrusted to his case. He was also chargesheeted under Rule-16 CCS(CCA) Rules, 1965. The Hon'ble CAT, Principal Bench had also mentioned in its order dated 01.09.2006 that Smt. Pramod Saxena was never informed about her adverse performance/report.
- ii) Before approaching the Hon'ble CAT, Principal Bench, New Delhi, Sh. E.M. Reddy also challenged the order dated 24.06.2003 of his reversion to the post of PGT (Chem.) before Hon'ble CAT, Guwahati Bench in OA No.163/03 which was dismissed. Further, the applicant filed an appeal before the Hon'ble High Court of Gauhati in WP (C) No.2007/2005 against his reversion and same was also dismissed vide judgment dated 20.02.2007. In this way, he lost the case in Hon'ble CAT, Guwahati as well as Hon'ble

High Court, Guwahati earlier. On the other hand Smt. Pramod Saxena challenged her reversion in Hon'ble CAT, Principal Bench, New Delhi and got relief which was also held by Hon'ble High Court, Delhi and Hon'ble Supreme Court of India.

This order is passed keeping in view of the above position and in compliance of Hon'ble CAT, Principal Bench, New Delhi direction on 06.01.2014."

6. This Tribunal treated the CP as an MA for revival of the OA, vide its order dated 07.03.2014. Thereafter was moved the aforesaid MA No.1779/2015 for amendment in the OA, which was allowed.

7. We have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given our thoughtful consideration to the matter.

8. In our view, the distinctions made by the respondents between the case of the applicant and the case of Smt. Pramod Saxena (vide Annexure A-11) are not germane insofar as the claim of the applicant based on the respondents' Circular dated 19.09.2007 (Annexure A-2) is concerned. His repatriation in 2003 and dismissal of the challenge thereof by courts as well as his performance prior to his repatriation are besides the point involved in the instant OA. Further, whether or not the applicant is one of the 322 PGTs/Vice-Principals, as referred to in the first paragraph of the said Circular, should not make any difference, because if he is covered, he becomes entitled to its benefit and if

he is not, the Circular to that extent may be called discriminatory, being violative of articles 14 and 16 of the Constitution.

9. In the light of the above, the OA deserves to succeed. Therefore, the impugned orders dated 10.06.2008 (Annexure A-1) and 29.01.2014 (Annexure A-11) are set aside. The respondents are directed to extend to the applicant the benefit of the Circular dated 19.09.2007 (Annexure A-2) with all due consequential benefits. The exercise shall be completed within two months from the date of receipt of a copy of this Order.

10. The OA is allowed accordingly. No order as to costs.

(Dr. B.A. Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/jk/