

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 04th day of January 2019.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER – A

HON'BLE MR.RAKESH SAGAR JAIN, MEMBER –J

Original Application No. 868 of 2012

Tribhuwan Prasad Pathak, S/o Shri Rameshwar Prasad, R/o H. No. 67-C, Gurunanak Nagar, Lane No. 2, Naini, Allahabad.

... . Applicant

By Adv: Shri Ashish Srivastava

V E R S U S

1. Union of India through Ministry of H.R.D. Department of School Education and Literacy, New Delhi.
2. Commissioner, Navodaya Vidyalaya Samiti, A-28 Kailash Colony, New Delhi.
3. Joint Commissioner (Admn), Navodaya Vidyalaya Head Quarter, A-28 Kailash Colony, New Delhi.
4. Dy. Commissioner, NVS (RO) Sector 2, Lekhraj Panna third Floor Vikas Nagar, Lucknow 226022.
5. Dy. Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Way No. 26-27 Sector 31-A Chandigarh.

... . Respondents

By Adv: Shri Nishant Mehrotra

ORDER

BY HON'BLE MR.RAKESH SAGAR JAIN, MEMBER – J

1. The present Original Application has been filed by applicant Tribhuwan Prasad Pathak under Section 19 of the Central Administrative Tribunals Act, 1985 by applicant seeking the following reliefs:

“(i) This Hon'ble Tribunal may be pleased to quash the impugned order dated 06/07.07.2011 passed by

the respondent No.2 and the order dated 12.10.2011 passed by the Assistant Commission (Admn) Navodaya Vidyalaya Samiti, Lucknow (Annexure No. A-1 & A-2 to the present original application).

- (ii) This Hon'ble Tribunal may be pleased to direct the respondents to allow the applicant lien of two years for his posting as Principal Krishak Inter College, Bhauri, Chitrakoot.
- (iii) This Hon'ble Tribunal may be pleased to direct the respondents to promote the applicant as Principal Navodaya Vidyalaya Samiti from the date the juniors and batch mate are promoted on this post.
- (iv) This Hon'ble Tribunal may be pleased to direct the respondents to pay the applicant the arrears of dues as T.A./D.A. and transfer allowance during his posting under the respondent No.5.
- (v) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.
- (vi) Award the costs of the original application in favour of the applicant".

2. Applicant's case is that in 2006 he was posted as Vice Principal in Jawahar Navodaya Vidyalaya (JNV), Gyanpur, Bhadohi and applying through proper channel, he responded to notification issued by U.P. Secondary Education Selection Board, Allahabad for appointment of Principal. He was selected for the post of Principal and his application to respondent No. 2 for grant of lien for two years as per the Government Rules was allowed and vide order dated 01.07.2010 (Annexure- A4) one year lien from the date of his being relieved from the organisation was granted and the letter would show that the lien of one year was granted under provisions contained in OM No. 28015/2/80 (C) dated 22.07.1980. As per the O.A., applicant was assured that he will be allowed extension of one year before the expiry of this

period keeping in consideration his request for lien for two years.

3. It is the further case of applicant that on being relieved from JNV on 02.07.2010, he assumed charge of Principal, Krishak Inter College, Bhauri, Chitrakoot. He on 02.04.2011 and 15.06.2011 applied to respondent No. 3 for granting of further extension of work as Principal, Principal, Krishak Inter College. It is the case of applicant that extension of lien is normally extended by another year in routine. However, vide order dated 06/07.07.2011, his request was rejected and he was asked to tender his resignation or return back otherwise a presumption would be drawn that the applicant is not interested to come back to NVS. Unlike other employees of NVS into mere granted two years lien, applicant request for lien for one more year was rejected. On his request, he was given a list of employees by respondent NVS on 18.8.2011 who were on lien and there were 25 employees whose lien was extended by a year and included Principals and Vice Principals who were on two years lien with other departments.
4. It is the case of applicant that he has been discriminated against by non-extension of his lien whereas his colleagues have been granted lien of two years and no reasons have been given for rejection of his request and has given particulars how in previous years he has been victimised by the NVS administration by promoting his juniors overlooking him and have withheld his TA/DA and transfer allowance on many occasions.
5. Applicant seeks quashing of :
 - (1) Letter dated 06/07.07.2011 declining his request extension of lien and informing him to tender his resignation from NVS w.e.f. 03.07.2011 or return back to service of NVS. He shall

intimate the respondents by 20.07.2011 failing which it would be presumed that he is not interested to come back to NVS;

(2) Letter dated 12.10.2011 inviting his attention to order dated 03.11.2011 terminating his lien w.e.f. 02.07.2011 and submit his request for payment of his terminal benefits;

(3) Direct the respondents to given lien of 2 years;

(4) Promote applicant as Principal from the date his juniors and batch mate have been promoted;

(5) Direct the respondents to pay his arrears of TA/DA and transfer allowance.

6. In the counter affidavit it has been averred that applicant was granted lien for one year keeping in view that he was appointed Principal in Krishak Inter College on direct recruitment basis on probation for a period of one year. The respondents cannot be compelled to extend his lien period and lien cannot be claimed as a matter of right. Since the applicant failed to join NVS by 02.07.2011, order dated 03.10.2012 was passed. The recruitment to the post of Principal is made strictly in accordance with the rules and regulations. Respondents have denied the allegation of discrimination averred by the applicant.

7. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.

8. It is settled law that that framing of Service Rules and administration of an organisation is a policy matter which falls within the realm of the Executive/Department/Expert Bodies and no one can challenge it by saying that the same is not beneficial. Applicant is not entitled as a matter of right to claim extension of lien. Other employees have been given longer lien but it cannot be said that the conditions etc of

those employees are similar to that of the applicant herein. In any case, the respondents' case is that they gave a lien for one year since applicant was recruited to the College on probation of one year. It would be profitable to refer to the principle laid down by the Hon'ble Supreme Court in P.U. Joshi & Others Vs. Accountant General 2003 (2) SCC 632 and the relevant para 10 reads as under:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure

the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service”.

9. We would include the consideration of ‘lien’ in aforementioned policy matter which are to be decided by the respondents and it is not for this Tribunals to tell the respondents as to how to run their institutions, to do otherwise would be to interfere with the working of the respondents-educational institute which can lead to chaotic result in the administration which is best run by people who are expert in such like matters. The courts should not interfere with day to day administrative orders which are made in public interest and for administrative reasons unless the orders are made in violation of any mandatory statutory rule or on the ground of mala fide.
10. Respondents after following principles of natural justice and informing the applicant of the course of action available to him, had informed him to submit his request for payment of his terminal benefits since it is apparent that the applicant did not join the NVS after the period of his lien had expired.
11. In so far as other reliefs are concerned, applicant has not given the particulars of his juniors who have been promoted

overlooking him and also not made them parties in this O.A. or the details of the TA/DA etc to which he is entitled. Bald and general averments have been made in these regard for which no basis/details have been quote in the O.A.

12. In the circumstances and the facts of the case, we are of the opinion that the O.A. is meritless. Accordingly, the O.A. is dismissed.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-