

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 584 of 2009

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Sreenibash Panda, aged about 49 years, S/o Late Gangadhar panda, working as Post Graduate Teacher (Physicws), Kendriya Vidyalaya, Balasore, Indira Gandhi Marg, At/PO/PS/Dist – Balasore, Orissa.

.....Applicants.

VERSUS

1. Union of India, represented through Secretary, Ministry of Human Resource Development, Department of School Education & Literacy, Sashtri Bhawan, New Delhi – 110001.
2. Kendriya Vidyalaya Sangathana, represented through its Commissioner, 18, Institutional Area, Saheed Jeet Singh Marg, New Meherauli Road, New Delhi – 16.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathana, Regional Office, Pragati Vihar, Mancheswar – 751017, Bhubaneswar, Dist. - Khurda.

.....Respondents.

For the applicant : Mr.S.Mohanty, counsel

For the respondents: Mr.H.K.Tripathy, counsel

Heard & reserved on: 5.3.2019 Order on : 7.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This Original Application (in short OA) has been filed by the applicant seeking the following reliefs:-

“(i) Pass orders setting aside the order dated 20/21.7.2009 passed by Assistant Commissioner, Kendriya Vidyalaya Sangathan, Respondent No.3.

(ii) Pass orders directing the respondents to give senior scale of pay to the applicant with effect from 9.11.1998 on completion of 12 years from 9.11.1986 and pay his arrear salary forthwith;

(iii) Pass orders declaring that the seniority of the applicant be fixed in the provisional Common All India Seniority List of PGT's as on 1.1.2005 at Serial No.546 on the basis of the date

of joining as PGT Physics (9.11.1986);

(iv) And pass such other order/orders, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice and allow the Original Application."

2. The facts leading to the dispute are that the applicant was first appointed by the respondent-Kendriya Vidyalaya Sangathan (in short KVS) as a Teacher in Physics after being selected through an advertisement, he was appointed on a trial basis for two years during which he was asked to get the degree in B.Ed after which his service would be regularized. He joined on trial basis on 9.11.1986 and got the B.Ed. degree on 11.3.1989. His services were regularized from 11.3.1989. After completion of 12 years of service from the date of regularization (i.e. 11.3.1989), he was granted senior scale for the teachers. It is the case of the applicant that in the case of two other similarly placed Teachers i.e. Smt. Nirupama Kar and Sri Subash Chandra Behera, who had filed OAs in the Tribunal, the respondents were directed to extend the benefit of senior scale after completion of 12 years from the date of initial appointment and not from the date of regularization. The applicant seeks similar benefit as extended to above two Teachers.

3. In addition, the applicant also claims that his seniority position in the Provisional Gradation list be corrected from the position of 1384 to 546 after grant of senior scale from completion of 12 years from the date of joining i.e. from 9.11.1998 in place of 11.3.2001. After passing of the order dated 2.3.2009 of the Tribunal in the case of Smt. Nirupama Kar in OA No. 771/2005, the applicant represented to the respondents for similar benefit, which was rejected by the respondents vide order dated 20/21.7.2009 (Annexure-A/4). Being aggrieved, the applicant has filed this OA.

4. The respondents have filed the Counter resisting the OA on the following grounds:-

(i) Based on the DOPT OM dated 3.7.1986 (Annexure-R/1), it is stated that ad hoc/trial period service is not be taken into account while determining the seniority, which is to be counted from the date of regularization.

(ii) The KVS has clarified vide letter dated 24.2.2003 (Annexure-R/2) stating that the services rendered on adhoc basis or during trial period cannot be counted for grant of senior scale or selection scale.

(iii) Regarding the decision in the case of Smt. Nirupama Kar and Sri Subash Chandra Behera, the order of the Tribunal is under challenge

before Hon'ble High Court in two Writ petitions which are pending.

5. Learned counsel for the applicant was heard. He stressed on the fact that under similar circumstances in the case of Smt. Nirupama Kar and Sri Subash Chandra Behera, the Tribunal has allowed counting of the period of trial/ad hoc service before regularization for the purpose of grant of senior scale and the applicant being similarly situated, is entitled for similar relief. He also filed a copy of the order of the Tribunal dated 2.3.2009 passed in the case of Nirupama Tripathy alias Kar in support of the applicant's case.

6. Learned counsel for the respondents opposed the arguments of the applicant's counsel stating that the orders of the Tribunal in the case of Smt. Nirupama Kar and Sri Subash Chandra Behera are under challenge before Hon'ble High Court for which the said order cannot be taken as a precedent. He also argued that since the order of the Tribunal in above case violated the rule, it is to be treated as per incuriam which cannot be relied upon for deciding a similar case. It was also argued that in the case of Smt. Nirupama Kar and Sri Subash Chandra Behera, there was no prayer to change the seniority in the Gradation list. But in the present OA, one of the relief sought is to change the seniority position of the applicant from 1384 to 546 [vide para 8(iii) of the OA] and by doing so, the seniority of a number of other employees would be affected. Hence, these employees, being essential parties, should have been incorporated as parties which has not been done by the applicant in this OA. He therefore, argued that the OA is not maintainable on the ground of non-joinder of essential parties. Learned counsel for the respondents also filed a Written note of arguments with the citation of the judgments in the following cases to strengthen his case:-

(i) B.Varadha Rao -vs- State of Karnataka & Anr. [(1986) 4 SCC 624]

(ii) Punjab State Warehousing Corpn. -vs- Manmohan Singh [(2007) 9 SCC 337.

(iii) Khirod Kumar Patra -vs- KVS & Ors. [WP(C) No. 11298/2013]

7. In the case of B. Varadha Rao (supra) it was held by Hon'ble Apex Court that the seniority has to be reckoned from the date of regularization. In the case of Manmohan Singh (supra) Hon'ble Apex Court has held that the policy guidelines of the State Government are applicable for Government servant and those are not applicable on the employees of the PSUs. In the case of Khirod Ku. Patra (supra), Hon'ble Orissa High Court has upheld the fee structure of the KVS schools and

this judgment is inapplicable for the OA before us.

8. We have perused the pleadings on record and considered the submissions of learned counsels. The point regarding the seniority as argued by the respondents' counsel citing the case laws as discussed above, has some force. The claim to change the seniority of the applicant from the serial no. 1384 to 542 will adversely affect many other employees altering the settled position of the seniority since long. The affected persons have not been included as parties. Further, in the cases of Smt. Nirupama Kar and Sri Subash Chandra Behera, the Tribunal did not consider the issue of seniority which was not changed. It is noticed that the seniority position of the Teachers including the applicant has been decided since long back based on the date of regularization of the service after completion of B.Ed. degree by the applicant. Moreover, the applicant has not furnished any other precedent where similar benefit has been allowed. In the cited cases decided earlier by the Tribunal, there was no direction with regard to the seniority position of the applicants in the cited OAs. Hence, we have no hesitation that the claim of the applicant regarding seniority has no merit and it is not maintainable.

9. Regarding the issue of the date which will be relevant for the purpose of calculating 12 years, we have gone through the order dated 2.3.2009 of the Tribunal in which it was held as under:-

"3.....There is much difference between trial based appointment and ad hoc appointment. As per service rules, one of the questions for appointment to the post of PGT is the pass of B.Ed. Degree which the applicant lacked when he was appointed during 1985 and the applicant succeeded in B.Ed. Degree examination only during 1988. In the above view of the matter we find that passing of the B.Ed. Degree only relates to confirmation or regularization of the service where as the claim of the applicant is that she is entitled for senior scale of pay on completion of 12 years of service in the K.V.S. In the absence of any service rules preventing the authorities from allowing the senior scale of pay or counting the entire service for other service benefits except seniority, the applicant is entitled for senior scale of pay w.e.f. the date of completing 12 years of service in the cadre of PGT."

It is seen from the guidelines at Annexure-R/1 that there is reference to completion of 12 years of service for grant of senior scale subject to screening by the DPC in the guidelines of the Ministry which does not specify that 12 years of service is to be counted from the date of regularization of service, although the circular of the KVS at Annexure-R/2 clarifies that the date from which services should be counted is the date of acquiring the necessary qualifications. Hence, no rule or regulation of the guidelines of Government of India furnished before us in support of the contention of the respondents that the years of service for

senior scale is to be counted from the date of acquiring the necessary qualifications.

10. In view of above discussions and taking note of the fact that as per the order dated 2.3.2009 of the Tribunal passed in the OA No. 771/2005 filed by Smt. Nirupama Kar, the benefit of counting the period of service as Teacher prior to regularization for the purpose of granting senior scale has been allowed by the Tribunal to the applicant in the OA No. 771/2005 and that the said order is under challenge before Hon'ble High Court in the Writ petition [W.P.(C) No. 9505/09] filed by the respondents, we allow the present OA in part by extending same benefit as allowed by the Tribunal in the OA No. 771/2005 to the present applicant, who is similarly placed as Smt. Nirupama Kar in OA No. 771/2005. However, this will be subject to the outcome of the writ petition WP(C) No. 9505/09 before Hon'ble High Court. The claim of the present applicant regarding re-fixation of his seniority position, being devoid of merit as discussed in paragraph 8 of this order, is rejected.

11. The OA is disposed of with directions as above with no order as to costs.

(SWARUP KUMAR MISHRA)

MEMBER (J)

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath

