

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAATI BENCH

Original Application No.040/00282 of 2015

Date of Order: This the 04.01.2019

THE HON'BLE SMTI MANJULA DAS, JUDICIAL MEMBER
HON'BLE MR.N.NEHSIAL, ADMIISTRATIVE MEMBER

Shri Kamala Kant Bajpai, TGT (Sst),
 S/O Shri Ram Asrey Bajpai,
 Kendriya Vidyalaya, Kimin
 (10th I.T.B.P. Force, Kimin),
 District-Papumpare (Arunachal Pradesh),
 PIN:791121 Applicant
 By Advocate:Mr.P.J.Phukn

-AND-

1. The Union of India
 Represented by the Secretary
 To the Government of India,
 Department of HRD
 New Delhi-110001.
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2. The Commissioner,
 Kendriya Vidyalaya Sangathan,
 18, Institutional Area, Shaheed Jeet
 Singh Marg, New Delhi-110006.
3. The Joint Commissioner,(Admn)
 Kendriya Vidyalaya Sangathan
 18, Institutional Area, Shaheed Jeet
 Singh Marg, New Delhi-110006.

4. The Assistant Commissioner, (Admn)
Kendriya Vidyalaya Sangathan
18, Institutional Area, Shaheed Jeet
Singh Marg, New Delhi-110006.

5. The Deputy commissioner,
Kendriya Vidyalaya Sangathan
Regional Office-Tinsukia,
Campus of Kendriya Vidyalaya
O.I.L.Duliajan,
District-Dibrugarh(Assam)
PIN-786602

6. The Assistant Commissioner, (Admn)
Kendriya Vidyalaya Sangathan
Regional Office-Tinsukia,
Campus of Kendriya Vidyalaya
O.I.L.Duliajan,
District-Dibrugarh(Assam)
PIN-786602

7. The Principal
Kendriya Vidyalaya, Kimin
(10th I.T.B.P. Force, Kimin),
District-Papumpare
(Arunachal Pradesh),
PIN-791121

Respondents

ORDER (O R A L)

Per Mr.N.Neisial, Member(A):

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-“

“8.1 For promoting the applicant to the post of PGT-Economics with retrospective effect immediately alongwith all consequential benefits, etc.

8.2. For setting aside/quashing the impugned orders (regarding 1st & 2nd inquiry) more particularly the order dated 27.02.2015, in favour of the applicant.

8.3 For not harassing the Applicant in any manner (including constitution of recent fact finding committee, immediately even after two inquiry proceedings);

(8.4) For any other appropriate relief/reliefs that the applicant may be entitled to and as may be deemed fit and proper by this Hon'ble Tribunal.”

2. The applicant was serving as TGT (Social Studies) at Kendriya Vidyalaya at Kimin (Arunachal Pradesh) under Papumpare district of Arunachal Pradesh. In 2011 the Disciplinary Proceedings under Rule 16 of CCS (CCA) Rules, 1965 was initiated against the applicant vide Memo No.20063-2/KVS (GR)/2011/18514-15 dated 19/20-10.2011 on the ground of misconduct or misbehaviour including showing of disrespect to the constituted/Inspecting Authority, non maintenance of teacher's diary, non maintenance of split up of syllabus, bi-lingual method teaching in the class. The inquiry was conducted and inquiry report submitted on 21.04.2014. The inquiry authority found the charges "Not proved". However, the Disciplinary Authority vide his order No.F.42062/2014-15/KVS(TSK)/Admn)/1888-1889 dated 19.06.2014 imposed penalty of "censure" on the applicant. Subsequent to this, an office order No.F.11055/1(1)/PGT/LDE/2013/KVS(HQ)Estt.II/1109886-

90 dated 09/18-12.2014 was issued promoting him to PGT in Economics for having cleared Limited Departmental Examination for the year 2010-2011. Subsequent to this, another Departmental Proceedings under 16 CCS (CCA) Rules, 1965 was initiated against the applicant vide order No.F.420355/2014-15/KVSRO/TSK/Admn.671-03 dated 05.12.2014. This Memo of charge sheet included 3 articles of charges such as, unauthorised collection money from the parents of the students for participation in the Chess Game competition, neglecting the instructions of competent authority in subversive manner, and non fulfilment of responsibility for selecting of student for participation in Chess game. In the meantime, the office order No.F.11055/1(1)/PGT/LDE/2013/KVS(HQ/E-II/PF.294-96 dated 08/13.01.2015 was issued keeping offer of promotion vide order dated 9/18.12.2014 to keep in abeyance till further orders. The second charge sheet issued to the applicant has been concluded and

the order of imposing penalty of withholding increments of pay for 2 years without cumulating effect has been issued vide office order No.4203/2014-15/KVSRO)/TSK/Admn dated 22.12.2014. The appeal of the applicant against the imposition of penalty dated 17.12.2014 has been rejected by the appellate authority vide his order No.F.42055/2014-15/KVS(RO)/TSK/Admn/ 7992 dated 27.02.2015.

3. The issue before the Tribunal is, as to whether it was appropriate or right on the part of the respondents to keep in abeyance the order of promotion which has been issued on the exoneration of the previous departmental proceedings, only because, another Disciplinary Proceedings has been initiated against the applicant after the order of promotion has been issued. In this connection, the learned counsel for the applicant has submitted the decision of **SLP (C) No.11726 of 2000** rendered in the case of **Delhi Jal Board , Vs. Mahinder Singh** which is as follows:-

“ A. Service Law –Promotion-Sealed cover procedure- Pendency of a new departmental enquiry-Effect of, if any, on giving effect to the recommendations contained in the sealed cover-Where the departmental enquiry pending at the time when DPC had met and adopted the sealed cover procedure, ended in exoneration but by that time another departmental enquiry was initiated, pendency of the latter departmental enquiry, held, would not bar the benefit of the recommendation of DPC to the employee concerned.”

4. Considering the above facts of the case law as pointed out by the learned counsel for the applicant, this Tribunal considered that it is not fair on the part of the respondents authority to keep in abeyance the promotion order as already issued after the previous departmental proceedings has been completed and the applicant has been exonerated. This is particularly, more so in the context of the fact that the individual was not given an opportunity to make representation against the proposal to keep in abeyance the promotion order already issued to him.

5. Keeping in view of the above, we hereby set aside the order No.F.11055/1(1)/PGT/LDE/2013/KVS(HQ/E-II/PF/294-96 dated 08/13.01.2014. The applicant would deem to have been promoted to the higher grade with effect from 05.01.2015. Subsequent penalty imposed on him as a result of the second Disciplinary Proceedings, if requires shall be implemented on his promotional post /scale.

6. To the above extent the O.A. is partly allowed. There will be no order as to costs.

(N.NEHSIAL)
MEMBER(A)

(MANJULA DAS)
MEMBER(J)

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