

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORGINAL APPLICATION NO.200/00239/2012

Jabalpur, this Wednesday, the 31st day of July, 2019

**HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER**

L.K.Thakur, S/o Shri Kusheshwar Thakur, Aged about 53 years, Vice Principal (Principal Grade-II), Presently under the orders of reversion to the post of Post Graduate Teacher (Mathematics), Presently posted in Kendriya Vidyalaya Sangathan, Harda-461331 (M.P.) - APPLICANT

(By Advocate – Shri Manoj Sharma)

Versus

1. Kendriya Vidyalaya Sangathan, Through its Commissioner, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi-110 016
2. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi-110 016
3. Joint Commissioner (Personnel), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi-110 062

- RESPONDENTS

(By Advocate – Shri S.S.Chauhan)

(Date of reserving the order: 13.12.2018)

O R D E R

By Navin Tandon, AM.-

The applicant is aggrieved by the order of reversion from the post of Vice Principal to the post of Post Graduate Teacher (for brevity 'PGT').

2. The brief facts of the case, as submitted by the applicant, are as under:

2.1 He was appointed as PGT w.e.f. 11.12.1984. He completed his B.Ed. on 16.06.1989.

2.2 He was promoted to the post of Vice Principal vide order dated 12.01.2006 (Annexure A-2) and posted at Gwalior.

2.3 In letter dated 13.01.2011 (Annexure A-3) it has been mentioned that since he was appointed on trial basis as PGT (Mathematics) in the year 1984 and has acquired his B.Ed. degree during 1989, accordingly his services were regularised in the year 1989. It has been further contended that his seniority position has been re-fixed at Sl.No.1392-E instead of Sl.No.240. Thereafter, he was given a memorandum dated 11.05.2011 (Annexure A-4) to show cause as to why he should not be reverted from the post of Vice Principal to the post of PGT.

2.4 In reply to said memorandum dated 11.05.2011, the applicant submitted his detailed reply (Annexure A-5) stating that the competent authority after due verification of records has granted him promotion to the post of Vice Principal, and that for appointment to the post of PGT the essential qualification is Master's degree in the concerned subject and further certain relaxation has been provided. B.Ed. degree is having no relevance with regard to determination of seniority to the post of PGT.

2.5 In the matters of **Gajendra Singh Yadav Vs. Kendriya Vidyalaya Sangathan**, Original Application No.390 of 1999 decided by

Jaipur Bench of this Tribunal on 10.09.2001 the Tribunal has held that the period of trial converting into period of probation be considered for the purpose of computing the experience as well as length of service. W.P.No.5803/2011, filed against the aforesaid order of CAT/Jaipur Bench dated 10.09.2001, was dismissed by the Hon'ble High Court of Rajasthan vide order dated 27.10.2009 Thereafter, said **Gajendra Singh Yadav (G.S.Yadav)** was granted promotion with retrospective effect vide order dated 13.05.2011 (Annexure A-8).

2.6 The respondent-authority rightly granted him promotion to the post of Vice Principal vide order dated 12.01.2006 (Annexure A-2) by taking into account the period of his trial service as PGT(Mathematics), which had been rendered by him since 1984. After the grant of promotion to the post of Vice Principal, the applicant has further rendered more than 06 years of satisfactory service with the respondents. However, in a most unreasonable arbitrary manner, the KVS issued the impugned order dated 23.02.2012 (Annexure A-1) and reverted him from the post of Vice Principal to PGT(Mathematics) after withdrawal of the original order of promotion dated 12.01.2006. He was further directed to be post in Kendriya Vidyalaya No.1 Gwalior.

3. The applicant has, therefore, prayed for following reliefs in this Original Application:-

“8(i) Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal.

(ii). Quash and set aside impugned order dt.23.02.2012 (ANN-A/1);

(ii-a) Quash and set aside the order dated 13.01.2011 Ann.A/3.

(iii) After quashing impugned order dt. 23.02.2012 (ANN-A/1), direct the respondent authorities to give effect to the order of promotion dt.12.01.2006 with all consequential benefits of pay, perks and status thereon;

(iv) Grant any other relief/s, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.

(v) Award the cost of the instant lis to applicant”.

4. The respondents in their reply have submitted as under:-

4.1 The applicant was offered appointment to the post of PGT (Maths) on trial basis in 1984 and he joined as PGT(Maths) on 11.12.1984. His services were regularised on 16.06.1989.

4.2 Based on the particulars received from the concerned Regional Office, the seniority of the applicant as PGT was fixed at serial No. 2816-7(a) showing the date of regular appointment as 11.12.1984.

4.3 The DPC meeting held on 22.03.2005 (2005-2006) considered/recommended names for promotion to the post of Vice Principal upto serial no.3000 in the general category. The applicant's position in the

seniority list was at serial No.2816-7(a) and he was found fit for the post of Vice Principal.

4.4 Later on, it was brought to the notice of competent authority that the applicant was appointed on trial basis and his services were regularised as PGT w.e.f. 16.06.1989 by acquiring professional qualification. As such the applicant was entitled for seniority from the date of regular appointment as PGT as per sub-para (v) of KVS Circular No.F.11-15/1981-KVS (Estt) dated 22.06.1981. In the said circular it is clarified that seniority of all such teachers would count only from the date of announcement of the result of the examination of teaching degree/diploma, which he/she passes. The period of trial service rendered by him/her prior to possessing requisite qualification will count for the purpose of probation.

4.5 Hence, on refixation of his seniority from the date of regular appointment, the applicant was reverted to his original post by giving him a show cause notice.

4.6 The case of Shri G.S.Yadav for promotion to the post of PGT was considered by the respondents in terms of court direction. Furthermore the facts of the two cases are different.

5. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. The learned counsel for the applicant has submitted that the essential qualification laid down for appointment to the post of PGT was only Master Degree in the concerned subject in the advertisement issued in the year 1984. The applicant passed both his graduation and post-graduation in first class and, therefore, there was no embargo in his posting as PGT. Acquisition of B.Ed. degree was not an essential qualification. Although the applicant completed his B.Ed. degree in 1989, but the same cannot be treated to be adversely against him as the acquisition of B.Ed. degree has no role with the seniority to the post of PGT. There was trend in KVS that candidates having 1st class degree at Graduation/Post Graduation level had been appointed as TGTs and PGTs even if they did not possess B.Ed. degree.

6.1 The applicant had intimated to the competent authority regarding completion of B.Ed. degree through proper channel vide KV AF Bagdogra letter No.F:1-2/KV Bag/89-90/12481-1 dated 18.10.1989. But service regularisation order was never issued by the competent authority in the past 22 years. In the impugned order dated 13.01.2011 (Annexure A-3) it was simply stated that “He acquired B.Ed degree during the year 1989. His services were regularised during the year 1989 consequent upon acquiring B.Ed. degree”.

6.2 The case of the applicant is fully covered with the decision of Jaipur Bench of this Tribunal in the case of Shri **G.S.Yadav** (supra), as has been detailed in para 18 of the rejoinder. Since Shri G.S.Yadav was promoted to higher post of PGT (vide order dated 13.05.2011 Annexure RJ-2) counting his 05 years experience of trial period of feeder post of TGT as length of service in KVS keeping aside his seniority number allotted from the date of acquisition of B.Ed.degree, the applicant should also be promoted to the higher post of Vice Principal by counting his 05 years of experience of trial period as length of services in KVS on the feeder post of PGT keeping aside the date of acquisition of B.Ed degree by him in terms of the decision of **G.S.Yadav** (supra).

7. It would be relevant to reproduce the contents of impugned order dated 13.01.2011 (Annexure A-3) to understand the exact issue involved in the present case, as under:-

"Sub: Correction in the seniority number in the Provisional Common All India Seniority List of PGTs as on 01.01.2005 – case of Shri Lalan Kumar Thakur, PGT (Maths) now as Vice Principal. Madam,

With reference to your letter No.F.14044/6-20/2010/KVS (BPL)/5844 dated 10-08-2010 regarding Grievance dated 22-03-2010 of Shri B.P.Sah, PGT (Maths) Kendriya Vidyalaya Ishapore on the subject mentioned, I am to say that:-

(1) Shri Lalan Kumar Thakur was appointed on trial basis as PGT (Maths) during 1984.

(2) He acquired B.Ed degree during the year 1989. His services were regularized during the year 1989 consequent upon acquiring B.Ed. degree.

(3) His seniority as PGT (Maths) was erroneously fixed during the year 1984.

(4) Now he has been allotted seniority number 1392-E (after the name of Smt. Radha Randhir PGT (Eco) in the Provisional Common All India Seniority List of PGTs as on 01.01.2005.

(5) His name appearing at seniority no.240 has been deleted.

The teacher concerned may be informed accordingly".

7.1 It is evident from the above letter that there was a Provisional Common All India Seniority List of PGTs in existence as on 01.01.2005 wherein the name of the applicant was placed at serial No.240 on account of his joining as PGT in the year 1984. On finding that the applicant acquired B.Ed degree during the year 1989, he was allotted seniority number 1392-E in the Provisional Common All India Seniority List of PGTs as on 01.01.2005.

8. It would be further relevant to reproduce the contents of impugned memorandum dated 23.02.2012 (Annexure A-1) as under:-

"Whereas the name of Shri L.K.Thakur, PGT (Maths) along with others was considered by the Departmental Promotion Committee in its meeting held on 22.3.2005 based on the particulars received from the Assistant Commissioner (re-designated as Deputy Commissioner), KVS RO Silchar wherein showing his date of regular appointment as 11.12.1984, in the cadre of PGT.

Whereas based on the particulars the DPC recommended the name of Shri Thakur for promotion to the post of Vice Principal. Accordingly he was promoted to the post of Vice Principal vide Memorandum of even number dated 12.1.2006 with posting at KV No.3, Gwalior where he joined his duties on 30.1.2006 (presently working at KV, Harda).

Whereas it has been brought to the notice that Shri Thakur joined as PGT (Maths) on trial basis and he acquired B.Ed. degree during the year 1989 i.e. on 16.6.1989. As such he is entitled for seniority in the cadre of PGT from the date of regularisation of his

service i.e.16.6.1989 and not from the date of trial appointment. Therefore, the promotion to the post of Vice Principal made to Shri Thakur during the year 2005-2006 was found to be not in order.

Whereas revised seniority number in the cadre of PGT has been allotted as 1392-E to Shri L.K.Thakur, presently working as Vice Principal in the Provisional Common All India Seniority List of PGT as on 1.1.2005 vide letter dated 13.1.2011 from the date of regularisation of his service.

Whereas Commissioner, KVS being the Chairman of the DPC has approved the recommendation given by the members of the DPC for withdrawal of promotion in the case of Shri L.K.Thakur to the post of Vice Principal and deletion of his name from the promotion panel of Principal for the year 2010-2011.

Whereas competent authority **has found that he was not possessing requisite qualification of B.Ed. degree during the year 1984 and he was not having requisite service as PGT for promotion as Vice Principal** accordingly the offer of promotion to the post of Vice Principal made to Shri L.K.Thakur, PGT (Maths) (Vice Principal) Kendriya Vidyalaya No.3 (Gwalior) vide this office Memorandum of even number dated 12.1.2006 is hereby withdrawn and Sh.L.K.Thakur is hereby reverted to the post of PGT (Maths) with retrospective effect and posted to KV No.1, Gwalior with immediate effect.

He is hereby stand relieved in the afternoon of 23.2.2012 with the direction to report to the Principal KV No.1 Gwalior immediately.

*This issues with the approval of the competent authority".
(emphasis supplied by us)*

8.1 A minute perusal of the above order would reflect that the applicant was considered for promotion by the DPC, which met on 22.03.2005, to the post of Vice Principal, on the basis of information provided by KVS RO Silchar that he was regularly appointed as PGT on 11.12.1984. It shows that while the DPC was making its recommendations, either there was no seniority list in existence of the post of PGT reflecting the position of the applicant in the seniority list, or

the DPC had brushed aside the seniority list while considering the matter for promotion to the post of Vice Principal, acting on sole information given by KVS RO Silchar. At this stage we may point out that the respondents have failed to produce the minutes of the DPC in question to buttress their claim. We further find that the applicant was reverted to the post of PGT only on the ground that he was not possessing requisite qualification of B.Ed. degree during the year 1984 and he was not having requisite service as PGT for promotion as Vice Principal.

9. We have carefully gone through the decision of Jaipur Bench of the Tribunal in the matters of **G.S.Yadav** (supra) as well as the order dated 13.05.2011 (Annexure A-8) passed by the respondents in compliance to the order passed by the Jaipur Bench of the Tribunal, which was upheld by the Hon'ble High Court of Rajasthan in Writ Petition No.5803/2001 vide order dated 27.10.2009.

10. In the matters of **G.S.Yadav** (supra), a coordinate Bench of this Tribunal at Jaipur has discussed the terms 'service' and 'experience' as under-

“(11). A very brief further elucidation of the terms ‘service’ and ‘experience’ used in the Rules in question might, at this stage, be in order even if for the most part we will be repeating what we have already said above. The applicant, while on trial, was placed on the regular pay scale of the TGT and did a fine job of it by teaching like any other TGT. The period spent as trial has been treated as period on probation.....the start of probation is equated with the beginning of regular appointment or else probation will have no

meaning. In circumstances such as these, it is, in our view, difficult to sustain the argument that experience acquired during the period of trial will not amount to service rendered as TGT. Thus, the terms experience and service can be used interchangeably, to our mind, legally validly in the present situation. However, in a different situation, experience acquired may not amount to service rendered but service rendered will in any case give rise to experience. The aforesaid position, in so far as equation of experience with service is concerned, will hold good however only if a contrary provision has not been made in the relevant rule. We have not come across any such conflicting provision in the present case. Moreover by converting the trial period into period of probation, the respondents have only strengthened the view we have just expressed that experience acquired is in no way different in the instant case, from service rendered. Exclusion of the trial period from the computation of length of service was, in the circumstances, wholly incorrect”

(emphasis supplied by us)

10.1 The Jaipur Bench in the above matter has clearly held that the exclusion of the trial period from the computation of length of service was wholly incorrect.

11. It would also be relevant to reproduce the operative portion of the orders passed by the Jaipur Bench of the Tribunal in the matters of **G.S.Yadav (supra)** as under:-

“We allow the present OA with the direction to the respondents to hold a review DPC to consider the claim of the applicant against any of the existing vacancies as expeditiously as possible and in any event within a period of three months from the date of receipt of copy of this order. It is clarified that the applicants period of trial converting into the period of probation as above shall be considered for the purpose of computing the experience as well as length of service rendered by the applicant by the review DPC, on being found fit for promotion, all the consequential benefits will be allowed to the applicant from the date his next junior was promoted. In so far as pay fixation is concerned applicant’s pay

will be fixed on notional basis with effect from the date his next junior was promoted'.

11.1 In the above order of our coordinate Bench at Jaipur, which was upheld by the Hon'ble High Court of Rajasthan, it has been specifically held that the probationary period of service of the applicant was countable towards experience as well as length of service as TGT for the purpose of consideration of his case for promotion to the post of PGT.

12. The respondent-department complied with the above order of the Jaipur Bench of the Tribunal as well as of the Hon'ble High Court in respect of said Shri G.S.Yadav vide order darted 13.05.2011 (Annexure A-8), relevant extract of which read thus:

“Accordingly Departmental Promotion Committee was held on 20.04.2011. The Departmental Promotion Committee considered/ perused the relevant service records of Shri G.S.Yadav and found him FIT for promotion to the post of PGT(Physics) w.e.f. 1993-94 and recommended to place him at serial number 43-A (below Shri Pradeep Kumar Jolly) in the main promotion panel for the year 1993-94 with all consequential benefits from the date his next junior was promoted as per the direction of Hon'ble CAT Jaipur Bench on dated 10.09.2001 subject to the outcome of SLP filed before the Apex Court. His pay will however be fixed on notional basis with effect from the date his next junior was promoted’.

13. We find that the findings recorded by the Jaipur Bench as upheld by the Hon'ble High Court of Rajasthan, on counting of trial service for the purposes of promotion, are fully applicable in the present case. In the instant case the applicant was earlier duly considered and found fit for promotion by the DPC, which met on 22.03.2005, to the post of Vice

Principal by treating him as regularly appointed as PGT on 11.12.1984. Thereafter, the applicant performed his duties as Vice Principal for more than six years. However, by the impugned order dated 23.02.2012 (Annexure A-1) the applicant was reverted to the post of PGT only because the respondents have now excluded the trial period from the computation of length of service and treated the applicant as he was not having requisite service as PGT for promotion as Vice Principal. Thus, the decision of the respondents in differently treating the applicant can not be sustained and is liable to be struck down in terms of the aforementioned decision of Jaipur Bench of this Tribunal in the case of **G.S.Yadav** (supra).

14. Accordingly, the Original Application is allowed. The impugned orders are quashed and set aside. The respondents are directed to give effect to the order of promotion dated 12.01.2006 and grant all consequential benefits to the applicant within a period of three months from the date of communication of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

rkv

(Navin Tandon)
Administrative Member