

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14357 of 2017

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1. The Union Of India through the Commissioner, Navodaya Vidyalaya Samiti under Ministry of HRD, Government of India, B- 15, Institutional Area, G.B. Nagar, Sector- 62, Noida (U.P.)- 201309.
 2. The Joint Commissioner (ADMN), Navodaya, Vidyalaya Samiti under Ministry of HRD, Government of India, B-I Institutional Area, G.B. Nagar, Sector- 62, Noida (U.P.)- 201309.
 3. The Deputy Director, Navodaya Vidyalaya Samiti, Regional Office, Shillong- 793001.
 4. The Principal, Jawahar Navodaya Vidyalaya, Ramankabad, Munger, Bihar.

.... Petitioners

Versus

Md. Abu Taleb, aged about 59 years, Son of Md. Jainul Abedin, Resident of Village- Kasthaber, P.O.- Sahja, District- Katihar and at present posted at TGT (Maths) at Jawahar Navodaya Vidyalaya, Munger (Bihar).

.... Respondent

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Appearance :

For the Petitioners	:	Mr. Siddhartha Prasad. Advocate Mr. Om Prakash Kumar, Advocate Mr. Kaustubh, Advocate
For the Respondent	:	None.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 20-11-2017

The writ petitioners, in the present case, are
aggrieved by the order dated 08.05.2017 passed by Central



Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as “CAT, Patna Bench”) by which the CAT, Patna Bench has allowed the O.A. No. 050/00819/2014 holding that the applicant has wrongly become a collateral victim of some litigation initiated by another employee in another jurisdiction in which applicant was not a party. The reversion order dated 03.09.2014 as contained in Annexure-10 to the O.A. with respect to the applicant has been quashed and direction has been issued to restore his promotion with back-wages.

2. The disputes brought by the applicant before the CAT, Patna Bench was limited to the reliefs praying for setting aside of the memo no. *F.11-36/04-BVS [Estt.] Vol.11/179* dated 30.09.2010 issued by the Joint Commissioner, NVS, New Delhi whereby petitioner was reverted from the post of PGT to the post of TGT and his representation was rejected and again on disposal of O.A. No. 750/2010, when a fresh representation was filed, the Commissioner, Navodaya Vidyalaya Samiti vide his order dated 03.09.2014 refused to interfere with the previous order dated 30.09.2010.

3. The facts are not in dispute. The petitioner was



working in Shillong Region from 29.08.1995 to 07.07.2001, and admittedly his promotion, from the post of TGT to the post of PGT, was considered for the services rendered by him up to December, 2000. When he completed more than five years of continuous service as TGT in North Eastern Region, it was, in fact, the case of the applicant that even though the meeting of the Departmental Promotion Committee was held belatedly but the consideration was based on services for the year 1995 to 2000. This had nothing to do with his work in the State of Bihar.

4. The stand of the Navodaya Vidyalaya Samiti was on the same line in a proceeding before the Hon'ble Delhi High Court in WP(C) No. 186/2010 (The Commissioner, Navodaya Vidyalaya Samiti vs. Krishna Kumar) (Annexure-R/6) to the compilation submitted on behalf of the Navodaya Vidyalaya, which is duly reflected in the order of Delhi High Court and we take note of the same hereunder:

“Mr. Abutaleb was transferred from Shillong to Patna region at his request and applying the general principle, he should have also forgone his seniority. But in his case though the transfer was made at his request, however, he had been allowed to retain his seniority. The case of the petitioner is not that Mr. Abutaleb was allowed to retain seniority contrary to rules. Had that been



the plea of the petitioner, the respondent could not have claimed parity with him nor could invoke discrimination. The plea of the petitioner is, rather, that if an employee is due for promotion and is transferred then such an employee shall be entitled to retain his seniority. However, this contention cannot be justified and has not been justified on behalf of petitioner on the basis of any statutory rules or any office memorandum or any transfer policy. In the circumstances the respondent shall also be entitled to the same treatment as was admissible to Mr. Abutaleb. Consequently, the learned counsel for the petitioners is unable to show any irregularity or illegality in the order of the tribunal impugned before us.”

5. In the case of Krishna Kumar (supra), there was a direction by CAT Delhi Branch to the Navodaya Vidyalaya Samiti to promote respondent as PGT (Geography) by quashing the order declining him the seniority. In his case, the promotion given to Abutaleb was discussed and it was shown that he was transferred to Patna region on request but was not placed in the bottom of the seniority. The Navodaya Vidyalaya Samiti tried to distinguish the case of Abutaleb with that of Krishna Kumar. In this background aforesaid observation came. The writ application filed by Navodaya Vidyalaya was dismissed by Delhi High Court.



Thereafter, action of reversion was taken against the present respondent.

6. At this stage, when the applicant Abutaleb moved the Tribunal, the Navodaya Vidyalaya changed its stand, which, according to learned counsel, is only because of the observations of Hon'ble Delhi High Court holding that in absence of any statutory rules or any office memorandum or any transfer policy, the contention of the Navodaya Vidyalaya was not justified. It is, however, a matter of record that the observation of the Hon'ble Delhi High Court adversely affecting the case of the present applicant-respondent came in a writ petition, where the present applicant-respondent was not a party.

7. It is, thus, evident that whatever was observed and held not to be justified, if found affecting, the interest of the present applicant-respondent, who was not a party before the Hon'ble Delhi High Court, the applicant is well within his right to take all such pleas which are available to him before the learned CAT, Patna Bench, Patna.

8. It is, in this background of the fact that the applicant assailed the order reverting him from the post of PGT to the post of TGT after a period of 8 years and contended that his



promotion itself was based on the work which he had rendered while serving in Shillong Region. This is not disputed by the Navodaya Vidyalaya Samiti.

9. Learned counsel representing the Navodaya Vidyalaya Samiti before this court admits that what has been recorded as a finding of fact is correct. The only reason for contesting the case of the applicant, according to learned counsel, is the observation given by the Hon'ble Delhi High Court where the stand of Navodaya Vidyalaya Samiti trying to distinguish the case of Krishna Kumar with present respondent was not found to be justified.

10. We have considered the submission advanced before us. It is evident from the record that the present applicant was not a party in the Delhi High Court and whatever was observed in the said proceeding relating to Krishna Kumar cannot be held binding upon him. The CAT, Patna Bench, Patna has rightly considered the issues placed before the Bench, and upon finding that what was considered by the Departmental Promotion Committee in its meeting, was the services rendered by this applicant-respondent during his posting in the Shillong Region held that the reversal of the applicant is bad, and in the light of



the observation, the CAT, Patna Bench, Patna issued directions as stated hereinabove.

11. We find no illegality or infirmity in the order passed by learned CAT, Patna Bench, Patna and there is no need to interfere with the impugned order in view of the facts which are admitted and the submission of learned counsel for the petitioners that the only reason for taking this action was the observation of the Hon’ble Delhi High Court. The observation of the Hon’ble Delhi High Court in a case where respondent was not a party cannot be used and utilized or made the basis for revisiting the decision of the Departmental Promotion Committee and grant of promotion as a consequence of the same.

12. The Writ Application has no merit, it is, accordingly, dismissed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.11.2017
Transmission Date	NAFR

