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Central Administrative Tribunal, Principal Bench

Original Application No.1567 of 2002

New Delhi, this the 12<sup>th</sup> day of March, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. V.K. Majotra, Member (A)

Ms. Nirmal Grover,  
W/o Shri B.R. Grover,  
R/o 78-A, Pocket-IV, Mayur Vihar-I  
Delhi-91

.... Applicant

(By Advocate: Shri Arvind Pandey)

Versus

1. The Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-16  
Through Commissioner
2. Union of India  
(i) Through Secretary,  
Department of Personnel and Training,  
Ministry of Personnel, Public Grievances  
and Pensions,  
North Block, New Delhi.
3. (ii) Through Secretary,  
Department of Education,  
Ministry of Human Resources Development,  
Shastri Bhawan,  
New Delhi

.... Respondents

(By Advocate: Shri S. Rajappa)

ORDER

By Justice V.S. Aggarwal, Chairman

The applicant Ms. Nirmal Grover had joined the Kendriya Vidyalaya Sangathan (for short 'Sangathan') on 5.8.77. On 21.7.78, she was appointed as Post Graduate Teacher (for short 'PGT') and confirmed as such on 1.8.84. She submitted an application dated 27.7.91 to the Assistant Commissioner for registration for employment abroad with Overseas Man Power Bureau. She was selected by the Ministry of Education and Youth, Sultanat of Oman for the post of English Teacher in Oman. The applicant prayed for her release to take up the assignment at Oman while

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retaining her lien over her permanent post of PGT (English) initially for a period of two years. As per the letter that the applicant received, her lien could extend upto five years. She had received a no objection certificate and contends that on verbal assertions, she had joined at Oman.

2. According to the applicant, she had written to the Assistant Commissioner from Oman informing of her inclination of joining with respondent no.1 in 1996. She gave a joining report to the Assistant Commissioner, Delhi Region. She was informed by the Deputy Commissioner of the Sangathan that she does not hold any lien on any post of the Sangathan and that her lien has been terminated. Earlier she had preferred T.A.No.44/99 which was disposed by this Tribunal on 13.7.2001 directing the Sangathan to pass a speaking order. The request of the applicant has been rejected by a speaking order.

3. By virtue of the present application, the applicant seeks that she should be considered to be in regular service and her lien be continued with the Sangathan. According to her, the period for which she could retain her lien was five years and she had never received any communication of 9.3.94.

4. In the reply filed by respondent no.1, it is insisted that a communication was sent to the applicant dated 9.3.94. She was informed that she had lost the lien in the Sangathan. The letter was served upon the applicant

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on her last known address and that the applicant is concealing this fact. She is stated to be not sincere towards the work. She was not sent to Oman on assignment of Kendriya Vidyalaya. She had gone to Oman on her own for which she was granted permission to hold the lien on the post and was advised to come back within the period for which the lien could be retained. After the communication of 9.3.94, the applicant did not join. Her attitude was intolerable and, therefore, the lien was determined. She herself ran the risk of losing the lien. It is further asserted that this is not a case where a Government to Government relationship existed. She was not sent by the Sangathan on deputation.

5. A separate reply has been filed by respondents 2 to 4 in which it has been pointed that under Article 65 of the K.V.S. Education Code, in case of educational institutions, the interest of the children cannot be left high and dry and no person holding a permanent post can hold the lien beyond two years. It is insisted that the letter of 1994 was sent to the applicant by Registered Post and it is not correct on her part that she did not receive this communication.

6. Perusal of the above said facts clearly show that the applicant, on her own, had applied for working at Oman and that it is not a case of a person going on deputation from one Government to another <sup>govt department</sup>. Admittedly the applicant had been permitted to go to Oman and the letter written by the Deputy Secretary to the Govt. of India dated 10.9.91,

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addressed to her, reads -

"Sir,

I am directed to refer to your letter number nil dated 5.9.91 addressed to the Assistant Commissioner, KVS, New Delhi and a copy endorsed to this Department and to say that subject to the administrative and vigilance clearance by your parent Department, this Department has no objection to you being permitted to accept assignment secured by direct contact, under the Sultanate of Oman.

2. You should register yourself with the Indian Mission immediately on your arrival in the country of assignment.

3. The assignment including previous assignment, if any, should be restricted to 5 years only.

Yours faithfully,

Sd/-

(Smt. A.C. Duggal)

Deputy Secy. to the Govt. of India."

7. Learned counsel for the applicant strongly relied upon paragraph 3 of the said letter to contend that period for which she could retain her lien could be five years. However perusal of the said letter does not indicate that permission had been granted to her to remain at Oman for five years. At best it can only be treated as the outer limit because it clearly refers to the fact that it includes the previous assignments and in all, the maximum period for which a person could stay for such assignments, is five years.

8. In that event, reliance was placed by the learned counsel on the letter of the Assistant Commissioner written to the Assistant Commissioner, K.V.S. for extension of lien with respect to the applicant dated 3.7.96. It reads

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as under:

"Sir,

I am to invite your attention to this office letter of even no. dated 28.7.93 (copy enclosed) vide which it was informed that Smt. N. Grover, PGT(Eng.) Kendriya Vidyalaya No.2 Hindon was granted lien for a period of 2 years in the post of PGT(Eng.) on her appointment as English teacher in the Ministry of Education Sultanate of Oman which expired on 5.11.93. She requested vide her application dated 7.7.93 for extension of her lien for further three years i.e. upto 5.11.96. The decision of the Sangathan in this regard is still awaited.

Now Smt. N. Grover vide letter dated 24.6.96 has requested for joining in the K.V.S. A copy of the letter dated 24.6.96 submitted by her is enclosed.

It is requested that her request for extension of lien for a further period of 3 years may kindly be considered at your end and the decision arrived at may kindly be communicated at an early date.

Yours faithfully,

Sd/-

( K.K. Bhatt )

Assistant Commissioner"

9. Reliance is placed on the fact that decision of the Sangathan in this regard is still awaited and, therefore, it is contended that no letter of the year 1994 had been received. This letter, by no stretch of imagination, can be termed to be an expression extending the period of lien. On the contrary, the contesting respondents have placed on record the letter of the Assistant Commissioner of the Sangathan addressed to the applicant at her address at Mayur Vihar dated 9.3.94. It reads as under:

"With reference to her application dated 7.7.93, Smt. Nirmal Grover, PGT(Eng.) is hereby informed that her request for extension of lien has been considered sympathetically



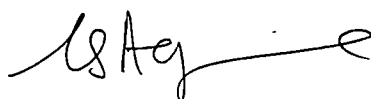
but the same could not be acceded to. She is directed to report for duty to Assistant Commissioner, KVS, Delhi Region immediately on receipt of this letter failing which the terms and conditions of Sangathan letter No.F.4-1/71-KVS(SS) dt. 8.6.72 and F.4-1/71-KVS(SS) (Estt-I) dt. 23.12.74 will be enforced.

Sd/-  
(J. KALRA)  
Assistant Commissioner(Admn.)"

10. The aforesaid letter had been sent by Registered Post. The presumption in law would be that correctly addressed letter would be received by the addressee and normal course of events should be followed. There is nothing to indicate that anything extraordinary happened and normal course of events would not have been followed. Therefore, it must be taken that the said letter was received by the applicant and that decision had been taken that her lien can only be retained for two years and she should join duty. The applicant had not done so in this regard.

11. Our attention was drawn by the learned counsel to the decision of the Supreme Court in the case of State of Haryana vs. Shri Des Raj Sangar, AIR 1976 S.C. 1199. In the cited case, a Head Assistant was appointed to an ex-cadre post substantively. The said ex-cadre post was abolished. There was no written request by the employee for termination of the lien. The Supreme Court held that on termination of the service in the ex-cadre post, the lien on the post of Head Assistant would be revived.

12. The facts referred to above are totally different from the facts of the present case. Patently therein the



person concerned had gone to a post within the Government. Herein the applicant joined a totally private post at Oman and the period for which her lien was sanctioned, was two years. The decision thus in the case of Des Raj Sangar will not come to the rescue of the applicant.

13. Another limb of the argument of the learned counsel in this regard was that the applicant was a permanent employee of the Sangathan and without reasonable opportunity of being heard to be given to her, the lien could not be terminated.

14. We have already held above that the applicant had been informed vide communication of 9.3.94 that she should join her duty otherwise consequence in pursuance of the earlier communication would follow. The applicant ignored the same. At the outset, we may in this backdrop refer to the decision of the Supreme Court in the case of Aligarh Muslim University and ors. vs. Mansoor Ali Khan, 2000 (6) SCALE 125. The Supreme Court was dealing with Rule 5 of the Aligarh Muslim University Revised Leave Rules. The facts were somewhat similar. Therein also a notice had been given but the employee ignored the same. The Supreme Court held that in the peculiar facts, the principle of reasonable opportunity cannot be enforced and it would be a useless formality in this regard. In face of the aforesaid, we have no hesitation in rejecting the said argument.

15. Some attempt had been made to press into service



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Article 311 of the Constitution in this regard. On this question, we need not dwell further into any discussion because it had been agitated before a Division Bench of the Delhi High Court in the case of Prem Juneja vs. Union of India, 2003 I AD (DELHI) 57. Therein also the employee was serving in the Kendriya Vidyalaya Sangathan. A similar argument had been advanced. It was held that Article 311 of the Constitution would not be attracted and Sangathan could act as per its rules/regulations. In paragraph 9, the Delhi High Court concluded:

"9. We have considered the submissions of the learned counsel for the parties. At the threshold we will deal with the submission of the learned counsel for petitioner that Article 81(d) and action taken against the petitioner pursuant thereto run contrary to Article 311 of the Constitution. This submission is based on the assumption that Article 311 of the Constitution applies to the employees of the Kendriya Vidyalaya Sangathan. There appears to be no justification for drawing such an assumption. It is not claimed that the employees of KVS are the employees of the Government of India. Indubitably they are the employees of the Sangathan and the question of absence without leave is governed by the Education Code for Kendriya Vidyalayas. Therefore, the argument of the learned for the petitioner that the impugned orders are contrary to Article 311 of the Constitution is of no avail to him as Article 311 does not apply to the employees of the Sangathan. No provision of the Education Code or any memorandum issued by the Sangathan has been brought to our notice which makes Article 311 applicable to the employees of the Sangathan. Therefore, the submission of the learned counsel for the petitioner is rejected."

16. No different is the position here. Therefore, we conclude that the lien of the applicant had already been determined. She did not join the Sangathan despite notice

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and presently she has no cause of grievance.

17. Resultantly the O.A. being without merit must fail and is dismissed.

V.K. Majotra

( V.K. Majotra )  
Member (A)

/dkm/

V.S. Aggarwal

( V.S. Aggarwal )  
Chairman