

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.426/2002

Wednesday, this the 6th day of March, 2002

Hon'ble Shri S.A.T. Rizvi, Member (A)

Mr. Bharat Bhushan S/O Late Sh. A.C. Lakhina
R/O 99-B, Single Storey,
Ramesh Nagar, New Delhi-15

..Applicant

(By Advocate: Shri M.K.Bhardwaj)

Versus

Kendriya Vidyalaya Sangathan through

1. The Commissioner
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi-16
2. The Principal
K.V., Rohtak
Haryana.

..Respondents

(By Advocate: Shri S. Rajappa)

O R D E R (ORAL)

Heard the learned counsel on either side at length.

2. Under challenge in this OA is the respondents' Memorandum dated 30.1.2002 (A-1) by which the applicant has been directed to report to the Principal, Kendriya Vidyalaya Jhagra Khand immediately. The Memorandum further provides that "he is hereby relieved in F/N of 30.1.2002 in absentia".

3. Briefly stated the facts relevant for a proper adjudication of this case are that the applicant was, along with others, transferred vide respondents' order dated 9.8.2000. Those transferred were to go to different places. The applicant was destined for Jhagra Khand. Aggrieved by the aforesaid transfer order,

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several Teachers, including the applicant, went up before the Hon'ble High Court. As a result, the Board of Governors of the Kendriya Vidyalaya Sangathan rejected the recommendations of the Baldev Mahajan Committee. This led to ~~the~~ temporary attachment of the aforesaid Teachers, including the applicant, being withdrawn by the respondents' Office Order dated 20.9.2001. By the same order, the applicant as well as the others were directed to get themselves relieved and report to the Kendriya Vidyalaya to which they stood transferred initially by the respondents' order dated 9.8.2000. Insofar as the applicant is concerned, the implication was that his attachment at Rohtak Kendriya Vidyalaya stood withdrawn and he was obliged to get himself relieved therefrom and report at Jhagra Khand. In the endorsement of ^{a copy of} the aforesaid Office Order dated 20.9.2001, it was stipulated that the concerned Teacher would be relieved after two weeks with a direction to report to the Principal of the Kendriya Vidyalaya to which he or she stood transferred by the respondents' order dated 9.8.2000. Still aggrieved by the aforesaid Office Order of 20.9.2001 (A-~~1~~ to OA-2923/2001), the applicant with eight others, all women Teachers, approached this Tribunal by filing OA-2923/2001. The applicants in that OA sought the annulment of the aforesaid Office Order dated 20.9.2001 as a result of which the applicant in the present OA was obliged to join at Jhagra Khand. The aforesaid OA was, however, dismissed on 29.1.2002. The very next day, i.e., on 29/30.1.2002, the respondents issued a Memorandum laying down, inter alia, that the applicants in the OA stood relieved in the F/N of 30.1.2002. The

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Memorandum specifically issued in respect of the present applicant is dated 29/30.1.2002 and has already been referred to above.

4. Of the nine applicants in the aforesaid OA, eight, all women, aggrieved by the respondents' aforesaid Memorandum dated 29/30.1.2002, approached this Tribunal in OA-305/2002 which has been decided on 13.2.2002. A copy of the said order has been placed on record at A-4. In the peculiar circumstances of the case, the Tribunal by its aforesaid order dated 13.2.2002, without annulling the aforesaid Memorandum dated 29/30.1.2002, modified the same by providing that the said orders shall come into force positively w.e.f. 1.4.2002 F/N.

5. The learned counsel appearing on behalf of the applicant submits that the applicant is a similarly circumstanced person and, therefore, is entitled to be given the same treatment. Thus, according to him, the impugned Memorandum dated 30.1.2002 should be modified, without being annulled, to lay down that the applicant will stand relieved in the F/N of 1.4.2002.

6. The learned counsel appearing on behalf of the respondents contends that OA-2923/2001 having been dismissed and the applicants having failed to seek any remedy against this Tribunal's order dismissing the aforesaid OA, the present OA is hit by the principle of constructive res-judicata. A perusal of the orders passed by this Tribunal on 13.2.2002 in OA-305/2002 shows that the same contention was raised on behalf of the

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respondents in that OA. The same was discussed by the Tribunal in the aforesaid order. All the same, having regard to the peculiar circumstances of the case, the Tribunal proceeded to pass orders modifying the Memorandum dated 29/30.1.2002 as indicated above. The circumstances being exactly similar, I do not find any reason why a similar order should not be passed in the present OA as well. The impugned Memorandum dated 30.1.2002, in my view, gives rise to a cause of action which is distinct and different from the cause of action pleaded before this Tribunal in OA-2923/2001 and to this extent, the present OA, in my judgement, is not hit by the principle of constructive res-judicata.

7. In the light of the foregoing, the OA is partly allowed and the respondents are directed to modify the Memorandum dated 30.1.2002 by laying down that the applicant will stand relieved on 1.4.2002 (F/N). The applicant is not entitled to any other relief.

8. The present OA is partly allowed and disposed of in the aforesated terms. No costs.

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

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