

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 305/2002
MA 304/2002

New Delhi, this the 13th day of February, 2002

Hon'ble Shri Govindan S.Tampi, Member (A)

1. Mrs. Abha Bhardwaj
W/o Dr. R.Bharadwaj
R/o A-2/25, Shri Agrasen Apartments
Plot No.10, Sector-7, Dwarka
New Delhi - 110 045.
2. Smt. Madhu Sharma
W/o Shri R.K.Sharma
R/o M-38, New Mahavir Nagar
New Delhi.
3. Smt. Kanta Vohra
W/o Shri Devender Vohra
R/o 109/b, Ramesh Nagar
New Delhi.
4. Smt. Rekha Pathak
W/o Shri C.D.Pathak
R/o 44, Laxmi Apartments
Sector 9, Rohini, Delhi.
5. Smt. Rajni Sati
W/o Shri G.S.Sati
R/o B-549, Sector 9
Kendriya Vihar, NOIDA.
6. Smt. Renu Saxena
W/o Shri A.K.Saxena
R/o C-77, East of Kailash
New Delhi.
7. Ms. Tajinder Kaur
D/o Sardar Narayan Singh
R/o DA/99/C, Hari Nagar
New Delhi.
8. Smt. Usha Rani Sharma
W/o Shri V.B.Sharma
R/o 28, Plot B-5
Deluxe Apartments
Yasundhara Enclave, Delhi.

...Applicants

(By Advocate Shri A.K.Bhardwaj
with Shri B.B.Rawal)

V E R S U S

Kendriya Vidyalaya Sangathan : Through

1. The Commissioner
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi - 110 016.

2. The Principal
KVS, Rangapuri
New Delhi.
3. The Principal
KVS, Rajokari
New Delhi.
4. The Principal
KVS, AFS, Bawana.
5. The Principal
KVS, Nahara.
6. The Principal
KVS, Dadri AFS
New Delhi.
7. The Principal
KVS, Pragati Vihar
Sec 3, Rohini, New Delhi.
8. The Principal
KVS, Sec 3, Rohini
New Delhi.
9. The Principal
KVS, NTPC Dadri
New Delhi.

... Respondents

(By Advocate Shri Rakesh Khanna with
Shri S.Rajappa)

O R D E R

By Hon'ble Shri Govindan S.Tamai,

Challenge in this OA is directed against the order dated 29/30-1-2002, issued by the respondents directing the relief of the applicants from the Kendriya Vidyalayas, where they are presently attached.

2. MA No. 304/2002 for joining is allowed.
3. Shri A.K.Bhardwaj with Shri B.B.Raval represented the applicants while Shri Rakesh Khanna with Shri S.Rajappa appeared for the respondents during the oral submission before me on 8-2-2002.
4. All the eight applicants, who are Yoga teachers attached to various Kendriya Vidyalayas in and around Delhi have been transferred to places far off from Delhi by order F.No.6-9(9)/2001-KVS(E.IV)

dated 20-9-2001 but were permitted to continue for two weeks, in consonance with the orders dated 25-7-2001 passed by the Hon'ble Delhi High Court in CWP No. 7351, 7816/2000 and 4092/2001. This transfer order was challenged by the applicant along with a few others through OA No.293/2001. The OA, however, was dismissed by the Tribunal on 29-1-2002, following which on 29/30-1-2002, respondents issued orders relieving the applicants from their present Schools with immediate effect. These orders are violative of the Articles 14 & 16 of the Constitution of India as a number of similarly situated Teachers, who were transferred on 8-11-2000 have not been relieved as yet and it has been mentioned that female Teachers should not be relieved. The present order is also contrary to the directions of Hon'ble High Court's order dated 25-7-2001 stating that the applicants should be permitted to stay in Delhi for seeking any appropriate remedy. These relief orders have come in the way of education of the children of these Teachers who are studying in Secondary and Higher Secondary classes and the same were absolutely harsh. The applicants also point out that the respondents are seeking to have the services of the applicants terminated in case they do not join at their new places of posting immediately, inspite of the fact that these transfers are totally against the guidelines of KVS themselves, which provide that mid-session transfers should be avoided.

5. During the oral submissions Shri A.K.Bhardwaj, 1d. counsel reiterated the above and pointed out that the relief sought by him in this OA was confined to the postponement of relief up to the end of academic session this year, as the validity of



the transfers had already been upheld by the Tribunal in the order dated 29-1-2002 while disposing of the earlier OA 2923/2001. According to Shri A.K.Bhardwaj, when other persons similarly situate had been given the benefit, it is absolutely unfair that the present applicants are being discriminated. He relied upon the decision of the Hon'ble Supreme Court in the case of Director of School Education Madras & Ors Vs. O.Karuppa Theyan & Anr. (1994 SCC (L&S) 1180). He also pointed out that the Schools from which the applicants have been transferred as being declared surplus are engaging fresh persons for performing the job of Yoga teachers on contract basis. In this view of the matter also retention of the applicants till the end of the academic session was totally justified in law, in addition to being humanitarian in nature.

5. Stoutly opposing the above, Shri Rakesh Khanna, appearing for the respondents, points out that this OA is hit by res-judicata and constructive res-judicata, in as much as the pleas being raised now have been already adjudicated upon by the Tribunal and the High Court and the applicants are only trying to circumvent the orders issued earlier upholding the validity of the transfer orders. This is clearly a case of abuse of the process of law and the Tribunal should not entertain the same. When the applicants had challenged the validity of the orders, they have argued on all possible points but the same have not been found to be acceptable by the Hon'ble Tribunal. The attempt by the applicants by limiting the plea to challenging the relief order (s) in this OA is only an attempt by them to mislead the Court. Infact when the applicants had argued the previous OA, they had full

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opportunity to question the order as well as raise the aspect of hardship. The order issued to them is deemed to have been passed by the Tribunal considering all the pleas raised as well as those which ought to have been raised in connection with the above pleas. The applicants now cannot come forward and seek a fresh order from the Tribunal as if a fresh cause of action had arisen, argues Shri Khanna. He also points out that the fallacy of the applicants' plea would be clear from the facts that the present orders of relief were nothing but reiteration of the order of transfer passed in September 2000.

6. He further states that the allegation of discrimination raised by the applicants was not based on facts, as the endorsement made in the order dated 8-11-2000 against the relief of female or physically handicapped Teachers only meant that when their transfers to some other Schools, they should not be relieved first but should be relieved only when the substitutes arrive. This does not in any way help the cause of the applicants, according to the ld. counsel for the respondents. Besides, the applicants, having been transferred from their present postings as far back as September, 2000 but having been retained only on account of their moving the Hon'ble High Court and the Tribunal cannot now take a plea of hardship after having failed before both the fora. The OA, therefore, merits dismissal, according to the respondents.

7. I have given careful and anxious deliberations on the issues raised in the OA. The point for determination in this case falls within a very small compass i.e. whether the impugned

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relieving orders of 29/30-1-2002 should be given effect to. The applicant do not, and cannot, question the validity of the transfer orders, which has already been upheld by the Tribunal by the dismissal of OA 2923/2001. The respondents also are correct when they state that the Tribunal had considered all the points relating to the transfers and upheld their legality. That being the case, it is not open for me to record any findings thereon. The limited question that remains, relates to the retention of the transferred Teachers till the end of the academic session. While it is true that the applicants were able to stall the transfer orders issued in September 2000 by coming to the Tribunal and gain more than a year's time, the fact remains that just two months stand between now and the closure of the academic session, 2001-02. It is also on record that in the Schools wherefrom some of these Yoga Teachers are transferred, the respondents are seeking to get teachers on contract basis. That being the case, it would be in the interest of justice as well as in tune with the magnanimity of the Administration to permit these applicants, all of whom are female teachers with school going children to complete this session in the Schools to which they are attached. I am not setting aside the impugned orders, but directing that the same be postponed till the end of the academic session. The applicants are entitled for just this relief and nothing more and would have to be perforce relieved at the end of the session i.e. by 31-3-2002.

8. In the result, the application succeeds to a limited extent and is accordingly disposed of. The

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impugned orders are modified to the extent that they
shall come in to force positively w.e.f. 1-4-2002
forenoon. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

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