

9

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.908 of 2002

with

Original Application No.933 of 2002

New Delhi, this the 6th day of January, 2003

HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)

O.A. No.908/2002

Mrs. Dolly Gulati Agnihotri
W/o Mr. M.P. Agnihotri
R/o 1273, C-1, Vasant Kunj,
New Delhi-110 070.

-APPLICANT

Versus

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

2. The Deputy Commissioner (Admn.)
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.

3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan
(Delhi Region)
JNU Campus, NMR,
New Delhi-110 067.

-RESPONDENTS

O.A. No.933/2002

Mrs. Dolly Gulati Agnihotri
W/o Mr. M.P. Agnihotri
R/o 1273, C-1, Vasant Kunj,
New Delhi-110 070.

-APPLICANT

Versus

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

2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan
(Delhi Region)
JNU Campus, NMR,
New Delhi-110 067.

-RESPONDENTS

By Advocate: Shri Ashwani Bhardwaj for the applicant.

By Advocate: Shri S. Rajappa for the respondents.

km

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Jud1)

By this common order I will be deciding two OAs bearing No. 908/2002 and 933/2002, as the issues are interrelated.

OA No. 908/2002

2. The applicant in this case has impugned an order dated 25.6.2001 vide which the applicant has been transferred from Kendriya Vidyalaya Sangathan (hereinafter referred to as KVS) NTPC, Dadri to NTPC Kahalgaon in public interest. To challenge the same, the applicant alleges that she joined the service in the year 1985 and was posted in Ferozepur which was a terrorist area. She got married in 1988 and her husband is posted in Delhi who is working with the Airports Authority of India.

3. She further alleges that after her marriage she has been requesting the respondents to transfer her to the school near to the place of posting of her husband but her request has not been acceded to. However, in 1995 she was transferred to Kendriya Vidyalaya, NTPC, Dadri (District Gautam Budh Nagar) and since then she is working at NTPC, Dadri.

4. The applicant further alleges that in 1996 she again made a request to be posted in New Delhi and further as per the guidelines, she had been filling up her annual transfer on prescribed forms for transfer on



3.

request to Delhi in accordance with the rules but her request as usual was ignored. She further stated that respondents have maintained a priority list for transferring on request on the basis of annual transfer applications and her name is at S.No.17 in the priority list but still her request has not yet been considered.

5. Instead vide impugned order dated 25.6.2001 the respondents while exercising their power under Rule 10 of the guide-lines of transfer, transferred the applicant to Kahalgaon in Bihar. The applicant alleges that the respondents ignored the guidelines and have wrongly interpreted the provisions of Rule 10(1) of the guide-lines. As per Rule 10 (1) the vacancies have to be created to accommodate anybody by transferring teachers with the longest period of stay at that station. The respondents also ignored the fact that the guide-lines specifically provide that the lady teachers should be accommodated at nearby places and the displacement of the applicant to accommodate another teacher was redundant as there was a clear vacancy of PGT English at AFS Gurgaon since April, 2001. The applicant could have easily been posted there to consider her request.

6. The applicant also pleads that she herself is an asthmatic patient and her mother-in-law has been recently operated and she requires continuous attention of the applicant. It is further pleaded that since the applicant had not completed the required 5 years of service on the date of filling up of her transfer request application so she could not have been transferred since she was in the high up of priority list and she was

always posted at hard station, as such the respondents were required to consider her request sympathetically in preference to other persons.

7. It is also pleaded that the case of the applicant was a spouse case and she was required to be posted at a place of her husband and she has been transferred in an arbitrary and unjust manner.

8. It is further pleaded that the transfer is totally contrary to the rules and guide-lines of transfer policy.

9. The OA is being contested by the respondents. The respondents pleaded that the transfer of the applicant is strictly in accordance with the guide-lines for the transfer. Respondents submitted that the applicant was posted at Dadri since 11.12.1995 and has been there for more than 5 years and three months and thus she came within the zone of displacement requiring to be transferred/displaced in the event of request for transfer from another teacher and since another teacher who was working at NTPC Khalagaon applied for her transfer to KV Dadri which is her first choice as per the transfer application on medical grounds which was covered under the transfer guide-lines and was also one of the identified diseases mentioned under the guide-lines, so in terms of the said guidelines the teacher who was working at Khalagaon was transferred to NTPC Dadri and the applicant who had a longer stay and had completed 5 years and was under the displacement zone was rightly displaced under the guidelines for transfer.

km

5.

10. It is further pleaded that since the applicant has all India transfer liability so she can be transferred to any place in India.

11. As far her request for transfer is concerned, it is admitted that the name of the applicant is at S.No.17 of the priority list but since there is a huge demand for posting at Delhi so the applicant despite being at S.No.17 could not be accommodated at Delhi and as far the personal grounds like spouse and the other conditions of the applicant for being posted at a particular place are concerned, the respondents submitted that this is not a case which is fully covered by the guide-lines for the transfer so applicant could be transferred and it is for the administration to see how best they can manage personnel affairs to post a teacher at a particular place.

12. I have heard the learned counsel for the parties and gone through the records of the case.

13. The guidelines annexed by the respondents along with the reply, particularly Rule 10(1) of the guidelines which are relevant are reproduced for easy reference:-

"10(1) Where transfer is sought by a teacher under para 8 of the guidelines after continuous stay of 3 years in NE and hard stations and 5 years elsewhere at places which were not of his choice, or by teachers falling under the Provisions to para 7 of these guidelines, or very hard cases involving human compassion, the vacancies shall be created to accommodate him by transferring teachers with longest period of stay at the station provided they have served for not less than five years at that station.

.6.

Provided that principals who have been retained under para 4 to promote excellence, would not be displaced under the clause".

14. The above extract goes to show that any teacher who has served for not less than 5 years in a particular school can be displaced if a request is made by another teacher who has completed his tenure at a particular station or in the North East station. So there is no doubt that the applicant was in the zone who could be displaced from Dadri as she had already worked for more than 5 years and since there was a request from a teacher and that too on medical grounds which was covered under the guidelines so the department could transfer applicant under Rule 10(1) of the guidelines.

15. Thus I find that there is no violation of guidelines, rather the applicant had been displaced as per the guidelines for her transfer itself.

16. The question of applicant's request for being posted at Delhi though she had filled up the form twice in 2001 was considered but could not be accommodated as no vacancy was available in Delhi. The applicant alleges that applicant's number in the priority list is at S.No.17 which is not denied by the respondents but the applicant has failed to point out that if any post was available at Delhi for which she had made a request and she had not been accommodated in that place. On the contrary the respondents have pleaded that because of the huge demand for posting at Delhi and despite the fact that the applicant is at S.No.17 of the priority list, she could not be accommodated in Delhi so there does not appear to be any mala fide in the transfer of the

[Signature]

applicant.

17. Hence, I find that the OA has no merit and the same is dismissed. Interim order, if any, is hereby vacated.

OA No. 933/2002

18. This OA has been filed by the applicant when it was pointed out that he was seeking multiple reliefs in OA 908/2002, the stay of transfer order as well as stay of order of provisional loss of lien on post held and show cause notice under Article 81(d)(3) of the Education Code for confirmation thereof, Annexure A-1.

19. Since during the pendency of the case there was a stay against the tranfer order so it will not be desirable to take any action under Article 81(d)(3) by the department against the applicant on that ground. Hence, the show cause notice issued to the effect for taking disciplinary action for dispensing stay order that stands quashed and now since OA 908/2002 pertaining to the transfer matter has been dismissed and the stay order has been vacated so if the applicant now does not abide by the order then the department would be at liberty to take necessary action under Article 81(d)(3) by issuing a fresh show cause notice as per rules.

20. In view of the above, OA is disposed of with the above directions. No costs.


(KULDIP SINGH)
MEMBER(JUDL)