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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2390/2001

New Delhi, this 11th day of January, 2002

Hon'ble Shri M.P. Singh, Member(A)

Smt. Ratna Varshney
Flat No.31, Jangpura Extn. Market
New Delhi-110 014 ... Applicant

(By Shri Naveen R. Nath, Advocate)

versus

1. Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg, New Delhi
2. Joint Commissioner (Admn.)
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg, New Delhi
3. Shri Hari Om Gupta
TGT(Hindi), KVS, Ppragati Vihar
Lodhi Road, New Delhi ... Respondents

(By Shri S.Rajappa, Advocate)

ORDER

Applicant has challenged the order dated 23.6.2001 (A/5) whereby she has been transferred to Kendriya Vidyalaya (KV, for short), Alwar; order 8.8.2001 (A/8) by which she stands promoted and transferred from KV, Pragati Vihar, New Delhi to KV, Kalpakkam as also the order dated 24.8.2001 by which her request for cancellation of transfer order has not been acceded to.

2. Briefly stated, applicant was appointed as TGT (Humanities) in KV on 4.7.73. On her request, she was posted to KV, Pragati Vihar by order dated 13.8.85. By order dated 23.6.2001 she was transferred in public interest from Pragati Vihar to Alwar (Rajasthan). She made a representation against this order on 29.6.2001. In the meantime, she was promoted as PGT(Hindi) by order dated 8.8.2001 and posted at Kalpakkam (Tamil Nadu),

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which was communicated to her vide letter dated 17.8.2001. She preferred a representation against the said order on 23.8.2001 which was rejected by the impugned order dated 24.8.2001. That is how the applicant is before this Tribunal challenging the aforesaid orders and seeking directions to the respondents to retain her in KV, Pragati Vihar, New Delhi.

3. Respondents in their reply have contested the case and have stated that since the applicant has foregone her promotion from TGT(Hindi) to that of PGT(Hindi) by making a statement before this Tribunal and also by virtue of the fact that she has lost her right to be promoted to the higher post for five years, she cannot challenge the impugned order dated 8.8.2001. She has been transferred by order dated 23.6.2001 on the basis of the transfer policy and therefore she cannot challenge this order also. Respondents also would submit that as per the transfer guidelines, where a teacher seeks transfer (1) after continuous stay of 3 years in NE regions, declared hard stations, A&N Islands/Sikkim; (2) 5 years elsewhere at places which were not of his/her choice; (3) teachers falling under the proviso to para 7 of the transfer guidelines that is death of spouse and medical grounds (on notified diseases only); (4) very hard cases involving human compassion, vacancies shall be created to accommodate him/her by transferring teachers with longest period of stay at that station provided they have served for not less than 5 years at that station. R-3 who had been serving in Alwar since 5.1.94 had requested for transfer to Delhi, while the applicant is serving in KV, Pragati

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Vihar since 31.8.85 and she was required to be transferred making way for R-3. Applicant has been transferred under a displacement scheme which is legally valid. She also carries an all-India transfer liability. Respondents have also cited the judgement of the Supreme Court {CGM, NET Circle Vs. R.C.Bhattacharya 1995(2) SCC 532} and contended that an employee has no vested right to insist on the particular posting where the services are transferable. That apart, the doctor who examined the case of the applicant had opined that her case is not covered under the guidelines. In view of these submissions, the OA may be dismissed.

4. Heard the learned counsel for the parties and perused the records.

5. As per settled legal position, court/Tribunal cannot interfere with the transfer unless some malafide is established or that the transfer has been made in violation of the policy guidelines. (see UOI Vs. H.N.Kirtania, JT 1989(3) SC 131 and UOI Vs. S.L.Abbas, 1993(2) SLR 585(SC)). In the instant case, I find that there is no allegation of any mala fide against the respondents. However, the learned counsel for the applicant would submit that posting of R-3 at Alwar was of his choice and therefore the transfer of the applicant from KV, Pragati Vihar to KV, Alwar and posting of R-3 in applicant's place is in violation of the transfer guidelines.

6. I find from the OA file that by order dated 12.9.2001, the respondents were directed to constitute a Medical Committee for medical examination highlighting



the heart ailments of the applicant and the fact that treatment is not available at Alwar. After the arguments were concluded on 18.12.2001, the learned counsel for the respondents was directed to produce the original record regarding constitution of Medical Committee as ordered by the Tribunal on 12.9.2001 and also the relevant file to show that R-3 had completed 5 years at Alwar, which station was not of his choice, before he was transferred to Delhi. The learned counsel for the respondents has submitted the relevant documents on 31.12.2001.

7. A careful perusal of the same reveals that the respondents have not constituted the Medical Committee in pursuance of the orders passed on 12.9.2001. I find that the respondents have only forwarded applicant's representation dated 29.6.2001 to one Dr. Vijay Kansal, a medical practitioner, who is not even a Specialist for giving his medical opinion about the health condition of the applicant. The said medical practitioner has not medically examined the applicant but has simply remarked on 11.9.2001 on the representation itself that "Not accepted as it is not covered under Transfer Guidelines". He has also remarked in a separate sheet that "ECG was within normal limits on 14.9.94". In other words, the said Doctor has not cared to medically examine the applicant on that date with regard to her ECG or other ailments and had only given comments on the ECG which was taken 7 years back. It appears that instead of giving medical advice with regard to the ailments of the applicant, he has passed an administrative order with regard to her transfer, which was not expected of his profession. In fact the doctor

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has taken the role of administrative authority justifying applicant's transfer and thus has transgressed the scope of medical advice.

8. It is also observed from the above file that the order for constituting medical committee was given by the Tribunal on 12.9.2001 whereas the advice of the medical practitioner has been obtained on 11.9.2001, which appears to be stage-managed. I also find that R-3, while filling up the application for his transfer to Delhi on 8.2.2000, has written "NA" against the column 8(e) relating to "Posting history during the last 5 years commencing from the present station. Also indicate whether the station was of his/her choice". It shows that posting of R-3 at Alwar was of his choice.

9. In para 5 of the reply affidavit filed on behalf of R-1 and R-2 on 19.11.2001, they have stated that the applicant has been transferred as per the provision of clause 10(1) of transfer policy which provides that: "Whether transfer is sought by a teacher under para 8 of the guidelines after continuous stay of 3 years in NE & hard stations and 5 years elsewhere at places which were not of his choice, or by teachers falling under the Proviso to para 7 of these guidelines, or very hard cases involving human compassion, the vacancies shall be created to accomodate him by transferring teachers with longest period of stay at that station provided they have served for not less than five years at that station". It is further stated in the reply that from a bare reading of these guidelines, it could be seen that where a teacher seeks transfer (1) after continuous stay of 3 years in NE regions, declared hard stations, A&N

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Islands/Sikkim; (2) 5 years elsewhere at places which were not of his/her choice; (3) teachers falling under the proviso to para 7 of the transfer guidelines that is death of spouse and medical grounds (on notified diseases only); (4) very hard cases involving human compassion, vacancies shall be created to accommodate him/her by transferring teachers with longest period of stay at that station provided they have served for not less than 5 years at that station. R-3 who had been serving in Alwar since 5.1.94 had requested for transfer to Delhi, while the applicant is serving in KV, Pragati Vihar since 31.8.85 and having longest period of stay in Delhi applicant was required to be transferred making way for R-3. In the light of the transfer guidelines, the applicant has been transferred under a displacement scheme which is legally valid and the applicant cannot question the same. As against this affidavit filed by R-1 and R-2 on 19.11.2001, I find from the records that posting of R-3 at Alwar, where he was serving since 1994, was of his choice and therefore he was not entitled for transfer again on completion of 5 years to a station of his choice as per the aforesaid guidelines. Respondents have, therefore, violated the guidelines by transferring R-3 from Alwar to Delhi and displacing the applicant from Delhi.

10. [During the course of the arguments, the learned counsel for the respondents has made a false statement that] respondents have constituted the Medical Committee and has stated that R-3 was transferred to Alwar where he has served for more than 5 years and that station was not of his choice. Respondents have also filed a false affidavit stating the above position which shows their

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casualness and utter disrespect to the court's order. I take a very serious note of this and direct the Ministry of Human Resources Development to enquire into the matter and fix responsibility against the officer who has filed false affidavit and take action against him as deemed appropriate. Respondents have also issued the transfer order in violation of the guidelines framed by themselves and displaced the applicant, who has been put under a lot of mental agony and compelled her to approach this Tribunal. I therefore impose heavy costs of Rs.10,000 (Rupees ten thousand) upon the respondents to be payable to the applicant, within three months from the date of receipt of a copy of this order.

11. In the circumstances, this OA is allowed and the order dated 23.6.2001 in so far as it concerns with the transfer of the applicant from KV, Pragati Vihar to KV, Alwar and also the order dated 24.8.2001 are quashed and set aside.


(M.P. Singh)
Member(A)

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