

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA-37/2001
MA-20/2001

New Delhi this the 13th day of March, 2002.

Hon'ble Dr. A. Vedavalli, Member(J)
Hon'ble Sh. Govindan S. Tampi, Member(A)

1. Sh. Rajinder Parshad S/o Sh. Nirmal Singh
2. Sh. Shankar Lal S/o Sh. Balbir Singh
3. Sh. Brij Mohan S/o Sh. B.P. Bharati
4. Sh. Daya Chand S/o Sh. Birbal
5. Sh. Kishan Chand S/o Sh. Babu Lal
6. Sh. Amarveer Singh S/o Lt. Sh. K. Singh
7. Sh. Harpal Singh S/o Sh. Nanak Ram

All are working as Sweeper/Chowkidar in various School,
under Kendriya Vidyalaya Sangathan, in Delhi Region.

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Kendriya Vidyalaya Sangathan,
through the Commissioner,
18, Institutional Area, Shahid
Jeet Singh Marg, New Delhi.
2. The Dy. Commissioner (ACAD),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi.
3. The Asstt. Commissioner,
Kendriya Vidyalaya Sangathan,
(Delhi Region), JNU Campus,
New Mehroli Road, New Delhi. Respondents

(through Sh. S. Rajappa, Advocate)

ORDER (R.)

Hon'ble Dr. A. Vedavalli, Member(J)

Pleadings are complete in this case. At the
request of learned counsel for both the parties, this OA
is being disposed of at the admission stage itself.



2. Heard the learned counsel for both the parties. Pleadings and the material papers and documents placed on record have been perused.

3. MA-20/2001 for joining together of the applicants is allowed.

4. The 7 applicants who have filed this OA who were working as Sweeper/Chowkidar/Peon (Group-D) employees in different schools under the respondents Kendriya Vidyalaya Sangathan, Delhi Region are aggrieved by their transfer to other schools.

5. Applicants claim the following reliefs in this OA:-

"(i) That the OA of the applicants may be allowed with costs.

(ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned memorandum dt. 10.12.1990 (Annex.A/1) and order dt. 3.5.2000 (Annex.A/2) declaring to the effect that the same are illegal and against the Govt. of India Instructions and consequently the applicants are entitled for their posting in the Original place where the applicants were working before passing the impugned order dt. 3.5.2000."

6. Facts of this case briefly are as under:-

The Kendriya Vidyalaya Sangathan by its OM dated 10.12.1999 i.e. the first impugned order (Annexure

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A/1) relating to the privatisation of certain services in the schools decided to allow the schools to engage the services of private agencies with immediate effect with reference to the three tasks mentioned therein in case sufficient vacancies of Group-D staff exist in the school and in the manner indicated therein. The three tasks are as under:-

- "(a) Watch and ward duties of schools, presently being performed by Chowkidars.
- (b) Cleaning of school buildings, toilets, class rooms including dusting of desks etc. presently being done by Safai Karamacharis.
- (c) Proper maintenance of gardens, lawns and compound presently being done by malis."

7. Pursuant to the aforesaid O.M. Respondent No.3 issued the impugned order dated 03.05.2000 (Annexure-A/2) transferring several Group-D employees including the present applicants with immediate effect to other schools in public interest stating that some Principals have requested him to provide the services of Sweepers/Chowkidars and Malis in the schools in Delhi Division. We are also informed by the learned counsel for the applicants that the applicants have since joined their posts in various schools to which they were transferred.

8. The applicants have submitted in their OA that work and functions referred to in the first impugned

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order/memo dated 10.12.1999 (Annexure A-1) are of perennial and permanent nature. They also submitted that the transfers are against the provisions of the Government of India Notification dated 08.12.1976 regarding prohibition of employment of contract labour (S.O.779(E)-Annexure A-3) and the D.O. letter dated 29.05.1992 (Annexure A-4). They have also stated that the said instructions are applicable to Kendriya Vidyalaya Sangathan also which is under the administrative control of the Ministry of Human Resources Development. Learned counsel for the applicants Sh. Yogesh Sharma contends that the impugned orders are totally illegal and arbitrary particularly in the light of the observations given by the Hon'ble Supreme Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union and others, etc. (AIR 1997 SC 645). He prayed that the OA may, therefore, be allowed and the impugned orders be quashed.

9. The OA is contested by the respondents. It was submitted by the respondents in their counter that the applicants are holders of Group-D posts having all India transfer liability under Rule 49(k) of the Education Code for Kendriya Vidyalaya Sangathan. They were transferred from one school to another because they were holding posts where they were working which were declared as surplus. They further submitted that Kendriya Vidyalaya Sangathan is an autonomous body

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governed by its own rules and policies and Government of India Notification and the instructions on which the applicants have placed their reliance are not applicable to Kendriya Vidyalaya Sangathan.

10. Learned counsel for the respondents Sh. Rajappa submits that the impugned orders are in accordance with law and are not vitiated by any mala fides. Moreover, the Air India case on which applicants have relied has been over-ruled by the Hon'ble Supreme Court in the case of Steel Authority of India Ltd. (SAIL) Vs. National Union Water Front Workers & Ors. (2001 Vol. 5 Scale 626) and hence the OA deserves to be rejected.

11. The applicants in their rejoinder have reiterated their averments in the OA and have denied the submissions made by the respondents in the counter in a general way.

12. We have given our careful consideration to this matter.

13. Re the first impugned order dated 10.12.1999 (Annexure A-1) it is seen that the said order relates to a policy decision taken by Kendriya Vidyalaya Sangathan regarding privatisation of certain services in their schools. It is well settled that this Tribunal normally does not interfere with policy decisions unless the same is established, inter alia, to be patently

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illegal, unconstitutional or arbitrary. While so, the applicants have not been able to establish with supporting material that the said order is vitiated by any patent illegality, unconstitutionality or any other valid ground.

14. Re the second impugned order dated 03.05.2000 (Annexure A-2) it is seen that the applicants alongwith several others were transferred to different schools in public interest. They have not been able to show that they do not have all India transfer liability or that they are not surplus. They have also failed to spell out specifically any mala fides or illegal action on the part of the respondents. The applicants have also not indicated as to how Government of India Notification and the instructions relied upon by them are applicable to Kendriya Vidyalaya Sangathan with supporting documents and material. Even otherwise, the decision of the Hon'ble Supreme Court in Air India case (supra) has been over-ruled, though prospectively, in the Steel Authority's case (supra).

15. On the facts and circumstances of this case and in view of the above discussion, we are of the considered opinion that the present OA does not warrant any judicial interference. In the result, the OA is dismissed. No costs.

(Govindan S. Tampli)
Member (A)

/vv/

A. Vedavalli 13/3/2002
(Dr. A. Vedavalli)
Member (J)