

(27)

Central Administrative Tribunal  
Principal Bench

O.A.No.995/2001

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 2<sup>nd</sup> day of April, 2003

Poonam Arora  
TGT (Sanskrit)  
K.V.Birpur  
Dehradun.

... Applicant

(By Advocate: None)

Vs.

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

2. The Principal  
K.V.Birpur  
Dehradun.

3. The Assistant Commissioner  
Kendriya Vidyalaya Sangathan  
Dehradun Region  
Hathibarkala  
Dehradun.

.. Respondents

(By Advocate: Sh. S. Rajappa)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant impugns respondents' orders dated 24.10.2000 and 18.4.2001 whereby she has been transferred from KVS, Birpur to K.V. IDPL, Rishikesh.

2. By an interim order dated 26.4.2001 implementation of the order dated 18.4.2001 has been stayed in full.

3. Applicant, who is working as TGT (Sanskrit) in KVS, on request, was posted in the present school on 1.12.1999 against a clear-cut vacancy. Husband of applicant died on 12.2.1996, and

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applicant as per the medical, submitted his permanent disability on account of 40% disability of his spinal column.

4. At KVS, Birpur one Ms. Sangita Rani, who has been working since 1994 and was senior to applicant, as per the policy of transferring the surplus Teachers, Board of Governors guide-lines were followed to transfer Smt. Sangita Rani to IDPL, Rishikesh, and latter on transfer orders have been withdrawn and instead applicant was shown surplus and transferred to Rishikesh.

5. None appeared for applicant even on second call. Accordingly, I dispose of this OA under Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

6. In the OA, applicant is contended that as per the policy laid down by the Board of Governors on surplus transfer, seniormost Teacher is to be transferred, and as applicant was not seniormost, the transfer order issued is contrary to the policy guide-lines.

7. Moreover, it is stated that as per the transfer policy of respondents, surplus Teachers on account of physically handicapped are not to be transferred.

8. On the other hand, Sh. S.Rajappa, learned counsel for respondents stated that transfer order of applicant was issued due to fixation of staff strength

for the academic year 2001-2002 where applicant was found in excess of the sanctioned strength at KVS, Birpur and was re-deployed to a transfer order which is in public interest.

9. In so far as the withdrawal of the transfer order of Smt. Sunita Rani is concerned, it is stated that the Regional Office, Dehradun misconstrued the confirmation of the withdrawal of the additional post by letter dated 13.10.1999, as such additional post of TGT (Sanskrit) was created in KVS, Birpur. Accordingly, applicant was transferred to KV, Clement Town as against the zero vacancy, but to correct the anomaly it was decided in the academic session 2000-2001, applicant was transferred. The contention that applicant was junior to Smt. Sunita Rani is not correct. However, it is contended that the disability of applicant was only 15%. Accordingly, applicant was transferred within the radius of 45 Kms. It is also contended that her disability can be ascertained by a medical Board and in the event, <sup>if</sup> she <sup>has</sup> been found to be incapacitated and disability upto the extent of 40%, the guide-lines shall be applied to her case and necessary consequent action would be taken.

10. I have carefully considered the pleadings in the OA as well as the submissions of the learned counsel for respondents.

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11. In so far as the transfer of an handicapped is concerned, as per the decision of the KVS, the same cannot be resorted to in case of permanent physically handicapped having 40% disability.

12. I find that Office of the Chief Medical Officer, Dehradun, where the Board was constituted has already declared the applicant having 40% disability and physically handicapped person, but as the applicant, by the department, has been found to be only 15% handicapped, and the correct position is to be obtained from an expert body. In this view of the matter, ends of justice would be met, if the present OA is disposed of with a direction to respondents to constitute <sup>an</sup> ~~one~~ Medical Board to ascertain the physical disability of applicant and in the event, it is found to be 40% they should act in accordance with their own circular and take consequent action with regard to the transfer of applicant. Till the medical Board is constituted and an opinion is forwarded to respondents, the transfer order of applicant dated 26.4.2001 shall be kept in abeyance. I order accordingly. With these observations, OA is disposed of. No costs.

S. Raju  
(Shanker Raju)  
Member(J)

/rao/