

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPLE BENCH

D. A. No. 2180/99

New Delhi: this the 30<sup>th</sup> day of March, 2000.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

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

Smt. Krishna Katarya,  
W/o Shri Naveen Katarya,  
R/o K-1/43, Mohan Garden,  
Peepal Wala Road,  
New Delhi

.... Applicant.

(By Advocate: Mrs. Meera Chhibber with  
Shri Ajesh Luthra)

Versus

1. Lt. Governor of Delhi,  
Govt. of NCT,  
Delhi.

2. The Chief Secretary,  
Govt. of NCT of Delhi.  
5, Sham Nath Marg,  
Delhi.

3. The Principal Secretary,  
Directorate of Education,  
Govt. of NCT Delhi,  
Old Secretariate,  
Delhi.

4. The Director of Education,  
Govt. of NCT Delhi.  
Old Secretariate,  
Delhi- 54

.... Respondents.

(By Advocate: Shri Vijay Pandita)

ORDER

Hon. Mr. S. R. ADIGE VC(A):

Applicant impugns respondents' order dated 4/5.10.99 (Annexure-A1) and seeks permanent absorption as Assistant Teacher in Directorate of Education, Govt. of NCT of Delhi.

2. Applicant's case is that she was appointed in July, 1988 as Asstt. Teacher, Govt. Primary School, Chirkhana, Alwar Rajasthan on regular basis while her husband is a permanent employee of Govt. of NCT of Delhi since July, 1977. Because of family circumstances,

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applicant's husband moved respondents for giving applicant a posting as Asstt. Teacher in Delhi vide representation dated 18.2.93 (Annexure A-2) and upon NOC being issued by competent authority at Rajasthan, applicant was transferred to Delhi Govt. on deputation basis vide order dated 3.12.93 (Annexure A-5), which was extended from time to time, and was last extended upto 14.12.98. Applicant asserts that before that date she had been representing to respondents for her permanent absorption in Govt. of NCT of Delhi. Since no decision was taken thereon, just before her deputation period was to expire, she requested respondents to extend the deputation period for another one year, upon which respondents by letter dated 11.12.98 (Annexure A-9) directed that she be not relieved till further orders.

3. Meanwhile aggrieved by her non absorption, she had filed DA No. 1437/99. In that DA applicant had asserted that in similar circumstances, as many as 16 candidates identically placed had been absorbed by Delhi Administration. Particular attention had been invited to the case of one Smt. Krishna Sharma who had filed DA No. 1899/90 seeking similar <sup>relief</sup> ~~by~~ which had been disposed of by the Tribunal's order dated 30.9.1994 directing respondents to consider her case for absorption. Attention was also invited to CWP No. 2426/99 filed by Mrs. P. Padmaya VNN in the Delhi High Court against her repatriation who by its order dated 23.4.99 had directed respondents to showcause why

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the W.P. should not be admitted and in the meanwhile had directed respondents to maintain the status quo.

4. Noting the aforesaid averments, O.A. No. 1437/99 had been disposed of by order dated 15.6.99 (Annexure A-15) directing respondents to consider applicant's case for absorption by a detailed, speaking reasoned order in accordance with rules and instructions on the subject under intimation to applicant within three months, with liberty given to applicant that if she will still aggrieved, she could agitate her grievance in accordance with law if so advised.

5. Pursuant to the aforesaid order dated 15.6.99, respondents have issued order dated 4/5.10.1999, which applicant now impugns in the present O.A.

6. We have heard both sides.

7. Applicant's counsel Mrs. Chibber has reiterated the grounds taken in O.A. No. 1437/99. It has been emphasised that in as many as 16 similar cases, respondents have permanently absorbed those teachers, and treating applicant's difficulty would be subjecting her to hostile discrimination. The case of Smt. Shyam Lata has been cited, in respect of which it is stated that she has been absorbed by Delhi Administration even after her O.A. No.1437/99 was dismissed by the Tribunal on 19.7.1993.

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Smt. Krishna Sharma's case (Supra) has been referred to, who Mrs. Chibber states has also been absorbed, as also Ms. Padmaja's case (Supra). Reference has also been made to the contents of Para 120.18 of the Fifth Pay Commission Report wherein it has been recommended that the existing Government institution for posting of husband and wife at the same station to the extent possible to reiterated and expanded. Applicant's domestic difficulties have also been highlighted.

8. On the other hand respondents counsel Shri Pandita has emphasised that applicant is an employee of another State who has come to Delhi Administration on deputation and has no enforceable legal right to compel respondents to absorb her. In the case of those deputationists who have been absorbed, he has contended, that those absorptions were ordered on extreme compassionate grounds or exceptional circumstances (such as terrorist <sup>Threats to employees</sup> ~~activities~~ <sup>husband working</sup> in Punjab), and applicant's case does not fall within the aforesaid categories.

9. We have considered the matter carefully.

10. In Smt. Shyam Lata's case (Supra) the Tribunal in its order dated 19.7.1993 in which one of us (Shri S.R. Adige, Member (A) as he then was) was a party, it has been conclusively held that a deputationist has no enforceable legal right to claim absorption and non absorption does not violate any condition of service in the absence of any rule specifically permitting absorption.

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This legal position remains good, notwithstanding the fact that respondents did subsequently absorb Smt. Shyam Lata. It is only when the rules themselves provide for absorption, and a Government employee despite fulfilling the eligibility qualification prescribed in those rules and adhering to the procedure prescribed has not been absorbed in violation of those rules, that a right access to that Government employee, as held by the Supreme Court in Rameshwar Prasad Vs. M. U. P. Rajkiya Nirman Nigam Ltd. and on AISLJ II - 2000 (1) Page 137. Mrs. Chibber has not established that applicant's case falls within those parameters to invite our judicial interference. The Delhi High Court order for maintainance of the status quo in Padmajas case (Supra) is admittedly only an interim direction operative till the disposal of the W.P. and cannot be termed as conclusory, and in so far as Smt. Krishna Sharma's case (Supra) is concerned, the impugned order dated 4/5.10.1999 itself makes clear that it has been passed after considering applicant's case.

11. Indeed Mrs. Chibber has herself furnished for our perusal the CAT, Principal Bench order in O.A. No. 2010/99 Kanwal Nain Vs. Delhi Administration and Ors. delivered as recently as 20.1.2000. Ms. Kanwal Nain like the present applicant was a teacher employed by the Haryana State Government who came on deputation to Delhi Administration and sought permanent absorption for domestic

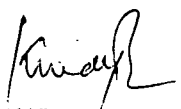
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reasons similar to those of applicant in this OA. In that case also it was argued on applicant's behalf that certain decisions were taken by respondents in the past wherein teachers on deputation had been absorbed by respondents under compelling domestic circumstance, and rejection of applicant's case would be tantamount to arbitrariness and discriminatory treatment. Noting respondents' contention that a policy decision had been taken in June, 1998 that no further absorption would take place, the Bench after noticing the Hon'ble Supreme Court's ruling in R.L.B. Soni Vs. State of Gujrat that a Govt. servant had no right to be absorbed <sup>on</sup> a deputation post, held that it was entirely within the domain of executive policy to decide that for administrative reasons they would not permanently absorb <sup>a</sup> deputationist, and if in the background of that decision, applicant's case for absorption was rejected it warranted no judicial interference. However, having regard to the fact that applicant had school going children while dismissing the OA respondents were called upon not to implement the repatriation till 15.5.2000 i.e. the conclusion of the academic session 1999-2000.

11. For the reasons discussed above, the ruling in Kanwal Nain's case (supra) is, in our view, fully applicable to the facts and circumstances of the present case.

12. Under the circumstance the impugned order dated 4/5.10.99 warrants no interference. However, respondents should not implement the same till mid May, 2000. Subject to that the OA is dismissed. No costs.

  
( KULDIP SINGH )  
MEMBER(J)

  
( S. R. ADIGE )  
VICE CHAIRMAN (A).