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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1735/2000

New Delhi, this the 21st day of March, 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Sh. V V Deswal,
P.E.T.
Kendriya Vidyalaya,
BSF, Chhawla Camp,
New Delhi 110071.

.....Applicant

(By Sh. Anil Shrivastava, Advocate)

VERSUS

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

.....Respondent

(By Sh. S. Rajappa, Advocate)

O R D E R (ORAL)

Shri V.V. Deswal, Physical Education Teacher (P.E.T.)
Kendriya Vidyalaya, BSF Chhawla Camp, New Delhi, has come
up in this OA seeking that order No.F.3-(Sur)/2000-KVS
(Estt.IV) dated 30.8.2000 transferring him to K.V. Shimla
be quashed and set aside.

2. S/Sri Anil Shrivastav and S. Rajappa, learned counsel
represented the applicant and the respondent respectively
during the oral submissions before me today.

3. The applicant, a P.E.T. at K.V. BSF Chhawla since
1996, assails the aforesaid transfer order as according to
him he has been shifted out being declared as surplus.
This was incorrect and improper as there were teachers who
have spent more time in the same stream in the same School
and he could have been shifted only after those teachers
have been posted out. He states that the Board of

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Governors (BOG) had taken a decision on 16.9.1999 that freezing of the staff strength of the K.Vs has to be settled by a Committee who have to decide on the same and therefore, the respondent could not have unilaterally shifted him out on the ground of his being surplus. He states that his two children are preparing for Board examinations and the transfer had come in the way of their education.

4. In the reply filed on behalf of the respondents, it is pointed out that K.V. Sangathan manages as many as 854 KVs situated all over India including two abroad and that the teachers are liable for transfer from one school to the other in terms of Article 49(k) of the Education Code governing the administration of the Vidyalaya. The respondents are also authorised to examine and assess the staff strength of any particular school and to determine whether any of them is surplus so that they can be posted out. The same exercise has been undertaken in KVS BSF, Chhawla when it was found that Physical Education Teachers were surplus and accordingly the applicant was transferred out. The same cannot be challenged, according to the respondent. He specifically states that Smt. D.D. Sharma (wrongly shown as Shri D.D. Sharma) has been working in the School since 1992, but only as a Yoga Teacher and only during 1998 she became a PET and therefore, for considering the period of stay in a given School, the period in a particular stream is taken into consideration. Therefore, the applicant who joined in 1996 in the PET stream has put longer service and has

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therefore been transferred out. This was the proper and correct decision to have been taken, according to them.

5. Appearing on behalf of the applicant before me today, Shri Anil Shrivastav brought to my attention the minutes of the 66th Meeting of BOG held on 16.9.1999 which reads as under:

"Since KVS, being a corporate body, has autonomy to frame its own rules, it has issued its own instructions, the orders of the Govt. are inapplicable to that extent. While issuing comprehensive instructions as mentioned above, the KVS has also kept in view that senior most teachers in terms of length of stay in that KV should be first posted out in the event of being rendered surplus instead of junior most teachers in terms of length of stay in the same KV."

6. In the above circumstances, the applicant should not have been posted out, is his plea. He also pointed out that the list of teachers who have completed more than five years of stay at a particular station, in order of seniority of stay, issued by the respondents showed that Smt. D.D. Sharma had been working in the present cadre in regular basis since 12.11.1981 and in the present KV since 14.2.1992. The applicant having joined in 1996 should not have been posted out to benefit Smt. Sharma who has put longer years with the same School. The decision of the respondents to post the applicant was therefore, illegal and be set aside, Shri Shrivastava argues.

7. According to Shri Rajappa, learned counsel for the respondent, the period of stay has to be computed with reference to the period spent as PET, in which case the

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applicant has spent more time in the same School i.e. from 1996, while Smt. D.D. Sharma has become PET only in 1998. The period, therefore, was correctly taken into consideration and the applicant was transferred out. The same, therefore do not merit interference by the Tribunal, pleads Shri Rajappa.

8.I have carefully considered the matter. The transfer order of the applicant has been issued in terms of the guide-lines governing the transfers and postings of the teachers of the KVS, the validity of which is not questioned by the applicant also. What he assails is the implementation of the guide-lines in a manner, which he says hurts his interests. Teachers being rendered surplus have to move out to adjust the staff strength, as required by the Education Code and the management, but while doing so those who have put in longer time would have to be posted out first. In this case, the applicant who has been working in the present School since 1996 as a PET has been transferred out, treating him in surplus while another teacher who is similarly placed and who is working in the same School from 1992 has not been transferred. The only reason the respondents state, for this distinction, is that the said teacher was earlier a Yoga Teacher and became a PET in 1998. Therefore, in the view of the respondents that teacher gets the advantage for continuation in the same School, ignoring the six years she has spent as Yoga Teacher before becoming a PET. This distinction is rather invidious and cannot be countenanced. As the applicant has been serving as PET in KV BSF Chhalwa since 1996, his being posted out as surplus

can be permitted only after others who have been working in the same school from earlier days. The respondents have not kept this principle in mind and therefore, their order transferring the applicant is vitiated and cannot be endorsed.

9. In the result, the application succeeds and accordingly allowed. The impugned order No.F.3-1(Sur)/2000- KVS (Estt.IV) dated 30.8.2000 is quashed and set aside. The respondents shall permit the applicant to continue to serve as PET in K.V. BSF Chhawla. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

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