

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 848/2000

109

T.A. No.

(B)

DATE OF DECISION 7-11-2000

....Petitioner

Mrs. Meena Chhibber

....Advocate for the
Petitioner(s)

VERSUS

Kendriya Vidyalaya Sangathan
through Commissioner and Ors

....Respondent

Sh. S. Rajappa

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble

1. to be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 848/2000

New Delhi this the 7th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Mrs. Rita Kumar,
W/o Shri Ajay Kumar,
R/o 158 H, West Arjun Nagar,
Agra-2812001.

... Applicant.

(By Advocate Mrs. Meera Chibber)

Versus

1. Kendriya Vidyalaya Sangathan,
through Commissioner,
18, Institutional Area
Shaheed Jeet Singh Marg,
New Delhi-16.
2. Jt. Commissioner (Admn.),
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-16.
3. Dy. Commissioner (Academics),
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-16.
4. Assistant Commissioner,
KVS Sector J. Aligang,
Lucknow.
5. Principal,
Kendriya Vidyalaya No.1,
Air-force Station,
Agra.

... Respondents.

(By Advocate Shri S. Rajappa)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application impugning the transfer order dated 30.10.1999 passed by the respondents transferring her from the Kendriya Vidyalaya (K.V) No.1, AFS, Agra to their School at Khandwa (MP). She has also impugned the orders dated 18.11.1999 and 11.2.2000 by which she has stated that the Principal of the K.V, Agra has rejected her claim for transfer advance and composite

18/

(V)

transfer grant, including TA/DA and another order dated 7.4.2000 transferring one Mrs. Pushpa Jain from K.V. No. 2, Agra Cantt to K.V.No.1, AFS, Agra on her request (surplus adjustment).

2. The brief relevant facts of the case are that the applicant who is a Trained Graduate Teacher (TGT) (Social Studies), was working from 1987 at K.V. No. 1, AFS, Agra. At the relevant time, her husband who is a Physical Education Teacher (PET) was also posted in the same School at K.V. Agra. According to her, because of certain domestic problems pertaining to the education of her children, etc, both she as well as her husband made applications to the KVS on 20.5.1999 requesting for transfer/posting to other places. In paragraph 9(a) of this application (Annexure P-VI), the applicant had indicated the choice of Vidyalayas/Stations at Indore, Dewas and Mhow, and under paragraph 9(b) against the column whether she was interested for transfer to any K.V. in a particular Region, in which case she was to indicate the preferences in terms of ^{the} Region, she had given the Code "03". This has been explained as the "MP Region" in which the stations she had indicated as choice stations were also situated. A similar application had also been made by the applicant's husband. Mrs. Meera Chibber, learned counsel for the applicant has laid much stress in the Note- column under the declaration to be given by the applicants for transfer on request which reads as follows:

"My spouse may be posted at the same station. Otherwise it may not be considered for transfer".

19/

(6)

This Note according to her is in pursuance of the requirement mentioned in paragraph 13, namely, to narrate the compelling problem(s) for seeking transfer.

3. Learned counsel for the applicant has submitted that after the impugned transfer order dated 30.10.1999 was passed, the applicant was relieved from the K.V. No. 1, AFS, Agra w.e.f. 15.11.1999 when she was also informed that she is entitled for TA/DA as per the K.V.S. Rules (Annexure P-X). Immediately thereafter, the applicant made an application addressed to the Principal of that School on 16.11.1999 (Annexure P-II) claiming payment of the advance salary, composite transfer grant, TA/DA immediately to enable her to join her duties at the earliest. In that letter, however, the Principal was informed by the officials of the School that ^{as per} the balance of School fund on 16.11.1999 was Rs.2716.70P, so advance cannot be given to the applicant. The applicant followed up this letter by another letter dated 11.2.2000 again asking for the advance amount of Rs.23,550/- in which she has explained her hardship to manage the family affairs/expenditure. He has also mentioned that this can be done latest by 14.2.2000 and if this is not done, she has informed that she is unable to join her duties at the transfer place, namely, Khandwa (MP). Below this application, there are certain notes ~~have~~ been written by the respondents on the same date. According to the learned counsel for the applicant, the applicant had made several other representations addressed to the Commissioner, KVS, explaining her problems and family difficulties. In her representation dated 2.11.1999, she had, therefore, requested that she and her husband may be posted together and her transfer order may

YB

(X)

be cancelled to avoid unnecessary family disturbances and financial losses. Mrs. Meera Chibber, learned counsel has submitted that there was no reply to these representations made by the applicant either regarding granting her the transfer advance due to her or cancelling the transfer order of the applicant from KV, AFS Agra to Khandwa (MP). So the applicant kept waiting and again made further representations on 11.4.2000 and 20.4.2000 requesting for cancelling her transfer order, due to the reasons mentioned therein. By this time, certain other transfer orders had also been effected by the respondents with regard to one Mrs. Pushpa Jain, PGT (Social Studies) vide respondents' order dated 25.1.2000 firstly to K.V. Shahjahanpur, and later by order dated 7.4.2000 to K.V. No. 2, AFS, Agra. In another case of one Mrs. Shanti Krishnan, TGT (Social Studies), the respondents have modified their earlier transfer order by order dated 11.4.2000 and transferred her from the K.V., AFS Agra, to Rangpuri, Delhi. Mrs. Chibber, learned counsel has pointed out that these orders with regard to Mrs. Shanti Krishnan and Mrs. Pushpa Jain have been passed by the respondents in furtherance of the requests made by these teachers, whereas the respondents have acted in an illegal manner with regard to the request made by the applicant in similar circumstances to cancel the transfer order dated 30.10.1999. She has also submitted that ~~while~~ the applicant had expressed her willingness to carry out the transfer effected by the respondents to Khandwa, provided she was given the financial assistants which she was otherwise entitled ~~to~~ her transfer, as per the letter dated 3.12.1981 (Annexure P-XII), failing which she had requested for cancellation of the transfer order. However, nothing was done by the

(8)

respondents, whereas the situation was otherwise in the case of the other two teachers for their transfer to places of their choice. In the facts and circumstances of the case, learned counsel for the applicant has contended that when the applicant's request for cancellation of the transfer to Khandwa and ^{for} being retained in AFS, Agra, was still pending with the respondents, they could not and ought not to have accommodated the other two teachers for posting at AFS, Agra, thereby initially defeating the right of the applicant for such consideration. She has pointed out that from Annexures P-XVII and P-XVIII, it is seen while Mrs. Pushpa Jain joined at AFS, Agra on 10.4.2000, the other teacher, namely Mrs. Shanti Krishnan was relieved from that post only by the transfer modification order dated 11.4.2000 which again, according to her, shows mala fides on the part of the respondents, in not ~~extending~~ ^{agreeing to} her request for cancellation of the transfer order and being retained in AFS, Agra. For these reasons, learned counsel has very vehemently submitted that the prayers made in the O.A. may be allowed.

4. The respondents have controverted the above allegations made by the applicant. Shri S. Rajappa, learned counsel has submitted that the impugned orders have not been passed by them in any illegal or improper manner but have been done in accordance with the relevant rules and instructions, including the policy adopted by the respondents and strictly keeping in view the public interest involved in the matter. He has drawn my attention to the KVS policy dated 26.4.1999 on the subject of "Annual Request Transfers" of teaching and non-teaching of KVs for the year 1999-2000 (Annexure R-I). He has submitted that

19

(19)

✓ this instruction clearly lays down the methodology and procedure for making the applications which are applicable for any particular year, that is from 1st April of that year to 30th March of the next year. Learned counsel has mentioned that in the present case, what is relevant to deal with ^{is} the application made by the applicant for the year 1999-2000, ^{which is} ~~is~~ that she was required to do by 20.5.2000, which she has ~~also~~ ^{also} complied with. He has submitted that under Paragraph 7 of these instructions, it is further provided that no request for cancellation of transfer, once effected will be entertained, because these are applications for transfers on request which are made by the eligible teachers and which are processed annually, keeping in view both the interests of the individual as well as the interests of the students and public interest. He has, therefore, submitted that as the applicant had been transferred to Khandwa which is in the State of M.P. in the region of her choice as per paragraph 9(b) of the application, the applicant cannot have any further grievance in the matter or insists upon ^{no} further decisions for cancellation of the transfer order. Learned counsel has submitted that as the respondents have made the transfer of the applicant in the order dated 30.10.1999 strictly in accordance with the rules and instructions on the subject, that order cannot be impugned in the manner the applicant has done, without even effecting the transfer to Khandwa after she was relieved.

5. With regard to the contention of the learned counsel for the applicant that the transfer advance package had not been given to her, he has submitted that the applicant was also fully aware that the School at the

20

relevant time had very insufficient funds, namely, less than Rs.3000/- and, therefore, she could not be paid the advance. However, according to him, that does not preclude the applicant from carrying out the transfer because the amount due to her by way of TA/DA and salary in any case would be paid to her subsequently at the place where she would report, which is also apparent from the remarks contained in the application made by the applicant herself (Annexure P-II). Shri Rajappa, learned counsel has, therefore, submitted that there is no question of not paying the due amount to the applicant but at the same time the applicant has no legal right not to carry out the transfer order on this ground. He has further submitted that the transfer orders with respect to Smt. Pushpa Jain and Smt. Shanti Krishnan were made on their being rendered surplus in public interest, although it was on their request also. In any case, the learned counsel has submitted that, since the request made by the applicant dated 20.5.1999 for transfer for the annual transfer on request for the period from 1999-2000 has been acceded to by the respondents, the question of cancelling that order does not arise. He has also explained that after Mrs. Shanti Krishnan was transferred to K.V., AFS, Agra, from AGCR, Colony, she did not report there but had made a request to be posted back to Delhi, which was done by the transfer modification order dated 11.4.2000. It was pointed out that this order in any case relates to the period from 1.4.2000 to 31.3.2001, that is in the new academic session and is not relevant to the period, in question. With regard to the order relating to Mrs. Pushpa Jain dated 7.4.2000, he has submitted that this is

(21)

also a transfer modification order. He has also contended that neither of these two parties have been impleaded by the applicant.

6. Learned counsel for the applicant had also referred to the fact that even in the case of applicant's husband, she had made a request for cancellation of his transfer from AFS, Agra to Mhow. That had been agreed to by the respondents and, therefore, there was no reason ^{why B.} ~~that~~ the request of the applicant for such cancellation of her transfer order to Khandwa should also not be agreed to. To this, Shri Rajappa, learned counsel has submitted that each case has to be taken on the basis ^{of B.} ~~its~~ merits and as there was no post vacant to accommodate the applicant, it was not done; whereas the bonafides of the respondents were clear that when the request of the applicant's husband came, the same was acceded to because they could do it. He has, ^{B.} ~~therefore~~, submitted that the applicant cannot refuse the transfer on ~~these~~ grounds taken in the O.A. as it is a mere incidence of service and the application which she had made for request transfer, as provided in the respondents' letter dated 26.4.1999 is a concession made by the respondents, which is an annual request made by the eligible teachers. He has also submitted that on the grounds taken by the applicant, she has not assumed her duties at K.V. Khandwa, and, therefore, she is not entitled to any pay for the aforesaid period. In the circumstances, learned counsel has submitted that the O.A. may be dismissed.

7. During the hearing held on 29.9.2000, learned counsel for the applicant had mentioned about a vacancy having arisen on the voluntary retirement of one Mrs. Lata

22

Joshi by Office Order dated 22.2.2000. She had submitted that the respondents could possibly consider transferring the applicant at K.V. Mhow in that vacancy. Shri Rajappa, learned counsel has submitted that the respondents have duly considered the matter, but taking into account the relevant rules and instructions and the priority of other eligible teachers, the request of the applicant for transfer to Mhow could not be agreed to and they have, therefore, taken the appropriate decision in the matter to transfer her to K.V. A.F.S., Ojhar, which will be communicated to her subsequently. However, since that order is not before me, nothing further ^{need be} be said on this point.

8. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

9. From the facts mentioned above, it is noted that the applicant had made a request for transfer dated 20.5.1999. In this application, she had indicated her choice stations as Indore, Dewas and Mhow. To the query raised in Paragraph 9(b) of the application, she had further indicated her interest for transfer in the Region Code "03", that is in the State of M.P. The form filled up by the applicant together with the declaration has been dealt with in detail in respondents' letter dated 26.4.1999 for consideration of annual requests from teaching and non-teaching staff of KVs for the year 1999-2000. The detailed instructions have been given in this letter regarding filling the form which also appears to have been complied with by the applicant, excepting the note appended

23

to the column under the declaration to be given by her. This Note has been reproduced in paragraph 2 above and has been heavily relied upon by the learned counsel for the applicant. Taking into account the facts and circumstances of the case, and the nature of the request application called for annually by the respondents for adjusting the staff in accordance with their request, the emphasis placed on the Note appended by the applicant, as if it has to be given ^{is} the same weightage as her request for choice stations or region cannot be accepted. In the present case, admittedly both the applicant and her husband were posted as TGT (Social Studies) and PGT, respectively in the same K.V. at AFS, Agra, ^{but} ~~but~~ They at the same time cannot request for transfers and in the same breath cancel it in the same application. Further, paragraph 7 of the request transfer policy adopted by the respondents also makes it clear that no request for cancellation of transfer will be entertained and this was also well within the knowledge of the applicant. The applicant had indicated that if she was not posted in the choice Vidyalayas/Stations as per her request application, she may be transferred to any K.V. in "03" Region which has been agreed to by the respondents. In this view of the matter, the action of the respondents in transferring the applicant from AFS Agra to Mhow in the State of M.P. cannot be held to be contrary to her own request for transfer read with the transfer policy on the subject of "Annual Request Transfers" dated 26.4.1999.

10. In pursuance of the Transfer Order No. 43/99-2000 dated 30.10.1999, the respondents have relieved the applicant w.e.f. 15.11.1999, ^{and} it was clearly mentioned that she was entitled to TA/DA as per the K.V.S. Rules.

13

The letter dated 3.12.1981 also makes it clear that the transfer benefits are available to teachers who are transferred even on their own request. Mrs. Chibber, learned counsel has contended that the respondents ought to have paid the transfer entitlements in accordance with the K.V.S. Rules in time to the applicant to enable her to join the place of transfer at Khandwa. This apparently has not been done by the respondents because of ~~the~~ paucity of funds available with the particular School. This only shows certain amount of mis-management on the part of the respondents, for which they have only to blame themselves and they cannot, therefore, shift the entire responsibility in not carrying out the transfer order on the shoulders of the applicant. Having said this, however, it is also relevant to point out that even as early as 11.2.2000 the applicant was aware that the respondents have taken a stand that as she was no longer in the strength of K.V. AFS, Agra, and that she had to report to her place of posting, some duty was also cast on her to carry out the transfer order followed by the relieving order dated 15.11.1999. During the hearing Shri Rajappa, learned counsel, has also submitted that even if the applicant had reported for duty at Khandwa, she could have got the reimbursement of her claims subsequently, which in any case cannot be denied by the respondents as she was fully entitled to the same under the Rules. No doubt, the applicant had been making repeated representations to the respondents to have the advance amount released to her so that she can join her duties at Khandwa but in view of what has been stated above, that by itself would not totally absolve her from carrying out the transfer order. As submitted by the learned counsel for the respondents, her claim for

✓ reimbursement of the expenses incurred by her ^{on} her transfer to Khandwa will have to be reimbursed to the applicant, although as pointed out above, the situation has arisen ^{because} of inefficiency of the respondents. In the representation made by the applicant dated 11.2.2000, she had only requested for the transfer advance being paid to her. From the notings made by the respondents in the letters submitted by the applicant dated 11.2.2000, which she has herself filed in the O.A., it is seen that she was, therefore, aware of the fact that the respondents were not considering ^{to give} her the advance as she was not in the strength of KV, AFS, Agra, and she had also to report for posting at the place of transfer, namely, Khandwa.

11. The subsequent events leading to the posting of Mrs. Pushpa Jain and Mrs. Shanti Krishnan to K.V. AFS Agra in April, 2000 would not appear to be relevant to the issue of the transfer of the applicant made by the respondents dated 30.10.1999. The learned counsel for the respondents has submitted that the posting of these two lady teachers has been done on their being rendered surplus and in public interest although on their request. I find merit in this submission that merely because a post which the applicant earlier held as TGT (Social Studies) at K.V. AFS, Agra, is vacant, she has a right to be posted there cannot be accepted. Learned counsel for the respondents has further explained that there were three other teachers who had priority. Similarly, I do not think it will be necessary to get into the question as to how the respondents placed Mrs. Pushpa Jain in AFS, Agra, while they still had on their own strength Mrs. Shanti Krishnan as it does not appear to be relevant in the facts and

(26)

circumstances of the case as pointed out by the learned counsel for the respondents. What is in issue in the present case is regarding the transfer of the applicant on her request for the concession year of 1999-2000 whereas these transfer orders deal with subsequent period. Besides, it was also open to the applicant to make another request transfer application if she so chose in the subsequent year starting from 1.4.2000. After the applicant had made the aforesaid representations, it is noticed that the applicant has filed this application on 8.5.2000, that is when the next academic session has begun. Therefore, in the facts and circumstances of the case, the prayer of the applicant to quash and set aside the transfer modification order dated 7.4.2000 which deals with Mrs. Pushpa Jain who has not been even impleaded as party in this O.A. is rejected.

12. From a perusal of the orders dated 18.11.1999 and 11.2.2000, which are actually notes appended by the respondents to the applications made by the applicant for transfer advance due to her, it cannot be stated that the respondents have outrightly rejected her claim although no doubt they have also not paid her ^{the} dues in accordance with the KVS Rules because of paucity of funds available to them. Shri Rajappa, learned counsel has also submitted that if the applicant had, in fact, carried out the transfer at the relevant time, the same would have been reimbursed to her with interest because they were not able to pay her the amount earlier. The contention of Mrs. Chibber, learned counsel relying on the representation made by the applicant dated 3.12.1999 that the applicant could

not proceed to join her new place of posting for want of TA advance on transfer and cancellation of her transfer to Khandwa does not absolve her from carrying out the otherwise legal transfer order to Khandwa. The other aspect is regarding not ~~being~~ ^{paid} the TA advance. In the circumstances of the case since it cannot be held that the transfer of the applicant per se is illegal or justifies any interference in the matter, the applicant cannot claim pay and consequential benefits for the entire period when admittedly the applicant has not discharged her duties as a teacher. But the respondents also cannot take advantage of their own wrong in not arranging for the funds or intimating to the applicant to make her claim for the actual expenditure for the transfer at her new place of posting. In the circumstances, the respondents cannot deny the applicant regularisation of her services for the period from 16.11.1999 till she joins her duties in the place where she has been transferred.

13. In the short reply filed by the respondents dated 17.7.2000, they have submitted that the Tribunal may direct the applicant to approach the Principal, A.V., AFS Agra, for getting necessary payments made to her with a further direction to join duty at K.V., Khandwa. Admittedly, at that time, the K.V., AFS, Agra, had with it sufficient funds. Even by the application made by the applicant dated 3.12.1999 (Annexure P-14) requesting for TA advance on transfer, the respondents have not intimated to her to collect her entitlements like TA/DA. In this letter, she has stated that she would then be able to join her new place of posting. In the circumstances of the case, the contention of the respondents that the applicant had refused to join her place of posting cannot also be

accepted. Considering the fact that the applicant had filed this application on 8.6.2000, the respondents could have also taken the decision and conveyed it to the applicant as to where and when they were willing to pay the TA advance which they have failed to do. However, since the transfer order dated 30.10.1999 is not illegal, on this ground alone the applicant could not have abstained from joining her duties at the place of posting. In the circumstances, the contention of the learned counsel for the respondents that the applicant will not be entitled to any pay for the intervening period on the principle of "no work no pay" would not be justified. having regard to the facts, the respondents cannot take advantage of their own wrongs, responsibilities or wrongs in dealing with the case in accordance with their own Rules.

14. Taking into account the totality of the facts and circumstances of the case the transfer order dated 30.10.1999 qua the applicant is held varies. The respondents shall regularise the intervening period till her joining at her place of posting in accordance with the relevant rules and instructions. In the circumstances of the case, I consider it appropriate that she will be entitled to pay for the period from 16.11.1999 till 1.8.2000 but it is made clear that the entire period from 16.11.1999 till the date of her joining shall be treated as if she was on duty for all other purposes. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'