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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 352/2004

New Delhi this the 20 th day of May, 2004

Hon'ble Shri R.K. Upadhyaya, Administrative Member.

Smt. Harpal Sodhi TGT English,
86-A/2, Krishna Nagar,
Safdarjung Enclave,
New Delhi-29. Applicant.

(By Advocate Shri S.M. Dalal)

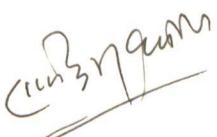
Versus

1. Union of India through
Secretary,
Ministry of Human Resources Development,
Department of Education, Shastri Bhawan,
New Delhi-110001.
2. Shri H.M. Cairae,
Commissioner, K.V. Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110016.
3. Shri S. Modawal,
Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
JNU Campus, New Mehrauli Road,
New Delhi-110067.
4. Dr. P.S. Pandey,
Chairman, VMC,
Department of Chemistry,
I.I.T., Delhi,
Hauz Khas,
New Delhi-110016.
5. Smt. P. Soni,
Principal, Kendriya Vidyalaya
Sector-II, R.K. Puram,
New Delhi-110022.
6. Smt. A.N. Siddique,
Education Officer,
K.V. Sangathan, J.N.U. Campus,
New Mehrauli Road,
New Delhi-110067. Respondents.

(By Advocate Shri S. Rajappa)

Hon'ble Shri R.K. Upadhyaya, Administrative Member.

This application under Section 19 of the
Administrative Tribunals Act, 1985 has been filed seeking
the following reliefs:



"(a) Quash transfer order No. 33-9/2003-4/KVS (Estt-2) dated 30 Oct 2003 placed at Annexure A-1 and Relieving Order No. F-101/KV/RKP/S-II/2003/1645 dated 31.10.2003 at Annexure A-2, as the same are malafide, arbitrary, capricious and against the principle of natural justice.

(b) Quash Order No. F-40 (16)/2003-KVS (DR/39983-87 and show cause notice dated 23 Dec 2003, of respondent 3 (Annexure A-3) being without jurisdiction, mala fide and violative of principles of natural justice.

(c) Quash the order No. F-19-481(8)/2003-KVS (L&C)/Estt II dated 20 Jan 2004 of respondent 2 at Annexure A-4 being arbitrary, biased and perverse.

(d) Direct the respondents to allow the applicant to rejoin in her post as TGT in KV Sector II R.K. Puram immediately, and the period from 01 Nov 2003 till the date of her rejoining be regularised by granting medical leave and extra ordinary leave as already applied for.

(e) Direct respondent to release pay and allowances of the applicant as per entitlement.

(f) Direct Respondent 5 not to initiate the Annual Confidential Report of the applicant for the year 2003 for the reasons of her bias towards the applicant.

(g) Award exemplary costs against the respondents and in favour of the applicant.

(h) Any other or further relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case can be also granted".

At the time of hearing, the learned counsel of the applicant did not press relief No. 8 (f) stating that if so advised he may be granted liberty to file separate proceedings in respect of that relief. Therefore, so far as this O.A. is concerned, the relief at 8 (f) above is dismissed.

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2. The applicant was appointed as Trained Graduate Teacher (TGT for short) in Kendriya Vidyalaya Sangathan (KVS for short), on 23.8.1986 at Kendriya Vidyalaya, Dharangdhara. She was transferred to Kendriya Vidyalaya, Masjid Moth, New Delhi in February, 1991. Thereafter, she was locally transferred to Kendriya Vidyalaya at R.K. Puram, on 4.9.1996. The applicant states that she was not well on 21.8.2003 but still she was present in the school premises when she was rebuked by the Principal Mrs. P. Soni. On the next day, i.e., on 22.8.2003, the Principal again checked the classes where the applicant was teaching. The applicant claims that she was humiliated in the class room in spite of her request to the Principal not to insult her in the presence of students. This was followed by Memorandum dated 22.8.2003 (Annexure A-11) where the applicant was asked to submit her explanation about not checking the work books of the students and being in the habit of remaining absent on unsanctioned leave very often. The applicant submits that she gave the reply to the Memorandum but she was told by the Principal that she would teach her a lesson. Another memorandum dated 1.9.2003 was again issued by the Respondent No.5, Principal. Feeling consistently harassed by the Respondent No.5, Principal, the applicant addressed a communication to the Commissioner, Kendriya Vidyalaya Sangathan, relating to behaviour of Respondent No.5. It is further stated by the applicant that Education Officer Mrs. A.N. Siddique was appointed as Inquiry Officer and inquiry was conducted by her on 8.9.2003. The Education Officer submitted her report but a copy of such a report has not been made available to the applicant. Assistant



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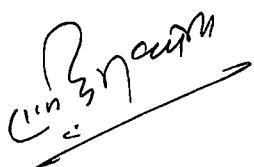
Commissioner, Kendriya Vidyalaya Sangathan Shri S. Modawali, Respondent No. 3 visited the school on 29.9.2003. When the applicant did not agree to withdraw her letter to the Commissioner, KVS, the Respondent No. 3 (Assistant Commissioner) shouted at the applicant and threatened her of dire consequences. The applicant claims that because of this sequence of events, the applicant has been transferred from the post in Kendriya Vidyalaya, R.K. Puram, New Delhi to Kendriya Vidyalaya, Silvassa as per impugned letter dated 30.10.2003 (Annexure A-1). Respondent No.5 immediately relieved the applicant on receipt of such an order as per relieving letter dated 31.10.2003 (Annexure A-2) with the instructions to the applicant reporting for duty at Kendriya Vidyalaya, Silvassa.

3. Aggrieved by these orders, the applicant filed OA No.2960/2003, on 6.12.2003. Meanwhile, since the applicant was advised rest by Authorised Medical Attendant, she informed the competent authority vide her letter dated 12.11.2003 that she was not in a position to undertake long journey from Delhi to Silvassa. The applicant claims that vide MA No. 2887 of 2003 filed on 18.12.2003, the factum of sickness was also placed on record. However, the respondents vide their letter dated 23.12.2003 issued a show cause notice for passing an order for provisional loss of lien on the post held under Article 81 (d) (3) of the Education Code. The applicant was allowed 10 day's time to make a representation against this show cause notice. The Original Application No. 2960 of 2003 was disposed of by order dated 31.12.2003 (Annexure A-21). After noting the contention

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of the applicant as well as short reply of the respondents, this Tribunal directed the Commissioner, KVS to hear the applicant in person and then consider her request for cancellation of her transfer order and pass appropriate orders on merits. The applicant sent an application to the Commissioner of KVS, on 7.1.2004 (Annexure A-21) seeking personal audience in compliance to the order of this Tribunal dated 31.12.2003. It appears that the impugned order dated 20.1.2004 (Annexure A-4) has been passed thereafter. The applicant has challenged the impugned orders of transfer and rejection of her representation on several grounds. According to the applicant, the orders are arbitrary and issued in a malafide manner. It is also contrary to the provisions of transfer policy of the Sangathan. The transfer order is bad in law as it has been issued as a punitive order. Besides, the natural justice is also violated as the preliminary inquiry report was not made available to the applicant. The applicant has also challenged the show cause notice by Respondent No.3 for provisional loss of lien being without jurisdiction and in violation of Section 19 (4) of the Administrative Tribunals Act, 1985.

4. The respondents have opposed the application and have filed a short reply. It has been pointed out by the respondents that by order dated 11.3.2004, the applicant was removed from service of KVS as the competent authority confirmed the loss of lien on her abandoned post of TGT, English. In the reply filed by the respondents, it has been stated that several reliefs have been claimed in the O.A. and all of them are not consequential to each other. Therefore, this application



deserves to be rejected on that ground alone. Reliance has been placed on the decision of this Tribunal on the case of Shankar Sharma Vs. Commissioner, KVS and Ors. (O.A. 1239/2001) as per order dated 29.6.2002 justifying the removal order passed under Article 81 of the Education Code. At the time of arguments, the learned counsel also pointed out that there is a provision of appeal against the order of confirmation of loss of lien under Article 81 (d) of the Education Code. The applicant has not exhausted that remedy and, therefore, the same cannot be challenged in this O.A. The O.A., therefore, deserves to be dismissed as premature.

5. In the rejoinder filed, it has been stated that Shri D.S. Bist is the Joint Commissioner (Admn.) in KVS Headquarters. The impugned order dated 11.3.2004 removing the applicant from the service of KVS has been passed by Shri S. Modawal, who is Assistant Commissioner of Delhi Region and holds a separate office. Therefore, Shri D.S. Bist is not a competent person to file the said counter affidavit. Moreover, Shri S. Modawal has been impleaded as a party by name and the notice of this Hon'ble Tribunal dated 11.2.2004 has also been issued to him by name. It is further pointed out by the applicant that the present Original Application was filed on 9.2.2004 and notice was issued by this Tribunal, on 11.2.2004 calling upon the respondents to state as to why interim relief should not be granted. The matter was listed for showing cause on 25.2.2004. However, the respondents' counsel sought adjournment on 25.2.2004 and the matter was listed for 22.3.2004. During the pendency of the O.A., the impugned orders of termination of

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service of the applicant vide order dated 11.3.2004 have been issued. Such an act is prohibited by the provisions contained in Section 19 (4) of the Administrative Tribunals Act, 1985. The order dated 11.3.2004 is non-est. It has also been pointed out by the applicant in the rejoinder that she has never voluntarily abandoned her post but was on leave as she had been advised rest by the authorised Medical Practitioner. Accordingly, she has applied for ^cmedical leave. The leave having not been refused by the competent authority, the impugned order of termination of lien from the post was uncalled for even on merits.

6. The learned counsel for both the parties have been heard and the materials available on record have been perused.

7. A perusal of the reliefs claimed as reproduced earlier indicates that all the reliefs are related to the order of transfer of the applicant which has been issued on 30.10.2003. The only relief which was unrelated was at item (f) relating to initiation of Annual Confidential Report which has not been pressed so far as this O.A. is concerned. Therefore, there is no substance in the argument of the respondents that the application suffers from vice of multiple reliefs as per the provisions in Rule 10 of the CAT (Procedure) Rules, 1987.

8. The first relief claimed is for quashing of transfer order dated 30.10.2003 (Annexure A-1) and relieving order dated 31.10.2003. The applicant has

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submitted that the transfer is outcome of bias and mala fides of respondents 3, 5 and 6. Normally, such an allegation is difficult to prove but the sequence of events as narrated by the applicant shows that there has been consistent efforts on the part of Principal, Respondent No. 5 to see that the applicant was "taught a lesson". If there was any deficiency, the same should have been brought to the notice of the applicant. If it so merited, it could have been followed by a charge-sheet and disciplinary proceedings. Instead of that, the applicant has been visited by an order of transfer as a punishment for so called dereliction of duty as is reflected from the Memorandum dated 22.8.2003 (Annexure-A-11) and 1.9.2003 (Annexe A-13). The language of Memorandum dated 22.8.2003 as well as 1.9.2003 itself suggests that the Respondent No. 5, Mrs. P. Soni, the Principal was bent upon taking action against the applicant. The relevant portion of Memorandum dated 22.8.2003 reads as follows:

.... Correction of Class work and Homework copies also reflect her casual attitude towards her job. Frequency of assignment copies checked is also very less.

Mrs. H. Sodhi is also in the habit of remaining on unsanctioned leave very often.

She is asked to submit her explanation within seven days as to why the above should not be considered as dereliction of duties as a teacher.

She is further directed to check the workbooks and note books of the students VI B without further delay and submit the compliance report by 26th August".

Extract from Memorandum dated 1.9.2003 reads as follows:

...The quantum of homework & class work given is not sufficient; regarding which she was advised by the inspecting team also in their classroom observation report for 2002, but to no change in her attitude. English notebooks in all the classes being taught by her confirm the casual attitude of her in checking the notebooks.

Whereas she is in habit of availing unsanctioned leave and submitting leave application after several reminders is evident from the office record, denial on her part speaks of her disobedient nature and offensive attitude towards chair.

Her protest on the basis of fake Medical Certificate & false assertion could not be acceded to. Her attitude of not accepting the suggestions given by the chair, rather becoming offensive is viewed seriously & regretted".

9. It appears rather strange that the medical certificates furnished by the applicant have been brushed aside as "fake". Medical Certificate dated 21.8.2003 (Annexure-A-10) clearly states that the applicant was suffering from "Acute Gastroenteritis". There is nothing to show that the medical certificate produced by the applicant was a fake one. On the other hand, the repeated reference of the applicant being "in habit of availing unsanctioned leave and submitting leave applications after several reminders" shows that the applicant was being punished for some other offences which she did not perhaps do on 21.8.2003 and on 22.8.2003. If the applicant was really absenting without proper leave applications, that definitely called for some appropriate action, including disciplinary proceedings. Mere transfer as a substitute for punishment has been deprecated by the Courts. Therefore, the allegation of the applicant that the impugned order of transfer is outcome of bias and mala fide action of the respondents may not be far from the truth. In view

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of the facts as evidenced from the sequence of events mentioned hereinbefore, it is, therefore, held that the impugned order of transfer and subsequent consequential orders are bad in law and cannot be sustained. These are accordingly quashed and set aside.

10. When the applicant was relieved, she applied for leave. Therefore, it cannot be said that the applicant had abandoned her post without any justification. The applicant has challenged the show cause notice dated 22.12.2003 of provisional loss of lien under Article 81 (d) (3). The show cause notice for provisional loss of lien under Article 81 (d) was as a consequence of transfer order, which was under challenge in OA 2960 of 2003. The same is very much a consequential action. It is further noticed that the applicant had given a reply dated 1.1.2004 (Annexure A-20) to such a show cause notice wherein it has been pointed out that the show cause notice was without jurisdiction. It has further been stated that the applicant was advised rest by an authorised Medical Attendant from 1.11.2003 upto 31.12.2003. Accordingly, she had informed the Principal, KVS, Silvassa where she had been posted within 15 days from the date of being relieved from the last station i.e. Kendriya Vidyalaya, Sector-2, R.K. Puram, New Delhi. It was further stated in the reply that the applicant had filed O.A. challenging the transfer. She filed Miscellaneous Applications bringing on record the facts about her illness. The second relief, therefore, was consequential to the transfer order. The relief at (c) is regarding quashing of the order passed by the Commissioner, KVS, on

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20.1.2004 rejecting her representation. The applicant had filed O.A. in this Tribunal on 9.2.2004 challenging the show cause notice for loss of lien under Article 81 (d) (3) of the Education Code. However, before any order of stay could be passed by this Tribunal, the respondents have passed a final order confirming termination of the lien of the applicant as per order dated 11.3.2004. It is for consideration whether such an act by the respondents is permissible in view of provisions contained in Section 19 (4) of the Administrative Tribunals Act, 1985. The relevant provisions of the Administrative Tribunals Act, 1985 read as follows:

"19. Application to Tribunals.

(1) to (3) x x x x x x x x x x

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules".

11. The learned counsel of the respondents at the time of hearing of this application pointed out that the matter was not admitted. Therefore, the respondents were at liberty to pass any order in respect of the show cause notice already issued. In the opinion of this Tribunal, this contention is untenable. The whole purpose of filing an O.A. is lost if the respondents take adjournment and pass some final order in respect of which show cause notice is already under challenge. In my opinion, the provisions contained in Section 19 (4) of the Administrative

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Tribunals Act, 1985 have to be read along with the provisions contained in Section 19 (3) of the Act. It is provided under sub-section (3) that on receipt of application, the Tribunal shall if satisfied admit such application. In my opinion, the purpose of such admission is clear as soon as the notice is issued which shows that the Tribunal is seized of the matter. In the present case, such a notice was issued on 11.2.2004. The next date of hearing was fixed on 25.2.2004. On 25.2.2004, the respondents sought and were allowed further two weeks time to file short reply. The next date fixed was 22.3.2004. When the matter was taken up, it was observed that before respondents filed a short reply on interim relief, they issued an order dated 11.3.2004 terminating the applicant from service for the reasons indicated in the said order. This order is not appreciated by the Tribunal. The learned counsel for the respondents has submitted that he was not aware of the reasons under what circumstances this order has been issued. However, he will be ensuring that the reply to the notice which has already been served on the respondents vide order dated 11.2.2004 is filed by them within a week's time. Instead of detailed or short reply, only a short counter affidavit on behalf of respondents 2 to 6 has been filed by Shri D.S. Bist, Joint Commissioner (Admn.), KVS, New Delhi, on 29.3.2004. Without going into the other aspects of the case, it is, therefore, held that the respondents could not pass a final order in respect of show cause notice dated 23.12.2003 while the matter was under consideration of this Tribunal. In this view of the matter, this relief claimed by the

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applicant has to be allowed and is allowed accordingly.

The show cause notice dated 23.12.2003 as well as subsequent orders pursuant to the said notice are quashed and set aside even without going into the merits regarding jurisdiction to issue such a notice.

12. The remaining reliefs claimed are consequential reliefs praying for a direction to rejoin the duty from the place from where she was transferred and regularising her period of absence as well as reliefs of pay and allowances. The applicant will be eligible for consequential reliefs.

13. In the result, the impugned orders dated 30.10.2003, 31.10.2003, show cause notice dated 23.12.2003, order dated 11.3.2004 are hereby quashed. The respondents will be at liberty to pass a fresh order of transfer or any other order ^{as per law and rules} if they so consider necessary. No order as to costs.


R.K. Upadhyaya
20.5.04

(R.K. Upadhyaya)
Administrative Member

'SRD'