

20

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.402/2004

New Delhi, this the 26¹⁵ day of April, 2005

HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Mrs. Vinod Malhotra,
W/o Shri N.K. Malhotra,
Aged about: 50 years,
Resident of: House No.861, Sector 37,
Faridabad

And Employed As:

Trained Graduate Teacher in the
Kendriya Vidyalaya,
NTPC, Badarpur,
New Delhi
(By Advocate: Shri B.B. Rawal)

... **Applicant**

Versus

Union of India Through
The Secretary,
Ministry of Human Resource Development,
Department of Education, Govt. of India,
Shastri Bhawan, New Delhi-110 011

The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110 016

Shri R.K. Gautam,
Principal,
Kendriya Vidyalaya,
NTPC, Badarpur,
New Delhi
(By Advocate: Shri S. Rajappa)

... **Respondents**

ORDER

The prayer made in this OA is for quashing the impugned orders at Annexures 'A', 'B' and 'C' whereby the applicant has been transferred and relieved of her duties from Kendriya Vidyalaya, NTPC, Badarpur, New Delhi to Kendriya Vidyalaya No.4, BCPP, Korba (Jabalpur) and for further direction to the respondents to accommodate her in Delhi.

2. The facts of the case, in brief, are that the applicant joined the services of the respondents at K.V. Pathankot (J&K) as Primary Teacher on 11.7.1976. On

(C)

her request, she was transferred from K.V. Pathankot to K.V. R.K. Puram, New Delhi in 1979 and further transferred to K.V. AGCR Colony, Trans Yamuna in 1981 and then to K.V. NTPC, Badarpur on 25.6.1986 on promotion as Trained Graduate Teacher. The applicant suffered from Psychosis and depression in 1997 and remained under treatment for over a year and a half on sanctioned leave intermittently. She is again under treatment for the same disease since October, 2002.

3. The applicant was transferred from K.V. NTPC, Badarpur to K.V. No.2, Agra Cantt on 10/16.6.2003 (Annexure A/1) in public interest and was relieved of her duties on 19.6.2003. The applicant submitted a representation to the Commissioner, Kendriya Vidyalaya Sangathan for cancellation of her transfer on medical grounds, which was rejected. She joined at the new place of posting on 1.7.2003. However, the respondents vide order dated 4.7.2003 (Annexure A/4) cancelled her transfer to K.V. Agra Cantt and accordingly she joined back her duties at NTPC Badarpur on 11.7.2003. Immediately thereafter vide impugned order dated 18.7.2003 (Annexure 'A') the applicant has again been transferred to K.V. No.4, BCPP, Korba, Jabalpur, which was received by respondent No.3 on 21.7.2003 and on the very same day, she has been relieved of her duties with instructions to report at the new place of posting. Against this transfer order, the applicant filed CWP No.5172 of 2003 before the Hon'ble High Court of Delhi, which was withdrawn due to non-jurisdiction with liberty to file an O.A before this Tribunal, and accordingly filed OA No.2300 of 2003 before this Tribunal. The Tribunal dismissed the said OA in limini as being premature vide order dated 18.9.2003.

4. The applicant thereafter preferred a representation to the Commissioner, Kendriya Vidyalaya Sangathan against her transfer on 1.10.2003. In the absence of any response from the respondents on her representation, she filed OA No.2635/2003 before the Tribunal. The Tribunal disposed of the said OA vide order dated 6.11.2003 with direction to the respondents to dispose of the applicant's representation. In compliance to the Tribunal's direction, the

72

respondents directed the applicant for a medical check up at Vasant Lok Hospital, Medical Research Centre, New Delhi and she appeared before the Medical Board on 5.1.2004 as per the Hospital's direction. She has contented that the outcome of the medical examination is still not known to her. In the meantime, Commissioner, Kendriya Vidyalaya Sangathan, rejected her representation vide impugned order dated 9.12.2003 (Annexure 'C'). Hence the OA.

5. The learned counsel for the applicant has contended that the transfer is malafide and in violation of their own Circular that teachers will not be transferred out of their zone of recruitment, except on own requests and is also in gross violation of their Circular, which prohibits instant relieve of a lady teacher on transfer. He has also referred to the latest instructions of the respondents regarding transfer of teachers, which were published in the Newspapers.

6. The respondents in their counter reply have submitted that the applicant was transferred from KV, NTPC, Badarpur to KV No.2 Agra by displacing her as per the guidelines on transfer issued by the KVS whereby the applicant gave way for one Ms. Naresh Kashyap, TGT (Bio) who was posted at KV, Badarpur. Thereafter the posting of Ms. Kashyap was modified and she was transferred to KV, JNU Campus, New Delhi. Since there was an error in the posting of Ms. Kashyap, the order of transfer of the applicant to Agra was rectified and corrected. Thereafter when the matter of redeployment of excess Teachers in the category of TGT (Bio) came up for consideration, the applicant was redeployed to KV No.4, BCPP, Kobra (Jabalpur). Regarding the applicant's medical treatment, the respondents have stated that she can continue the same at the new place of posting, where all medical facilities are available. It has been contended that the applicant was transferred to Jabalpur in order to redeploy as many as 13 excess Teachers in the category of TGT (Bio) and the same is in accordance with the transfer guidelines. It has been stated that there is no rule, which stipulates that a lady Teacher cannot be relieved immediately on transfer. The applicant has an all India transfer liability. The applicant has been

transferred as she had been rendered excess to the sanctioned strength and has also put in more than 16 years of service in Delhi.

7. The applicant has filed a rejoinder to the counter and reiterated almost all the points raised in the Original Application.

8. We have heard both the learned counsel for the parties and have also gone through the material on record.

9. During the course of arguments, the Ld. Counsel for the applicant highlighted the fact that within a period of about a month, the applicant was transferred from Badarpur to Agra and when she reported for duty, she was transferred back to Badarpur and then within another few days, she was again transferred to Jabalpur. These three transfers within a short spell of about a month are malafide and were made to accommodate a particular person. The applicant has been under treatment for a serious ailment of depression and this fact was totally ignored while transferring her to Jablapur. Even the medical board where she was sent for medical examination, had recommended leave on medical ground till May, 2004. The respondents had granted EOL to her on medical grounds from 22.7.2003 to 4.5.2004. But her condition did not improve and she had been sending medical certificates to the respondents every month from the Neuropsychiatry Centre advising her bed rest. The last certificate was till 10.4.2005.

10. Besides the above, her transfer has been made against the transfer policy. In this connection, a reference was made by a transfer order dated 10.11.2000 issued by KVS in respect of 188 teachers, in which it was specifically stipulated that "in case the said teacher is a female or physically handicapped, as per the standard guidelines issued by Govt. of India, the said teacher should not be relieved. Intimation to this effect should be sent to Regional Officer immediately so that further appropriate action can be taken." This policy guideline was violated in her case, as she was relieved immediately after her transfer order to Jablapur was issued.

2

11. The Ld. Counsel for the applicant also stated that the transfer policy being pursued earlier has already been reviewed by the respondents and they have since issued fresh guidelines, which is called "teacher/employee friendly transfer policy" which was widely published in all Newspapers. According to this policy transfer will be only to place of choice on request. No transfer will be ordered unless the spouse in KV/Govt/PSU also gets transferred. Even those lady teachers, who were displaced beyond 500 kms earlier, were also to be transferred within 500 kms against vacancies. In her case, the husband of the applicant is working in Delhi in State Sector Undertaking and cannot be transferred to Jabalpur. All the past cases in which teachers were dismissed and who opted to retire voluntarily due to their inability to join the remote places of transfer, were asked to make a request for reinstatement and their cases were reviewed. The underlying emphasis of the present transfer policy is that there should be least inconvenience, especially to lady teachers in the matter of transfer and they should not be transferred unless they make a request for the same. Under the circumstances, the Ld. Counsel for the applicant made a request that the transfer of the applicant to Jabalpur deserves to be set aside, especially keeping in view her medical reports. He also referred to a judgement in the case of UOI and Others Vs H.N. Kirtania (1989) 3 SCC 447 in support of his contention.

12. The points raised on behalf of the applicant were vehemently opposed by the Ld. Counsel for the respondents. He clarified that the applicant was earlier displaced and transferred to Agra under clause 18 (b) of the transfer guidelines but later it was found that, she was awaiting her redeployment as she was in excess of the requirement. Her transfer to Agra was cancelled and she was transferred to Jabalpur. This was due to an inadvertent error and not due to any malafide intention. Her transfer was made in accordance with guidelines in vogue at the relevant time, as she had the longest stay in that school. She has been granted medical leave, based on the recommendations of the medical board, duly constituted by the KVS and no fault can be found with it. The applicant is

holding a post, which has an All India transfer policy, and she has no legal right to continue working at one place after having served at one station for almost sixteen years. In so far as her medical treatment is concerned, she can get the treatment even at the new place of posting but her unauthorized absence, without sanctioned leave, for a long period is a serious act of misconduct. He also cited a judgement of this Bench of the Tribunal dated 24.7.2003 in OA No. 3193/2002 relating to a similar case of a teacher in KVS and the OA was dismissed as the applicant has no indefeasible right for a posting at a particular place.

13. After hearing the rival contentions of both sides, I am convinced that the transfer of the applicant to Jabalpur is not malafide and is not against the transfer guidelines. She has the longest stay at her present place of posting. Her post carries an all India transfer liability and should be prepared to be posted anywhere, based on administrative exigencies. The role of the Tribunal in such cases is also limited. We can intervene only if the transfer is against any statutory provision or is proved to be malafide. In the case of **Mrs. Shilpi Bose vs. State of Bihar**, 1992 (6) SLR 713 (SC), it has been observed by the Hon'ble Supreme Court that if the Courts continue to interfere in day to day transfer orders, there will be complete chaos in administration which would not be conducive to public interest. I do not find any good ground for interference, as the transfer is neither malafide nor against any statutory provision. As far as her medical problem is concerned, the applicant can get the necessary medical facilities in Jabalpur also. She cannot be allowed to continue at her present place on this count.

14. The judgement cited by the Ld. Counsel for the applicant in the case of H.N. Kirtania (supra) does not appear to be relevant, as in that case the Hon'ble Supreme Court had held that the Tribunal had no jurisdiction to issue directions to pay all arrears of salary with allowances to the employee with further directions that no release order be issued, unless all the emoluments are paid. The order of the Tribunal was set aside. This judgement does not give any benefit to the applicant in the present case.

15. However the fact remains that the respondents have since revised their transfer policy, which is stated to be teacher/employee friendly and envisages transfer to the place of choice. She is at liberty to approach the respondents to review her transfer order on the grounds taken in the present OA.

16. As a result of the above discussions, the OA turns out to be bereft of merit and is dismissed. However the applicant will be at liberty to approach the respondents for redressal of her grievances, in terms of the new transfer policy announced by them.

No order as to costs.

Amulya
(S.K. Malhotra)
Member (A)

/pkr/