

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 788 OF 2001

ALLAHABAD, THIS THE 14th DAY OF may - 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Mrs. Raj Bala Srivastava,
w/o Shri Pradeep Kumar Srivastava,
T.G.T.(Bio) Kendriya Vidyalaya,
Air Force, Station Bamrauli,
Allahabad r/o 7/310, Madwapur, G.T.,
Road, Allahabad.

.....Applicant

(By Advocate : Shri S. Singh)

V E R S U S

1. Union of India, through the Secretary, Ministry of Human Resources and Development, Deptt. of Education, Govt. of India, New Delhi.
2. Commissioner Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi.
3. Deputy Commissioner (Administration) Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi.
4. Principal, Kendriya Vidyalaya Air Force Station, Bamrauli Allahabad.
5. Principal, Kendriya Vidyalaya No.II(Army), Jodhpur.

...Respondents

(By Advocate : Shri N.P. Singh)

O R D E R

By this O.A. applicant has challenged the order dated dated 21.06.2001 whereby she was transferred from Bamrauli to K.V. No.II Army Jodhpur in public interest (Page 28 at 33 at Sl. No.38)

2. Applicant approached the Tribunal on 06.07.2001 when



.....2/-

this Tribunal passed the following order:-

"In the meantime in case the next incumbents to the post held by the applicant has not so far reported to join, the impugned transfer order shall not be ~~be~~ given effect ^{to it} in respect of applicant only."

3. Respondents filed application for vacating the interim order but Tribunal rejected the M.A. on 15.01.2001. Being aggrieved respondents filed Writ Petition in which notice was issued on 06.02.2002 initially and orders dated 06.07.2001 and 15.01.2001 were stayed in the meantime. However, on 04.03.2001 the Hon'ble High Court of Allahabad dismissed the Writ Petition on the ground that writ petition against interim orders does not call for interference. Hon'ble High Court further directed the Tribunal to decide the case very expeditiously. The interim orders passed by Tribunal were revived and directed to be implemented till the disposed of case.

4. After this, initially respondents did not comply with the order so their personal appearance was called. However, in the meantime they complied with the directions therefore, respondents were exempted from personal appearance and contempt proceedings were dropped vide order dated 07.03.2002. Thereafter, on 04.06.2002 Tribunal fixed 09.07.2002 for final disposal of case in view of directions given by Hon'ble High Court of Allahabad.

5. The case was listed on 29.01.2003 for hearing but counsel for the applicant did not appear yet in the interest of justice case was adjourned for next date, ^{P2 with clear stipulation that} appropriate orders shall be passed ^{on next date P2}

6. On 30.01.2003 counsel for the applicant levelled allegations against the registrar for changing the date at his back but since allegations were not borne out from the records and he had not placed any evidence to substantiate his allegations, his objection was rejected. Yet he was given another opportunity to prepare the case and case was adjourned for 10 days and was directed to be listed on 10.02.2003. On 10.02.2003 there was no Single Bench available so matter got adjourned automatically to 04.03.2003. On which date adjournment was sought by the counsel for the respondents. On next date i.e. 22.04.2003 none appeared for the parties so case was adjourned to 02.07.2003. Thereafter twice matter was adjourned due to non availability of Single Bench.

7. Thereafter on 19.09.2003, and 26.09.2003, and 10.10.2003 counsel for the applicant got the matter adjourned on ^{one R} the pretext or the other therefore on 10.10.2003 case was fixed peremptorily on 16.10.2003. On 16.10.2003 applicant's counsel again got the matter adjourned. On 28.10.2003, 02.12.2003 and 16.12.2003 the case was adjourned due to non-availability of Single Bench or due to strike so matter finally came before Single Bench on 07.01.2004. Once again counsel for applicant sought adjournment which was opposed by the respondents counsel yet in order to accommodate applicant's counsel, case was adjourned to 12.01.2004.

At this stage

8. At this stage respondents filed M.A. No.207/04 for expediting the case which was allowed by Hon'ble V.C. and case was directed to be listed on 03.02.2004 for hearing. In spite of case being expedited, counsel for applicant again sought adjournment on 03.02.2004 on the ground that he is busy in Hon'ble High Court. It was again opposed by respondents counsel vehemently on the ground that counsel for applicant is getting the matter extended



on every date purposely because there is stay in favour of applicant. Accordingly while adjourning the case it was made clear that further adjournment shall not be granted on any ground whatsoever. Case was listed for 10.02.2004. On 10.02.2004 again Single Bench was not available so matter got adjourned automatically to 20.02.2004. On 20.02.2004 counsel for applicant got adjournment on the ground that he wanted to file Supplementary Affidavit with M.A. Case was adjourned for 12.03.2004. On 12.03.2004 once again counsel for the applicant got the matter adjourned on account of his illness slip, therefore, case was adjourned to 22.04.2004. On 22.04.04 Single Bench was not available so case was adjourned to 30.04.04. On 30.04.2004 once again counsel for the applicant sought adjournment through Shri Vinod Kumar his brief holder but after recording everything, his request for adjournment was rejected in the presence of Shri Vinod Kumar and respondents counsel was asked to open his arguments and since time was over, case was adjourned to 12.05.2004 as part heard. This order was passed in the presence of Shri Vinod Kumar, therefore, counsel for the applicant should have asked from Shri Vinod Kumar about the proceedings or in other words Shri Vinod Kumar ought to have intimated the order passed on 30.04.2004 to the applicant's counsel because he had appeared on behalf of the counsel for the applicant.

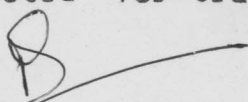
9. It was expected that atleast on 12.05.2004 counsel for the applicant would come and argue the case as there was sufficient time gap but even on 12.05.2004 counsel for the applicant took objection in the 1st half of the day about the listing of the case before the Division Bench when P.H. matters of Single Bench were listed at 3.30 p.m. and he again sought adjournment on the ground that he does not have the file and was not aware of the listing of the case. Looking



at the background of the case, his request for adjournment was not acceded to but his valid request, that this case should be listed at 3.30p.m. along with other part heard cases before Single Bench was accepted and accordingly an order was passed to list it at 3.30 p.m. to enable the advocate to bring his file in the meantime if he so desired. This order was passed around 11.40 a.m. This case was next called at 4.14p.m. in the revised call when again counsel for the applicant started repeating the same old story that he was not aware about the order as Shri Vinod Kumar did not inform him and no notice was given to him about the listing of the case. He was asked in clear words whether he wanted to argue on merits of the case or not. Since he was not prepared to argue on merits and was making lame excuses, the matter was reserved for orders as respondent's counsel had already concluded his arguments.

10. It would be pertinent to mention here that accommodation can be once, twice or even third time but we cannot be party to circumventing the orders passed by Hon'ble High Court. Hon'ble High court had directed us as far back as on 04.03.2002 to decide the matter very expeditiously but even after this order counsel for the applicant had dragged the matter for almost 2 years so there had to be a stop at some level. After all, we are answerable to the Hon'ble High Court and have ^{to B} balance the equities on both the sides. Moreover, counsel for the applicant was not prepared to argue the case and I was satisfied that he just wanted to linger the case, on one pretext or the other which could not have been permitted. It was in these circumstances that order had to ^{be R} reserved without hearing the applicant's counsel.

11. On merits of the case, the brief facts as alleged by applicant are that she was appointed as TGT(Bio) at Ojhahar District Nasik. She requested for transfer to Allahabad



since her father was transferred to Allahabad. Her request was acceded to and she was transferred from Nasik to Allahabad on 16.07.1984. On 13.08.1997 she was declared surplus at K.V. New Delhi Cantt Allahabad, therefore, in public interest she was transferred to K.V. Bamrauli where she joined on 24.09.1997.

12. Vide order dated 08.11.2000 she was transferred to Suratgarh, Rajasthan but since her husband was posted at Allahabad and she was a lady teacher, she gave representation on 17.11.2000 for modification of the order. The transfer was modified vide order dated 21.06.2001 and she was posted to K.V. No.II(Army)Jodhpur.

13. She has challenged this order on the ground that she has been transferred out in order to accommodate Ram Bhujharat as he has been transferred on request. Being aggrieved she gave representation on 28.06.2001(Annexure-6). She has further submitted that her husband is a Central Govt. employee and is posted as Assistant Audit officer in the office of Accountant General Allahabad and she has small daughters aged 8 and 4 years respectively apart from having one aged mother in law who is also dependent on her, therefore, it is not possible to go to such a far flung area leaving her entire family at Allahabad. She has submitted that as per the transfer guidelines no transfer can be made on public interest and since her husband is a Central Govt. Employee she is entitled to 18 points on this ground. Moreover, according to their own guidelines, lady teachers are to be accommodated in nearby places to the extent possible. Therefore, she could not have been separated from her family. Respondents have not at all considered this aspect of the matter. She has further submitted that since Ram Bhujharat had been appointed in Jaipur Region, he could not have been transferred to Allahabad as transfer is to be done region wise.



14. She has further submitted that a post of TGT(Bio) is lying vacant at Phoolpur District and Ram Bhujharat can easily be accommodated there. She has, also submitted that she could not have been posted outside the region as that would be in violation of clause 15 of the transfer guidelines.

15. She further submitted that even otherwise if seniority was the consideration then also Smt. Shanti Joshi a PRT had the longest stay at Allahabad since 1975 as such she should have been posted out and not applicant. She has also submitted that this transfer order has been issued due to malafides as respondents know she would not be able to join at such distant place away from her family. She has thus, submitted that transfer order deserves to be quashed.

16. Respondents on the other hand have opposed this O.A. on the ground that she has a transferable liability all over India as is evident from her terms and conditions of appointment letter itself apart from clause 49K now as 54K the Education Code wherein it is clearly laid down that the employees of KVS will be liable to be transferred anywhere in India.

17. They have also submitted that Hon'ble Supreme Court has repeatedly held that transfer is an incidence of service and it should not be interfered by the court unless it is violative of mandatory statutory rules or is vitiated due to malafides. In this case since applicant has not impleaded any officer by name nor has laid down any foundation for malafides therefore, this ground is not at all sustainable. As far as husband's posting at Allahabad is concerned, they have relied on the Judgment of Hon'ble Supreme Court in the case of S.L. Abbas reported in 1994 SCC (L&S)230. Transfer on merits they have

18. On merits they have submitted that transfer order has



been issued in accordance with para 10(1) of the transfer guidelines which are duly approved by Board of Governors of KVS. Moreover, she was already relieved on 28.06.2001(Annexure CA-I).

19. They have further explained that initially applicant was appointed as Primary Teacher in Maharashtra Region in 1981. She was transferred from Nasik to Allahabad on 16.07.1984 at her request and has been at Allahabad since then therefore, she was Sl. No.3 in the list of teachers having 5 years or more stay at one station. All the 3 TGT(Bio) have been transferred from Allahabad and she was relieved on 28.06.2001. Similarly Shri Ram Bhujharat who was transferred vice her was relieved from KV No.II Jodhpur on 06.07.2001(Annexure CA-III).

20. They have further submitted that there is no such circular which states ^{that R} lady teachers cannot be transferred. In fact she had herself got her transfer from one region to another as it suited her, therefore, it is not open to her to challenge the transfer of another teacher. They have also submitted that her representation has been forwarded to the ^R Commissioner which may be considered in due course. Even otherwise, they have submitted after joining at Jodhpur, applicant can also give her request on spouse ground and it would be considered. As far as Phoolpur is concerned, they have explained that one Smt. V.L. Srivastava TGT(Bio) of K.V. Rai Bareilly has been re-deployed under the surplus adjustment at Phoolpur. As far as clause 15 is concerned they have explained it pertains to Promotion cases only, therefore, it cannot advance the case of applicant.

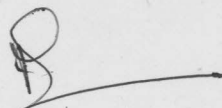
21. As far as Smt. Shanti Joshi is concerned, they have explained that she joined as TGT (Bio) at Allahabad only on 17.09.1987 and is at Sl. No.7 in the list of teachers



have more than 5 years or more ^{stay B} ~~station~~ at one station. Therefore, applicant is Sr. to her, when her turn will come, she will also be transferred out. They have thus, submitted that the O.A. may be dismissed.

22. They have taken preliminary objection that applicant has not impleaded Joint Commissioner(Admn.) KVS Head Quarter who is a necessary party, therefore, O.A. is liable to be dismissed for non joinder of necessary parties. They have also submitted that applicant concealed the fact from this court on 07.07.2001 that she was already relieved on 28.06.2001, therefore, O.A. is liable to be dismissed on this ground itself.

23. I have heard the respondents counsel and perused the pleadings. It would be relevant to mention at the outset that scope of interference in transfer matters is very limited. Hon'ble Supreme Court has repeatedly held that courts should not interfere in transfer matters lightly, as, who is to be posted where and how best work can be taken from an officer can best be decided by the competent authority. It was also held that wheels of administration should not be stopped otherwise it will create total chaos in administration. Hon'ble Supreme Court has however held that interference in transfer matters can be made only if the order is vitiated due to malafides or is shown to be contrary to statutory rules. In the instant case no case for malafides has been made out as neither applicant has impleaded any officer by name nor she has laid down any foundation for malafides. She has on the contrary stated in a casual manner that this order is due to malafides as respondents know she would not be in a position to join at Jodhpur and would have to resign. To say the least, it does not even come within the ambit of malafides. Respondents have transferred not only applicant but no. of other teachers



in a routine matter whereby those who had completed more than 5 years have been transferred to a different place and those who had served in hard stations or against their request were adjusted as per their request to their choice station. This is very much permissible under clause 10(1) of transfer policy which for ready reference reads as under:-

"Where transfer is sought by a teacher under para-8 of the guidelines after continuous stay of 3 years in N.E. and hard stations and 5 years elsewhere at place, which were not of his choice or by teachers falling under the proviso to para 7 of these guidelines or very hard cases involving human compassion, the vacancies shall be created to accommodate him by transferring teachers with longest period of stay at that station." ~~Provided that~~

~~principals who have been retained under para. 4 to~~

24. Now applicant's grievance is that Smt. Shanti Joshi is senior to her as far as her stay in Allahabad is concerned but respondents have explained that she was appointed as TGT (Bio) only 17.09.1987 whereas admittedly applicant is TGT(Bio) ^{It is clear that applicant has longer stay as TGT(Bio) than Smt. Shanti Joshi this is} therefore, it is not correct on the part of applicant to compare herself with Smt. Shanti Joshi.

from 1984 B

25. Applicant's next contention, that Shri Ram Bhujharat could not have been posted to a different region is absolutely wrong. It is not even open to the applicant to raise this objection when she herself had sought transfer from Nasik to Allahabad a different region on her request and has availed the benefit also. She cannot be allowed to take advantage when it suits her and to object to it when same benefit is being given to others. She cannot be allowed to approbate and reprobate according to her whims. Having taken the advantage of Regional Transfer at request ^{herself B} she has no right to challenge the transfer of Ram Bhujharat. Moreover, Ram Bhujharat has not ^{been B} even impleaded by applicant, therefore, she has no right to challenge his transfer.



26. As far as applicant's contention that since her husband is posted at Allahabad she could not have been posted out, it would be relevant to quote the observations made by Hon'ble Supreme Court which for ready reference reads as under:-

"An order of transfer is an incident of Govt. service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The same guideline however, does not confer upon the Govt. employee a legally enforceable right. Executive instructions are in the nature of guidelines. They do not have Statutory force."

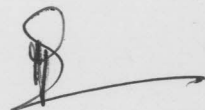
27. In view of the above applicant cannot claim as a matter of right that she should be posted at Allahabad for all times to come as this is not enforceable right. However, since applicant has small young daughters, I do feel that this aspect needs to be considered by the authorities concerned. An effort should be made to see if she can be accommodated in some nearby vicinity so that she may do the job, as well as, look after her family also on weekends. Applicant can even give her request on spouse ground as there is a provision for it. If applicant gives such a request, we are sure it would be looked into sympathetically by the competent authority.

28. Applicant has admittedly been at Allahabad since 1984 and now we are in 2004 that means she has been at Allahabad for



almost 20 years . After all when one takes up the transferable appointment, one should be prepared to serve wherever the posting is given. Of course, in case there is some difficulty, one can always give representation. In the instant case, it is seen applicant has already given her representation on 28.06.2001 and respondents have stated it will be considered in due course. Probably because the matter was pending in court, no decision was taken thereon. Respondent No.2 is directed to consider her representation within 4 weeks from the date of receipt of this order by passing a reasoned order and communicate the same to the applicant. Till such time the representation is decided, interim order shall continue.

29. With the above directions, this O.A. is disposed off with no order as to costs.



Member (J)

shukla/-