

(11)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No. 689/2005

....., THIS THE <sup>15<sup>th</sup></sup> DAY OF <sup>Sept</sup>....., 2006

HON'BLE MR. P.K. CHATTARJI ... MEMBER (A)

1. Shri Raj Bali Misra, S/o Late Tribhuwan Misra,  
R/o Village Sherpur, Post Office Khuthan,  
District Jaunpur, at present  
Resident of 17-B/2A, Alka Bihar, Bamrauli,  
District Allahabad.

2. Smt. Sabita Singh, W/o Late Sri Shailendra Singh,  
R/o J-12/122-B-2, Dhoop Chandi,  
Varanasi.

Applicants

(By Advocate Shri P.N. Tripathi)

Vs.

1. Union of India,  
Ministry of Human Resource and Development,  
New Delhi.

2. Commissioner, Kendriya Vidyalaya Sangathan,  
18, Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi - 110 016.

3. Assistant Commissioner, Kendriya Vidyalaya Sangathan,  
Regional Office, Aliganj,  
Lucknow.

4. Education Officer, Kendriya Vidyalaya,  
18, Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi.

5. Principal, Kendriya Vidyalaya,  
Chheoki, Allahabad.

Respondents

(By advocate Shri D.P. Singh, Standing Counsel for Respondents)

ORDER

Heard Shri P.N. Tripathi, the learned counsel for the applicant and  
Shri D.P. Singh, the learned counsel for the Respondents.

2. In this O.A., the applicant has impugned the order dated  
15/16.06.2006, passed by Respondent No.4, cancelling the transfer order  
dated 30.05.2005, by which the applicant No.1, was transferred from

*Signature*

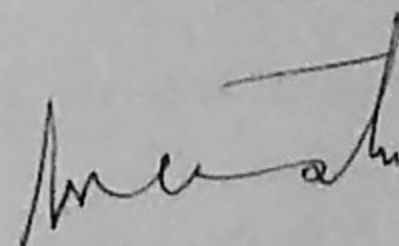


Kendriya Vidyalaya, Rohini, New Delhi to Kendriya Vidyalaya, Cheoki, Allahabad. The other applicant of this O.A., applicant No.2, was transferred from Kendriya Vidyalaya, Cheoki, to Kendriya Vidyalaya, Rohini, New Delhi. This transfer was on mutual request. However, suddenly, by the impugned order, the Respondent No.5, cancelled the transfer.

3. The applicant No.2, had initially agreed to the mutual transfer as stated in the O.A., because it would provide better education for her two sons at Delhi. After considering the applications from both the applicants, the Respondents had agreed to the request. In pursuance of the order dated 30.05.2005, the applicant No.1, was relieved from Kendriya Vidyalaya, Rohini, New Delhi, on 08.06.2005 and he joined Kendriya Vidyalaya, Cheoki, Allahabad, on 09.06.2005. Likewise, the applicant No.2, was also relieved on 07.06.2005 from Kendriya Vidyalaya, Cheoki, Allahabad, and she joined Kendriya Vidyalaya, Rohini, New Delhi, on 09.06.2005.

4. It is seen from the order sheets that, later the applicant No.2, Smt. Sabita Singh, withdrew herself from the O.A. saying that she no longer wanted to be a party in the contest.

5. The grounds on which the relief has been sought are that the applicant No.1 is having a daughter of marriageable age and his wife is having various ailments. For this reason, the applicant wanted transfer on mutual ground. The applicant No.2, also stood to be benefited for the reason that at Delhi, her two sons would be getting better education. For this reason, she had also agreed to her transfer. Moreover, this being a mutual transfer in which no other person was being affected, there was no reason why suddenly it had to be cancelled.





6. For this reasons, the relief of cancellation of the impugned order has been sought, so that the previous order of transfer is given effect to. It would be pertinent to record here that in the meantime, applicant No.2, Smt. Sabita Singh, withdrew from the O.A. saying that she was not interested in contesting. For this reason, the O.A., which was filed jointly earlier is being now contested singly by applicant No.1.

7. During hearing of the case, the learned counsel for the applicant brought to the notice of the Tribunal that Smt. Sabita Singh, the applicant No.2, after withdrawing herself from the O.A. was transferred to Kendriya Vidyalaya, Dharbangha under Rule 18(b), to accommodate one Smt. S. Abha Shukla. For this, a memo dated 01.06.2005, was issued transferring Smt. Sabita Singh, from Kendriya Vidyalaya, Cheoki, Allahabad to Kendriya Vidyalaya, Dharbangha and Smt. Abha Shukla, was posted from Kendriya Vidyalaya, Jodhpur, in place of Smt. Sabita Singh.

8. It sounds strange that while one order in one office was issued on 30.05.2005, transferring Smt. Sabita Singh from Kendriya Vidyalaya, Cheoki to Kendriya Vidyalaya, Rohini, Delhi, in the same office, another order was issued on the very next day, i.e., 01.06.2005, transferring the same Smt. Sabita Singh from Kendriya Vidyalaya, Cheoki, to Kendriya Vidyalaya, Dharbangha, under Rule 18(b). It is also pertinent to record here that acting upon the order dated 30.05.2005, Smt. Sabita Singh had already joined her new post at Kendriya Vidyalaya, Rohini, on 09.06.2005. It sounds intriguing that while another order dated 01.06.2005 was issued for her posting to Dharbangha, she still proceeded to Delhi, in accordance with the direction of the order dated 30.05.2005.

9. When these questions were put to the learned counsel for the Respondents, he could not give any satisfactory answer. He only clarified

*Muath*



that the orders dated 30.05.2005 and 01.06.2005 were issued by two different departments of Kendriya Vidyalaya Sangathan, without the knowledge of each other and hence, this confusion. This, he attributes to a gap in communication.

10. The learned counsel for the applicant, however, has brought to the notice of the Tribunal that later Smt. Sabita Singh, did not even join at Dharbangha, and she continues to be posted in Allahabad. Therefore, he alleges that the order dated 01.06.2005 was also an eye wash. The whole thing has resulted in depriving applicant No.1 only in getting a transfer to his place of choice, which he needed very badly, because he was at the fag end of his service and had family liabilities which he was unable to meet being so far away from home.

11. The learned counsel for the Respondents, citing a very good number of judgments from the Apex Court in the matter, defended the action on the part of the Kendriya Vidyalaya Sangathan, by saying that the memo dated 30.05.2005, was a mistake. As there was a request from Smt. Abha Shukla for transfer under Rule 18(b), there was a compulsion on them to accommodate her at her station of choice as per the transfer guidelines. Naturally, this had to take precedence over the mutual transfer. In citing the different judgments from the Apex Court, he has submitted that the interest of service are best understood by the management and therefore, the Tribunals and Courts are not supposed to substitute their decision for that of the management. The employees have the right to hold a post only, but, they do not have the right to hold the post in a particular place and as per the Rules of transfer, they can be shifted from one place to another as per the needs and exigencies of service. He has further submitted that as per the settled law, the Courts and Tribunals are not to look into the merit of transfer cases, unless there is patent violation of natural justice, display of

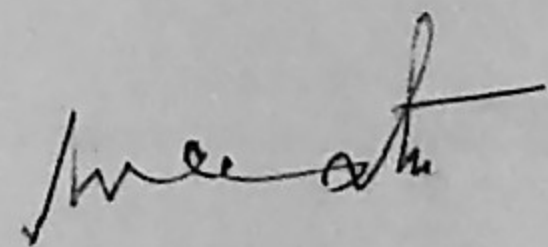
*muath*



malafides. In this case, the applicant has not ascribed any malafide on the part of the Respondents. He has sought the relief only on the ground of personal inconvenience and therefore, this Tribunal is not well placed in the present situation to intervene.

12. It is true, that as per the law settled by the Apex Court, transfer matters or administrative decisions are best left un-intervened. I am, therefore, not inclined to intervene and quash the order. However, in the present case, some ~~facts~~<sup>aspects</sup> remain mysterious and some points remain unanswered. The cycle of events from the point of submission of the mutual transfer, its modification, subsequent modification of the modified order to accommodate Smt. Sabita Singh at Allahabad, and her decision to withdraw her name from the O.A., which was submitted jointly, leave a few intriguing questions rather unanswered because all this things have culminated in the non transfer of applicant No.1, to which he was looking forward too eagerly for urgent family reasons. He has a reason to feel aggrieved.

13. For these reasons, I am of the view that the Respondents should consider his request for his posting at Allahabad, once again for the grounds mentioned in the O.A. and try to accommodate him sincerely so that his grievances are removed and he is able to discharge his family responsibilities. After consideration, appropriate orders may be issued by the Respondents. This may be done within a period of three months from the date of receipt of a copy of this order.



(P.K. CHATTARJI)  
MEMBER (A)