

(13)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 8th day of September 2006.

Original Application No. 1059 of 2005.

Hon'ble Mr. P.K. Chatterji, Member-A

Ashok Kumar Mogha, S/o Late R.S. Mogha,  
Permanent Resident of Mohalla Mangal Bazar, Jansath,  
Post, Jansath, District Muzaffar Nagar.

. . . . . Applicants

By Adv: Sri S. Narain

V E R S U S

1. Union of India through the Secretary,  
Department of Education,  
Ministry of Human Resource Development,  
Govt. of India,  
NEW DELHI.
2. The Commissioner, Navodaya Vidyalaya Samiti,  
A-28, Kailash Colony,  
NEW DELHI.
3. The Deputy Commissioner,  
Navodaya Vidyalaya Samiti,  
Regional Office, Lucknow Region,  
3<sup>rd</sup> Floor, Lekhraj Panna Commercial Complex,  
Vikas Nagar, Sector II,  
LUCKNOW.
4. Sri Adya Prasad Sharma, Previously, Principal,  
Jawahar Navodaya,  
GHAZIPUR.

. . . . . Respondents

By Adv: Sri N.P. Singh.

O R D E R

The applicant in this OA No. 1059 of 2005, has  
challenged the order passed by the Commissioner,  
Navodaya Vidyalaya Samiti, New Delhi dated  
25.10.2004 (Annexure A1), after considering his  
request for transfer to his home state dated

*Narain*

(M)

02.09.2004 (Annexure A13). Earlier an OA No. 624 of 2004 was filed by the applicant before this Tribunal for cancellation of his transfer from Ghazipur to Jawahar Navodaya Vidyalaya Mong, Nagaland. The Tribunal vide its order dated 23.06.2004 decided the following:-

"that since the applicant has joined the place of his transfer, this tribunal has no jurisdiction to entertain this. However, learned counsel for the applicant states that cause of action has originally arisen here and the challenge is to the transfer order dated 17.6.03. It appears that this tribunal on this ground can entertain this O.A. here. Since the applicant has already joined and it is fairly conceded by learned counsel for the applicant that he is not seeking any interim relief for this purpose. It appears that the ends of justice will be better served if the applicant makes a representation for redressal of his grievances and competent authority is directed to decide the representation within a stipulated period. In view of the above, the respondent No. 2 i.e. Commissioner, NVS, is directed to decide the representation with a reasoned and speaking order within a period of two months."

2. In compliance with the direction, the applicant submitted his representation from his place of posting i.e. Mong, Nagaland on 02.09.2004. After considering his representation the respondents have issued order dated 25.10.2004 which is impugned in this present OA.

3. In the counter affidavit filed by the respondents they have raised the following objections regarding maintainability of the OA from the angle of the jurisdiction:-

"The applicant while working as PET at JNV, District: Ghazipur was transferred to Navodaya Vidyalaya Samiti, NE Region, Shillong for posting in a JNV under the jurisdiction of RO Shillong vide order No. 202/03-NVS (Estt.) dated 17.06.2003

*meah-*

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on administrative grounds. The applicant filed an Original Application No. 624 of 2004 before the Hon'ble CAT, Allahabad, challenging the order dated 17.06.2003 against his posting to NE Region. The aforesaid Original Application was finally disposed of at the admission stage itself by means of order and judgment dated 23.06.2004 with the observation to decide the representation of the applicant with a speaking and reasoned order within a period of two months. In compliance with the aforesaid order of Tribunal, the applicant submitted a representation dated 02.09.2004 to the competent authority i.e. Commissioner NVS. The aforesaid representation was disposed of by means of speaking order dated 25.10.2004 without affording any relief to the applicant for the reasons mentioned in the order under reference. As per the Central Administrative Tribunal act, 1985 and orders issued there under before adjudicating the matter, the jurisdiction of the appropriate court is to be seen. After the representation of the applicant finally disposed, he applicant already joined at JNV, Distt. Mong (Nagaland) in compliance with the order dated 17.06.2003. Therefore, any petition against the order dated 25.10.2004 passed subsequently by the department could be challenged before the appropriate Bench of the CAT covering the districts as notified by the Government of India. The applicant is working in District Mong, Nagaland and therefore, the present original application is not maintainable before the Central Administrative Tribunal, Allahabad Bench, Allahabad and the same lies within the jurisdiction of Guwahati Bench of the Central Administrative Tribunal. In view of the above facts and circumstances of the case, this Hon'ble Tribunal may graciously be pleased to dismiss the present original application filed by the applicant for want of the jurisdiction, otherwise the respondent shall suffer an irreparable loss and injury."

4. Sri S. Narain, learned counsel for the applicant cited the following reasons for treating this OA as falling under jurisdiction of this Tribunal:

a. He cited the relevant provisions of the A.T. Act and Rules whereby it is provided that:

i. If place of posting of the official falls within ~~territorial~~ jurisdiction of the Tribunal.

*meant*

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ii. If cause of action has arisen at a place which falls within the jurisdiction of the Tribunal.

b. The learned counsel for the applicant cited the doctrine of merger whereunder <sup>if</sup> an order passed by the authority is modified, amended or in any way disposed of by a subsequent order, the former would automatically merge into the subsequent order, thus ceasing to have its separate identity. Automatically the cause of action will be that of the subsequent order. In the instant case cause of action of the earlier OA was the transfer order which originated under the jurisdiction of the Tribunal. Since it was subsequently considered and disposed of by the order dated 25.10.2004, the cause of action is shifted to the latter. Because jurisdiction of this Tribunal was unquestionable with regard to the transfer order, the jurisdiction of this Tribunal will automatically lie over the impugned order after the merger.

c. The learned counsel also pointed out <sup>that</sup> a look at the orders dated 18.10.2005 and dated 13.04.2006 on this OA would signify virtual admission of the OA under the jurisdiction of the Tribunal. Therefore, raising the

*merger*

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issue of maintainability at this stage is in effect putting the clock back in time and so is improper.

5. While these ~~were~~ were the arguments of the learned counsel for the applicant in favour of admitting this OA under this Tribunal, the learned counsel spoke of the substantive issue involved in this OA as follows:

- a. The order of the transfer of the applicant was punitive as would be evident from the last paragraph of the order dated 25.10.2004 (Annexure A1).
- b. The applicant has been discriminated against vis-à-vis other employees for the reason that many other officials who were transferred under the same order have been accommodated in their places of choice, while the applicant has been singled out for the hostile discrimination.
- c. The learned counsel emphasized that while the Tribunal issued order dated 23.06.2004 in OA No. 624 of 2004, it did not decide the case on merit but merely decided to refer it to the appropriate authority for decision on the representation.

*merah*

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Therefore, there is a need to look at the substantive issued in this case.

d. Referring to paragraph 32 of the counter affidavit the learned counsel pointed out that the respondents in their own admission concedes that the tenure of the applicant in North Eastern Region (NE Region) will be over on 30.09.2006. Therefore, if they are not having any malice or rancor against the applicant they should demonstrate their good intention by considering his representation for transfer to his home state favorably.

6. Learned counsel for the respondents countered these allegations of discrimination saying that the transfer was made by observing the policy of transfer to NE Region. However, he again emphasized on the observations made earlier regarding the maintainability of the OA under the jurisdiction of this Tribunal.

7. Without proceedings to look at the substantive issue I decided to look at the points made by the respondents regarding maintainability of the OA because there is no point in looking at the main issues without first deciding the question of

*jurisdiction*

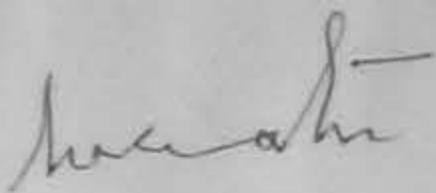
maintainability. Going back to the Rules of procedure as cited by the learned counsel for the applicant, we find that in this case the current place of posting of the applicant is at Nagaland which is outside this Tribunal's jurisdiction. The order which has been impugned by this OA is the order dated 25.10.2004, which is issued by the Commissioner, Navodaya Vidyalaya Samiti, New Delhi. This also is quite outside the jurisdiction of this Tribunal. The pleading by the learned counsel for the applicant relating to the doctrine of merger that because the transfer order which subsequently merged into the order dated 25.10.2004, originated within the jurisdiction of this Tribunal, this Tribunal will be well within its rights in admitting the present OA is also not convincing. The doctrine of merger is not an instrument of such illimitable elasticity as can be stretched to any extent to suit one's convenience. I am of the view that invoking the doctrine of merger will not help the present OA to assert its maintainability under the present jurisdiction of this Tribunal. Regarding the points made by the learned counsel for the applicant at para 4 (c) above it is observed that the two orders did not take the issue of

*merit*

*Even the order in which the first order is supposed to merge originated at a place out of the jurisdiction of this Tribunal*

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jurisdiction into consideration as it cropped up later. This does not prove that it is either irrelevant or too belated for consideration. Therefore, the OA is dismissed only on the ground of maintainability from the angle of jurisdiction without any observations on the main issues contained in the OA. No cost.



Member (A)

/pc/