

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.216/2018

Reserved on:24.08.2021
Pronounced on: 27.08.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs.Hina P. Shah, Member (J)**

Sanjay Meena S/o Shri Ramdhan Meena, aged about 35 years, R/o 3, Mahaveer Nagar, Nearby Railway Station, Ranthambore Road, Sawai Modhopur (Raj), Presently posted on the post of Lecturer (English) Govt. Polytechnic College, Tonk (Raj.) and earlier working as PGT English in KVS.

...Applicant.

(By Advocate: Ms.Kavita Bhati)

Versus

1. Kendriya Vidyalaya Sangathan through the Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi 110016.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi 110016.
3. The Deputy Commissioner, Kendriya Vidyalaya Sangathan (RO) K.V.No.2, Agra Cantt Area, Ground Parade Road, Agra Cantt., Agra (UP)-282001.

...Respondents.

(By Advocate: Shri V.D.Sharma)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicant has prayed for quashing the order dated 09.01.2018 whereby the respondents have rejected the claim of the applicant for repatriation to his

(2)

(alleged) parent department (Kendriya Vidyalaya Sangathan, in short KVS or Sangathan) on the ground that no lien has been granted/approved by the respondents. The applicant has also prayed for directing the respondents to allow him to join duty in KVS with posting as Post Graduate Teacher (English) in or nearby his spouse's posting place, considering his service record and lien on the post of PGT (English) treating his service as continuous and entitling him for terminal benefits as per rules. The applicant was working as TGT English with the Respondent KVS since the year 2009. In the year 2016, he applied, through proper channel for a job of Lecturer (English) with Department of Technical Education, Rajasthan. He got the 'No Objection Certificate' from the respondents (Annexure A/4). The applicant alleges to have given the required undertaking for paying Leave Salary and Pension Contribution through a letter dated 01.08.2016 (Annexure A/3). On selection, he tendered his technical resignation on 22.02.2017, which was duly accepted by Respondent No.3. He was relieved to join the post of Lecturer (English) at Tonk. He joined on 27.02.2017 and is working there till now. Since the Department of Technical Education, Rajasthan is not giving him the benefit of Pay protection, he wishes to repatriate to his parent department, i.e. KVS. He gave an application dated 26.12.2018, to extend his period of lien for one more year

(3)

or to allow him to revert. This request has been denied, by a letter dated 03.01.2019, on ground that the applicant has not applied for the lien separately and hence it has not been granted to him (Annexure A/7). The applicant has challenged this decision stating his right under the rules (quoting DoPT OM dated April 2016, Page-5 of the Paper Book) to have a lien on a permanent post with the KVS (irrespective of whether he has applied for it or not). However, his representations and further prayers in this regard with the Appointing Authority (Respondent No.1) have been responded denying his request (Annexures A/8 and A/9 respectively). The applicant has filed this OA stating that the lien represents the right of a confirmed Government employee to hold a regular post, which cannot be terminated even with the consent of the employee. The applicant has also cited and annexed (Annexure A/10) a decision of the Chandigarh Bench of this Tribunal (OA No.060/00469/2016 in Surender Kumar vs. Kendriya Vidyalaya Sangathan & Others), where, in a similar case of the KVS, this Tribunal has allowed the "lien".

2. The respondents have filed a reply stating that the KVS is an autonomous organization with its own goals and rules. The applicant had not applied for grant of "lien" when he applied for the technical resignation. The undertaking

(4)

(regarding the payment of leave salary and pension contribution), which the applicant alleges to have annexed as Appendix-X (Annexure A/3 of the OA) with his application, is not available in the official records of either KV Agra Cantt. or in the Regional Office. The respondents have quoted Article 49 (Annexure R/4) of the Education Code for Kendriya Vidyalaya which states the position about permitting lien to permanent employees who are selected for appointment in Central or State Governments/Public Sector Undertakings etc. The lien can be allowed, under this rule, subject to specified conditions. It is also stated that the DoPT OM dated 08.04.2016, is not final and it only asks for comments/views before finalising the same. The respondents have also differentiated the case cited by the applicant stating that, in that case, the lien was specifically requested by the applicant therein. In summary, the respondents have denied "lien" to the applicant stating he did not separately apply for it and did not give the requisite undertaking.

3. The applicant has filed a rejoinder, restating that he had given the undertaking and if the respondents do not find it in their offices, it is not his fault. He was asked to give this again during an e-mail correspondence (Annexure A/12), and he has given it again. The applicant has reiterated his

(5)

claim about the lien irrespective of whether he separately asked for it or not and annexed (At Annexure A/13) the DoPT's OM dated 17.08.2016 on technical resignation and lien.

4. The case was finally heard on 24.08.2021. The learned counsels of the parties reiterated the arguments stated in their respective pleadings.

5. After going through the pleadings and hearing the arguments of learned counsels of both the parties, it is clear that the main issue before us is whether the applicant has a lien with the respondent department irrespective of whether he has specifically asked for grant of such lien at the time of his technical resignation. A second related issue is that of fact about whether the applicant had given the requisite undertaking and if not whether the lien can be denied on account of not giving such undertaking at the relevant time. We are, at first, quoting here the rule position of the KVS, (produced by the respondents as Annexure R/4) in this regard:

"Article 49. Retention of Lien

Permanent employees of the Sangathan who are selected for appointment in Central Govt. or State Govt. Institutions/Public Sector Undertakings/Autonomous Bodies/Semi-Government Organisations etc. will be permitted

(6)

to retain their lien on their permanent post for a period of two years or till they are permanently absorbed in that Department/Undertaking, whichever is earlier, subject to specified conditions. However, temporary employees of the Sangathan shall be asked to resign from the Sangathan's service before they are appointed in such Departments/Undertakings, etc."

6. The respondents have not produced what are those "specified conditions". In this situation, since the KVS is an autonomous organization coming under the Government of India, these conditions cannot be very different from the rules of Government of India in this regard. These rules and instructions, cited by the applicant and annexed at Annexure A/13 make it very clear that the lien cannot be terminated even with the consent of a Government servant. It specifically states that it will not be correct to deny it on the ground that the employee did not ask for such lien at the time of his technical resignation. We are quoting the relevant portion of these instructions here:

"3.4 Termination of Lien

3.4.1 A Government servant's lien on a post may in no circumstances be terminated even with his consent if the result will be to leave him without a lien upon a permanent post. Unless his lien is transferred, a Government servant holding substantively a permanent post retains lien on that post. It will not be correct to deny a Government servant lien to a post he was holding substantively on the plea that he had not requested for retention of lien while submitting his Technical Resignation, or to relieve such a Government servant with a condition on that no lien will be retained. "(emphasis added)

7. This leaves us in no doubt about the legality of the claim made by the applicant. Rule 49 of the KVS (the Rule quoted above) does not specifically say that the employees will be permitted to retain their lien only if they ask for it. It only talks about permitting them to retain for a period of two years or till they are permanently absorbed. The applicant did ask for repatriation before the completion of two years. The respondents have not shown us any conditions in their rules which make it mandatory for the employee to ask for it before they leave. The rules of the Government of India, clearly indicate no need for asking for it. The rejection of the applicant's claim, therefore, on the sole ground of his not having asked for it, is patently wrong.

8. This leaves us with the second issue about the filing of the undertaking. Here, it is an issue of fact about whether the applicant filed it in time or not. The applicant says he has while the respondents say that they did not find it with any of their offices. The applicant was asked to file it again and he has done so. Since this matter is only with respect to the willingness of the applicant to pay his leave salary and pension contributions for the period of his work with a different organisation, which he has still expressed he is

(8)

willing to do, we do not think, this, too, is a right reason for denying the applicant his lien.

9. The respondents' actions, in denying the applicant "lien" with the Sangathan, are, thus not found to be strictly correct, as per their own rules, and certainly not in accordance with the Rules of the Govt. of India on this matter. We, therefore, allow this OA. The respondents are directed to allow the applicant to join duty with the respondents at an appropriate place of posting, taking into account his request (for accommodation close to his spouse's place of posting) and the needs of the respondent Sangathan. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/