

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Dated: Allahabad: this the 15 day of November 1999.

Present:- Hon'ble Mr. Rafiq Uddin, Member (J.)

Original Application No. 200 of 1999.

Smt. Krishna Chatterjee,
wife of Shri Ashish Kumar Chatterjee
resident of 86, Rohit Nagar, Naria,
Varanasi.

. . . Applicant.

(Through Sri Prakash Padia, Adv. &
Sri A.K. Dave, Adv.)

Versus

1. Assistant Commissioner,

Kendriya Vidyalaya Sangathan,
(Regional Office) Vijai Nagar,
Ruknupura, Patna-14.

2. Principal,

Kendriya Vidyalaya,
Diesel Locomotive Works,
Varanasi.

3. Commissioner,

Kendriya Vidyalaya Sangathan,
18 Saheedji Singh Marg,
Institutional Area,
New Delhi.

. . . Respondents.

(Through Sri Satish Mandhyan, Adv.)

Order (Reserved)

(By Hon'ble Mr. Rafiq Uddin, Member (J.)

The applicant is a primary teacher in
Kendriya Vidyalaya Sangathan and at present is

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posted at Kendriya Vidyalaya, Diesel Locomotive Works (D.L.W.) Varanasi. The applicant has been transferred vide impugned order dated 18.12.1998 from Kendriya Vidyalaya (D.L.W.) Varanasi to Kendriya Vidyalay H.F.C. Barauni. By means of this D.A. the validity of the transfer order has been challenged by the applicant and direction has been sought to set aside the transfer order.

2. The applicant was initially appointed as Primary Teacher and posted at B.H.A.L. Hardwar in the year 1971. Subsequently she was transferred to Kendriya Vidyalaya D.L.W. Varanasi in the year 1978 and since then she has been working in the said Vidyalaya. The transfer order has been challenged on the ground that the same/arbitrary and illegal. It is stated that the transfer of the applicant on account of surplus adjustment is not justified because as per formula mentioned in the Education Code at present there is no surplus teacher in the institution in question and as such the applicant has been wrongly declared surplus by the respondents. The applicant being at serial No. 4 in the seniority list of Primary Teachers of the school in question, she is not liable to be transferred because it is only the junior most teacher who should be transferred on the basis of alleged surplus adjustment. The respondents have also not appointed any other primary teacher in place of the applicant for the present academic session. The applicant has been suffering from Heart ailment for the last six years and is under treatment of Dr. Virendra Kumar Singh, Heart Specialist of local Heritage Hospital and the applicant has been advised not to leave the city.

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The applicant has also complained that neither any notice nor any opportunity has been given to her by the respondents before passing the impugned transfer order. The respondents have also not disclosed any reason for making the applicant as surplus in the school in question in the impugned transfer order. The applicant has also disclosed that her husband namely Ashish Kumar Chatterji is also posted as Music Teacher in the school in question ~~xxxxxxxxxxxx~~ and as per Government policy husband and wife should remain at one place. Since the applicant has been transferred at the new place at the flag end of the Academic session, it would not serve any purpose because the studies at the school Barauni had already come to an end.

3. The respondents have contested the D.A. and have claimed that the applicant has been transferred because she has been declared surplus due to shortage of class rooms during the session 1998-99. Four sections of Class first were not started and three sections of class 2nd, 3rd and 4th were merged with other sections which resulted in the deduction in the strength of teachers and as such only 12 sections are running in the Vidyalay for which only sixteen teachers are required as per rules whereas the total strength of teachers in the primary section was 20. Consequently three of the senior most teachers were declared surplus, the applicant being one of them who is at serial No.3, the applicant has been transferred to Barauni being within the same region. It is further stated on behalf of the respondents that the latest policy is contained in the policy letter dated 23/24 July 1997. A copy of which has been ~~annexed~~ annexed as Annexure C.A-1

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Since the applicant has been transferred on being declared ~~excess~~ declared surplus, there does not arise any question for appointing any new teacher in her place. It is admitted to the respondents that the husband of the applicant is working in the school in question but rendering the applicant surplus and posting her out of Varanasi is strictly in accordance with the policy. It is also claimed that sympathetic consideration was given to the case of the applicant but she could not be posted nearby the D.L.W. Vidyalaya for want of any vacancy of primary teacher in any other Kendriya Vidyalaya.

4. I have heard the learned counsel for the parties and perused the record.

5. In the present case it is not in dispute that the applicant holds a ~~transferable~~ post and the transfer is an incident of service. It is also not challenged that the respondents have a right to transfer the applicant from the present place of posting to any other place of posting. The Apex Court in B. Vardha Rao Vs. State of Karnataka (1986) 4 S.C.C. 131 has held as under:-

" It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post."

The applicant has not challenged the impugned order on the ground of malafides on the part of any official of the respondents. The main grievances, it appears, of the applicant are of nature of personal inconvenience to her on account of her transfer from Varanasi to Barauni. It has been contended by the learned counsel for the applicant that the husband of the applicant is posted in the same school and it would cause great inconvenience to the applicant if she is separated from her husband and posted at far away from Varanasi. It is also contended that the applicant is a Heart Patient and is constantly under treatment of a local Heart Specialist. It is needless to emphasise that this Tribunal is not an Appellat Authority, as regards the transfer order is concerned. It is only for the Administrative Authorities to consider the personal problems and inconvenience to the applicant. Accordingly the applicant should approach the Administrative Authorities for the redressal of personal problems as a result of impugned transfer order.

6. As regards the question of giving notice to the applicant before passing the transfer order the argument has no force and the principles of natural justice do not come into picture in case of transfer order.
7. The learned counsel for the applicant has urged before me that the ground of transfer i.e. rendering of the applicant as surplus is not correct. On this point the learned counsel for the respondents has drawn my attention towards policy decision taken by the respondents regarding surplus adjustment

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and transfer of the staff within the region on their being rendered surplus which is contained in letter dated 23/24th July 1997 (Annexure C.A.-1). The relevant part of the aforesaid letter is extracted as under:-

" The proposals for adjustment of teachers within the region received in response to the telegram of even number dated 30.5.96 have been examined in detail in this office. It is observed that in many cases delineation of persons who have been rendered surplus has not been done in accordance with the decision taken in the meeting of Assistant Commissioners held on 13.5.96 to 15.5.96. According to the decision in the Assistant Commissioner's meeting the yardstick to be adopted for adjustment of surplus teachers were as enumerated below:

A. Automatic Surplus: Teachers who have been rendered surplus automatically due to the modifications in staff strength are the ones referred to as automatic surplus. In such cases the teacher of the particular category who had the longest stay in the Vidyalaya should move out on transfer.

B. Created Surplus: The term created surplus connotes posting of a teacher when no vacancy existed in that Vidyalaya. In such cases adjustment by transfer should be resorted to only after containing the consent of one of the existing incumbents in the cadre.

8. It has been pointed out by the learned counsel for the respondents that it is the specific case of the respondents that due to shortage of rooms in the school certain sections were merged with other sections resulting in the ^{reduction of} ₁ strength of the teachers. Since the applicant has become surplus as a result of modifications in staff strength, she being senior is to be transferred and the transfer order has been passed strictly in accordance with the guidelines mentioned in the policy decision. These

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facts have not been categorically denied by the applicant. The applicant has also not alleged any malafides on the part of any officials of the respondents in reducing the strength of the teachers in school as a result of shortage of rooms. The act of the respondents is purely administrative in nature and it is within their right to reduce the strength and transfer the surplus staff to any other station.

9. As regards the plea put forward on behalf of the applicant that as a result of her transfer from Varanasi in mid session, the education of the students adversely suffer, it is sufficient to state that the syllabus of educational curriculum of Kendriya Vidyalaya being the same all over India, it can not be said that the teaching of the students would suffer adversely. I do not find any force in this argument of the learned counsel for the applicant.

10. It is no doubt correct that the husband of the applicant is posted in the same school and great hardship would be caused to the applicant on her transfer. The learned counsel for the applicant has however not been able to show any policy decision regarding the transfer of couple. However, it is expected from the respondents that they would reconsider sympathetically the case of the applicant in case any representation is made by her on this ground for stay of her transfer from Varanasi to Barauni. With these observations the D.A. is dismissed. There shall be no order as to costs.

R. J. Muddam
Member (J.)

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