

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 322 OF 2002

THIS THE 31<sup>st</sup> DAY OF JANUARY, 2003

HON. MRS. MEERA CHHIBBER, MEMBER(J)

Vidya Vishal Sharma,  
s/o Sri Ram Gopal Sharma,  
r/o 61/32, Hoolanganj,  
Kanpur Nagar.

.....A-pplicant

(By Advocate:- Shri S.Mandhyan  
Shri R.S.Pradad)

V E R S U S

1. Kendriya Vidyalaya Sangthan,  
through the Commissioner,  
18, Institutional Areas, Shaheed  
Jeet Singh Marg, New Delhi-110 016.
2. Deputy Commissioner (Administration)  
Kendriya Vidyalaya Sangthan  
Shaheed Jeet Singh Marg,  
New Delhi-110 016.
3. Principal, Kendriya Vidyalaya  
No. 2, Chakeri, Kanpur.

.Respondents  
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(By Advocate:-Sri N.P.Singh  
Sri D.P.Singh)

O R D E R

HON. MRS. MEERA CHHIBBER, MEMBER(J)

By this O.A applicant has challenged the order dated 2-5-2001 (Annexure-9) as far as applicant is concerned and order dated 6/8-3-2002 (Annexure-9) . By order dated 2-5-2001 (page 17) applicant has been transferred from No.2 Chakeri Kanpur to Masimpur, Silchar on the ground that excess staff of TGT Maths are being redeployed. Applicant's name figured at sl. No. 26. By order dated 6/8.3.2002 (page 20) applicant's representation has been rejected.



2. The main grievance of applicant in this case is that even though he was appointed as TGT(PCM) and continues to be TGT(PCM) yet he has been transferred out by showing him as TGT(Maths) which is exfacie illegal as his category cannot be changed in order to transfer him out. He has shown following documents to substantiate his contention. His call letter dated 5/29-10-1997 at page 17 (with rejoinder) wherein he was shown to have been selected as TGT(PCM) and was appointed also as TGT(PCM). Apart from it he has annexed no. of documents to show that he had been working as TGT(PCM) certificate issued by the Principal of school to show that he has been working as TGT(PCM) since 13.11.1987. He has also shown other orders to show that TGT(PCM) is still in existence eg. order dated 30.7.2002(Annexure A+6) shows Sh.S.A. Paul TGT(PCM) is promoted as PGT(PHYSICS) therefore he has submitted that this order clearly shows that cadre of TGT(PCM) is still in existence and since Sh.S.A. Paul was working as TGT(PCM) his <sup>Post</sup> of TGT(PCM) is still lying vacant since then <sup>where</sup> applicant can easily be accommodated. He has also submitted that TGT(PCM) and TGT(Maths) are two independent cadres and no order has been issued by the respondents to merge both the posts nor any common seniority list has been issued as alleged by respondents. He has shown that those who were appointed for Maths have been appointed as TGT(Maths) specifically ; whereas applicant has been shown as TGT(PCM) throughout therefore he couldn't have been transferred out on the premise that excess staff in TGT(Maths) is being redeployed. He has next submitted that on one hand his wife has been transferred from Muzzaffarpur to join at Chakeri Kanpur on 30.6.2001 on the ground of spouse being at Chakeri as such there is no justification to send the spouse to Silchar simultaneously as that would defeat the purpose of her transfer as well. He has further submitted that the principal of school at Chakeri has given the vacancy position as on 30.9.2002 also whereby one post of (PCM) TGT has been shown vacant since 31.7.2002. This document was taken on record and respondent's counsel was given this document to confirm the correctness of the same but inspite of taking time, they couldn't rebut the same, the applicant's counsel therefore



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submitted that there is absolutely no justification to post him out of Chakeri as post of TGT(PCM) is still vacant in Chakeri school itself.

3. Respondents have opposed the O.A on the ground that posts of TGT(PCM) & (Maths) have been merged and now no separate category of TGT(PCM) exists and it was due to sanctioned strength at Chakeri for the session 2001-2002 <sup>that</sup> TGT Maths was reduced from 5 to 4 and <sup>since</sup> applicant was working as TGT(Maths) in KVS Chakeri since 25.3.1993 <sup>he</sup> had the longest stay <sup>in</sup> school so he had become surplus as such had to be transferred. They have stated that earlier TGT Maths & PCM were separate <sup>adree</sup> but now there is only one category i.e TGT(PCM). At present post of TGT(P CM) are being sanctioned in every Vidyalaya instead of TGT(Maths). The category of TGT(PCM) and TGT(Maths) are now merged giving the name of TGT(Maths). They have thus submitted that since applicant was working as TGT(Maths) he has become surplus as such he has been relieved on 5-5-2001 and redeployed as per the sanctioned strength. They have annexed sanctioned strength to show the post of TGT(Maths) has been reduced. They have further submitted that applicant had filed O.A earlier also numbering 576/2001.

In that O.A Tribunal was pleased to direct the respondents to decide his representation vide interim order dated 14-5-2001. Pursuant to which <sup>applicant's</sup> period from 14.5.2001 to 22.8.2001 was regularised treating applicant on regular role of K.V No. 2 Chakeri by deciding his representation. The O.A was finally decided on 23-11-2001 when the Tribunal was pleased to direct the respondents to consider his case within one month. In compliance with court's order the respondents have passed a speaking order on 8-3-2002 whereby applicant's request has been rejected to accommodate him in Lucknow region (Annexure CA-6).



It is this order which has been challenged by applicant in this O.A. They have also submitted that the matter has been argued in vacation without informing the respondent's counsel and interim order could not have been given for more than 14 days but it has been given for more than one month thus they have prayed interim order may be vacated.

4. I was also informed by the counsel that respondents have challenged the interim order before Hon'ble High Court and the Hon'ble High Court of Allahabad has been pleased to stay the interim orders passed by this Tribunal.

5. They have also submitted that transfer is an incidence of service and since applicant has been transferred due to administrative reasons, court should not interfere in same. They have relied on the judgment in S.L. Abbas case.

6. I have heard both the counsel and perused the pleadings as well. There is no doubt that scope of interference in transfer matters is very limited as Hon'ble Supreme Court has repeatedly held that courts should not interfere in transfer matters in a routine way. In normal course we would not have interfered in the matter but in the present case the issue raised before me<sup>is</sup> whether the basis for transfer can be sustained in law when there is sufficient material to show that ground for transfer itself is wrong. The defence taken by respondents is that applicant has been transferred out due to reduction in strength of TGT (Maths) and that TGT Maths and PCM have been merged together.

7. It would be relevant to mention here that applicant





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had been appointed as TGT (PCM) and there were two different streams of maths and PCM as separate orders were issued for both the categories. Apart from it applicant has annexed number of documents to show that TGT (PCM) is still continuing and that applicant was working as TGT (PCM). He has also annexed the vacancy position as on 30-9-2002 certified by the Principal Kendriya Vidhyalaya 2 Chakeri to show that there is still a vacant post of TGT (PCM) in same school since 31-7-2002 which means that post of TGT (PCM) is till in existence. The respondents counsel was given a copy of this document to ascertain the position and to clarify the same. They were also directed to produce the order by which posts of TGT (PCM) and TGT(Maths) have been merged as alleged by them because there were number of documents on record to show that merger has not yet taken place. The respondents had taken time 2-3 times but have neither produced the order of merger nor filed any affidavit to rebut the correctness of vacancy position in K.V 2 chakeri with regard to TGT(PCM). They did produce the sanctioned strength for 2001-2002 in KVS No. 2 Chakeri and Recruitment Rule for the post of TGT after the orders were reserved to show that TGT Maths would include Physics and Chemistry also. Both the documents are taken on record even though they were produced after the orders were reserved. They are neither supported by an affidavit nor the first covering page of Recruitment Rules is there and all that respondents have produced is schedule-I which means the main document is somewhere else. There is no date on this Recruitment Rules nor it is shown whether it is already notified or is still a proposed Recruitment Rule thus no reliance can be placed on such a document in law as it is incomplete document. I had directed the respondents specifically to produce





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the merger order because that would have put an end to the whole issue but inspite of taking sufficient time the respondents could not produce any such order meaning thereby they were not able to substantiate their argument that both the cadres have been merged. On the contrary applicant has produced number of documents to show that he was working as TGT (PCM) in school and there is still a clear vacancy of TGT (PCM) in the same school as shown by the Principal since 31-7-2002 meaning thereby that stream of TGT(PCM) is still in existence. If that be so, then there is no justification to transfer the applicant from KV 2 Chakeri on the ground that he had become surplus as TGT (Maths). It is seen that Tribunal had already directed the respondents vide its order dated 23-11-2001 to consider posting him in Lucknow region if there is a vacancy existing in the region but that request has not been acceded to by the impugned order stating therein that even if there is a vacancy as identified by applicant, he can not be posted as computerised priority list is already prepared based on request transfer applications invited by KVS and is displayed on website. It is therefore unfair to order for transfer of Shri V.V.Sharma as this would deprive others of their chance.

8. Pausing here, we would like to mention here that the availability of vacancy in the region has not been disputed by the respondents but they say applicant can not be adjusted as the list of those who have asked for request transfer is already displayed. It is also not disputed by respondents that applicant's wife has been transferred from Muzzaffarpur to Kanpur only on 30-6-2001 on the ground that her husband was posted in Kanpur. It is not understood what is the point in bringing the wife to Kanpur on spouse ground if the husband was to be posted out. It is correct that instructions

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are as far as possible husband wife should be posted at same station and it is not mandatory but atleast an effort can be made to keep them at same station as it only improves the efficiency of an employee. The respondents should have atleast applied their mind to this aspect. They seem to be rather adamant as they are infact commenting on the Tribunal's order which is not permissible. In any case without going into other aspects the order of transfer as far as applicant is concerned is liable to be quashed on this ground alone that there is no merger order of PCM & Maths category and admittedly applicant was appointed as TGT (PCM). The respondents have not been able to produce any order to show that applicant was working as TGT Maths while applicant has produced number of documents to show that he was working as TGT(PCM) and there is still a clear vacancy of TGT (PCM) available in same school where he was teaching. If that be so, the very basis of applicant's transfer is wrong because he is being shown as surplus in TGT (Maths) while he has been appointed and working as TGT(PCM) which post is still lying vacant as per the vacancy position shown by the Principal therefore the transfer order is quashed as far as applicant is concerned. Since the matter is still pending in Hon'ble High Court both the parties shall abide by the final orders passed by HON. High Court. D.A is disposed of with no order as to costs.



Member (J)

Madhu/