

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 653 OF 2002

ALLAHABAD, THIS THE 05th DAY OF JANUARY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Smt. Anita Benjamin w/o Mr. Vincent
Benjamin, T.G.T. (English), Kendriya
Vidyalaya, I.I.T. Kanpur, R/o 7/115,
Silar Apartment 505, Swaroop Nagar,
Kanpur.

.....Applicant

(By Advocate : Shri S. Mandhyan)

W E R S U S

1. Union of India through Secretary,
Ministry of Human Resources Development
Shastri Bhawan, New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. Deputy Commissioner (Admn.) Kendriya
Vidyalaya Sangathan, 18 Institutional
Area, Shaheed Jeet Singh Marg, New Delhi.
4. Education Officer, Kendriya Vidyalaya
Sangathan, 18 Institutional Area, Shaheed
Jeet Singh Marg, New Delhi.

.....Respondents.

(By Advocate : Shri N.P. Singh)

O R D E R

By this O.A. applicant has sought the following reliefs:-

- (i) issue a writ order or direction in the nature of certiorari quashing the impugned transfer order dated 02.04.2002 and transfer modification order dated 21.05.2002 annexed as Annexure A-1 and Annexure A-2 respectively.

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- (ii) issue a writ order or direction in the nature of mandamus commanding the respondents not to effect the order dated 02.04.2002 and 21.05.2002
- (iii) issue any other writ, order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. It is submitted by the applicant that applicant was initially appointed as T.G.T. English on 01.08.1981 and was posted at Kendriya Vidyalaya, I.I.T. Kanpur. She has been teaching to the entire satisfaction of her superiors and there has been no complaint against her work and her result has always been excellent. After she was married in 1983, she gave birth ^{to} 3 children out of which unfortunately two sons were handicapped from birth and one of them expired at the age of 13 years. The other son is also handicapped as he has suffered from Cerebral Palsy. Her husband ~~was~~ ^{is} employed with U.P. State Food and Essential Commodity Corporation but he is also suffering from mental deficiency with Masteed Dystonia (Post Meningitis), therefore, he also suffers from convulsions and is totally dependent. Certificate which shows that he ~~is~~ ^{is} handicapped more than 80% is annexed as Annexure A-3. Her husband ~~even~~ ^{has} heart ailment ~~as he~~ ^{as he} has already suffered two heart attacks. Inspite of this, applicant had been attending the duties. But vide order dated 02.04.2002 she has been transferred from Kanpur to Kendriya Vidyalaya Namrup in the State of Assam. Since applicant was having manifold problems, she gave a representation stating therein ~~her~~ ^{his} problems but unfortunately by order dated 21.05.2002 she has been transferred instead of Namrup to New Majri in Maharashtra (Pg.15).

3. Grievance of the applicant in this case is that in order to accommodate another teacher from North East applicant was first posted from I.I.T. Kanpur to K.V.S. No.2 Chakeri against the clear vacancy (Annexure A-4) where she immediately joined

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but ~~and~~ within one year she was again posted at I.I.T. Kanpur on 01.04.2002 and as soon as she joined there the very next day i.e. 02.04.2002 she was transferred from Kanpur to Namrup whereas the mail teacher has been posted from North East to K.V. No.2 Chakeri. She has thus submitted that this transfer is passed only to accommodate Shri K.C. Kushwaha ^{which shows} respondents have not really applied their mind to the genuine problems placed by the applicant before them with regard to the handicapped husband and handicapped son. They have ^{also} not ~~also~~ considered that the medical facilities is almost negligible at Namrup as well as ^{at} New Majri as both are small places whereas the ailment of the family are very serious ⁱⁿ nature, which cannot be overlooked. She has thus submitted that the order by which she has been posted to New Majri shows total non application of mind. She further submitted that there is ^a still [^] vacancy of T.G.T. English at K.V. No.2 Chakeri Kanpur which is evident from Annexure A-6, therefore, there was no need to transfer her to New Majri. ~~There is~~

Finding no other remedy, she had to file the present O.A. She has annexed the medical papers and the photographs of her son which shows that the son is really in a critical condition.

4. Respondents on the other hand have opposed this O.A. by submitting that employees at Kendriya Vidyalaya Sangathan are liable to be transferred anywhere in India, in the light of Article 49(K) of Education Code (New amended as 54-K of Education Code), therefore, transfer is a condition of her service. They have, thus, submitted that Hon'ble Supreme Court has repeatedly held that since transfer is a condition of service, it should not be interfered by the Courts or Tribunals and who is to be posted where is to be decided by the administration. Counsel for the respondents relied on number of judgments to support the argument. On merits they have submitted that applicant was No.2 in the station by seniority list of T.G.T. English therefore, she was



displaced from I.I.T. Kanpur to Namrup which was subsequently changed to New Majri on consideration of her request for change of place as per her representation. Whereas Shri S.K. Tiwari was also in the Station Seniority List and got his transfer as per his request in accordance of para 10(I) of Transfer guidelines. They have submitted that since her problem has already been looked into by the respondents themselves and instead of North East she has ^{now} been placed at New Majri in Maharashtra which is a peaceful area, She cannot ^{have} any other grievance. As far as the medical facilities are concerned, they have submitted it may be available ^{at} New Majri or nearby city Nagpur. As far as her ^{contention} ~~condition~~ that she has been displaced to accommodate another teacher concerned, they have submitted that he had already completed his tenure in North East Region which ^{is} considered to be a difficult area, therefore, as per the guide lines he was entitled to be given ^{his} request posting and applicant cannot have any grievance as she had been in the same station for the last 21 years. Therefore she had to be transferred out in order to ^{do} ~~the~~ justice ^{to} the other teacher. She was transferred out from I.I.T. Kanpur because she was surplus, yet she was adjusted in K.V. No.2 Chakeri during the year 2001-2002. They have thus submitted that there is no illegality in the orders passed by the respondents. As far as the advertisement is concerned, they have submitted the advertisement was given only for stop gap arrangement whereby a panel is made for teachers on contract basis so that they may be utilised against those teachers who proceed on long leave. Moreover the advertisement itself was for contract service of one year, therefore applicant cannot claim that she should be given advantage of the said advertisement, as the said advertisement was not for any clear vacancy. They have thus submitted that the O.A. may be dismissed and stay order vacated.



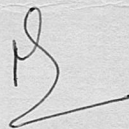
5. I have heard both the counsel and perused the pleadings, as well as the judgments referred to by the counsel on both the sides. Counsel for the applicant relied on 1996(4)UPLBEC 2614 wherein the Hon'ble High Court has held that even grievances of personal nature can be considered in deciding representation.

6. It is correct that Hon'ble Supreme Court has repeatedly held that in matters of transfer, Courts and Tribunals should not interfere and it should be left to the administration to decide as to who is to be posted where. It is also held that transfer cases can be interfered only if either it is shown to be as a result of malafides or is contrary to the statutory rules. In this case after hearing both the counsel, I am satisfied that neither this case can be ^{said} to be as a result of malafides nor can be said to be contrary to the statutory rules or guidelines. ^{as she was allowed to stay in the same station for 2 yrs} She also cannot get any benefit from the advertisement (annexed as Annexure A-6) as that selection was operative for academic session 2002-2003 only. Yet looking at the photographs, which applicant has annexed with the O.A., I do feel this is one of those rare cases which requires compassion. The photographs clearly show that the child is not in a position to look after himself and would require help in day to day course as well. It is rather unfortunate that the husband and child both are physically handicapped. In such a situation, I am of the opinion that respondents ought to have ^{seen} if the applicant could be adjusted if not in Kanpur at least in its ^{near vicinity} so that at least she could look after her husband and the ailing child. ^{doubt is} No respondents have modified her transfer from Namrup to New Majri but they have totally ignored the fact that since her husband is a heart ^{suffered} patient who has already 2 heart attacks at least she should be posted at a place where he could be given medical assistance immediately. In case it is ^{to} required, ^{to} say that she can get the medical facilities.

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at Nagpur is not appreciated because in case of heart attack there is hardly any time to go to the hospital also at times. Time and availability of the medical facilities is the main factor. Therefore, they should have applied their mind to this aspect of the matter. Since respondents have not considered this aspect, this matter is being remitted back to the authorities with a direction to see ^{if} ~~that~~ in peculiar circumstances of the case, ~~the~~ applicant can be accommodate in Kanpur or some other Kendriya Vidyalaya in near ^{vicinity,} ~~proximity~~ of course subject to the availability of vacancy. I am sure, respondents would apply their mind to this aspect and then pass appropriate orders thereon within a period of 2 months from the date of receipt of a copy of this order. Till such time respondents decide this matter, the interim order already passed shall continue.

7. With the above observation, the O.A. is disposed off with no order as to costs.



Member-J

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