

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 28th DAY OF MARCH, 2003

Original Application No.822 of 2002

CORAM:

Shyam Behari, S/o Sh. Jamuna  
Prasad, R/o Suman Bihar Colony,  
Ajit Nagar Gate, Kheria Road, district  
Agra.

.. Applicant

(By Adv: Shri Ajai Rajendra)

Versus

1. The Commissioner,  
Kendriya Vidyalaya Sangathan  
18, Institutional Area, Shaheed  
Jeet Singh Marg, New Delhi.
2. The Deputy Commissioner,  
Kendriya Vidyalaya Sangathan  
18, Institutional area, Shaheed  
Jeet Singh Marg, New Delhi.

.. Respondents

(By Advs:S/Shri D.P.Singh/N.P.Singh)

O R D E R (Oral)

JUSTICE R.R.K. TRIVEDI, V.C.

By this OA u/s 19 of A.T.Act 1985, applicant has challenged the order dated 6.5.02(Annexure 1) by which representation of the applicant has been rejected. The applicant has also prayed that respondent no.1 may be directed to post the applicant at Agra,

Learned counsel for the respondents have raised the preliminary objection that this OA is not maintainable at Allahabad. It is submitted that applicant was transferred from Agra to Langjing Imphal by order dated 16.1.01(Annexure 2). The aforesaid order of transfer was challenged in this Tribunal by filing OA No.101/01 which was disposed of by order dated 1.2.01 with the following direction:

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"For the reasons stated above, this petition is disposed of finally with the liberty to the applicant to file a representation before respondent no.1 within two weeks from today. The representation if so filed, shall be considered and decided by respondent no.1 by a reasoned order within a month. For a period of six weeks or till the representation is decided whichever is earlier, applicant shall be allowed to stay at Agra."

In pursuance of the above order of this Tribunal applicant filed representation before respondent no.1 which was rejected on 16.3.01. The order was challenged by filing OA No.944/01 which was decided finally on 7.11.01. The operative part of the order is being reproduced below:

"Keeping in view the facts and circumstances of the matter, the laws laid down by the Apex court on several occasions and also submissions made from either sides, I find that the applicant could not bring home the allegation of malafide. It can also not be been disputed that as per service conditions he can be transferred and posted to any station within the Kendriya Vidyalaya Sangathan and also transfer order under exigencies of service can hardly be interferred on judicial side. It has also to be taken into consideration that the applicant has already joined at the station where he has been transferred and, therefore, no good reasons found to set aside the order quashing the impugned order. Before parting with the matter, I would like to observe that since the applicant is resident of District Agra, U.P. and has been transferred to a very far off place, the authority in the respondents establishment will consider his case sympathetically when some occasion arises to adjust him at Agra or any nearby station. No costs."

From the above order passed by this Tribunal it is clear that the order of transfer passed against the applicant was upheld and the court refused to grant any relief so far as order of transfer ~~was~~ concerned. The Tribunal also noticed the fact that applicant has joined at transferred place. The observations were left only to help applicant in future. The learned counsel for the respondents submits that once the order of transfer became final, and applicant has joined at the transferred place, he ~~seems~~ to be a member of the staff of U.P. and he could not file the present OA in this Tribunal. He requested before the authorities at Delhi for his transfer from Imphal to Agra which has been turned down. Thus the cause of action for him may arise either at Delhi or at Guwahati. This Tribunal will have no jurisdiction.

The learned counsel for the applicant, however, submitted that the joining of the applicant in pursuance of the order of transfer was a consequential step and applicant has every right to approach this Tribunal since he is praying for his transfer to Agra. Learned counsel has placed reliance on a judgment of learned Single Judge of Hon'ble High court in case 'Salek Chand Vs. State of U.P. and Ors, 2000 (1) ESC-105.

I have carefully considered the submissions of the counsel for parties. The undisputed facts are that the applicant was working at Agra as Lab.Assistant. He was transferred from there to Langjing by order dated 16.1.01. Thus the cause of action was available to him for filing OA in this Tribunal. The OA No.101/01 was filed and was disposed of giving ~~him~~ liberty to applicant to make representation and he was allowed to stay for six weeks at Agra. On rejection of the representation he again approached this Tribunal and filed OA No.944/01 challenging order dated 16.3.01. This ~~OA~~ was finally

dismissed on merits. As clear from the operative part of the order quoted above, the case of the applicant that order was passed on account of malafide and arbitrariness was not accepted. Court declined to interfere noticing the judgment of Hon'ble Supreme court and the fact that applicant has joined at the transferred place. thus, the order of transfer was upheld and it became final, after the order dated 7.11.01 passed by this Tribunal disposing of the second OA. After this order applicant could not have any connection of his posting at Agra. He became member of the staff of Kendriya Vidyalaya Sangathan at Langjing and the cause of action to file OA before the Tribunal would be available either at Delhi where the order was passed or at Guwahati within whose jurisdiction he is presently posted. The judgment relied on by the applicant is distinguishable as in that case the main petition filed against the order of transfer was pending and its merits could not be affected on the ground that the petitioner of that case had joined during pendency of the case. In the circumstances, I find force in the preliminary objection raised by the learned counsel for the respondents. The OA is not legally maintainable in this Tribunal.

At this stage, the learned counsel for the applicant submitted that the OA may be dismissed with liberty to the applicant to file fresh OA before the Competent <sup>accordingly</sup> bench. The OA is dismissed as not maintainable. The interim order is vacated. No order as to costs.

  
VICE CHAIRMAN

Dated: 28th March, 2003

Uv/