

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1141 OF 2003

ALLAHABAD, THIS THE 10th DAY OF NOVEMBER, 2003

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

Noorul Huda Ansari (T.G.T. Urdu),
s/o Sri Dabir Ahamad posted at J.N.V. Mahoba(U.P.)
Permanent r/o Fagirabad, Sari Aqil,
District : Kaushambi.

.....Applicant

By Adv. Shri R. P. Mishra)

V E R S U S

1. Union of India through Secretary of
Ministry Human Resources Development
(Education Department), New Delhi.
2. The Deputy Director, (L.R.), Navoday Vidyalay
Samitee, Lekhraj Panta III Floor, Sector-2,
Vikash Nagar, Lucknow.
3. Ali Azhar (T.G.T. Urdu)
Posted at J.N.V. Mahoba (U.P.),
4. Subhash Chandra (T.G.T. Urdu)
Posted at J.N.V. Bhind (M.P.),
5. The Commissioner, Novadaya Vidyalay Samiti,
I.P. Estate, Indira Gandhi Stadium,
New Delhi.

.....Respondents

BY Advocate : Shri V. Swaroop)

O R D E R

By this Original Application, applicant has challenged
the office order dated 09.09.2003 whereby he has been reposted
to J.N.V. Bhind(M.P.) under Bhopal Region of the Samiti from
J.N.V. Mahoba and Shri Subhash Chandra T.G.T. who was ^{earlier at} transferred



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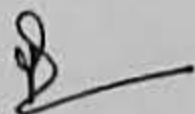
from J.N.V. Mahoba to J.N.V. Bhind is reposted to J.N.V. Mahoba vide order dated 01.09.2003. It is submitted by the applicant that applicant was appointed as T.G.T. Urdu on 30.08.1997 and was posted at J.N.V. Baramula^{and thereafter}(J & K)/vide order dated 24.10.2002, he was transferred from J.N.V. Baramula to J.N.V. Kargil(Most sensitive place)(Annexure-2). The applicant's wife is a Assistant teacher posted at Primary School Jhariyahi, Meja District Allahabad who looks after the family as applicant's father is a chronic patient of mental disease and is getting his treatment at Allahabad. His mother had already died and since applicant is the only issue of his father, therefore, applicant had to take care of his ailing father as well. The appointment letter of his wife and present work ng place certificate has been annexed as Annexure-4.

2. Vide letter dated 21.03.2003 all the Principals of Jawahar Navodaya Vidyalaya situated at Srinagar, Budgam, Pulwama, Anantnag, Baramula, Kupwara, Leh, Kargil, Kinnaur and Kaza were informed that the teachers working in the above said station, being hard and difficult station will be considered for transfer on request basis to their choice place after completion of 3 years of service as has been done in N.E. Region. Therefore, they shall get the proforma filled from the teachers who have completed 3 years, if they want tranfer on request basis and fax the same to the office by 22.03.2003(Pg.19). The subject of this letter was special drive for transfer of teachers from N.E. Region to outside N.E. Region-regarding.



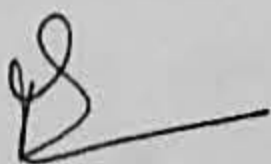
3. It is submitted by the applicant that since the home state as declared by the applicant was Allahabad in U.P. and he had already completed more than 3 years in a hard station as mentioned above, he gave his application for posting him to U.P. in Mirzapur, Jaunpur, Mahoba, Kaushambi or Faizabad in the order of preference. His request was acceded to and in view of their own policy applicant was transferred from Kargil to Mahoba vide order dated 06.08.2003 (Pg.26). In the said order other teachers were also similarly posted to their choice stations. The applicant joined at Mahoba on 22.08.2003. He had been at Mahoba only for about 15 days, when by the impugned order, applicant was reposted to Bhind (M.P.) and Shri Subhash Chandra who was earlier transferred to J.N.V. Bhind was reposted to J.N.V. Mahoba. It is this order, which has been challenged by the applicant in this O.A. on the ground that once the applicant was given benefit of the special drive/policy declared by the respondents themselves, he could not have been retransferred to another place within 15 days to a station^{for} which he never gave his option. Specially when Shri Subhash Chandra was transferred already from Mahoba to Bhind (M.P.), it is submitted by the applicant that this order has been passed arbitrarily incolourable exercise of power and by depriving the applicant's posting to his choice of station.

4. Counsel for the applicant submitted that in case of applicant he is entitled for two policies taken by the respondents, one under the special drive and secondly because his wife is also



posted at Allahabad. and since he is coming from hard station he has to be given preference over ~~other~~ ^{all} the teachers who ~~were~~ ^{also} serving in the soft station. He has thus, submitted that this impugned order may be quashed and to allow the applicant to work at J.N.V. Mahoba.

5. Respondents on the other hand have submitted that Shri Subhash Chandra T.G.T Urdu and Ms. Kavita Arora PGT (English) a couple case had been working in Jawahar Navodaya Vidyalaya Mahoba. In order to give relief to third language teachers who had been working at difficult stations and had put in more than 5 years in service, Navodaya Vidyalaya Samati, Head Quarters framed a policy to transfer such teachers to plain areas. Since Shri Subhash Chandra TGT Urdu had put in more than 5 years service at Mahoba, he was transferred to JNV Bhind but inadvertently it was not seen that he was a couple case. ^{When} ~~Ms.~~ Ms. Kavita Arora PGT (Eng.) brought this fact to the notice of Head Quarters, ~~therefore~~, in order to rectify the mistake, Shri Subhash Chandra TGT(Urdu) was transferred back to JNV Mahoba and the applicant Shri Noorul Huda Ansari was transferred to JNV ^{Blind (MP) R} ~~Mahoba~~ in plain area in place of Shri Subhash Chandra. They have thus submitted that since Shri Subhash Chandra and Ms. Kavita Arora were both a couple, they had to be given preference as per the policy dated 10.04.2003, which is annexed at page 22 of the O.A. Moreover, applicant has been posted in a plain area, therefore, he could not have any grievance. They have also submitted that



Shri Subhash Chandra T.G.T. (Urdu) has already joined at JNV Mahoba on 04.09.2003 and Shri Noorul Huda Ansari i.e. the applicant has been relieved on 09.09.2003. They have thus submitted that since applicant has been posted in a plain area after rendering the service in hard station, it is not possible to post him back to Mahoba because there are only two posts of TGT (Urdu) and both of them have already been filled up by Shri Subhash Chandra on 04.09.2003 as well as Shri Ali Azhar and no more vacancy is available for the applicant. They have further submitted that Shri Azhar Ali has also been transferred from Bhind to Mahoba on his own request, therefore, looking at the interest of all, applicant was transferred to Bhind which is also a plain Station. Applicant has controverted the fact that he was relieved from the school on 09.09.2003 by producing the attendance register of class-VIth A attended by the applicant himself wherein he had taken the attendance of Students and is duly signed by him. He has further submitted that the stay was granted by this Court on 19.09.2003 and he continued to sign the register till 25.09.2003 without any objection. But on 25.10.2003, respondent No.2 sent a letter to the Principal, JNV Mahoba directing him to treat the applicant at JNV Bhind in defiance of the order dated 19.09.2003 passed by this Tribunal. He has annexed the letter dated 25.09.2003 sent by respondent No.2 to the principal as Annexure SCA-2. He has also submitted that pursuant to this letter, principal made a line of red ink on the Attendance Register. In spite of applicant ^{saving} ~~they have~~ signed the said register and applicant



filed his application with this regard on 26.09.2003 itself to the Principal. Application filed as Annexure SA-3.

Thereafter, applicant was allowed to sign on the Attendance Register till 30.09.2003, But in the month of October, his name did not find place in the attendance register at all.

Therefore, he was restrained from signing on the attendance register. He has thus, submitted that ^{inspite of} Stay Order granted by this Tribunal he has not been permitted to perform his duties at Mahoba.

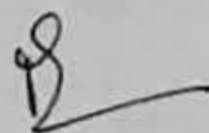
6. We have heard both the counsel and perused the pleadings as well.

7. The basic flaw in the arguments advanced by the respondents is that they are treating as if applicant could have been posted to any plain station after having spent a tenure in a difficult and hard station whereas the scope of their own letter by which a policy decision was taken vide letter dated 21.03.2003 for ready reference reads as under:-

"Sub: Special drive for transfer of teachers from NE Region to outside N.E. Region-regarding.

I am directed to inform you that the teachers working in the following stations being hard and difficult stations will be considered for transfer on request basis to their choice place after completion of 3 years of service as has been done in N.E. Region.

- | | |
|-------------|------------|
| 1. Srinagar | 6. Kupwara |
| 2. Budgam | 7. Leh |
| 3. Pulwama | 8. Kargil |
| 4. Anantnag | 9. Kinnaur |
| 5. Baramula | 10. Kaza " |



8. A perusal of this letter would show 3 things which are relevant for the purpose of deciding this case:

- (a) In the subject itself, it is seen that it was a special drive for transfer of teachers from hard and difficult stations and it had to be as per as the request made for their choice place. The hard stations included Baramula as well as Kargil both. Admittedly, applicant was initially appointed and posted at Baramula and after the posts were rendered surplus he was posted to Kargil. Therefore, when respondents issued this policy on special drive for transfer of teachers from hard stations to the choice place on request, *applicant's case gets fully covered under this policy*
- (b) Applicant also gave his application in which he had mentioned the stations ~~of~~ choice as follows as per his reference Mirzapur, Jaunpur, Mahoba, Kaushambi and Faizabad in U.P. This request nowhere talks about M.P. as his choice station.
- (c) Moreover, the policy was not that persons who had worked in the hard and difficult stations would be transferred to plain areas but it was that ^{they} would be considered for transfer on request as per their choice place. Therefore, looking at his choice place respondents had themselves posted the applicant vide their order dated 06.08.2003 from Kargil to Mahoba in U.P., which was very much as per the policy indicated in their own letter dated 21.03.2003.

9. Respondents have taken two grounds to justify posting the applicant to Bhind in M.P. and by putting back ~~to~~ Shri Subhash Chandra in Mahoba U.P. Firstly that since Shri Subhash Chandra's wife was also working in N.V.S. Mahoba, therefore, Shri Subhash Chandra could not have been transferred out and had to be given the same posting as per preference in the policy dated 10.04.2003 and secondly that Shri Subhash Chandra was adjusted in a plain station. As far as the plain station is concerned. I have already discussed above that the policy was not to give posting to those

[Signature]

teachers who had worked in hard and difficult stations to plain station but it was to consider them as per their choice station. Therefore, since applicant had given his preference for the schools situated at Mirzapur, Jaunpur, Mahoba, Kaushambi and Faizabad in U.P., he could not have been posted in M.P. because that was never his choice station and respondents had rightly considered the case earlier for posting him at Mahoba in U.P.

10. Shri Subhash Chandra had already been working in N.V.S. Mahoba for the last over many years and he was posted to Bhind in normal course to accommodate the applicant who had sought transfer as he had worked in the difficult and hard stations at Baramula as well as Kargil. The respondents have failed to understand that the policy dated 10.04.2003 was a general policy wherein the teachers could seek inter regional transfer on the ground that the spouse was working in a particular station whereas the policy dated 21.03.2003 was a special drive for accommodating those teachers who had worked in a hard and difficult stations. Therefore, in my considered view the policy which relates to the special drive for accommodating person from hard and difficult station would have over riding effect on a general policy for transfer. Therefore, the case of applicant is definitely on a better footing than that of Shri Subhash Chandra. Even otherwise the policy dated 10.04.2003 states that requests are invited from teachers who are seeking transfers on the ground that his or her spouse is working in the same station. Therefore, if Shri Subhash Chandra was posted out to Bhind in M.P. his wife

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could give the application but that would be considered in the next academic session along -with all other applications which were to be given by the teachers under the policy dated 10.04.2003. In this case, the applications were called by ^{under policy dt 10.4.03 H} 30.04.2003, so obviously this period was over at the time when applicant was transferred from Mahoba to Kargil as he was transferred on 06.08.2003. Therefore, even if, Shri Subhash Chandra's wife had made a representation after August 2003 that could have been considered in the next academic session and the orders which were already issued for transferring the applicant from Kargil to Mahoba under policy dated 21.03.2003 could not have been changed by the impugned order.

11. In view of the above discussion, the impugned order dated 09.09.2003 is quashed and set aside. Respondents are directed to allow the applicant to continue at JNV Mahoba as per the order dated 06.08.2003. As far as the intervening period is concerned, though the respondents have stated in the counter affidavit that applicant was relieved on 09.09.2003 but they have not annexed any relieving order either with the Counter Affidavit or with their supplementary affidavit. On the contrary, it clearly shows that after the applicant had signed on 23, 24, and 25th September, 2003, the same has been scored out by putting a line in front of his name. He has also annexed the attendance register of class 6th-A wherein after taking the attendance of the students on 1st and 3rd October, 2003



applicant had put in his signatures at the bottom. From 4th onwards, there were holiday. Therefore, it is evident that applicant was very much working in the school till 3rd October, 2003. The interim order was passed by this Tribunal on 19.09.2003 whereby respondents were directed to maintain the statusquo in respect of applicant. Since respondents have not annexed any relieving order with their counter affidavit, they are directed to regularise the intervening period with regard to the applicant and pay ^{him} salary for the said period. I would be failing in my duty if I do not refer to the judgment relied upon by the respondents in the case of STATE BANK OF INDIA VS. ANJAN SANYAL AND OTHERS reported in 2001 SCC(L&S)858, wherein it was held unless malafide or prohibited by service rules, or passed by an incompetent authority, the transfer order should not be lightly interfered with, in exercise of a court's discretionary jurisdiction. I would ^{like} to say that since respondents had passed the re-transfer order of applicant by mis-construing the different policy referred to above, the impugned order were found to be illegal and unsustainable in law. Therefore, this judgment would not be attracted and applicable in the present case. It is a settled principal of law that a special act ~~would~~ prevails over the general act. Therefore, it was keeping in view ^{this principle} ~~that~~ present O.A. has been decided on the ground that a policy which deals with special drive would prevail over the general policy of transfer.

12. With the above observation, this O.A. is allowed with no order as to costs. ^{directions.}



Member-J