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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH

ORIGINAL APPLICATION NO. 196/2004

Date of Decision: 8-2-2005

CORAM

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

Mrs. Sudesh Singh, W/o Dr. Raj Singh, PGT Biology, Kendriya Vidyalaya No. 2, (AFS), Jodhpur.

Applicants.

(Miss. Shalini Sheoran, Counsel for applicants.)

VERSUS

1. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi through its Commissioner.
2. Principal Kendriya Vidyalaya No.2, A.F.S. Jodhpur.

Respondents.

(Mr. K.K. Shah, Counsel for the respondents.)

ORDER

Mr. J.K. Kaushik, Judicial Member

Mrs. Sudesh Singh has filed this Original Application for seeking the following reliefs:-

(a) In view of the facts mentioned in the above para 4 and 5 of the order dated 20.11.2001 of the Tribunal maybe given effect in letter and spirit and the administrative order dated 22.10.2003 (Annexure-A/9), 12.4.2004 (Annexure-A/11) may be quashed and set-aside.

(b) Deletion of clause No. F.42-13-2001-KVS (Estt. III) in Annexure-A/3 may be done in the interest of justice.

© The applicant's request for the mutual transfer may be considered in the transfer list of 2004-2005 of Jaipur Zone.

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2. I have heard the learned counsel for both the parties and have anxiously considered the submissions made at bar, the pleadings and records of this case.

3. The factual matrix of this has born out from the pleadings of the applicant depicts that the applicant is holding the post of PGT Biology at Kendriya Vidhyalaya No. 2 (AFS), Jodhpur. Prior to her transfer to the present place, she was employed at KV Nasirabad. She was ordered to be transferred vide order dated 22.06.01 from K.V. Nasirabad to Kendriya Vidhyalaya, Nangal Bhur, District Gurudaspur, Punjab. The said transfer was made on the basis of complaint made by the Principal, K.V. Nasirabad, which was challenged by the applicant vide O.A No. 442/2001 before the Co-ordinate Bench of the Tribunal at Jaipur. The Hon'ble Tribunal observed that transfer to a place far away from her family could not be considered to be in public interest and directed the respondents to review the transfer order and to suitably accommodate the applicant at some nearby place. In pursuance with the aforesaid order of the Tribunal, the transfer order came to be modified and the applicant was ordered to be transferred to KV No. 2 (AFS) Jodhpur

4. The further facts of the case of the applicant are that the applicant constantly insisted for consideration of her case on medical grounds to transfer her to a more near place to her family. Her application was duly forwarded but of no avail. She again applied for her transfer but the very application itself was returned for the reason that her transfer was made under Clause 18 (d) of Transfer policy. She also represented in the matter and

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also requested for deletion of the word 'administrative ground' to the respondents vide letter dated 02.10.03 but her representation has been rejected. She filed a Misc. Application before the Jaipur Bench of the Tribunal for seeking effect to its order and to secure the end of the justice but the same was dismissed as not maintainable. The order passed in the Misc. Application was also challenged before the Hon'ble High Court but the Writ Petition of the applicant came to be dismissed. The Original Application has been filed on numerous grounds enumerated in the Para 5 and its sub paras.

5. The respondents have resisted the claim of the applicant and have filed an exhaustive reply. The defence has said out in the reply of the respondents is that the applicant has an all India transfer liability and Clause 5 of the transfer guideline contemplates transfer of Teacher on administrative grounds inasmuch as a teacher is liable to be transferred on the recommendation of the Principal and Chairman of Vidyalaya Management Committee of Kendriya Vidyalaya. It was for the K.V to decide whether to hold disciplinary proceedings against the applicant or to take an appropriate action against the applicant by shifting her to different place with a view to bring about a change in her attitude. The transfer of the applicant was modified at her own request taking a lenient view to which applicant gave her consent. Her Misc. Application came to be dismissed. She would be eligible for transfer after completion of five years at Jodhpur. Since her transfer was made as per Para 18 (d). The grounds have been generally denied.

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6. The learned counsel for the applicant has strived hard to persuade us that the applicant was transferred on her own request at Jodhpur and her transfer could not be considered as a transfer on administrative grounds under Para 18(d) so as to debar her further transfer for a period of five years. My attention was drawn towards the very order which came to be passed on 21.01.02 at Annexure A/3 and it has been demonstrated that the same contains the specific annotation to the effect that the transfer was at her own request. It was specifically clarified from the learned counsel for the applicant as to whether any transfer allowance was paid to her to carry out the transfer to this place. The answer came in positive; an affidavit was also sworn for the purpose. The learned counsel for the applicant has also submitted and carried me to various orders stating that it was clearly held that the applicant's transfer cannot be said in public interest and similar position has been reflected in the order passed by the Hon'ble High Court. In this view of the matter the encumbrance placed on the applicant by applying the Para 18 (d) of the Transfer policy is misconstrued and misconceived. She has also submitted that due to such action of the authorities, the applicant is faced with unwarranted harassment for none of her faults in as much as she could not get materialised her demand for own request/mutual transfers to a place of her choice.

7. Per contra, the learned counsel for the respondents has vociferously controverted the contentions put forth on behalf of the applicant. He has submitted that the applicant was in the

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first instance transferred in the public/administrative interest under Para 18 (d) of the Transfer Policy and she challenged the transfer order before the Hon'ble Bench of the Tribunal at Jaipur. The case came to be dismissed and direction was given to consider her case for posting at nearby places. As per the choice of the applicant, she was transferred to Jodhpur. Transferring her on option to Jodhpur itself would not convert the public interest transfer into her own request transfer and the string of bar of five years period on her transfer cannot be given go bye. He has also contended that whether the applicant was paid TA/DA transfer grant or not would be evident from the records which would be made available within the time specified for this purpose. The learned counsel for the respondents also taken us to the various provisions of the Transfer Policy and has submitted that once an employee has been transferred in the administrative interest, he would be debarred from asking any transfer for a period of five years and the same has been applied to the case of the applicant. Therefore, she cannot be allowed to complain any illegality or impropriety against the act done by the respondents. The Original Application, therefore, deserves to be dismissed and consequently her claim for any request for transfer cannot be entertained for a period of five years.

8. I have considered the rival submission put forth on behalf of both the parties. At the very outset, I would like to mention here that when the case was heard and the order was reserved, the learned counsel for the respondents was directed to clarify their stand and submit the relevant information in regard to the



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factum of payment of TA/DA and transfer grant to the applicant on her move from Nasirabad to Jodhpur for which a specific affidavit was filed by the applicant affirming that the same was not paid to her, since the very transfer order was her own request. The requisite information was to be submitted to this Tribunal by 24.01.2005 but even till date no such details are forthcoming and I am left with no option except to take the version of the applicant as true relating to the said facts.

9. Now adverting to the crux of the matter, in the instant case this Bench of the Tribunal is required to interpret the transfer order dated 21.01.2002 at Annexure A/3, keeping in view the other facts and circumstances of this case. To appreciate the controversy, we find it expedient to extract the contents of the transfer order as under:-

"TRANSFER MODIFICATION ORDER


The transfer of the Smt. Sudesh Singh, PGT (Bio.) Kendriya Vidyalaya, Nasirabad effected vide DVS, Hqrs. Order of even No. dated 22.6.2001 to Kendriya Vidyalaya, Nangalbhur, in public interest is hereby modified to K.V. No. 2, AFS Jodhpur, with immediate effect on her request.

2. Other terms and conditions as contained in the order dated 22.6.2001 will remain unaltered.

3. This issues with the approval of the competent authority."

10. The bare perusal of the aforesaid order indicates that her transfer from K.V. Nasirabad to K.V. Nangal Bhur, Punjab was earlier ordered in public interest but the same is modified to KV No.2 (AFS) Jodhpur with immediate effect on her request. There is absolutely no ambiguity in the order and the same is to be treated only as on her request transfer as per the golden rule of interpretation that is simple meaning of the language used. We also find that the order does not indicate that the applicant

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would be entitled to claim any TA/DA etc. to carry out her transfer. The position is further fortified with her specific statement that she has not been paid any such allowance while undertaking the transfer. The respondents have also failed to clarify the actual position in this matter, therefore, I am left with no option to take the version of the applicant as true on the point that she has not been paid any TA/DA as is admissible on transfer which has been made in the administrative interest.

11. Examining the matter from another angle, the rule of interpretation has been well-amplified by the Apex Court in case of **Mohinder Singh Vs. Chief Election Commissioner, AIR 1978, Page 851** wherein their lordships of Supreme Court, in unequivocally term, have held that order has to be read as it is and nothing can be added or reduced there from para 8 of the said judgement is relevant and the contents of the same are extracted as under:-

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order had in the beginning may, by the time it comes to court on account to a challenge, get validated by additional grounds later brought out."

12. The ratio of the aforesaid decision applies to the facts of the instant case on all fours. Therefore, I am not impressed with the submissions of the learned counsel for the respondents that applicant was transferred in administrative interest from Nasirabad to Jodhpur. I would like to point our here that the respondents cannot be allowed to blow hot and cold together and approbate or reprobate simultaneously inasmuch as while



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applicant was transferred from Nasirabad to Jodhpur, the applicant had forgone the benefits as admissible on transfer for the reason that transfer was on her own request and now the respondents are changing their stand and without paying the TA/DA on transfer they are construing the transfer as in the interest of the administration. Thus, the plea of the respondents is nothing but plea of volte face and ipse dixit which cannot be allowed to deprive the applicant of her legitimate dues. Therefore, the contentions of the learned counsel for the applicant are well founded and find my concurrence.

13. The upshot of the aforesaid discussion is that the Original Application has ample force and the same stands allowed accordingly. The impugned order dated 22.10.2003 at Annexure A/9 and 12.04.04 at Annexure A/11 and hereby quashed. It is directed that respondents shall extend all the facilities/benefits to the applicant by treating her transfer from Nasirabad to Jodhpur at annexure A/3 as a transfer on her own request for all purposes. No costs.

JK Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER

Lalit

Received

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Short

Received
from K. K. Rice
K. K. Rice

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