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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 293/06
Date of decision: 19.01.2007.

Hon'ble Mr. J K Kaushik, Judicial Member.
Hon'ble Mr. R R Bhandari, Administrative Member.

Smt. Jaya Shree Parihar, W/o Shri R.S. Parihar, aged 54 years, R/o 24-B Abhaygarh Scheme, OPP K.V. No. 1 (AF) Jodhpur, Rajasthan. (Presently working as PET KV-BSF, Jodhpur.)

: Applicant.

Rep. by Mr. K. K. Shah: Counsel for the applicant.

VERSUS

1. The Commissioner, Kendriya Vidyalaya Sangathan HQ, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi. 16
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, (Regional Office) 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.

: Respondents.

Rep. By Mr. P. S.Bhati: Counsel for the respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member.

Smt. Jayashree Parihar, has preferred this O.A, wherein she has assailed the order dated 08.12.2006 and the relieving order dated 12.12.2006 (Annex. A/1) and has sought for quashing and setting aside the same with any other favourable orders in her favour.

2. We have heard the learned counsel for both the parties at considerable length and have carefully perused the pleadings as well as the records of this case. The brief facts of this case are that the applicant came to be initially appointed as PET in December 1985 and posted at KV RD Mines. She had undergone numerous transfers and was posted to KV RD Mines, in May 2003. While posted at KV RD Mines, she made a request in 2006-07 for transfer to Jodhpur under

- 2 -

Code 10 which provides preference for posting with spouse. She gave her first priority as Jodhpur. Her request was acceptable and her name was included in the priority list at SI No. 1, which culminated into the issuance of transfer order dated 22.09.2006. She was relieved on 25.09.2006 and she joined at Jodhpur on 26.09.2006. Suddenly, the impugned order dated 12.12.2006 came to be issued whereby the transfer order dated 22.09.2006 itself has been ordered to be cancelled. Hence this application. The O.A has been filed on numerous grounds mentioned in para 5 and its sub-paras.



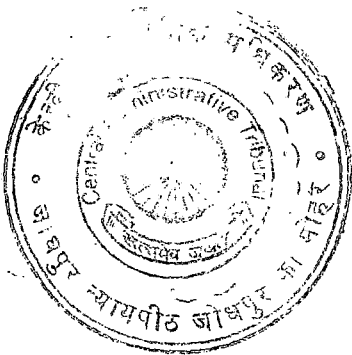
3. The respondents have contested the case and have filed a detailed reply to the O.A. A preliminary objection has been taken that the O.A deserves to be dismissed on the ground of non-joinder of necessary party, i.e. Smt. Sudha Chouhan, who will be directly affected from the outcome of this case. It has also been averred that the respondents have acted bonafidely according to the transfer policy and the same is not under challenge especially when one who has availed the benefits of the transfer policy and the action of the respondents is well in consonance with the Art. 14 of the Constitution of India. It has been averred that the applicant was wrongly considered for transfer and it was found that Smt. Sudha Chouhan was to be actually transferred and therefore the impugned order has been issued. The details of all the PETs at Jodhpur have been mentioned and also certain details of the policy have been adduced. The grounds have also been replied by inter mixing the factual and legal aspect.

4. The learned counsel for the applicant has submitted that once a transfer order has been executed, it cannot be cancelled especially when the applicant has changed her position by incurring lot of

-3-

expenditure for shifting from KV RD Mines to Jodhpur; the transfer being on her own request and no transfer grant and travelling allowance are admissible in such cases. He also submitted that the respondents department is a well organised department and the whole exercise is an after thought just to harass the applicant.

5. Per contra, the learned counsel for the respondents has vehemently opposed the contentions raised on behalf of the applicant. He has laid great emphasis that the whole episode happened because of computer mistake in as much as correct priority was not recorded and subsequently when the mistake came to knowledge of the authorities, they had no option but to correct the same and in consequence the very order of transfer dated 22.09.2006 issued in favour of the applicant had to be cancelled by issuing the impugned order. The impugned order has been issued in consonance with the transfer policy and therefore the action of the respondents cannot in any way be considered as illegal or arbitrary.



6. We have considered the rival submission put forth on behalf of both the parties. As far as the preliminary objection regarding the non-joinder of necessary party is concerned, we find that the fact regarding the proposed transfer of Smt. Sudha Chouhan's has been taken by the respondent only in the reply and therefore it has to be rejected since her name was not at all reflected in any previous orders i.e. either in the transfer order or in the cancellation order issued in respect of the applicant. Therefore, the applicant cannot be expected to know as to who is going to be affected by the order to be passed by this Tribunal. The preliminary objection ~~is~~ stands overruled. Hence there is no obstruction to proceed with the case on merits.

1/11

— 4 —

7. As far as the factual aspect of the case is concerned, there is hardly any quarrel. The applicant was admittedly transferred vide order dated 22.09.2006 from KV RD Mines to KV BSF Jodhpur on her own request. She carried out the transfer and joined the new place of posting on 26.09.2006. The same has been cancelled by the impugned order. The main question involved in the instant case is when once the transfer order is executed, can the same be cancelled? We find that a similar controversy came up for consideration before the Hon'ble High Court of Rajasthan and the same was decided in favour of the writ petitioner therein in case of **Kalu Singh vs. State of Rajasthan** [2003 (3) SLR 102]. The Hon'ble High Court has held that once a transfer order has been executed the same cannot be cancelled. Therefore, the issue has been already settled and does not remain res integra. If that be so, we have absolutely no hesitation in following the above ratio laid down by the Hon'ble High Court of Rajasthan, in the aforesaid case; rather we are bound by it and decide this case on similar lines. We do not find any necessity to examine the other grounds raised in this case.



8. In the premises, we find that there is ample force in this O.A and the same stands allowed, accordingly. The impugned order dated 08.12.2006 and the relieving order dated 12.12.2006 (Annex. A/1) are hereby quashed with all consequential benefits. The interim order already granted is made absolute. In the facts and circumstances of this case, the parties are directed to bear their own costs.

R R Bhandari
(R R Bhandari)
Administrative Member

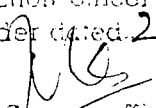
jsv

J K Kaushik
(J K Kaushik)
Judicial Member.

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Shale
Jog Singh D.A.

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of
12/16/2011
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P.S. Shanti

Part II and III destroyed
in my presence on 2/6/14
under the supervision of
section officer (J) as per
order dated 26/3/2014


Section officer (Record)