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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, Jodhpur**

Original Application No. 72/2007

Date of decision: 12.12.2008

Hon'ble Mr. N.D. Raghavan, Vice Chairman

Hon'ble Mr. Tarsem Lal, Administrative Member.

M.M.A. Usmani, S/o shri M.S. Usmani, aged about 45 years, by caste Muslim, r/o House No. 325, Bamba Behind Choti Mazid, Jodhpur. Working as Post Graduate Teacher (Maths) Awaiting for posting orders, last posting at Kendriya Vidyalaya No. 2 Army, Jodhpur.

: Applicant.

Rep. By Mr. Manoj Bhandari,: Counsel for the applicant.

VERSUS

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1. The Union of India through the Secretary, Ministry of Human Resource, New Delhi.
 2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Sahidjeet Singh Marg, New Delhi 110 016.
 3. The Joint Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Sahidjeet Singh Marg, New Delhi 110 016.
 4. The assistant Commissioner, Kendriya Vidyalaya, Regional Office, 92, Gandhi Nagar Marg, Bazar Nagar, Jaipur.
 5. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Bhopal.
 6. The Principal Kendriya Vidyalaya No. 2 Army, Jodhpur.
 7. The Principal, Kendriya Vidyalaya no. 3, Morar Cantg. Gwalior. 474006

: Respondents.

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

ORDER

Per Mr. Tarsem Lal, Administrative Member.

The applicant has filed this O.A. praying for the following reliefs:

"8. (I) by an appropriate order or direction, the Respondents no. 2 and 3 be directed to permit the applicant to join the duties at the last place of



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posting at K.V. No. 3, Gwalior in pursuance of the posting order dated 15th September, 2005 or pass fresh order of posting on the post of PGT (Maths) anywhere in the country with all consequential benefits including the arrears of pay.

(II) Without prejudice to above, by an appropriate order or direction, the respondents be directed to consider the case of the applicant to place him for posting anywhere near Jodhpur preferably Udaipur, Delhi on the post of PGT (Maths) forthwith with all consequential benefits including arrears of salary.

(III) By an appropriate order or direction, it is therefore, prayed that if during the pendency of the original application any orders effecting the rights of the applicant is passed or his services are terminated by any order passed by the respondents, the same kindly be declared illegal and be quashed with all consequential benefits.

(IV) By an appropriate order or direction, the respondents be directed to pay compensation to the tune of Rs. 1 lac to the applicant for the harassment caused to him by the respondents administration forthwith.

(V) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit and just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant."

2. The facts of the case are that the applicant was initially appointed as TGT (Maths) in KVS on 06.08.86. (A/1) and he was posted at Jhunjhunu. Thereafter, the applicant was posted at K.V. No. 2 Army Jodhpur on 01.11.97. While so he was promoted to the post of PGT (Maths) vide order dated 11.10.2002 (A/2). When the promotion was ordered, he was on leave from 23.08.2002 to 19.11.2002, and his leave was extended upto 27.11.2002, which was sanctioned, vide order dated 25.11.2002 (A/3).

3. The applicant joined his duties on 27.11.2002(A/4). As the applicant was already promoted as PGT (Maths) he was posted at KVS Bhusawal. He was granted time till 21.12.2002, to join at Bhusawal, vide order dated 11.12.2002 (A/5). In the meanwhile the applicant had to go to Hyderabad to pick up his daughter, who was undergoing treatment at Hyderabad and hence he had applied for leave on 13.12.2002 for the period from 13.12.2002 upto

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20.12.2002 (A/6). While the applicant was on leave, he was relieved from Jodhpur w.e.f. 18.12.2002, vide communication dated 18.12.2002 (A/7). As his daughter is deaf and dumb and his mother is aged and blind, he therefore ~~had~~ submitted a letter dated 29.12.2002, praying for sanction of leave and extension of time to join duties till 20.03.2003. The applicant further sent a telegram on 22.03.2003 with regard to extension of leave as well as willingness to join at Bhusawal. On receipt of the same, the respondents issued a letter dated 24.03.2003 (A/9) directing the applicant to report for duty immediately after prior permission of the Assistant commissioner, KVS, Mumbai. Thereafter a telegram dated 26.03.2003 (A/10) was received by the applicant to report for duty on or before 31.03.2003, failing which Clause 81 (d) of the Educational Code will be applied.

4. As it was a short time, therefore, applicant could not reach at Bombay in time. Accordingly the applicant requested that since he could not reach Bombay in time, he should be given more time to report at Bombay. The respondents instead of giving extension of time, issued a show cause notice vide communication dated 08.04.2003 (A/11) as to why he should not be treated as having voluntarily abandoned his services and thereby lost his lien. The applicant submitted a reply specifically pointing out that initially due to family problems he had requested to sanction leave till March 2003, to join duties and thereafter he is ready to join duties. While so another communication dated 05.05.2003 was received

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by the applicant that he should now join at KVS Bhusawal not later than 20.05.2003. On receipt of the same, the applicant immediately communicated with the respondents that whether in the summer vacation he should join duties or not. Thereafter he received a communication on 30.05.2003 (A.14) that he may join duties till 23.06.2003 and not later than that failing which loss of lien would be confirmed.

5. The applicant again sought time since he had to leave for Hyderabad for the treatment of his daughter who is stated to be deaf and dumb. The time as prayed for by the applicant was extended and he was asked to join duty on 06.07.2003, vide communication dated 02.07.2003(A/16).

6. The applicant reached Bhusawal on 06.07.2003. 06.07.2003 being Sunday, he reported for duty on 07.07.2003 (A/17). However, the Principal, KVS Bhusawal did not allow him to join duty since no post of PGT (Maths) is available and directed the applicant to report at Headquarter for further posting orders. In pursuance to the above the applicant reported to Headquarter along with a copy of joining report along with the comments of the Principal KVS Bhusawal, to respondent No. 1 on 11.07.2003. As no response was given to him, he came back to Jodhpur on 11.07.2003. Thereafter, he submitted a representation dated 11.07.2003 (A/18) along with the joining letter dated 07.07.2003 and the comments of the Principal, KVS, Bhusawal. Since there



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was no response to the representation dated 11.07.2003, he made another representation dated 06.09.2003 (A/19). Even to that also there was no response from the respondents. Therefore, the applicant submitted further representations dated 29.10.2003 and 23.01.2004. Finally, a copy of communication dated 05.03.2004, (A/20) written by the Assistant Commissioner, KVS, Jaipur, addressed to the Principal KVS, No. 2 Army, Jodhpur was received by the applicant, informing that he had been posted to Gwalior. Thereafter the applicant went to Gwalior to join duties but he was not taken at Gwalior and he was apprised that since there is no specific order of posting of the applicant at Gwalior, therefore, he couldn't join in KV 3 Gwalior. As there was no alternative the applicant had again submitted a representation dated 30.04.2004 (A/21) to respondent No. 1. He did not receive any reply for the same. Thereafter he made several representations dated 26.01.2005, 15.04.2005 and 15.07.2005. But there was no response for the same till date.

7. On 30.08.2005, the respondents issued a memorandum directing the applicant to report at K.V. No. 3 Gwalior, by 05.09.2005. But the applicant did not receive the same. Therefore, he could not reach Gwalior by 05.09.2005, but he reached Gwalior on 07.09.2005. But the Principal, K.V. No.3, Gwalior did not allow him to join duty since he did not join duties on or before 05.09.2005. The Principal, KVS, forwarded this report. No. 3 Gwalior to the Assistant Commissioner, Bhopal on

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07.09.2005 itself along with the representation of the applicant. In response to the above representation, the competent authority granting him extension of time upto 20.09.2005 passed an order. But the applicant on 21.09.2005 received that order and hence he could not join his duties at Gwalior on 20.09.2005. Therefore, the applicant made another representation on 23.09.2005. Thereafter, the applicant made representations on 03.10.2005, 16.12.2005 and 09.01.2006 and 25.04.2006, but he has not received any response.

8. The applicant finally served a notice for demand of justice on 10.10.2006 (A/29). No reply was received by the applicant from the respondents even to the notice for demand of justice. It is submitted by the applicant that in view of the reasons beyond his control, the applicant has been bereft and deprived from joining at Gwalior despite best efforts made by him. The applicant states that for the past 4 1/2 years he has been suffering and therefore his case may be considered sympathetically.

9. The respondents have contested the O.A, inter alia pleading that the applicant was sending leave applications under one pretext or the other without caring to join his duties on promotion and the study of the students was suffering badly in KVS. As per KVS leave rules, leave cannot be claimed as matter of right and the same has to be sanctioned in accordance with rules. It is further stated that action was taken as per clause 81 (d) of the Education Code by the



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competent authority of KVS due to his willful absence from duty. The applicant was given full opportunity to join his post on promotion, but he failed again and again and the respondents came to the conclusion that he was not interested in joining as PGT (Maths) on promotion.

10. He was also given full time to take care of his daughter and at the same time due to lack of teachers study was badly affected in KVS. He was given memorandum but he was always seeking extension of leave from time to time.

11. As per Sec. 7 of the CCS (Leave) Rules 1972 leave cannot be claimed as a matter of right. Sec. 23 says that an employee could be recalled to duty before expiry of the leave period and such recall before the expiry of the period shall be treated as compulsory in all cases. Sec. 24 says that a Government servant who is on leave shall not return to duty before the expiry of the leave period unless he is permitted to do so by the authority, which granted the leave.

12. The applicant was sending his leave applications under one pretext or the other without caring to join his duties on promotion and therefore, the study of the students were badly affected. Therefore, action was taken as per clause 81 (d) of Education code by the competent authority of KVS due to his willful absence from duty. Full opportunity was provided to him to join his post on promotion but he failed again and again and it seems that he was

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not interested to join his post on promotion. In view of the above the respondents have prayed that the O.A may be dismissed as devoid of any merit.

13. The applicant has filed rejoinder to the reply, wherein the arguments already given in the O.A have been reiterated.

14. Learned counsel for the parties have been heard. They generally reiterated the arguments given in their respective pleadings. The learned counsel for both the parties made us to go through the documents placed on record.

The learned counsel for the applicant has emphatically pleaded that the applicant is very much willing to join his duties. He has been requesting for sanction of leave time and again due to sickness of his daughter, who is undergoing treatment at Hyderabad continuously. He reported to the authorities in KVS, Bhusawal for duties but he was not allowed to join his duties on the plea that there was no post of PGT (Maths) available for him. Subsequently, when he was posted to Gwalior, he reached Gwalior also for joining duties but he was not allowed to join duties there on the plea that there was no specific order for his posting at Gwalior. On the basis of another communication, he was directed to report at KVS 3 Gwalior for duties by 20.09.2005, whereas he on received the above said communication 21.09.2005 and therefore he was unable to join duties at Gwalior on 20.09.2005.

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Subsequently he made representations to the authorities but there was no response from the respondents.

15. The learned counsel explained that the respondents have not held any inquiry and no disciplinary action has been taken against the applicant so far. He further submitted that when no inquiry has been conducted and no disciplinary proceedings initiated against the applicant, no adverse orders could be passed against the applicant.

16. In this regard the learned counsel for the applicant has relied on the following judgements:

(i) **K.C. Joshi vs. UOI and ors.** [(1985) 3 SCC 153]; **Mukesh Advani vs. State of M.P** [(1985) 3 SCC 162]; **Ashok Kriplani vs. The State of Rajasthan and ors.** [WLR 1992 (S) Raj 359]; **M/s National aluminium Co Ltd. Vs. Deepak Kumar Panda and others** [AIR 2002 SC 2498]; **Lakshmi Precision Screws Ltd. Vs. Ram Bahagat** [(2002) 6 SCC 552]; **Uptron India Ltd. Vs. Shammi Bhan and another** [(1998) 6 SCC 538]; **Scooters India and ors. Vs. Vijai E.V Eldred** [(1998) 6 SCC 549]; **D.K. Yadav vs. J.MA Industries Ltd.** [(1993) 3 SCC 259]

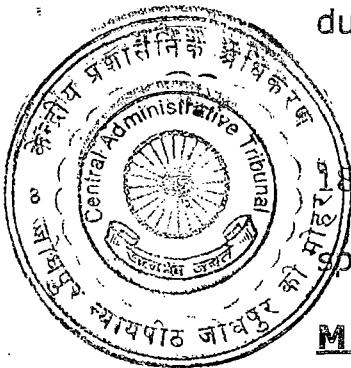
17. The learned counsel for the respondents strenuously pleaded that after his promotion as PGT (Maths) , he was relieved from

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KVS, Army 2 Jodhpur with effect from 18.12.2002 (AN) (A/7). But the applicant was not interested in joining his duties and he was extending his leave from time to time under one pretext or the other. Ultimately, when he went to Bhusawal on 07.07.2003 (A/17) for joining in KVS, he was not taken on duty by the Principal on the plea that there was no vacancy of PGT (Maths). Similarly when the applicant was posted to KVS 3, Gwalior , he repeatedly sought extension of time and it was considered by the authorities that the applicant was not interested in joining as PGT (Maths) on promotion. The learned counsel emphatically pleaded that the applicant had made repeated representations for his posting at Jodhpur or Delhi and therefore he was not interested in joining his duties at other places.



18. Mr. Manoj Bhandari learned counsel for the applicant specially relied on the judgement of the Apex Court in the case of **M/s National aluminium Co Ltd. Vs. Deepak Kumar Panda and others** (supra) and contended that there cannot be any automatic termination of service without enquiry. He also relied on the judgement of a Constitution Bench of the Apex Court in the case of **Jai Shanker vs. State of Rajasthan** (supra) and contended that removal from service without giving opportunity to show cause is illegal.

19. We have considered the rival contentions and perused various documents placed on record including judgement relied on

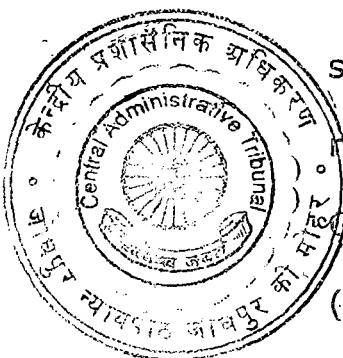
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by the learned counsel for the applicant. It is clear that the applicant was promoted as PGT (Maths) and was posted to KVS, Bhusawal from KVS Army 2, Jodhpur. He was relieved from Jodhpur on 18.12.2002 (AN) for joining at KV Bhusawal. The applicant had been making repeated representations and requesting for extension of leave under one pretext or the other. But when he reported for his duties at Bhusawal on 07.07.2003 (A/17), after a period of seven months (approximately), he was not taken on duty on the ground that there was no vacant post of PGT (Maths) at Bhusawal since the same had been already filled up presumably in view of the urgent requirement of the students.

20. He was again posted at KVS 3 Gwalior but he repeatedly submitted applications for extension of leave and by the time he reported at Gwalior, there was no specific order of his posting at Gwalior. Thereafter another order was passed on 15.09.2005, (Annex: A/25), vide which he was directed to report for duty on or before 20.09.2005, whereas the said communication was received by the applicant on 21.09.2005 and therefore he was unable to join his duties at Gwalior. Subsequently, he made numerous representations to the respondents for giving his posting orders at Jodhpur or New Delhi but the same were not replied to by the respondents. The respondents had presumed that since the applicant was relieved on 18.12.2002 from Jodhpur and he had not joined his duties till 20.09.2005, at Gwalior, he has therefore, abandoned his duties. He was, therefore, issued a notice under



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para 81 (d) of the Education Code of Kendriya Vidyalaya. Under these circumstances the respondents have not issued any further posting orders.

21. In this case, it is seen that against the applicant no inquiry has been conducted and no disciplinary action was taken against him. It is also seen that no adverse orders have been passed against the applicant till date except issuing a notice under para 81 (d) of the Education Code. The applicant had been repeatedly asking his posting either in Jodhpur or in Delhi in his different representations. It is seen from notice for demand of justice that he is requesting for a fresh posting order. Therefore, we are of the considered opinion that the employer-employee relationship still subsists and the same has not come to an end till date.

22. With regard to posting of the applicant at Jodhpur or Delhi, the Apex Court has time and again held that transfer is an incidence of service and the employee cannot ask for a particular place of posting. It has been held by the Apex Court in the case of

National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan,
[(2001) 8 SCC 574]

"It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer

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is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

(Emphasis supplied)

23. This Court considers that core area of responsibility of Kendriya Vidyalaya Sangathan is to impart qualitative education in multi disciplines to the students who join KVS with high aspirations. The applicant on his promotion as PGT (Maths) has willfully absented himself from joining his duties under one pretext or the other and shirked his responsibilities. Imparting education is a very pious profession but the applicant failed to realize that his absence will cause a huge loss to the students who are at the threshold of entering into the competitive world of education and would be going to professional institutions. If he was not in a position to join at Bhusawal and Gwalior, he should have refused to take his promotion as PGT (Maths). The respondents are not expected to keep any post vacant and particularly of a PGT (Maths) for an indefinite period simply for the reasons that the place of posting does not suit to the applicant. This Court is constraint to observe that the applicant has failed to discharge his duties conscientiously.

24. The case laws quoted by the learned counsel for the applicant is distinguishable on facts and grounds of this case.

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25. It is seen that the respondents were also granting extension of leave to the applicant by considering his family problems. Whereas they have not taken any disciplinary action against the applicant for such a long absence except issuing a mere notice under para 81 (d) of Education code for KVS for abandonment which is open ended and without coming to a logical conclusion.

26. In view of the above discussion the respondent No.1 is directed to issue fresh posting orders to the applicant giving clear period of four weeks for joining his duties. He may be given posting to any station where PGT (Maths) post is available, within a period of three months from the date of receipt of a copy of this order.

27. The period of absence from 18.12.2002 to till the date the applicant joins his duties will not be counted as duty for any purpose and he will not be entitled to any pay and allowances for the above said period under the principle of 'no work no pay'.

28. O.A is disposed of in the above terms. No order as to costs.

Tarsem Lal
[Tarsem Lal]
Administrative Member.

Jsv.

Chidambaram
[N D RAGHAVAN]
Vice Chairman.

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cart II and III destroyed
in my presence on 19/12/03
under the supervision of
section officer (J) as per
order dated 19/12/2014

Section officer (Record)

Received Log
by T. S. Singh
19/12/03
[R. S. SHER KHANWATI
Adv.]