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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR**

Original Application No. 89/2007  
with  
Misc. Application No. 72/2007

Date of order: 2nd Nov. 2007.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. YOG, JUDICIAL MEMBER.**

**HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.**

Smt. Jayshree Parihar W/o Shri R.S. Parihar, aged 54 years, R/o 24-B, Abhaygarh Scheme, Opp. K.V. No. 1 (AF), Jodhpur (Raj.).

(Ex.- PET, KV BSF, Jodhpur.

...Applicant.

Mr. K.K. Shah, counsel for applicant.

**VERSUS**

1. The Commissioner, Kendriya Vidyalaya Sangathan HQ, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi - 110016.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, (Regional Office) 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015.

...Respondents.

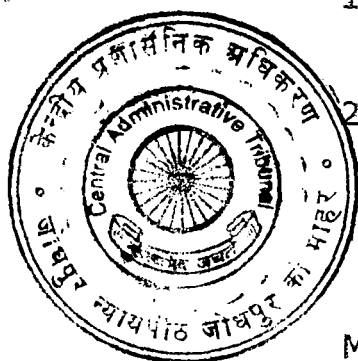
Mr. P.S. Bhati, counsel for respondents.

**ORDER**

**(Per Hon'ble Mr. Tarsem Lal, Administrative Member)**

The applicant, Smt. Jayshree Parihar, has filed Original Application No. 89/2007 with a prayer that this Original Application may kindly be allowed with costs and by issuance of an appropriate order or direction the impugned order dated 20.04.2007 (Annexure-A/1) vide which the loss of lien on her abandonment post of PET has been confirmed and removed from the service of Kendriya Vidyalaya Sangathan, may kindly be quashed and set aside.

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2. The brief facts of the case are that Smt. Jayshree Parihar was appointed in the services of Kendriya Vidyalaya Sangathan (K.V.S., for short) in December, 1985 and had been posted at various Kendriya Vidyalayas. In 2006-2007, while she was posted at K.V. RD Mines, she submitted her application for transfer and was posted from K.V. RD Mines to K.V. BSF, Jodhpur vide order dated 22.09.2006 (Annexure A/2). The above transfer order was cancelled vide order dated 08.12.2006 (Annexure A/3). The applicant preferred O.A. No. 293/2006 against the above order dated 08.12.2006 and the same was quashed by this Bench of the Tribunal vide order dated 19.01.2007.



3. In compliance of this Tribunal order dated 19.01.2007, the respondent No. 2 withdrew the order dated 08.12.2006 vide order dated 02.03.2007 (Annexure A/4) and passed another order on the same date i.e. 02.03.2007 (Annexure A/5) transferring her from KV (BSF) Jodhpur to KV (BSF) Pokaran in Public interest with immediate effect. She was relieved from KV BSF, Jodhpur on 09.03.2007.

4. The applicant approached this Bench of the Tribunal vide O.A. No. 51/2007 in which notices were issued to the respondents. As this Bench of the Tribunal did not issue any interim order in her O.A. No. 51/2007, she filed a D.B. Civil Writ Petition No. 1623/2007 (Annexure A/6) before the

Hon'ble High Court of Judicature for Rajasthan at Jodhpur. The above writ petition was admitted by the Hon'ble High Court and notices issued to the respondents vide order dated 29.03.2007 (Annexure A/6). After she was relieved from KV BSF, Jodhpur, she was not in a fit mental state to inform the respondents about her medical problems till she received a memorandum dated 04.04.2007 (Annexure A/8) which was a show cause notice for abandonment of her post under Article 81 (d) (3) of Education Code. On receipt of show cause notice dated 04.04.2007, the applicant sent leave application dated 10.04.2007 for Earned Leave for the period from 10.03.2007 to 18.04.2007 to the respondent No. 2 by FAX as well as by Registered Post. She subsequently sent another leave application dated 20.04.2007 for extension of Earned Leave for the period from 19.04.2007 to 28.04.2007 to the respondent No. 2 by FAX as well as by Post. It was shocking that on the very day i.e. on 20.04.2007 when she had requested for extension of leave for the period from 19.04.2007 to 28.04.2007, the respondent No. 2 issued the impugned order dated 20.04.2007 (Annexure A/1) confirming the loss of lien on her abandonment of the post of PET and removed from service of KVS w.e.f. 10.03.2007.



5. The applicant had submitted that her request for sanction of earned leave for the period from 10.03.2007 to 18.04.2007 has not been denied, though she has not been conveyed the sanction for the same. She had further applied for extension

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of earned leave on 20.04.2007 for the period from 19.04.2007 to 28.04.2007. It appears that application for grant of earned leave has not been considered on the ground that it was not supported by any medical certificate, as it has been stated in the impugned order that on careful consideration of all the relevant facts and circumstances mentioned by the applicant in the representation dated 10.04.2007, the respondent No. 2 has come to the conclusion that she is deemed to have voluntarily abandoned her service of KVS.



6. Sub para (1) (b) of Article 81 (d) envisages that the appointing authority should be satisfied of the reasons of not joining the duties and in the present case the applicant has categorically stated that she was not mentally fit to resume duties. If at all, medical certificate/s were required to sanction Earned Leave, the same should have been asked for. The respondent No. 2 neither asked for any medical certificates nor conveyed the grant of Earned Leave.

7. Sub para 5 of Article 81 (d) envisages that the appointing authority may grant an oral hearing (though at his discretion) but once it is a matter of terminating the services of the applicant, he ought to have given oral hearing to the applicant or record reasons for not doing so. Failure to do so has prejudiced the case of the applicant and such<sup>a</sup> drastic action is clearly taken in haste and against the 'principle of

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natural justice', i.e. punishing without giving reasonable opportunity to defend.

8. Aggrieved by the above, she has filed present Original Application and asked for the relief as given in para 1 above.

9. On the contrary, the respondents have filed a detailed reply to the O.A. and have not agreed to the relief asked for by the applicant. The respondents have stated that O.A. deserves to be dismissed on the ground of non-joinder of the necessary party i.e. Smt. Sudha Chouhan, who is directly affected from the outcome of this case as there is one post and two contenders for the same. In O.A. No. 237/2006 Smt. Sudha Chauhan vs. the Commissioner & Ors., this Tribunal issued notices on 10.10.2006 and after receiving the notices the respondent-department considered the matter on merits and found that due to an inadvertent error in the software the priority of Smt. Sudha Chouhan has not been considered in the category of posting with Spouse. It was also found that Smt. Jayshree Parihar w/o Shri R.S. Parihar had wrongly been considered for transfer to KV, BSF Jodhpur instead of Smt. Sudha Chouhan. The rectification of error was immediately taken up and Smt. Sudha Chouhan was transferred accordingly, while the transfer order of Smt. Jayshree Parihar was cancelled. The priority of Smt. Jayshree Parihar was erroneously decided and the same was rectified subsequently.



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10. The Tribunal decided the case of Smt. Sudha Chouhan on the ground that since the relief claimed has been granted, therefore the O.A. filed by her becomes infructuous. While deciding the case of Smt. Jayshree Parihar, the Tribunal observed vide its order dated 19.01.2007 that there was no dispute on facts and without examining any other grounds in the case the matter stands decided only on the ground that her transfer order cannot be cancelled while following the ratio of Kalu Singh vs. State of Rajasthan, 2003 Vol. 3, SLR 102. Therefore the order of transfer cancellation dated 08.12.2006 and relieving order dated 12.12.2006 were withdrawn by the department in compliance of the order of the Tribunal.



11. However, after rectifying the priority list and as per transfer guidelines, Smt. Jayshree Parihar has been transferred from Jodhpur to Pokaran in the public interest with immediate effect as there is only one sanctioned post of PET at KV BSF, Jodhpur and two PETs were working. The respondents have pleaded that they have acted in a bona fide manner and tried to remove the anomaly caused due to fault in the software.

12. The applicant was relieved from KV (BSF), Jodhpur on 09.03.2007 (Annexure A/2 to O.A. No. 51/2007) with the direction to report to Principal KV (BSF) Pokaran immediately and the Principal KV (BSF) Pokaran reported to the

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respondents that the appellant has neither resumed her duties by 04.04.2007 nor any intimation had been received. On 04.04.2007, the applicant was issued memorandum regarding 'Order of Provisional loss of lien on the post' and show cause notice under Article 81 (d) (3) of Education Code with the directions to submit the reply within 10 days. The applicant submitted her representation dated 10.04.2007 without medical certificate stating that due to her mental and physical condition she is not fit to join next place of posting, therefore earned leave w.e.f. 10.03.2007 to 18.04.2007 may please be sanctioned even after 18.04.2007 the applicant neither reported for her duties at KV (BSF) Pokaran nor submitted any documentary proof for absence from her duties. Therefore, the respondents informed the applicant vide letter dated 20.04.2007 that she had not joined her duties by 20.04.2007 nor applied for extension of leave. After careful consideration of all the relevant facts and circumstances and gravity in the matter mentioned by her in the representation dated 10.04.2007, the respondents had come to the conclusion that the applicant deemed to have voluntarily abandoned her services of Kendriya Vidyalaya Sangathan and provisional loss of lien on her post. Accordingly, the respondents confirmed the loss of lien on her abandoned post of PET vide office letter dated 20.04.2007 (Annexure A/1) and thus the applicant was subsequently removed from the service of KVS from the date of remaining absent from duties i.e. 10.03.2007.



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13. The respondents have, therefore, requested that in view of the reply furnished by them, the applicant has no case in her favour and she is not entitled to get any relief from this Hon'ble Tribunal and her application deserves to be dismissed.

14. Applicant has not filed Rejoinder to the counter-reply of the Respondents.

15. Question of 'abandonment of service' by the Applicant was considered earlier by a Division Bench of this Tribunal and vide interim order dated 27<sup>th</sup> April, 2007 the respondents were directed to take her on duty on 30.04.2007 (mentioned as 30.05.2007 on account of typographical error). Operative portion of the interim order dated 27<sup>th</sup> April, 2007 is as under: -



*"7. Leave applied for and the application for extension is not rejected. Instead removal order was passed. We notice that the applicant is on leave up to 28.4.2007 and therefore, termination order dated 20.4.2007 which is based on earlier proceedings dated 4.4.2007, cannot legally occupy the field. There may be technical hurdle to continue action, if once leave is granted on the initial application. So, although there is an order of removal, we feel that it is required to be kept under suspension and should not be operational. As a consequence, respondents will be bound to admit the applicant for duty, if she report for duty on 30.5.2007, before the Principal, Central School, Pokhran. She may present herself for duty at Central School, Pokhran and Principal KV should admit her for duty, on production of a copy of this order. She will have to intimate the Assistant Commissioner by forwarding a compliance report. After hearing the respondents, of course, if requirement is found, follow up orders could be passed.*

*(Signature)*



16. Subsequently, the applicant has filed Misc. Application No. 72/2007 stating that Hon'ble C.A.T. passed an interim order on 27.04.2007 in O.A. No. 89/2007, whereby the applicant was directed to report on duty at KV BSF, Pokaran on 30.05.2007. The applicant has stated that Hon'ble Tribunal while giving direction in open court, gave the date of joining duty on 30.04.2007, but due to typographical error the date appeared in the order dated 27.04.2007 as 30.05.2007.



17. The applicant reported for duty at KV BSF, Pokaran on 30.04.2007 at 0805 hrs. In the morning, the entry was made at BSF gate of the same. She was not permitted to join her duties at KV BSF, Pokaran by the Principal and was directed to report to respondent No. 2 as he had instructed the Principal KV BSF, Pokaran in the morning of 30.04.2007 itself. However, no authority was given for move from Pokaran to Jaipur. That in spite of repeated request by the applicant, the Principal neither spoke to the respondent No. 2 on phone, nor accepted joining report. The applicant left KV BSF, Pokaran at about 1025 hrs. on 30.04.2007 and the entry for the same was made at the BSF gate. The Principal, KV BSF, Pokaran received the copy of the order of the Hon'ble Tribunal dated 27.04.2007 and the receipt for the same was given on the photocopy (Annex. A/1 to the M.A.). On 30.04.2007 after coming back to Jodhpur from Pokaran, the applicant sent one more application by

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registered post to respondent No. 2 and the Principal KV BSF, Pokaran bringing out the error in date in order dated 27.04.2007. The applicant had stated that by not allowing the applicant to join her duties at KV BSF, Pokaran on 30.04.2007 by respondent No. 2 and the Principal falls under contempt of court that although the date in the order was indicated as 30.05.2007 but in the open Court the Tribunal had mentioned the dated of joining as 30.04.2007. She has prayed that the respondents may please be directed to treat the applicant on duty w.e.f. 30.04.2007 and the date of joining the duty may please be amended from 30.05.2007 to 30.04.2007 in the order dated 27.04.2007 as directed in the open Court.



18. The respondents have filed reply to the above Misc. Application and have stated that the respondents have complied with the order in true spirit. It is abuse of process of law to even state in the court that an advantage of the error has been taken by the department which has hundreds of employees like the applicant and does not have any prejudice against any one employee. The respondents have pleaded that it is self contradiction in the approach of the applicant because when the department has committed typographical error, the applicant does not want to accept it whereas she is harping upon some typographical error in the order and wants to take benefit out of it. The respondents pleaded that as the order was complied in its true spirit and

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there is no question of any contempt and the pleadings itself show that it is a mere averment for the sake of it because there is no prayer pertaining to the same. It is therefore, prayed that the Misc. Application filed by the applicant may be dismissed with costs.

19. Learned counsel for both the parties have been heard.

Learned counsel for the applicant pleaded that this Hon'ble Tribunal had issued an interim order on 27.04.2007 directing the applicant in the open court to join her duties on 30.04.2007 whereas in the order the date was given as 30.05.2007 as a typographical error. The applicant reported in KV BSF, Pokaran on 30.04.2007 and she was not allowed to join her duties. He also pleaded that she has not been paid her salary for the period from 30.04.2007 to 29.05.2007.



20. Learned counsel for the respondents pleaded that Kendriya Vidyalaya Sangathan has comprehensive transfer policy which lays the basic principles of transfers, as under: -

**"NEW TRANSFER GUIDELINES W.E.F. 14.03.2006"**

**1. BASIC PRINCIPLES**

1.1 All employees of the KVS are liable to be transferred and posted anywhere in India, at any time, and for any period, as requirements of public service and of the Sangathan may dictate. Transfers and postings are a right of the Sangathan which it would endeavour to exercise in the best interest of the students, with due regard to the principles of equity and transparency vis-a-vis its employees.

1.2 These guidelines regarding transfers are meant essentially for the internal use of the Sangathan and do

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*not vest any employee with any right.*  
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21. He further pleaded that due to software problems, Smt. Sudha Chouhan was not assigned the proper priority of transfer to Jodhpur under category of posting with spouse as her spouse is working as TGT (Bio) at Kendriya Vidyalaya No. 1, AFS, Jodhpur whereas Smt. Jayshree Parihar was allotted transfer category of posting with spouse and her husband is working in a private service. Therefore, the error was rectified and Smt. Sudha Chouhan was posted at KV BSF, Jodhpur whereas in the case of Smt. Jayshree Parihar, this Bench of the Tribunal had directed that her transfer order cannot be cancelled as the same has already been implemented following the ratio of Kalu Singh vs. State of Rajasthan [2003 (3) SLR 102]. Therefore, her transfer order dated 08.12.2006 from KV BSF, Jodhpur to KV RD Mines was cancelled and a fresh transfer order dated 02.03.2007 from KV BSF, Jodhpur to KV BSF, Pokaran was issued. As Smt. Jayshree Parihar was relieved on 09.03.2007 - she did not join her duties, therefore, a memorandum dated 04.04.2007 intimating the factum of voluntary abandonment of service by Smt. Jayshree Parihar, was issued. She was also to make written representation to the Assistant Commissioner, Kendriya Vidyalaya Sangathan (Regional Office) Jaipur through proper channel within 10 days of the receipt of this order failing which an order shall be passed confirming loss of lien on the post held by her and, in that case, she shall be



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deemed to have been removed from the service of the Kendriya Vidyalaya Sangathan as per the provisions of Article 81 (d). She subsequently sent an application requesting for earned leave upto 18.04.2007. On expiry of earned leave, she did not join her duties, therefore, order dated 20.04.2007 confirming the loss lien on her abandoned the post of PET, was issued removing her from the service of Kendriya Vidyalaya Sangathan w.e.f. the date of her remaining absent from duties i.e. w.e.f. 10.03.2007, as the representation dated 10.04.2007 submitted by Smt. Jayshree Parihar is not supported by any Medical Certificate and even she had not reported for duties on 19.04.2007. Further she has neither applied for any extension of leave w.e.f. 19.04.2007 nor submitted any documentary proof for absence from the duties.



Respondents further submitted that the competent authority confirmed the loss of lien on her abandonment of the post of PET and removed her from the service of KVS as per existing orders. He, therefore, requested that the O.A. filed by the applicant may be dismissed.

22. Learned counsel for the respondents relied upon the case of **S.C. Saxena vs. Union of India and Others** reported in 2006 Supreme Court Cases (L&S) 1890, which stipulates as under:

*"6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a*

government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty.



7. The learned counsel for the appellant urged that the appellant had reported for duty on 7-7-1989 and that he had applied for leave for 10-7-1989 and 11-7-1989 and, therefore, the enquiry officer could not hold him guilty of the misconduct of continuously remaining absent unauthorisedly. It has also been attempted to impress upon us that the enquiry officer found the appellant only partly guilty and that, if the disciplinary authority wanted to differ therefrom, he should have followed the Rules, issued notice in this connection and given cogent reasons for his difference of opinion with the enquiry officer. We are not impressed by this argument. The enquiry officer rightly said that the charge could not be fully established because the evidence showed that between 7-7-1989 to 11-7-1989 the appellant could not be said to have remained absent unauthorisedly. Of course, there is no doubt that the appellant was absent unauthorisedly for the rest of the period. The enquiry officer also took cognizance of this fact and the disciplinary authority noticed it. This is not a situation where the disciplinary authority was disagreeing with the findings of the enquiry officer, which would have required following of some procedure prescribed under the Rules. On the contrary, barring five days between 7-7-1989 to 11-7-1989, during the rest of the period the appellant was absent unauthorisedly, and the enquiry officer and the disciplinary authority were in agreement thereupon."

23. We have carefully considered this case and perused the documents. Smt. Jayshree Parihar was relieved from KV

*(Signature)*

BSF, Jodhpur on 09.03.2007 and she was entitled to joining time for a period of seven days, as admitted by both the counsel for the parties and stipulated under Article 67 of the Education Code for the Kendriya Vidyalayas. Whereas respondents are counting her period of absence from 09.03.2007; the day on which she was relieved from Jodhpur which is against the above rule position.

As regards the voluntary abandonment of service, Article 81 (d) [1 (a) & (b)] and 4 & 5 of Education Code for the Kendriya Vidyalayas, stipulates as under: -

**"81. (d) Voluntary Abandonment of Service**

The KVS vide letter F.No. 11-12-/2000 - KVS (Vig.) dated 04.09.2002 has conveyed the following decision on.



1. If an employee has been absent/remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall provisionally lost his lien on his post unless: -

(a) he returns within fifteen calendar days of the commencement of the absence or the expiry of leave originally granted or subsequently extended, as the case may be; and

(b) satisfies the appointing authority that his absence or his inability to return on the expiry of the leave as the case may be was for reasons beyond his control. The employee not reporting for duty within fifteen calendar days and satisfactorily explaining the reasons for such absence as aforesaid shall be deemed to have voluntarily abandoned his service and would thereby provisionally lose line on his post.

4. The employee may make a written representation to the appointing authority, within ten days of receipt of the order made under sub-clause (3).

5. The appointing authority may on receipt of the representation, if any, and perusal of materials available on record as also those submitted by the employee, grant, at his discretion, an oral hearing to the employee

*concerned to represent his case."*

It is obvious from the above rule position that if an employee has been absent/remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall provisionally loose his/her lien on his post unless he returns within fifteen calendar days of the commencement of the absence or the expiry of leave originally granted or subsequently extended. The appointing authority may on receipt of the representation, if any, and perusal of materials available on record as also those submitted by the employee, grant, at his discretion, an oral hearing to the employee concerned to represent his case.



Whereas in this case, she was relieved on 09.03.2007 and she was entitled for seven days joining time i.e. upto 16.03.2007 and she was entitled to return within fifteen days from expiry of the leave. However, notice regarding the factum of voluntary abandonment of service by Smt. Jayshree Parihar and provisional loss of her lien on PET was issued on 04.04.2007. On receipt of the said notice dated 04.04.2007, she submitted an application dated 10.04.2007 for earned leave for the period from 10.03.2007 to 18.04.2007. The receipt has been acknowledged by learned counsel for the respondents during his pleadings in the Court. She sent her second application dated 20.04.2007 for extension of earned leave for the period from 19.04.2007 to



28.04.2007. The above leave application dated 20.04.2007 was sent by FAX as well as by post to the respondent No. 2.

In the order dated 20.04.2007 (Annexure A/1), respondents have pointed out that request for grant of E.L. from 10.03.2007 to 18.04.2007 is not supported by any Medical Certificate. On a specific observation made by the Court to the learned counsel for the respondents to furnish rule position under which Earned Leave is required to be supported with the Medical Certificate, the learned counsel for the respondents could not indicate any rule for the same.

24. The applicant has also filed O.A. No. 51/2007 for cancellation of her transfer order from KV BSF, Jodhpur to KV BSF, Pokaran. Notices for the same were issued to the respondents on 12.03.2007. This fact was known to the respondents as Mr. P.S. Bhati, learned counsel for the respondents, was present in the Court on 16.03.2007 and requested for a short adjournment for filing the reply by 22.03.2007.



In the meantime, the applicant had also filed a D.B. Civil Writ Petition No. 1623/2007 before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur wherein the writ petition was admitted and notices were issued on 29.03.2007. The applicant has also pleaded [vide para 5 (F) of O.A. No. 89/2007] that this fact was known to the learned counsel for the KVS who had given his appearance in the case on 17.04.2007 after service of the notices of admitting the

petition by the Hon'ble High Court to the respondents.

25. The case of **S.C. Saxena vs. Union of India and Others**

(supra) quoted by learned counsel for the respondents does not help the respondents. Though this case squarely applies in case of transfers but the Hon'ble Supreme Court has not ruled that in case the transferee does not join at the next place of posting his/her services may be straightway terminated. The Hon'ble Apex Court had no occasion to deal with the case of loss of lien on abandonment of the post by the employees of Kendriya Vidyalaya Sangathan under Article 81 (d) of the Education Code for the Kendriya Vidyalayas.



26. The Hon'ble Apex Court in the case of **G.T. Lal and Others vs. Chemical and Fibres of India Ltd.** reported in 1979

Supreme Court Cases (L&S) 76, has held as under: -

"5a. ....According to the *Dictionary of English Law* by Earl Jowitt (1959 edition) 'abandonment' means 'relinquishment of an interest or claim'. According to *Black's Law Dictionary* 'abandonment' when used in relation to an office means 'voluntary relinquishment'. It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an 'abandonment of office'.

6. .... to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In ***Buckingham & Carnatic Co. v. Venkattiah***, it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not

*easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to a employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."*

27. The Hon'ble Apex Court further in the case of **Buckingham and Carnatic Co. Ltd. vs. Venkatiah and another**, reported in AIR 1964 Supreme Court 1272 (V 51 C 163), has held as under: -



*"5. ....It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and, normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. But where parties agree upon the terms and conditions of service and they are included in certified Standing Orders, the doctrines of common law or considerations of equity would not be relevant. ...."*

28. In view of the above discussion, it is obvious that Smt. Jayshree Parihar had applied for sanction of earned leave for the period from 10.03.2007 to 18.04.2007 and 19.04.2007 to 28.04.2007 for which no intimation relating to sanction or rejecting the same has been given to her by the respondents. She had also filed Original Application No. 51/2007 before this Bench of the Tribunal for cancellation of her transfer order from KV (BSF), Jodhpur to KV (BSF), Pokaran. She had also filed a D.B. Civil Writ Petition No.

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1623/2007 before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur for cancellation of her transfer order from KV (BSF), Jodhpur to KV (BSF), Pokaran.

The above facts of filing of an O.A. No. 51/2007 before this Bench of the Tribunal and a D.B. Civil Writ Petition No. 1623/2007 before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur, were very well within the knowledge of the respondents. Therefore, in view of the circumstances and facts of this case, it is clear that there was no intention of the applicant for abandonment of her post. In view of this, the impugned order dated 20.04.2007 (Annexure A/1) vide which the loss of lien on her abandonment of the post of PET has been confirmed and removed from the service of Kendriya Vidyalaya Sangathan, are hereby quashed and set aside. The interim orders already issued vide orders dated 27.04.2007 are made absolute.

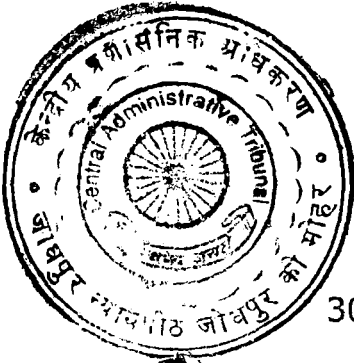


29. The applicant also reported for duties at KV BSF, Pokaran on 30.04.2007 as per orders and discussions in the open Court on 27<sup>th</sup> April, 2007 whereas the date for reporting for duty given in the order was 30.05.2007 on account of typographical error. The respondents adopted a very stubborn attitude by not allowing her to join her duties at Pokaran on 30.04.2007 instead of making repeated requests by her in person as well as in writing. If there was any doubt to the respondents, they could have sought clarification from

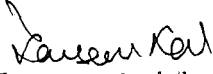
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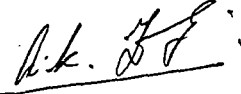
this Bench of the Tribunal or from their counsel.

In view of this, the respondents are directed to treat the period from 30.04.2007 to 29.05.2007 as on duty and pay her all consequential benefits including arrears of pay and allowances (if any due as on date) for the same.



30. In view of the above discussions, Original Application No. 89/2007, and Misc. Application No. 72/2007 are hereby allowed. No order as to costs.

  
[ Tarsem Lal ]  
Administrative Member

  
[ A.K. Yog ]  
Judicial Member

nlk

copy Recieved  
on behalf of  
P.S. Bhati  
Nikhil  
6/11/07 (Nikhil Dungawat)

R/O  
P.S. Bhati  
Ran K. Sh  
Adv  
17/11/07