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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No.247/2012

Date of decision: 07.09.2012

CORAM

HON'BLE MR. G. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER

Dr. Prem Lata Parihar D/o Shri R.L. Parihar, aged about 51 years, R/o Pipli Ka Chowk, Nagori Mohalla, Jodhpur (Rajasthan) (Presently posted KV Army No.2, Jodhpur).

.....Applicant

Mr. M.S. Godara, counsel for applicant.

Vs.

1. Union of India, through Joint Commissioner KVS, Head Quarter Shaheed Jeet Singh Marg, New Delhi.
2. Deputy Commissioner, Kendriya Vidyalaya, RO-92, Gandhi Nagar, Marg, Bajaj Nagar, Jaipur.
3. K.S. Bhati, Principal, K.V. Army No.2, Shikargarh Army Area, Jodhpur.
4. Prem Lata Tanwar, TGT, SST, KV Army No.1, Jodhpur.
5. Manoj Asheri, TGT SST, KV Army No.1, Jodhpur.

...Respondents

Mr. V.S. Gurjar, counsel for respondents No.1to3.

Mr. Vinay Jain, counsel for respondent No.4.

None present for respondent No.5.

ORDER (ORAL)

Per : Hon'ble Mr. G.George Paracken, Judicial Member

This OA has been filed by the applicant, Smt. Prem Lata Parihar, working as TGT (Social Studies) at Kendriya Vidyalaya No.2 (Army), Shikargarh, Jodhpur seeking the following reliefs:-

"8.1 In view of the above submission the applicant most respectfully prays that this original application may kindly be allowed with cost and by issuance of an appropriate order or direction the proviso provided of three years in the para 6 of Annex.A/1 dated 21.12.2011 may kindly be quashed and set aside or the respondents may be directed not to give

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effect to Annex.A/1 retrospectively. The tenure of the applicant at present station may be counted from the year 2006 onward and spouse employed based discrimination may place be declared arbitrary.

8.2 The retrospective implementation of transfer policy dated 21.12.2011 kindly be declared as Arbitrary null and void.

8.3 Any other relief which this Hon'ble Tribunal deems just and proper in favour of the applicant may be passed."

2. She has also sought interim relief as under:

"It is most respectfully prayed that during the pendency of this original application, the effect and operation of Annex.A/1 dated 21.12.2011 kindly be stay till the final disposal of this Original Application."

3. When this OA came up for consideration at the initial stage on 30.05.2012, we have considered the aforesaid interim relief sought by the applicant and passed the following order:

"The applicant is admittedly employed as Teacher in the KVS. She had served at Jodhpur who had been stationed at KV Dantiwada, Gujarat an admittedly hard posting till 1991 following which she was posted to KV Army No.1 till 2005. She was transferred back to Jodhpur in 2006 where she has remained except for a brief period 3 months on deputation to KV Suratgarh. The case of the applicant is that under the extant transfer policies the stay of employee at a station was being reckoned, the guiding principle being that the person staying for longest being transferred out.

In the meantime, the Department has issued a Circular vide its guidelines dated 21.12.2011 whereby a new policy has been framed under which the period of posting to a hard station has been enhanced from three months to three years. The matter was considered by the Lucknow Bench of CAT in OA No.235 of 2010 and it was decided that the circular will take effect from a prospective date that being 21.12.2011. The apprehension of the applicant is that as per the old policy guidelines a period of more than 3 months outstation was sufficient to discontinue at the old station but under the amended guidelines dated 21.12.2011 the applicant apprehends that her stay as per the old policy is being counted since 1991 which makes the applicant the oldest due for a transfer. The act of giving retrospective effect to the provisions of declared ultra virus by the Lucknow Bench of the CAT and the respondent organization were directed to implement the guidelines prospectively. This makes the applicant the junior most at her present station. The applicant has prayed for quashing the order a. As a measure of interim relief she also prays for protection against transfer till the matter is adjudicated by this Tribunal.

It is clarified that no transfer has taken place though the applicant has a reasonable apprehension on account of the operation of the policy. The Ld. Counsel for the applicant informs that the entire transfer in the KVS is computerized and it is likely that the transfer order will issue soon. It is admitted that the policy guidelines declared vide the OM of the KVS dated 21.12.2011 introduces a paradigm shift in the transfer of the KVS teachers. In so far as this Tribunal is concerned the order of the Hon'ble Lucknow Bench in OA 236/2010 has binding effect. Yet, it is equally well conceded that the concerns of the applicant appear genuine and not misplaced. Hence, the balance of convenience seems slightly tipped in favour of the applicant, at least for the time being. Issue notice Dasti to the respondents returnable by 8th June, 2012.

The learned counsel informs that the process of transfer is computerized and if in the meantime the transfer order is passed

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transferring the applicant out of her present station she may not be relieved till hearing on the issue of interim on 8th June, 2012."

4. The brief facts in this case are that initially the Applicant was appointed as PRT in the Kendriya Vidyalaya Sangathan in the year October, 1986. She became a TGT in August, 1987. Thereafter, she was posted at a hard station known as K.V. Dantiwada in Gujrat and remained there till 1991. In the year 2005, she was transferred and posted in K.V. Army No.1, Jodhpur from which she was displaced and transferred to KV Sector 8 Rohini, New Delhi on seniority basis counted from year 1991. From there she was transferred to KV BSF Jodhpur vide order dated 21.07.2006 and then to KV No.2 Army Jodhpur vide order dated 06.06.2011. Since then she has been working in KV No.2 Army except for the brief period of three months from December, 2011 to February, 2012 when she was posted out on temporary basis on deputation at KV Air Force, Suratgarh. According to the Applicant, in view of the above postings and transfers, her tenure at the present station, i.e. Jodhpur is to be counted only from her date of joining there in the year 2006 as per the original transfer policy/guidelines because as per the said policy, period of more than three months at outstation was sufficient to discontinue the seniority at the old station but the respondents by way of the amended transfer policy/guidelines dated 21.12.2011, replaced the period of three months by three years in the normal condition. Thus the stay of the applicant at Jodhpur would be counted from her earlier date of joining at Jodhpur in the year 1991.

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5. The applicant is in fact aggrieved by the clarification provided in para 6 of the amended Transfer Guidelines which came into retrospective effect from 1.04.2011 issued vide the Annexure-A/1 letter dated 21.12.2011 which reads as under:-

"However, if an employee returns to station after a period of three years (two years for very hard station) the stay shall be counted afresh."

6. According to the learned counsel for the applicant, the amended Transfer Policy being followed by the respondents is defective as the same was given the retrospective implementation and on that count the Lucknow Bench of this Tribunal in OA No.235/2012 ***Smt. Rama Bhadauria vs. Kendriya Vidyalaya Sangathan and others***, has set aside the same. The relevant part of the said order is as under:-

"The only blemish, we have found is in respect of implementation of these guidelines retrospectively. As already discussed that in the amendment guidelines itself, in the opening paragraphs, it is clearly mentioned that the earlier transfer guidelines dated 14.03.2006 have been amended with immediate effect. The law is also settled on this point that no retrospective effect can be given to any provisions so as to impair or take away an existing right unless those provisions either expressly or by necessary implication direct that it should have any retrospective effect. Concededly, no where it is mentioned in these amended provisions that it would have retrospective effect. Whether any provision has retrospective effect or not, primarily depends upon its language and its construction from which the intention has to be ascertained. The intent is ascertained either by express provision or by necessary implication which are lacking here. Therefore, these OAs are partly allowed to the extent that the amended transfer guidelines have been wrongly implemented with retrospective effect in an arbitrary manner, impaling and taking away the existing rights of the applicants. The remaining reliefs are declined. The respondents are required to implement the amended guidelines prospectively and in furtherance thereof, they are directed to make a fresh exercise in respect of transfer of all the applicants and then to pass appropriate orders, if any. It is also desirable that such an exercise, may be concluded within a period of forty five days from today so that the confusion if any may come to an end and the students may not suffer in their studies."

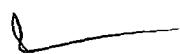
7. The respondents in their reply has submitted that new Transfer Policy/Guidelines of the Kendriya Vidylaya Sangathan have been brought into force only after it has been approved by the Board of Governors which is its apex policy making body. It

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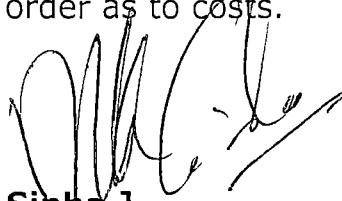
inter-alia provides in para 15 thereof that when a teacher who seeks transfer after a continuous stay of 02 years at a very hard station or 03 years in the North East, A&N Islands and other declared hard stations or by a teacher falling under the grounds of medical/death of spouse/less than three years to retire or any other very hard case involving human compassion, in the event of non-availability of vacancy at his/her choice station, the vacancy shall be created to accommodate him/her by transferring the senior most teacher at the said station of the same category (Post/Subject). They have also stated that this original application has been preferred by the applicant not directed against any specific order of transfer against which the applicant is aggrieved but it is only on the basis of apprehension and, therefore, it merits rejection at the very threshold.

8. We have heard the Ld. Counsel for the parties. It is seen that the applicant is basically challenging the amended Transfer Guidelines. However, we see that she has not made any representation before the competent authority in this regard. As per the scheme of the Central Administrative Tribunals Act, 1985, it is necessary that the Applicant should exhaust the departmental remedies available to him/her before approaching this Tribunal under Section 19 thereof. We, therefore, dispose of this OA with a direction to the applicant to submit a detailed representation bringing out her grievances to the competent authority of the respondent. On receipt of such a representation, the said authority shall consider the same and take a decision by passing a reasoned



and speaking order within a period of two months, under intimation to her. While considering her representation, the respondents shall also consider the Order of the Lucknow Bench of this Tribunal in OA No.236/2010 (supra). Till such time, the interim order dated 30.05.2012 restraining the respondents from relieving her from the present station shall remain in force.

9. With the aforesaid directions, this OA is disposed of. There shall be no order as to costs.


[BK Sinha]
Administrative Member


[G. George Paracken]
Judicial Member

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P. G. Parker
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