

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 273/04

.....Thursday THIS THE ^{22nd} DAY OF DECEMBER, 2005

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Asha Therose Joseph,
aged 41 years, W/o Late Hubert Innocent Joseph
Trained Graduate Teacher (Maths)
INS Dronacharya,
Kochi.Applicant

(By Advocate Mr.K.P.Dandapani)

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- 1 The Commissioner,
Kendriya Vidyalaya Sangathan,
18-Institutional Area
Shaheed Jeet Singh Marg,
New Delhi.16.
- 2 The Assistant Commissioner
Kendriya Vidyalaya Sangathan,
Regional Office,
Chennai.Respondents

(By Advocate M/s Iyer and Iyer)

The Application having been heard on 7.12.2005, the Tribunal on ^{22..}
12.2005 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is dissatisfied by the decision of the respondents
conveyed to her by the Annexure A7 order dated 17/18th March, 04
to regularize the period of her service from 16.4.03 to 15.12.03 with
leave of the kind due, in case she applies for the same.

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The applicant's demand is that the aforesaid period should be treated as duty with all consequential benefits, including, pay and allowances and the applicant should be deemed to have been continued in service during the said period as on duty.

2 The brief facts leading to the filing of the present OA is as under:

The applicant was working as TGT (Maths) Naval Base, Kochi. She was transferred to K.V. Chiri Miri in Jabalpur Region vide order dated 31.3.03 which was under challenge before this Tribunal in OA 373/03. When the OA came up for admission on 2.5.03 this Tribunal issued an interim order directing the Respondent 1, namely, the Commissioner, KVS New Delhi to dispose of the representation of the applicant dated 28.4.03 and pass appropriate orders within three weeks. The Tribunal also directed to keep the vacant post in KV, INS Dronacharya unfilled until further orders. The case was, thereafter, listed for further proceedings on 19.6.03. The respondents did not dispose of the representation of the applicant as directed in the aforesaid order dated 2.5.03 and sought further time of two weeks from 23.6.03. Meanwhile the applicant filed MA 458/03 seeking a direction to permit her to join at KV, Dronacharya which was kept vacant on the orders of this Tribunal dated 2.5.03. Considering the facts and circumstances of the case, the Tribunal passed an order dated 17.6.03 in MA 458/03 (supra) stating that the non-reporting of the applicant at Chiri Miri for two weeks from 17.6.2003 would not effect the applicant prejudicially. On the basis

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of the aforesaid order, the applicant did not report for duty at KV Chiri Miri. Meanwhile the respondents themselves have withdrawn the transfer order to Chiri Miri and issued a fresh order transferring her to KV, Thakkolam which was also challenged before this Tribunal in the same OA.

3 The stand of the respondents was that there was no vacancy in KV, INS Dronacharya. However, they had issued an advertisement inviting applications for filling up the post of TGT (Maths) on a part time/contractual basis in KV, INS Dronacharya and applicant had again sought to stay the selection process through MA 500/03 in the said OA. This Tribunal vide order dated 25.6.03 directed that no appointment in pursuance of the said notification be made till the next date of hearing. The interim orders dated 17.6.03 and 25.6.03 were extended till the disposal of the OA vide this Tribunals order dated 3.7.03. The OA was finally heard on 26.9.03 and disposed of the same with a direction to the Respondent No.1 to consider the applicant's case and issue necessary orders permitting the applicant to remain as TGT (Maths) in the same station in any of the KVs including KV, INS Dronacharya and subject to the said order the interim orders were vacated. On non-implementation of the said order dated 26.9.03 the applicant filed a Contempt Petition 76/03 in this Tribunal. Thereafter the order dated 9.12.03 was passed by the respondents attaching the applicant to the KV No.1, INS Dronacharya for a period of one year on the condition that she shall report at KV, Thakkolam thereafter. Finally the applicant was permitted to join

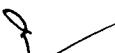
duty on 16.12.03 as TGT (Maths) in KV, INS Dronacharya. She had thus remained out of duty from 16.4.2003 to 15.12.2003 and she wants the Respondents to treat this period as duty and to grant her all consequential benefits including pay and allowances.

4 The applicant's contention is that though she was relieved from duties in absentia to report at Chiri Miri, the order of transfer was interfered by this Tribunal by various orders protecting her interest and by virtue of the interim directions of this Tribunal the applicant remained out of duty and ultimately both the transfer orders have been set aside and the Applicant was permitted to join duty at KV No.1, INS Dronacharya. The submission of the applicant is that the applicant was kept out of duty due to malfeasance and misfeasance on the part of the respondents by issuing unsustainable transfer orders and, therefore, the period she was kept out of duty was for the reasons attributable to the Respondents, which was purportedly interfered by this Tribunal. The applicant, has therefore, claimed eligibility to get the period of her absence from 16.4.03 to 15.12.03 treated a duty with all consequential benefits. The applicant has made a detailed representation on 5.1.04 to the respondents but the same was rejected vide the impugned order Annexure A7 dated 17/18.3.04.

5 The applicant has relied upon the judgment of the Hon'ble Supreme court in **Electronics Corporation of India Ltd. and others Vs. Sateesh S.Rao Sona Walkar {2056 SCC(L&S)82}** In that case the respondent, on his promotion as Manager, was transferred from

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Hyderabad to Aurangabad unit of Electronic Corporation of India Ltd. by order dated 2.5.1995. He had been making representations, etc. for his retention at Hyderabad office itself but on 17.7.1995 the appellants passed an order relieving the respondent from ECIL, Hyderabad. The respondent applied for leave from 17.5.1995 to 19.7.1995, which was, however, not granted by the appellants. The respondents then filed a writ petition in the High Court challenging the transfer order and an ex-parte stay order was obtained on 20.7.1995. According to the respondents, on 21.7.1995 he reported for joining and signed the attendance register. But was not allowed to join duty as he already stood relieved on 17.7.1995. The appellant moved an application for vacation of the stay order dated 19.12.95. The appeal preferred by the respondent against the order vacating interim order of stay was dismissed on 26.4.96. The Writ Petition was finally dismissed on 11.9.96 and liberty was granted to the respondent to make representation for his being retained at Hyderabad and for payment of his salary till he joins at Aurangabad. To evolve the best possible solution in the matter, in the given facts and circumstances so as to avoid any problems and controversy in the matter, the High Court passed an order with the agreement of the parties that the respondent would abide by the order of transfer and join duty at Aurangabad and the appellants would release arrears of salary of the respondent who may be considered as absent from duty without leave but as on extraordinary leave without any break in service. The appellants submitted that the respondent was relieved



on 17.7.95 and thereafter he remained absent. Under the rules, whatever period is admissible as Earned Leave that having been made available to the respondent, rest of the period is to be treated as period of extra ordinary leave but it has to be without pay, including the period during which the respondent had gone abroad on sanctioned extra ordinary leave without pay. The Hon'ble Supreme Court has observed that the respondent had on 19.7.95 obtained the stay order of his transfer and reported for duty on the next day. The appellant sat right over the matter for a period of five months, without bringing to the notice of the court that the respondent stood relieved on 17.7.1995 and moved for vacation of the stay order only on 19.12.1995 and the stay order was vacated only on 8.4.1996, with the result that the stay order remained operative w.e.f. 19.7.1995 till the date of its vacation on 8.4.1996. The respondent had made himself available and had reported on duty on 20.7.1995. The Hon'ble High Court observed that if such a relieving order was passed on 17.7.1995, it should have been brought to the notice of the court at the earliest, rather than to allow it to continue for such a long time even though appearance on behalf of the appellants was put in before the court much earlier. In those facts and circumstances of the case, the Hon'ble Supreme Court ordered that the period from 17.7.1995 to 8.4.96 shall be treated as period spent on duty and the appellant shall pay full salary for the said period excluding the period of three months i.e., 9.11.95 to 7.2.96 for which EOL was granted. The period after 8.4.96 shall be

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adjusted against earned leave or any other such leave which according to the appellants have been made admissible to the respondent for the period from 17.7.1995 to 8.11.1995 The rest of the period only to be regularized as against extra ordinary leave without pay. In this manner the continuity of service of the respondent is also maintained and all the period of service would also stand regularized in the spirit of the order passed by the High Court.

6 According to the Respondents, the judgment of the Hon'ble Supreme Court in Electronic corporation of India Ltd and others (supra)cannot be made applicable in the present case as the facts and circumstances of both cases are different. The respondents in their reply have submitted that this Tribunal on 2.5.03 gave a restraint order to the effect that the vacant post in KV INS Dronacharya be kept unfilled and simultaneously directed the KVS to dispose of the representation dated 28.4.03 but there was no interim order staying the order of transfer. The applicant filed MA 458/03 in the OA 373/03 with a prayer to direct the KVS to permit the applicant to post at KV, INS Dronacharya or in the alternative not to compel her to join at the transferred place at Chiri Miri. The court in this regard has observed that non-reporting of the applicant for two weeks from 23.6.03 will not affect the applicant prejudicially. However, her request to allow her join at KV,INS Dronacharya was not allowed by the Tribunal. The order of the Tribunal was to keep the post in KV, INS Dronacharya vacant and the same was complied

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with, in its true spirit. The respondents have also not treated the period of non duty of the applicant as period of EOL but she was asked to apply for leave of the kind due for the period in question so that the period of non-duty can be regularized by way of leave of the kind due. The submission of the respondents is that the applicant has misinterpreted the orders passed by this Tribunal and used them as cover for absenting herself from duty which amounts to gross violation of the responsibility vested in her by the respondents and also amounts to neglecting her duties towards her students. The only direction from this Tribunal was that non-reporting of the applicant for two weeks from 23.6.2003 would not affect the applicant prejudicially.

7 We have heard the counsels for both parties and have gone through the pleadings. The effect of interim/interlocutory orders or injunctions has been considered by the Hon'ble Apex Court in **Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, (1992) 3 SCC 1**). The three judge Bench of the Apex Court held as under:

"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence."

8 Again in **Kanoria Chemicals and Industries Ltd. v. U.P.S.EB (1997) 5 SCC 772** the court held that the grant of stay had not the

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effect of relieving the litigants of their obligation to pay late payment with interest on the amount withheld by them when the writ petition was dismissed untimely. Holding otherwise would be against public policy and the interests of justice.

9 We are also conscious of the scope and ambit of interference of the Courts and Tribunals in transfer matters. In **Shilpi Bose V. State of Bihar (1991 Supp.(2) SCC 669**, the Apex Court has observed as under:

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons, unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

Again in **Union of India Vs. S.L.Abbas (1993) 4 SCC 357**, the observation of the Apex Court are as under:

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration,. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines however does not confer upon the Government employee a legally enforceable right."

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Similar view has been taken in **National Hydroelectric Power Corp. Ltd. v. Shri Bhagwan**, (2001) 8 SCC 574 wherein it has been held 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 another is not only an incident, but a condition of service, necessary too in public interest and efficiency in public administration. Unless an order of transfer 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 order, as though they were the Appellate Authorities substituting their own decision for that of the management."

10. In our considered opinion the judgment of the Hon'ble Supreme Court in the case of **Electronic Corporation of India Ltd.** (supra) cannot come to the rescue of the Applicant. In the said judgment the Hon'ble Supreme Court has observed that the respondent (the concerned official) obtained a stay on 19.7.95 and reported for duty on the next day but the appellants sat tight over the matter for 5 months, without bringing it to the notice of the court that the respondent stood relieved on 17.7.95 and moved for vacation of stay only on 19.12.95 and the stay was vacated only on 8.4.96. It was in this background of the case that the Hon'ble Supreme Court has provided that the period from 17.7.95 to 8.4.96 shall be treated as the period spent on duty and the appellants shall pay full salary for the

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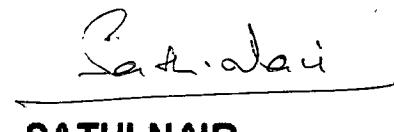
said period. This is not the case in the present OA. The applicant was not kept out of duty for the reasons attributable to the respondents. Unless the order of transfer is quashed and set aside, the period of absence cannot be counted as period spent on duty with all consequential benefits.

11. In view of the totality of the facts and circumstances of the present case and also in view of the judgment of the Hon'ble Supreme Court in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association and Kanoria Chemicals and Industries Ltd. V. UP.SEB (supra), we do not find any merit in the OA and it is dismissed accordingly. No order as to costs.

Dated this the 22nd day of December, 2005


GEORGE PARACKEN
JUDICIAL MEMBER

S.


SATHI NAIR
VICE CHAIRMAN