

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 513/2006

This the 28th day of March, 2008

Hon'ble Sri Justice Khem Karan, Vice Chairman

Harish Chandra Sharma aged about 49 years son of late Shri B.P. Sharma, resident of Type III/7, Staff Quarters, Kendriya Vidyalaya Gomti Nagar, Lucknow.

Petitioners

By Advocate: Sri Alok Trivedi

Versus

1. The Commissioner, Kendriya Vidyalaya Sangathan (HQ), 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110016.
2. The Dy. Commissioner (Academic), Kendriya Vidyalaya Sangathan (HQ), 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110016.
3. The Assistant Commisioner, Kendriya Vidyalaya Sangathan, Lucknow Region, Sector 'J' Aliganj, Lucknow.
4. The Principal Kendriya Vidyalaya Branch, Gomti Nagar, Lucknow.
5. The Principal Kendriya Vidyalaya, Bulanadsahar.

Opposite Parties

By Advocate: Sri Surendran P

ORDER

By Hon'ble Sri Justice Khem Karan, Vice Chairman,

Applicant, Harish Chandra Sharma, has prayed for quashing the impugned recovery orders dated 31.5.2005 and 16.8.2005 (Annexure -1) and for directing the respondents not to recover any amount from his salary pursuant to the said orders and to remit the amounts, which have already been recovered on the basis of said orders.

2. While being posted as employee of Kendriya Vidyalaya Sangathan at Bulandsahar, he was allotted Type-III residence on certain terms and conditions, including one that on his transfer from that place to another place, the same would stand cancelled. Vide



order dated 22.11.99, he was transferred from Bullandsahar to KVS No.1, Imphal (in Manipur). Aggrieved of this transfer, he filed one O.A. No. 116/2000 but before that his employer had, vide order dated 29.10.2000 asked him to vacate staff quarter Type III/04. Vide interim order dated 15.2.2000, passed in ^{the} said O.A., operation of transfer order dated 22.11.99 was stayed. After contest, the said O.A. No. 116/2000 was finally disposed of vide order dated 21.11.2001 (Annexure -3). The relevant portion of the said order is as under:-

"During the course of arguments, learned counsel for the applicant stated that applicants have no objection if they are transferred within the division. Against this issue, learned counsel for the respondents only pointed out that according to the rules of Kendriya Vidyalaya Sangathan, an employee can be transferred anywhere in India and also from an ordinary station to a hardship station. However, learned counsel for the respondents could not show any evidence to the affect that this was the reason beyond the transfer out-side Division. I see, no reason why these persons can not be accommodated within the division in the absence of genuine administrative grounds. The respondents are accordingly directed to re-consider the transfers of the applicants within the division to which applicants will have no objection. The salary for the intervening period, soon after a stay order was granted by this Tribunal, should be paid by the respondents and fresh transfer orders would also be made within the division within a period of three months from the date of service of this order. The OAs are accordingly disposed of."

There will be no order as to costs."

3. Aggrieved of the said order dated 21.11.2001 passed in the said O.A. and in the connected OAs No. 114/2000, 115/2000 and

117/2000, KVS filed writ petitions No. 34246/2002, 34247/2002, 34249/2002 and 34251/2001 before Hon'ble High Court at Allahabad which that court finally disposed of vide order dated 1.4.2004 (copy of which is annexed to the reply). Hon'ble High Court took the view that considering the facts and circumstances appearing in the case and law laid down by the Apex Court in Union of India and others Vs. Janardan Devnath and others (Civil Appeal No. 1010-1011/2004 decided on 13.2.2004), no grounds were made out for interference in the impugned orders. It also stated that an employee could be transferred to a place the employer decides, depending upon the administrative exigencies and it was not for the court to issue directions in that regard. In so far as, the direction of this Tribunal regarding payment of salary was concerned, the Hon'ble High Court said like this:

"In the present case, there is no dispute that at the time, the interim order was granted, the transferees had been dislodged from their posts and in their place other employees had been posted filling up the consequential vacancies. in the circumstances, therefore, not only because the interim order could not be an order quashing the impugned orders of transfer but as the petitioners had not discharged the duties, the principle of 'no work no pay' had to be taken to be attracted and consequently no direction for the payment of salary ought to have been issued. So, Tribunal's order dated 21.11.2001 was quashed with a direction to the petitioner, namely, K.V.S. for reconsideration of the case of the transferees, strictly in accordance with law and after taking into consideration, the transfer policy and the guidelines regulating such transfers."

4. With the dismissal of the SLP vide order dated 17.7.2006, filed by the applicant and others, the above order of the Hon'ble High Court became final.

5. It transpires that while matter relating to the transfer was in court, the applicant was transferred to Babina in Madhya Pradesh but he continued occupying Type III staff quarter at Bullandsahar as he was not allotted staff quarter at Babina. The respondents passed the impugned order for recovery of an amount of Rs. 1,09,722/- @ 2000/- a month. According to them, applicant had to pay fixed electric charges from December, 1999 to May 2000 and from June 2002 to 31.12.2004 and also the licence fees @ Rs. 265/- a month from December, 1999 to January 2000 @ Rs. 550/- from Feb., to March 2000 and @ Rs. 1625/- a month, from April 2000 to 31.1.2004 and all these amounts came to Rs. 1,09,722/-. Though the applicant gave repeated representations for taking back these orders and not making any recovery from his pay but the respondents did not pay heed and continued the recovery. Aggrieved of these orders of recovery, he filed present O.A., saying when his transfer had already been stayed vide interim order dated 15.2.2000 and when the same was affirmed in final order dated 21.11.2001, the question of making such recovery from his pay should not arise and that too, without giving him a show cause notice or without hearing him. He says, his occupation of staff quarter at Bullandsahar was never unlawful or unauthorized till he vacated the same on 31.12.2004. He goes on to say that his posting at Babina was not a permanent posting but was a temporary one and so he was entitled to continue in the residential quarter at Bullandsahar.

6. It transpires from perusal of the order sheet of the case in hand that vide order dated 15.12.2006, recovery was stayed till 12.1.2007 and the said interim order was extended from time to time. That interim order is in force even at present.



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7. The respondents have filed reply contesting the claim of the applicant. They say after the transfer order was upheld by the Hon'ble High Court in the writ petition filed by the respondents, the applicant could not justify his occupation of the staff quarter at Bullandsahar after he was relieved of the post, pursuant to transfer order of November 1999. They say, applicant was unauthorized occupant of the staff quarter at Bullandsahar and was liable to pay the amount so mentioned in the impugned order.

8. Applicant has filed Rejoinder Reply, saying that he was never an unauthorized occupant of the staff quarter, so allotted to him at Bullandsahar and so the question of recovery of licence fee and electric charges should not arise. Attempt has also been made to say that he was never declared an unauthorized occupant nor any show cause notice was issued to him. It is stated that in spite of the repeated reminders, interim order dated 15.2.2000 of this Tribunal issued in the said O.A. were not complied with. Reference to change of staff quarter has also been made. It is said that it was in the month of November, 2000 that he was allotted staff quarter Type III/01 in place of earlier quarter Type III/04 and he vacated staff quarter Type III/04 and shifted to Type III/01 and on his transfer to NAD Karanja (Maharashtra), he vacated this residence as well on 31.12.2004.

9. I have heard Sri Alok Trivedi, appearing for the applicant and Sri Surendran P for the respondents and have gone through the entire material on record.

10. According to Sri Trivedi, the occupation of the applicant of staff quarter at Bullandsahar from December 1999 to 31.12.2004 was never unauthorized so, the impugned orders of recovery of

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licence fee , electric charges etc. from the pay of the applicant are totally unjustified. He has also said that the respondents never declared the applicant as unauthorized occupant. According to him, since the operation of the transfer was stayed in Feb, 2000 and the same continued till 21.11.2001, when this Tribunal finally disposed of O.A. No. 116 of 2000 and directed the respondents to accommodate the applicant within the Division and to pay salary for the intervening period, so the applicant could not be saddled with the liability of paying electric charges and licence fee etc. Sri Surendran P has submitted that once the transfer order was upheld by the Hon'ble High Court and the verdict of the Hon'ble High Court has become final with the dismissal of SLP, the applicant cannot fall back on the interim order dated 15.2.2000 or on the final order dated 21.11.2001 passed in O.A. No. 116/2000. Learned counsel goes on to argue that according to the terms and conditions of the allotment order (RA-2), licence was come to an end automatically on the occurrence of either of the following four events, namely, retirement, transfer, resignation and death and so when the applicant was transferred to Bullandsahar to Imphal, his licence came to an end and no orders were needed for terminating the licence. Sri Surendran P says that under the terms of allotment of the official quarter, the licensee has to pay the licence fee and water and electricity charges according to the meter reading or according to the assessed flat rates and so the applicant can have no grievance against the impugned recovery.

11. I have considered the respective submissions and I am of the view that applicant's case is totally misconceived. Firstly, his occupation of staff quarter at Bullandsahar from December 1999 to 31.12.2004 was evidently unauthorized. Interim order dated 15.2.2000 passed in O.A. No. 116 of 2000, staying the operation of

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the transfer order merged in the final order dated 21.11.2001 and all these orders merged in High Court's order dated 1.4.2004. In other words, the transfer of the applicant from Bullandsahar to Imphal was not found to be bad, so as to be interfered with and O.A. challenging the said transfer was virtually dismissed. The contention of the applicant that his posting at Babina, being a temporary and not a permanent or so, he could continue in the quarter at Bullandsahar, does not appeal to me at all. How the applicant is saying that his posting at Babina was not a transfer.

12. Applicant says, he was without any electricity for several months and electricity meter could be installed in October, 2004. He has also attempted to say that such heavy amount of Rs. 13,950/- could not have been worked out under the head of electric charges. A perusal of the calculation sheet annexed with the order dated 16.8.2005 reveals that the amount of Rs. 13950/- is under the head of water and electricity charges. The Tribunal is not expected to undertake the task of accounting. In case, the applicant has any grievance as regards the actual amount, which he has to pay under the head of "water and electricity charges", he can ask the authority concerned to reconsider that part of the recovery. I do not think any show cause notice was required, before issuing the impugned orders.

13. The O.A. is dismissed with the observations made above. No order as to costs. Interim stay is vacated.

(J. D. M. A.W)
28/3/08
Vice Chairman