

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**O.A. No. 7/2008**

This the 24<sup>th</sup> day of September, 2010.

**Hon'ble Shri G. Shanthappa, Member (J)**

**Hon'ble shri S.P.Singh, Member (A)**

Smt. P. L. Sonkar, aged about 40 years w/o Shri Avanish Sonkar, r/o Murad Ali Lane, Nai Basti, Udaiganj, Lucknow (UP)

Applicants

By Advocate: Sri R.C. Saxena

Versus

1. Kendriya Vidyalaya Sangthan, through Commissioner, 18-Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.
2. The Commissioner, . Kendriya Vidyalaya Sangthan, through Commissioner, 18- Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.
3. The Joint Commissioner (Admn.), Kendriya Vidyalaya Sangthan, through Commissioner, 18- Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16.

Respondents

By Advocate: Sri Surendran P.

**ORDER**

**BY Hon'ble Shri G. Shanthappa, Member (J)**

M.P. NO. 1115/2008 filed by the respondents if for taking the Counter Reply on record. Since the C.A has already been taken on record, this M.P. is dismissed. M.P. No. 1116/2008 is for dismissal of the O.A. This relief has already mentioned in the reply statement, the question of considering this M.P. does not arise. Accordingly M.P. 1116/2008 is dismissed.

2. The above application is filed under section 19 of AT Act, 1985 seeking relief for challenging the illegality and propriety of order dated 22.9.2006, 16-17 January, 2007 and also Office Memorandum dated 9-10 June, 1999 contained in the said order and further relief to direct the 2<sup>nd</sup> respondents to consider and post the applicant as PGT (Economics)

at Lucknow. While passing the order dated 16/17 January, 2007, debarring the applicant from promotion for the period of 5 years w.e.f. 6.10.2006, direct the respondents that the applicant will be entitled for seniority as PGT (economics) from the date of her promotion.

3. We have heard the learned counsel for the parties.

4. The admitted facts from either side are that the applicant while working as TGT, she was eligible for promotion to the post of PGT (Economics). Accordingly, the applicant was promoted vide order dated 28.8.2006. The terms of promotion from the post of TGT to the post of PGT (Economics) on certain conditions. The said conditions are as per memorandum dated 22.8.2006. The terms which are mentioned as per Annexure 3 page 24 of OA are as follows:-

“1. The teachers mentioned above if accept the offer of promotion of PGTs are hereby directed to join or on or before 5.9.2006 (A/N) positively. If they fail to report for duty at the said Kendriya Vidyalaya by 5.9.2006, this offer of promotion would automatically be treated as withdrawn and they would stand debarred from getting further promotion for five years with attendant consequence as seniority etc. w.e.f. 6.9.2006 as per KVS (Hqrs) O.M. No. F-6-6/99-KVS (RP-1) dated 9/10.6.99.”

5. The applicant requested to the Commissioner, KVS, New Delhi for modification of posting on the ground of her personal family problem. In the representation dated 28-29 August, 2006, she has requested the Commissioner as under:-

“In this regard, I may submit that my husband is posted out of Lucknow. I am here at Lucknow along with my two children who are studying. There is no one to look after them in my absence. I am suffering a lot due to my husband's posting out of Lucknow and if I do not remain at Lucknow, the studies of my children will suffer a lot. Also, I am unable to fulfill my family responsibilities in the present circumstances. It is very hard for me to manage alone and this posting will certainly effect me badly.”



6. The applicant submitted one more representation on 19.1.2007, that was forwarded by the Education Officer for approval of the competent authority. Subsequently, on 22.1.2007 and 25.9.2007, she submitted the same request as requested in the earlier representation. Finally, the respondents i.e. Commissioner has rejected the request of the applicant and the promotion which has given to the applicant has been cancelled.

The said order dated 22.9.2006 reads as under:-

“Representation received from the following TGT for modification in place of posting on promotion from TGT to PGT for the year 2006-07 has been considered sympathetically by the competent authority but the same could not be acceded to:-

Sl. NO.	Name of TGT	Present KV	Promoted as PGT	KV where posted on promotion
1	Smt. P.L.Sonkar	Gomtinagar Lucknow	Economics	Chhatarpur

She is directed to get relieved by 5.10.2006 (if not relieved earlier) and join the place of posting as per rules, failing which offer of promotion will stand automatically withdrawn and she will stand debarred for a period of five years w.e.f. 6.10.2006. Other terms and conditions as stipulated in memorandum dated 22.8.2006 will remain unchanged and no further correspondence will be entertained in this regard in future.”


7. The said order is challenged in the present O.A. on the legal ground that the respondents have not considered the case of the applicant, though she has accepted the promotion on personal request, debarring the promotion is highly illegal, against the Principle of Natural Justice as held by the Hon'ble Supreme Court in the case of *A.K. Kraipak Vs. UOI and others*, 1969 (2) SCC 262, *Col. J.N. Sinha Vs. UOI*, 1970 (2) SCC,



*458, Mohinder Singh Gill Vs. Chief Election Commission, 1978 (1) SCC 405 and State of Orissa vs. Miss Vinapani Dei, 1967 (2) SCR 625.*

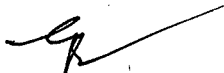
8. The learned counsel for the applicant submitted that there are no adverse remarks while in service of the applicant and no disciplinary proceedings are against the applicant. In such being the fact, withdrawing the promotion for a period of 5 years w.e.f. 6.10.2006 is highly illegal. The learned counsel for the applicant submitted that the memorandum dated 22.8.2006, though virus of the said memorandum is not challenged but this is against the principle of natural justice. The respondents have considered the similar request of Smt. Chaya Tandon, PGT (Social Studies) and she was accommodated to her place of request and one Smt. Shailender Kumar Verma, PGT (Economics) was also considered. The respondents have shown discrimination against the applicant, and the act of the respondents are arbitrarily caused hostile discrimination which is colorable exercise.

9. The learned counsel for the respondents vehemently opposed the O.A. and denied the allegations and averment made in the O.A. except which are admitted therein based on records. It is their contention that the applicant was given promotion but she did not comply the conditions mentioned in the memorandum dated 22.8.2006, hence her promotion will stand automatically withdrawn. She has been considered subsequently after the period of 5 years. The learned counsel for the respondents has taken the ground in the reply statement that the representation of the applicant was considered somatically but due to non availability of vacancy, could not be acceded to as the vacancy in question, was booked to accommodate a teacher, who was displaced from the same region.



10. The respondents have supported the impugned order. As per memorandum dated 22.8.2006, the concerned teacher if accepts the offer of promotion PGT was directed to join on or before 5.9.2006 (A/N) positively. If she fails to report for duty at the said Kendriya Vidyalaya i.e. K.V. Chhatarpur by 5.9.2006, this offer of promotion would automatically be treated as withdrawn and she would stand debarred from getting further promotion for five years with attendant consequences etc. with effect from 6.9.2006 as per KVS (Hqrs.) O.M. No. F.6-6/99-KVS (RP-1) dated 9/10.6.99. No extension of joining time shall be allowed except for the reasons of illness/ conferment of the teacher duly supported by the Medical Certificate from Chief Medical Officer/ Medical Supdt. / Civil Surgeon of Govt. Hospital / Dist. Hospital or from the Chief Medical Officer of the Hospital of public Sector Undertakings/Projects to which the school is attached / Military or Command Hospital as the case may be. She failed to join the promotional post within the stipulated period as per terms and conditions of Memorandum No. 13-1/PGT/2006/KVS/E-II dated 22.8.06, promoting her to the post of PGT (Economics). Accordingly, she was debarred for a period of 5 years w.e.f. 6.10.2006 with attendant consequences as per Memorandum No.F.6-6/99-KVS (RP-1) dated 9/10.6.99 vide order dated 16/17-1-2007.

11. We have carefully considered the submission made from either sides and pleadings available on record. As per the facts narrated above, it is clear from the orders, that the applicant did not refused the promotion given to her for the year 2006-07 and the said promotion dated 22.9.06 was based on the terms and conditions of memorandum dated 22.8.2006, When the applicant accepted the offer of promotion, she could not join



the place where she has been posted on her personal and family grounds, which she has narrated in her representation. The respondents, i.e. the competent authority while considering the request of the applicant for a particular place where she has been asking or any other place, which are convenient to her, the respondents i.e. competent authority would have considered the persona problems of the applicant. No doubt, the applicant has no legal ground to ask for a particular place of posting which is an administrative matter, but debarring for promotion, which is highly illegal. The respondents submitted that the applicant has accepted the promotion but she failed to report for duty, in terms of memorandum dated 22.8.2006, that the promotion stand automatically cancelled. Though, the applicant is not challenging the virus of para 1 of the said memorandum but in our view, the decision taken by the respondents for cancelling the promotion and debarring the applicant for getting further promotion for a period of 5 years is highly illegal, against the principle of natural justice as laid down by the Hon'ble Supreme Court in the judgment relied on by the learned counsel for the applicant.

12. In the relief, the applicant is asking for a particular place of posting for that we are not inclined to accept the posting. The order dated 4.3.2009 shall not come in the way of considering the promotion for the years 2006-07. of the applicant to the place where she is asking, we direct the respondents to consider the place of posting sympathetically, considering the family problems of the applicant.

13. The respondents did not given an opportunity to the applicant before passing the impugned orders. Though the memorandum dated 22.8.06, debarring the applicant from getting further promotion for 5 years, when the rights of the applicant is violated, in the circumstances, a




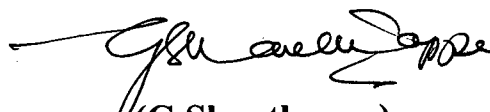
notice of hearing and the principle of natural justice was to be followed, but that the respondents failed to follow the principle.

14. Learned counsel for respondents has produced the order dated 4.3.2009 in which it is stated and decided that employees who are debarred for a period of 5 years prior to 1.8.2008 and have completed the debarment period of one year as on 31.7.2008 are eligible for consideration for promotion for the subsequent year as the crucial date of determination of eligibility is 1<sup>st</sup> January of the year in which a post falls vacant. For example, an employee who completes one year of the debarment period as on 31.7.2008 is eligible for consideration for promotion for the year 2009-10 as the crucial date of the determination of eligibility for the year 2009-10 is 1<sup>st</sup> January, 2009. The applicant will be considered for vacancies as per the said order dated 14.3.2009.

15. For the forgoing reasons, the applicant has made out a case for grant of relief as made in the O.A. except for the place of posting. The order dated 4.3.2009 shall not come in the way of considering the promotion for the year 2006-07. The respondents, though, they have supported their case, but they fail to convince us, the impugned orders are sustainable. The applicant is entitled for relief in O.A.

16. O.A. is allowed. The impugned orders are quashed. The respondents are directed to consider the case of the applicant for promotion for the year 2006-07 and consider the case of the applicant sympathetically for her posting to the nearer place. No order as to costs.

  
(S.P.Singh)  
Member (A)

  
(G.Shanthappa)  
Member (J)

HLS/-