

Central Administrative Tribunal, Lucknow Bench,

Lucknow

Original Application No. 321/2009

This the 26th day of February, 2010

Hon'ble Dr. A.K. Mishra, Member(A)

Manju Lata Pandey, Aged about 49 years, D/o Sri R.P. Pandey, R/o C/o R.K. Pandey, 56 N/2 Road Lal Bangla near Poonam Cinema, Kanpur (presently posted as TGT English in Kendriya Vidyalaya no.I AFS Chakeri, Kanpur.

.....Applicant

By Advocate: Sri A.P. Singh.

Versus

1. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Marg, Delhi through its Commissioner.
2. Joint Commissioner, Kendriya Vidyalaya Sangathan, Delhi.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Aliganj, Lucknow.
4. Principal Kendriya Vidyalaya No.I, AFS, Chakeri, Kanpur.
5. Smt. Shalini Asthana, W/o Mr. Puneet Saxena, presently posted as TGT Kendriya Vidyalaya, Janakpuri, IIInd Shift, New Delhi.

.....Respondents

By Advocate: Sri Surendran P.

ORDER

Heard both the parties.

2. The learned counsel for the respondents raised a preliminary objection about maintainability of the application on the ground that Lucknow Bench of the Tribunal does not have territorial jurisdiction to entertain the application in respect of the orders passed by the

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respondent-authorities located at Delhi and Kanpur respectively. Further, the applicant is also residing at Kanpur, therefore, there is no jurisdiction to file the application before Lucknow Bench.

3. The learned counsel for the applicant, in reply, states that the impugned order dated 31.7.2009 transferring the applicant from Kendriya Vidyalaya no.I Chakeri, Kanpur to Kendriya Vidyalaya (IInd Shift), Janakpuri, Delhi was made ostensibly on the ground of request of mutual transfer made by the applicant and Smt. Shalini Asthana, who was working at Kendriya Vidyalaya (IInd shift), Janakpuri. But before transfer order could be issued, the applicant had indicated her desire to withdraw her consent for mutual transfer. Her request in this regard was made on 29.7.2009 in the prescribed format. It was forwarded by the Principal on the same day to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow. But for reasons over which she had no control her request for cancellation of her consent for mutual transfer could not reach the competent authority. As the office of the Assistant Commissioner, who has been arrayed as Respondent no.3, is located at Lucknow, he argues that this Bench of the Tribunal has got jurisdiction to hear the application.

4. The learned counsel for the respondents brought to my notice the provisions of Section 19 of the Administrative Tribunals Act 1985, which says that an application could be made to the Tribunal, if an employee is aggrieved with any order pertaining to any service matter. In this case, the applicant has, by way of relief, prayed for quashing of the transfer order dated 31.7.2009 passed by the respondent no.2, who is located at Delhi and also for a direction to the respondent no.4, who is located at Kanpur. The applicant

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does not deny that she is residing at Kanpur. Delhi and Kanpur being outside the territorial jurisdiction of Lucknow Bench, the application could not have been filed before this Bench.

5. The learned counsel for the respondents further submits that the order passed on 23.10.2009 on the application for temporary relief should be recalled as the matter, again, relates to Kendriya Vidyalaya, Kanpur. According to him, the interim order has prevented the Principal to go ahead with preparation of a panel of contract teachers. I find that the directions issued on 23.10.2009 was to the applicant to make a representation for her temporary adjustment against the vacancy caused due to maternity leave taken by another employee for a period of six months w.e.f. 1.11.2009. The competent authority was directed to decide this representation according to rules. It is learnt that the competent authority considered the representation of the applicant and permitted her to continue against the temporary leave vacancy. Here, full liberty was given to the respondent-authority to take a view in the matter on merits. The ground of maintainability should have been taken immediately after the order was passed by the Tribunal, if they did not have the opportunity to do so at the time of hearing of the application for interim relief. Having taken a decision, it does not lie with them to urge the plea of non-maintainability at a later stage. In any case, this order does not prevent the respondent-authorities to go ahead with their proposal for preparing a panel of candidates for appointment on contractual basis. Therefore, I do not find any merit in the prayer for recall application, now filed at a belated stage.



6. I find that the applicant is aggrieved with the order of transfer of respondent no.2 and additionally has sought for a specific direction to the respondent no.4. Neither does the application dated 29.7.2009 show definitively whether it was received in the office of the Assistant Commissioner on 29.7.2009. Annexure-9 to the Application does not indicate any acknowledgment of its receipt in the office of the Assistant Commissioner. In reply to the averments of the applicant made in para 4.07 that the respondents no. 2 & 3 had not considered her application dated 29.7.2009 withdrawing her consent for mutual transfer before making the impugned transfer order dated 31.7.2009, the respondents have stated that her withdrawal application had not been received by the competent authority before the orders were passed. Be that as it may, the fact remains that the cause of action had arisen on the basis of the order of respondent-authority located at Delhi and the prayer was for a direction to the respondent no.4, who is located at Kanpur and the applicant herself has her residence at Kanpur. There is no order of respondent no.3, which is under challenge.

7. In the circumstances, I am inclined to sustain the preliminary objection of respondents that Lucknow Bench of the Tribunal does not have the jurisdiction to hear this application, which is, accordingly, dismissed as non-maintainable. No costs.

6/1/2012
(Dr. A.K. Mishra)
Member-A

Girish/-

26/02/12