

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. 313/2008

This, the 5<sup>th</sup> day of December, 2008

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

Mrs. Neena Kureel, aged about 47 years, wife of Sri Virendra Kumar, resident of 3/148, Vivek Khand, Gomati Naga, Lucknow, Lucknow (Working as TGT (Hindi) in Kendriya Vidyalaya Sangathan, under posting from Kendriya Vidyalaya, AMC Lucknow to Kendriya Vidyalaya, Mati Akbarpur, District Kanpur Dehat.

Applicant.

By Advocate Sri R.C. Singh.

Versus

1. Kendriya Vidyalaya Sangathan, New Delhi, through its Commissioner.
2. commissioner, Kendriya Vidyalaya Sangathan, New Delhi.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow Region Lucknow.
4. Principal, Kendriya Vidyalaya, AMC Lucknow.
5. Mrs. Reeta Sachdeva, aged about 53 years, wife of Sri Ashok Sachdeva, resident of H-39, Sector G LDA Colony, Kanpur Road, Lucknow (Now posted as TGT (Hindi) Kendriya Vidyalaya, AMC Lucknow.

Respondents.

By Advocate Sri Surendran P.

Sri A. K. Chaturvedi.

Order

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

This application has been filed against the order dated 27.8.2008 of respondent No. 23 cancelling her posting at AMC, Lucknow and directing her to join back at KVS, Mati, Akbarpur and in her place, posting respondent No. 5 at KVS, AMC, Lucknow. The applicant was promoted to the rank of Trained Graduate Teacher on 1.9.95. She was posted at KVS, Gomtinagar, Lucknow on 1.12.2006 and worked till 1.4.2008. On the basis of work load at Gomti Nagar, School, one post of TGT became surplus and she was posted out to KVS Mati, Akbarpur, District Kanpur Dehat, although there were many at Lucknow having longer duration of stay, who should

have been posted out on this ground. However, in the transfer order dated 31.3.2008 it was mentioned that she would be reposted to KVS AMC Lucknow on 1.7.2008 when a vacancy was to occur due to retirement.

2. The respondent No. 5 who has been continuing at Lucknow since 2004 and as such, had longer station seniority was allowed to continue at KVS, IIM, Lucknow cancelling her out station transfer order. According to provisions in Article 71 (7.3) of the Education Code, the vacancies arising out of superannuation should be filled up by reposting of teachers who were posted out purely for administrative reasons and on that basis the applicant was assured of reposting at AMC, Lucknow. On receiving telephonic instructions she was relieved from Kanpur and she joined here on 3.7.2008. Surprisingly the impugned order was issued on 27.8.2008 cancelling this posting and she was again relieved on 28.8.2008 A.N. by the Principal with instructions to report back at Mati, Akabarpur again. She alleges that this has been done simply to accommodate respondent No. 5 who has been flouting her transfer orders out of Lucknow on one pretext or the other.

3. Respondent No. 5 was working at Lucknow since 13.8.2004. She was transferred to KVS, Uttar Kashi vide order dated 7.11.2007 and was accordingly relieved on 13.11.2007. She did not join at the place of her posting and made a representation. The transfer order was modified on 19.11.2007. She was posted to KVS, IFFCO, Bareilly. Again, she did not join there and filed original application No. 516/2007, in which interim order was passed on 29.12.2007 for considering her representation.



4. On consideration of her representation, the transfer order was further modified and she was posted back at IIM, Lucknow where she joined on 16.1.2008. She was again transferred from KVS IIM Lucknow to Guna vide transfer order dated 17.4.2008. She did not join at Guna, made a representation and now she has been posted back at AMC, Lucknow displacing the applicant.

5. The applicant's contention is that she had obeyed the transfer orders of her authority and joined at Kanpur Dehat. As per transfer policy, she was to be re-posted back at Lucknow and this assurance was given in the transfer order itself. Further, she joined at AMC, Lucknow on 3.7.2008 against the superannuation vacancy. Whereas, Respondent No. 5 has been disputing her transfer orders all the time. She never joined at the places of her posting and she has now managed to displace the applicant even though the applicant was at her new station only for a few days. Therefore, she contends that the impugned posting order is malafide and arbitrary in nature passed in total disregard of the transfer policy. The counsel for the applicant relied on the decision reported in (1996) 34 ATC 255 to support his contention that any order which is not issued in bonafide exercise of power is bad in law.

6. The respondents have taken the plea that the present posting of Respondent No. 5 to AMC Lucknow was made only in pursuance of the direction received by respondent No. 2 from this Tribunal in its order dated 21.1.2008 (Annexure A11). The direction of the Tribunal is extracted below:-



“O.A. is finally disposed of with a direction to Respondent No. 2..... and also to consider her representation dated 18.1.2008 for accommodating her at KVS, AMC at Lucknow on retirement of Smt. M.B. Gaur.” The respondent No. 2 in compliance with the direction of the Tribunal considered the representation and posted her at AMC Lucknow. Consequently, the impugned order was issued by the respondent No. 3 . The counsel for the applicant challenged this plea and drew my attention to the transfer order at Annexure 5 to the counter reply. It does not make any mention that the respondent No. 5 was being reposted to AMC Lucknow pursuant to the direction of this Tribunal. He objected that such a plea could not be taken which is not manifest in the transfer order itself. The judgments in the following cases have been cited in support of this contention:

- (a) AIR 1978 SC 851-Mohinder Singh Gill versus The Chief Election Commissioner and others.
- (b) (1994) 2 UPLBEC 1030-Nathi Lal versus Director, Rajya Krishi Utpadan Mandi Parishad and others.
- (c) 1999 (17) LCD 419-Dr. Avneesh Kumar and others Versus Dircor, Indian Veterinary Research Institute and others.

The ratio of these judgments is that the validity of an order is to be tested on the basis of language used in the order, not on the basis of plea taken subsequently.

7. The counsel for the respondents replied that the fact of direction of this Tribunal to consider the request of respondent No. 5 could not be disputed. Further, the consideration of the representation of Respondent No. 5 was being made in the office of the Respondent No. 2 and the modification order has been issued by Respondent No. 3 on 3.7.2008,(annexure C-5), the date when the applicant came and joined at



AMC, Lucknow. There was no malafide intention either to harass the applicant or to show any undue favor to respondent No. 5.

9. The counsel appearing for respondent NO. 5 took the plea that the direction contained in the transfer order dated 31.3.2008 of respondent No. 3, where an assurance was given that the applicant will be reposted to AMC Lucknw on 1.7.2008, was prima-facie irregular as it was made in disregard of the specific direction given by this Tribunal in its order dated 21.1.2008 where the respondent No. 2 was categorically asked to consider the request of respondent No. 5 for posting at AMC, Lucknow against retirement vacancy. Similarly, her relief from Kanpur in pursuance of a telephonic message from respondent No. 3 and joining at AMC Lucknow, could not be considered as regular when respondent No. 3 was himself modifying the posting order of respondent No. 5 as per the instructions of respondent No. 2 issued in compliance with the Tribunal's direction. As a matter of fact, the modified order was issued on 3.7.2008, the same date when the applicant was allowed to join at KV, AMC, Lucknow.

10. The counsel for the respondents submitted a number of decisions of the Hon'ble Supreme Court to the effect that the transfer and posting of employees should not be interfered with by a court of law unless grounds of malafide, incompetence of jurisdiction or infraction of statutory rules are established. The counsel for the applicant replied by citing the case of State of U.P. and others Versus Ashok Kumar Saxena and another, reported in (1998) 3 SCC 303, in support of his contention that judicial review is permissible if there is a malafide or colourable exercise of power or infraction of professed norms or principles of transfer policy.



11. As a matter of fact, the counsel for the respondents No. 1 to 4 fairly conceded that if the order of this Tribunal dated 21.1.2008 is modified, the respondents will not have any hesitation in making further changes in the impugned order. However, the fact remains that the impugned order has been passed primarily on account of the direction of this Tribunal. Therefore I would like to refrain from issuing any contradictory order. However, equity demands that the case of the applicant should be considered with sympathy when the next chain of transfers is being contemplated by the respondents and a vacancy in Hindi TGT post arises at Lucknow.

12. With these observations, the application is disposed of. No costs.

  
(Dr. A. K. Mishra)  
Member (A)

V.