

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 19.08.2014.

Pronounced on 22.08.2014

Original Application No.116/2010

Hon'ble Ms. Jayati Chandra, Member (A)

Hon'ble Dr. Murtaza Ali, Member (J)

Smt. Shailam Saxena, aged about 45 years, wife of Shri Rajesh Saxena, resident of 1748, Sector I, L.D.A. Colony, Kanpur Road, Lucknow, [working as T.G.T. (Sanskrit) in Kendriya Vidyalaya Sangathan at Kendriya Vidyalaya, Raebareli].

-Applicant.

By Advocate: Sri P.K. Singh.

Versus.

1. Kendriya Vidyalaya Sangathan, New Delhi, through its Commissioner.
2. Joint Commissioner (Admn.), Kendriya Vidyalaya Sangathan, New Delhi.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow Region, Lucknow.
4. Principal, Kendriya Vidyalaya, Raebareli.

-Respondents.

By Advocate: Sri Surendran P.

ORDER

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

- “(a) issuing/passing of an order or direction setting aside the impugned order/ letter dated 24.03.2009, issued by respondent No.3 (as contained in Annexure No.A-1 to this Original Application), after summoning the original records.

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- (b). *issuing/passing of an order or direction to the respondent Nos.1 and 2 to consider the representations of the applicant dated 27.04.2009 and 06.010.2009 (as contained in Annexure Nos. A-9 and A-10, respectively) and to regularize the period from 23.07.2008 to 10.11.2008 treating it as duty and pay the salary for the said period within a specified period of two months.*
- (c). *issuing/passing of any order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (e). *allowing this Original Application with cost."*

2. The facts of the case are that the applicant was initially appointed as T.G.T. (Sanskrit) in Kendriya Vidyalaya Sangathan (KVS) vide appointment order dated 03.04.1989. The applicant submitted an application dated 2.7.2008 for transfer to KVS, Unnao on mutual basis vis-à-vis one Miss Shalini Yadav, TGT (Sanskrit) on the ground that her husband was also working at Unnao. By transfer order No.11046/63/(17.4)/2008/K.V.S. (Mu.) (Asth.-2 dated 16/18.07.2008 the applicant was transferred from CRPF, Bijnaur, Lucknow to KVS, Khagaul and she was relieved by an order dated 22.07.2008. The applicant filed O.A.No.265/2008 before this Tribunal, challenging the transfer order dated 16/18.07.2008 and the relieving order dated 22.07.2008. By an interim order passed on 29.07.2008, the respondents were restrained from taking any coercive action against the applicant. The OA was disposed of on 12.09.2008 with a direction to Respondent No.1 to consider the representation of the applicant within a period of one month. By an order dated 31.10.2008, the transfer order was modified and she was transferred to KVS, Raebareli (Annexure A-7). The applicant submitted a representation dated 6.1.2009 to the Respondent No.1

11/11/2009

for regularization of the period from 23.07.2008 to 10.11.2008 as duty and pay the salary for the said period (Annexure A-8). Vide the impugned order dated 24.03.2009, the Respondent No.3 regularized the period from 23.08.2008 to 10.11.2008 but has denied the payment of salary on the principle of 'No work no pay' and on the ground that there is no order from this Tribunal or any other Court regarding payment of salary. The basic ground for seeking to set aside the impugned order is the fact that she was transferred on 16/18.07.2008 and relieved on 22.07.2008 without giving any breathing time to her as such, she had not time to make a representation. As the representation was subsequently allowed and her transfer order was modified, there is no ground for denying her the salary. In a similar matter in O.A.No.180/2006, the interim period between the transfer and its modification i.e. (09.04.2003 to 20.08.2004) the said applicant was allowed to be on duty and all consequential benefits were extended to her.

3. The respondents have refuted the claim of the applicant by filing counter reply stating therein that the applicant was transferred from KVS, CRPF, Bijnor, Lucknow to KVS, Bhagaul on 18.07.2008 and she was relieved on 22.07.2008. Being aggrieved with the transfer order the applicant filed O.A.No.265/2008, which was disposed of by an order dated 12.09.2008 with a direction to the applicant to make a representation and the Respondent No.1 to consider such representation within a period of one month. In compliance of the order passed by this Tribunal the Respondent No.1 considered

11/11/2009

and decided the representation of the applicant. The place of posting was modified to KVS, Raebareli vide order dated 31.10.2008. The Principal, KVS, Raebareli was directed to regularize her leave as per rules and the payment of the salary was refused on the basis of 'No work no pay'. The respondents have further stated that transfer and posting are part of the service condition of the employees and the employees can be posted anywhere in India. The transfer order dated 16/18.07.2008 was never stayed by the Hon'ble Central Administrative Tribunal in O.A.No.265/2008. The respondents were only directed not to take any coercive action against the applicant. The respondents have not taken any coercive action against the applicant. The applicant never gave any applicant consequent upon the interim order to be taken back in the original place of posting. She waited till the outcome of the OA and joined at the amended transferred place of posting. She could have rejoined her duties but she remained absent. However, in view of the direction of this Tribunal no coercive action was taken and the period of absence has been treated as duty for all purposes except of payment of salary as she had not actually worked during the aforesaid period.

4. The applicant has filed Rejoinder reply rebutting the Counter Affidavit more or less reiterating the same points as taken in O.A.

5. We have heard the learned counsel for both the parties and perused the entire material available on record.

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6. The cited case is of no help of the applicant as the only issue that arises is whether the applicant is automatically entitled for full pay between the period from 23.08.2008 to 10.11.2008 when admittedly she was relieved and on 10.11.2008. The only case of the applicant is that by a subsequent order her place of transfer has been modified and that she was relieved suo-moto and that she has not given any time to make a representation to the said transfer order. This argument does not carry much conviction as by an interim order dated 12.09.2008 passed in O.A.No.265/2008 while the respondents were directed not to take any coercive action no order was passed for staying her transfer order. Further more, the applicant gave no application consequent upon such order for rejoining at her previous place of posting nor did she give any leave application but, she waited till the outcome of the OA. The facts and circumstances of the relied upon case do not seem to be similar to the case in hand. The para-2 of the order dated 22.01.2009 passed in O.A.No.180/2006 would reveal that facts of the two cases are not similar. Para-2 of the order dated 22.01.2009 passed in O.A.No.180/2006 reads as follows:-

“para-2

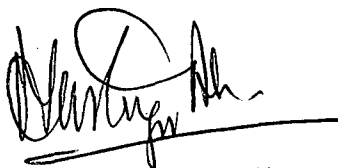
The applicant was transferred from Lucknow on being found surplus. She made a number of representations mentioning her state of disability and requesting to adjust her at Lucknow. Her representations were not taken into consideration. She filed O.A.No.489/2003 and thereafter O.A.No.16 of 2004. This Tribunal quashed the orders of transfer, her relief from the school at Lucknow. The respondent No.1 was directed to reconsider her case in view of availability of vacancies at Lucknow where she could be adjusted. Pursuant of this direction, the

1/11/2009

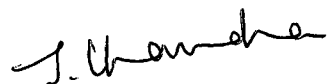
respondents decided to cancel the order of transfer and permitted her to continue at Kendriya Vidyalaya, Lucknow Cantonment against the available vacancy. She rejoined at the post on 20.08.04, and represented that the period of her absence from 9.4.2003 to 20.8.2004 should be treated as on duty and she should be given all consequential benefits. Her representation in this regard was considered and it was decided to treat the period as leave due to the extent leave is available in the credit of the applicant and the balance period as extra ordinary leave on private ground."

7. There is reference of another order/judgment of **Bangalore Bench of this Tribunal in O.A.No.349/2005 in the case of K. Gopinath Vs. The Central Electricity Authority, New Delhi and Others reported in 2006 (2) ATJ 237**, wherein the transfer order is quashed. In the present case the transfer order is not quashed only a direction was given to consider the representation of the applicant was passed.

8. In view of the above, the O.A. is liable to be dismissed and is accordingly dismissed. No order as to costs.



(Dr. Murtaza Ali)
Member-J



(Ms. Jayati Chandra)
Member-A

Amit/-