

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 271/2010

This the 8th day of July , 2010

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

Smt. Malti Tiwari, Aged about 57 years, W/o Sri M.K. Tiwari, working as TGT, Kendriya Vidyalaya No.1, Chakeri, Kanpur, R/o 383 Friends Colony, Rama Devi, G.T. Road, Kanpur

.....Applicant.

By Advocate: Sri A.P. Singh.

Versus

1. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-16 through its Chairman.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, RO, Aliganj, Lucknow.
4. Principal, Kendriya Vidyalaya No.1 Chakeri, Kanpur
5. Smt. Pravesh Kirmani (TGT) Kendriya Vidyalaya, BEG & Centre Khadki, Pune.

.....Respondents

By Advocate: Sri V. Mishra for Sri Surendran P.

ORDER

Heard both parties.

2. This is an Application challenging the transfer order dated 21.6.2010 passed by Education Officer with the approval of competent authority of Kendriya Vidyalaya Sangathan (KVS) and also the ex-parte relieving order issued by Principal, Kendriya Vidyalaya no.1, Chakeri, Kanpur (respondent no.4)

3. Vide paragraph 8(a) of the Application, the applicant is seeking a direction to set-aside the impugned transfer order as well as the relief order. She is also seeking in paragraph 8(b) of the application a direction to the respondents to permit her to join at the same school and perform her duties as Trained Graduate Teacher (TGT) (Hindi).

4. Sri V. Mishra appearing on behalf of Sri Surendran P. counsel for respondents requested short adjournment as the counsel was not

able to appear today before the Tribunal. The learned counsel for the applicant pleaded for grant of interim relief atleast against initiation of any disciplinary proceedings against the applicant. Sri V. Mishra holding brief of Sri Surendran P. appearing on behalf of respondents raised preliminary objection of maintainability of this Application on the ground that Lucknow Bench of the Tribunal did not have territorial jurisdiction to hear this Application. According to him, the impugned order has been passed by the Education Officer with the approval of Commissioner, KVS, whose office is located at Delhi. The applicant was working at Kendriya Vidyalaya no.1 Chakeri, Kanpur, which is beyond territorial jurisdiction of this Tribunal. He drew my attention to the representation of the applicant filed as Annexure no.6, which is addressed to the Commissioner, KVS, New Delhi. Since the impugned order has been passed by the Commissioner, New Delhi and the representation has been made to the Commissioner, New Delhi, according to him, this Tribunal does not have any territorial jurisdiction to hear this Application and pass any interim order.

5. Learned counsel for the applicant drew my attention to the order passed by Lucknow Bench of the Tribunal in O.A. no. 472 of 2005 in which transfer orders passed by respondent-authorities against the applicants who were teachers of Kanpur Kendriya Vidyalaya were set-aside and the respondents were directed to re-examine the policy. He pleads that Lucknow Bench of the Tribunal accordingly has jurisdiction in a matter relating to a teacher of Kendriya Vidyalaya no.1 Chakeri, Kanpur. On going through the judgment, I find that the issue of territorial jurisdiction of Lucknow Bench had neither been raised, nor discussed. According to the applicant, the respondent-authorities had gone in Writ petition against the order of this Tribunal dated 27.7.2005 passed in O.A. no. 472 of 2005 and the Writ petition was dismissed. But, he does not come forward whether the issue of territorial jurisdiction of Lucknow Bench was ever discussed by the Hon'ble High Court. In the circumstances, I do not think that the judgment of this Tribunal in O.A. no. 472 of 2005 is of any help to decide the issue of territorial jurisdiction.

6. Learned counsel for the applicant also filed a copy of the order dated 16.4.2010 passed by Lucknow Bench of the Tribunal in O.A. no. 107 of 2010 in which a direction was sought against Assistant

Commissioner, KVS, Regional Office, Lucknow (respondent no.3 in the present Application) to forward the representation of the applicant to the competent authority. Since a direction against the Assistant Commissioner, KVS, Lucknow was specifically sought, this Tribunal entertained the Application and gave directions to the Assistant Commissioner to forward the representation of the teacher concerned. When a specific query was made whether the present applicant is seeking any direction to the Assistant Commissioner, Lucknow to forward her representation, there was no clear answer. As seen from paragraph 8 of the Application, no relief is being sought against the Assistant Commissioner to forward the representation dated 22.6.2010, which has been filed by the applicant. Since no direction is being sought against the Assistant Commissioner, the order passed in O.A. no. 107 of 2010 cited by the applicant will be of no help to her.

7. The applicant has specifically averred in paragraph 2 of the Application that the Assistant Commissioner, KVS is the appointing authority as well as the appellate authority as per circular dated 1/2.2.2010. A copy of this letter has not been annexed by the applicant. It may be possible that the Assistant Commissioner is the Appointing authority, but he certainly does not have the powers to over-ride the orders of Commissioner in the matter of transfer of a Teacher of KVS. The learned counsel for the applicant drew my attention to the provisions of paragraphs 12.4.2, 12.4.5 as well as paragraph 12.4.9 of the guidelines relating to transfer of teachers annexed at Annexure-4 of the Application; again these are not relevant at the preliminary stage when the jurisdiction issue is being considered; neither do they confer power on Assistant Commissioner of a region to override the transfer orders of the Commissioner.

8. Learned counsel for the applicant further contends that no transfer order could be made in KVS without specific recommendations from the Assistant Commissioner. In order to substantiate this argument, he is placing before me Rule 59(27) of Education Code which says that no teacher shall represent his/her grievance except through proper channel. In this case, the applicant has made her representation against the impugned transfer order through proper channel, but this does not mean that the Assistant Commissioner is the competent authority in this case. He also drew my attention to the order of Assistant Commissioner at Annexure-3 in

which the applicant was adjusted at Kendriya Vidyalaya no.1 Chakeri, Kanpur against a clear vacancy pursuant to the direction of the Tribunal. Clearly this order was passed in pursuance of the direction of this Tribunal; therefore, it does not confer any power on Assistant Commissioner to over look the transfer order made by the Commissioner, KVS unless he is directed to do so by a competent authority.

9. From the aforesaid discussions, it emerges that the impugned transfer order was passed by the Headquarters of KVS located at New Delhi; further the applicant was stationed at Kanpur, both these places are admittedly beyond the territorial jurisdiction of Lucknow Bench of the Tribunal. The applicant is not seeking any specific direction to the Assistant Commissioner at Lucknow. Therefore, the preliminary objection of the respondents that the O.A. is not maintainable on jurisdiction ground is sustained. The O.A. is, therefore, dismissed as not maintainable. However, the applicant is at liberty to file an Application before the appropriate judicial forum for redressal of her grievance. The applicant may do so within a period of 15 days from the date of passing of this order. In the interest of justice, it is expected that the respondent-authorities will not initiate any coercive measure against her till expiry of the time frame indicated above. No costs


(Dr. A.K. Mishra)

Member-A

Girish/-