

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.312/2000.

this the 30th day of August 2000.

Coram: Hon'ble Shri D.S.Baweja, Member (A),

Mrs. Abha Gautam,
C/o. D.N.Dubey,
203, 'C' Wing,
Swapna Mahal, Swapna Nagari,
Mumbai - 400 080. ... Applicant.
(By Advocate Shri P.M.Mokashi)

Vs.

1. Union of India
through Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016.
2. Assistant Commissioner,
Mumbai Region,
I.I.T. Campus, Powai,
Mumbai - 400 076.
3. Principal,
Kendriya Vidyalaya, N.C.H. Colony,
Bhandup,
Mumbai - 400 078.
4. Mrs. Shanti Agarwal,
Kendriya Vidyalaya, N.C.H. Colony,
Bhandup,
Mumbai - 400 078. ... Respondents.
(By Advocate Shri V.G.Rege for R-1 to R-3
and Shri R.D.Deheria for R-4).

: ORDER :

{Per Shri D.S.Baweja, Member (A)}

The applicant has filed this OA challenging her transfer
as per impugned order dt. 20.4.2000.

2. The applicant was posted as a Teacher in Kendriya Vidyalaya,
NCH, Bhandup, Mumbai from July, 1997 onwards. The applicant's
husband was also posted at Mumbai in the Ministry of Defence and
she was staying with him. Subsequently, in June, 1999 her

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husband was transferred to Jalandhar. The applicant applied for leave of ten days from 29.7.1999 to 7.8.1999 and went to Jalandhar to visit her husband and family members. There the applicant felt sick due to slip disc and was under treatment of a Private Doctor. The applicant promptly informed the Principal of her School requesting for grant of leave from 7.8.1999 to 6.9.1999 enclosing medical certificate from the Doctor. The applicant further adds that since there was no improvement in her condition, she sent a telegram on 7.9.1999 informing the Principal that she had been advised further rest of one month. This telegram was also followed by a letter dt. 7.9.1999. Since the applicant did not recover from sickness by 7.10.1999, she again requested by letter dt. 8.10.1999 to grant leave upto 27.10.1999 along with the medical certificate. Thereafter, the applicant received a letter dt. 15.10.1999 from the Principal of her School directing her to present herself before the Civil Surgeon of the Government Hospital at Jalandhar for getting second medical opinion. The applicant in compliance with the direction, presented herself before the Civil Surgeon of the Government Hospital at Jalandhar and after examination she was advised further rest of one week and thereafter to report for duty. Accordingly, the applicant reported for duty on 28.10.1999. The applicant was permitted to join her duties. However, on 3.11.1999 she received a telephone call from her husband stating that her daughter was sick. The applicant applied for three days Casual Leave from 4.11.1999 to 6.11.1999. The applicant left for Jalandhar immediately. The applicant again fell sick with the same problem on account of the train journey from Mumbai to Jalandhar. The applicant, therefore, sent

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a telegram on 9.11.1999 requesting for grant of leave on account of sickness. This was followed by a letter dt. 25.11.1999 enclosing the medical certificate advising rest for 15 days. Thereafter, she sent another letter dt. 10.12.1999 indicating that a further rest of 15 days has been advised. However, the applicant did not recover from sickness and further extension had to be sought and applicant every time informed the Principal enclosing medical certificates. The applicant received a letter on 14.2.2000 from the Principal of the School informing that her leave is terminated and she should report for duty to Assistant Commissioner, Kendriya Vidyalaya Sangathan, Mumbai. The applicant, however, could not comply with this direction as she was still sick and informed the Principal accordingly as per letter dt. 21.3.2000. Finally, the applicant reported her duty at Mumbai on 19.4.2000 to R-2 i.e. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Mumbai. She was, however, directed by R-2 that she should collect her order of transfer from the Principal of School. When she reported to the Principal of the School on 22.4.2000, she was handed over transfer order dt. 20.4.2000 transferring the applicant to Kendriya Vidyalaya, Mudkhed. The applicant immediately represented against the order on 24.4.2000 and the said representation was rejected as per the order dt. 27.4.2000. Feeling aggrieved, she has filed the present OA on 1.5.2000 seeking the following reliefs:

"a) to quash the orders dt. 20.4.2000 transferring the applicant, 22.4.2000 relieving the applicant on transfer and 27.4.2000 rejecting her representation and directing the respondents to post back the applicant at Kendriya Vidyalaya, NCH, Bhandup.

b) to direct the respondents to sanction leave without pay to the applicant for the period from

4.11.1999 to 18.4.2000 and this absence will not result in any break in service.

c) to direct the respondents to grant full backwages w.e.f. 19.4.2000 till she is actually permitted to join her duties at Bhandup."

3. The main defence of the applicant is her entire her period of absence during which she was under medical treatment was covered by medical certificates. The respondents at no stage indicated that her medical certificates are not acceptable and the leave has been refused. Therefore it cannot be said that the applicant was on unauthorised absence without any justifiable reason. The applicant has been transferred as per the impugned order without giving any reasons and the said order is punitive in nature, as the same has been issued alleging absence of applicant as unauthorised for the period from 4.11.1999 onwards. The transfer is not due to any administrative exigency, as till 22.4.2000 when the applicant reported to this school, nobody was posted and the post was still vacant. The respondents if were not satisfied with the explanation given by the applicant with regard to her absence, then disciplinary action could have been taken against her for the mis-conduct as per Rules. Therefore, the transfer order has been passed with ulterior motive and with malafide intention.

4. The respondents have filed a written statement opposing the OA. The respondents submit that the applicant has not come to the Tribunal with clean hands as she has not disclosed the vital facts. The ground for remaining absent is false as the applicant had actually gone to Jalandhar to settle and perform the marriage of her daughter. On merits, the respondents submit that the applicant is liable to be transferred to any of the Kendriya Vidyalaya and transfer being an incident of service, it does not violate any legal rights of the applicant. It is further

contended, that the transfer has been ordered in the interest of administration and the competent authority has formed his opinion considering the material before him. The applicant remained on leave for a period of more than 8 months and thereby adversely affecting the studies and career of students of Kendriya Vidyalaya. The absence for a period of more than 8 months has caused prejudice to public interest and the interest of the Vidyalaya. Therefore, the transfer has not been done by way of a punishment, but in the interest of administration to ensure that the studies of the students do not suffer. The respondents also submit that the applicant is in the habit of proceeding on long leave whenever her husband is posted separately as will be observed from the details brought out in (Ex. - R-1) to the written statement. It is further stated that when applicant asked for three days Casual Leave, it was clearly informed to her that no leave can be granted to leave the Headquarter. However, on her understanding that she will not be going outside, three days Casual Leave was granted, but instead of availing the Casual Leave at the same station, she had proceeded outstation and thereafter remained absent for more than 5 months. Therefore, the applicant by getting Casual Leave sanctioned on a false pretext had gone to Jalandhar, in connection with marriage of her daughter. The contention of the applicant that the post is still vacant and not filled up is not correct, as one Mrs. Shanti Agarwal has already been posted in her place.

5. The applicant applicant in the has made Mrs. Shanti Agarwal as party respondent (viz. R-4) after filing of the written statement of written statement of the official respondents. The R-4 has filed a separate affidavit. She submits that she has

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already joined on 1.5.2000 as per the orders issued by R-2. She contends that if the relief is granted to the applicant, it would adversely affect her.

6. The applicant has filed a rejoinder reply controverting the submissions of the respondents. The applicant submits that during the period she was sick at Jalandhar it just happened that the marriage of her daughter was fixed. She contends it is not that she remained absent in connection with her daughter's marriage, but she was sick and she has been sending medical certificates from Civil Hospital, as well as, Military Hospital at Jalandhar.

7. I have heard the arguments of Shri P.M.Mokashi, the learned counsel for the applicant, Shri V.G.Rege, the learned counsel for Respondents 1 to 3 and Shri R.D.Deharia, the learned counsel for Respondents No.4.

8. The law in respect of scope of judicial review in the challenge of transfer order has been well laid down by the Hon'ble Supreme Court in catena of Judgments. I refer here one of such Judgment in the case of Mrs. Shilpi Bose Vs. State of Bihar (AIR 1991 SC 532). In this Judgment, the Hon'ble Supreme Court has held that Courts should not interfere with the transfer orders which are made in public interest and for administrative reasons, unless the transfer orders are made in violation of the statutory rules or on the ground of malafides. A government servant holding transferable post has no vested right to remain posted at the same place and is liable to be transferred anywhere. The transfer order does not violate any legal right of the government employee. In the present case, I find that none of the above grounds have been advocated to term the transfer orders bad in law. The only

ground taken by the applicant is that transfer is punitive in nature and not in the interest of administration. Considering the facts and circumstances of the case, however, I am not persuaded to hold that the transfer is punitive in nature. The facts as already detailed earlier bring out that applicant first took 10 days leave from 29.7.1999 to 7.8.1999 to join her husband at Jalandhar. Thereafter, she reported sick from there and continued to remain so, extending the period from time to time and finally reported back on duty on 29.10.1999 only when the Department directed her for the second medical opinion of the Civil Surgeon. However, after only few days of attending the school, the applicant again took Casual Leave for three days on 4.11.1999. The respondents have indicated that no leave was granted for going out of station and the Casual Leave was sanctioned by the Principal only on the understanding that she will not go out of Headquarters, but inspite of this the applicant left for Jalandhar. She again reported sick from there and continued so till 19.4.2000. Thus, the applicant was on leave for a period of almost nine months during the academic session. The applicant has stated that she was sick and the entire period is covered by medical certificates of the competent medical authorities. The Respondents, however, have brought out that the applicant has not come with clean hands before the Tribunal as the leave was being applied on medical grounds only with a view to settle and celebrate marriage of her daughter. The applicant has admitted that the settlement and marriage of her daughter took place during the period of her sickness at Jalandhar. Without going into the merits whether sick leave was being asked on the pretext of arranging or celebrating the marriage of her daughter and the

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genuineness of the medical certificates, the main issue which is to be looked at is whether her absence has affected the studies of the students during the long absence of almost nine months. The respondents have brought out in the written statement that her absence has adversely affected the studies of the students. I find much force in this contention, as any teacher who remains absent frequently and for long period, the studies of the students is bound to suffer. The respondents have also brought out that the applicant is in the habit of taking long leave whenever her husband is posted at a different station. The respondents have brought on the record at R-1 that leave obtained by her on medical grounds. It is noted that during the year 1999 she had been frequently on medical leave both short and long spells. One spell particularly from 8.3.1999 to 13.10.1999 deserves to be noted, as this spell shows that even before the applicant reported sick after availing 18 days of leave from 29.7.1999 the applicant had been reporting sick and availing the leave on medical grounds. With this fact ^{situation} thereafter, it is for the Competent Authority to take an overall view whether continuing of such a teacher in a particular School is warranted or she should be shifted to another school where her frequent absence in long spells may not cause much upset to the studies of the students. If such a decision is taken by the Competent Authority based on the attendance record of the applicant, in the interest of the administration and the studies of the students, then such a transfer order cannot be treated as punitive. Such an order would be in the interest of administration to ensure that students in school does not suffer. In the present case, I am convinced that the competent authority has applied his mind to the facts of the case and decided to

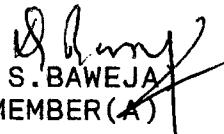
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transfer the applicant to a school outside Mumbai where perhaps the effect of ^{the} frequent absence may not affect to that extent as in a School at Mumbai. Keeping these observations in view, I do not find that the transfer order is punitive in nature.

9. As regards other relief of directing respondents to sanction leave for the period from 4.11.1993 to 18.4.2000 without pay and not to treat the period as break in service, I am of the view that it is an issue not connected with the challenge of transfer order. It is for the applicant to make a representation to the concerned authority for dealing with the period under reference as per the extant rules and if any adverse order is passed, the applicant can seek a legal remedy for the same as per law. Similarly, wages for the period from 19.4.2000 onwards no direction can be given, as it is the decision of the applicant not to join at the place of transfer.

10. In the result of the above, the OA has no merit and the same stands dismissed accordingly. No order as to costs. *IR dated 4.5.2000 will continue for a period 14 days from the date of this order and stand vacated hereafter*


(D.S. BAWEJA
MEMBER(A))

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