

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 894/2001

Date of Decision : 9th April 2002

Mrs.S.A.Gupte Applicant

Ms.N.Gohad Advocate for the
Applicant.

VERSUS

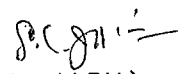
Commr.K.V.S.New Delhi & Ors. Respondents

Smt.H.P.Shah Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library yes


(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.894/2001.

Dated this the 9th day of April 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Mrs.Sneha Anjeesh Gupte,
Upper Division Clerk,
Kendriya Vidyalaya,
Varangaon, Dist.Jalgaon.

...Applicant

By Advocate Ms.N.Gohad

vs.

1. The Commissioner,
Kendriya Vidyalaya Sanghathan,
18, Institutional Area,
Shaheed Jit Singh Road,
New Delhi.

2. The Assistant Commissioner,
Kendriya Vidyalaya Sanghathan,
I.I.T. Campus, Powai,
Mumbai.

3. The Principal,
Kendriya Vidyalaya,
Ordnance Factory,
Varangaon, Dist. Jalgaon.

...Respondents

By Advocate Smt.H.P.Shah

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the letter dated 13.11.2001 with a direction to the respondents to reconsider the case of the applicant for transfer to Pune or around Pune forthwith.

Shri S.L.Jain -

..2/-

2. The applicant was transferred to Kendriya Vidyalaya, Varangaon in the post of UDC vide order dated 10.2.1999. On account of illness, she could join the said post on 11.8.2000. The applicant claims that the period is covered by sanctioned leave. On 3.2.2001 it is diagnosed that the applicant is a patient of Leg Cancer. The applicant submitted the application to respondents requesting for transfer to Pune on 9.2.2001. On 4.7.2001 the applicant filed the OA.NO.491/2001 before this Bench which was disposed of vide order dated 10.8.2001. The order passed in the said OA. is extracted below :-

"I have heard the Learned Counsel for both sides and have perused the pleadings. In my considered view, transfer is an incidence of service and, therefore, does not call for interference by this Court unless there is some malafide or violation of the statutory provisions or there is colourable exercise of power. IN this case, there is no such reason. The respondents are not transferring the applicant only because of departmental enquiry being conducted at Ambernath, which is nearer to Pune. However, considering that the applicant has cancer in the leg, as certified by the Government Hospital in Pune, I am of the view that the applicant's case needs to be considered sympathetically. While enquiries may go on, the respondents are directed to consider the applicant's request for transfer to Pune on compassionate grounds in terms of the application given by the applicant on 9.2.2001 within a period of one month from the date of receipt of a copy of this order."

The respondents decided the application of the applicant vide order dated 13.11.2001 rejecting the request of the applicant (Annexure-'A-1'). Hence, this OA. for the above said relief.

..3/-

[Signature]

3. The claim of the applicant is being resisted by the respondents with a prayer to dismiss the OA. along with cost. In para 4 of the Written Statement, it is stated that considering the case of the applicant sympathetically and also seeing that the applicant is suffering from leg cancer as mentioned in the application, the respondents stated that they have utmost sympathy with the applicant but there was no vacancy of UDC in Pune. The said fact is being repeated in para 8 of their Written Statement. In para 11, it is stated that the case of the applicant will be considered with utmost priority in accordance with K.V.S. transfer guidelines.

4. The respondents have passed the order (Exhibit-'A-1' OA. page 20) which is extracted below :-

"With reference to the submission made by the representationst the respondent organisation makes it clear that the transfer of the applicant has been ordered on administrative ground in public interest. In order to ensure smooth running of the Vidyalaya the transfer of the applicant became inevitable. In view of the adverse reports from the Vidyalaya and Sangathan authorities who are involved with the day to day supervision of the vidyalaya the transfer of the applicant had been ordered. Her medical ground being that she is suffering from leg cancer has been considered sympethetically but the same could not be acceded to as there is no clear vacancy of UDC available at the place of her choice i.e. Pune. MOreover, as per transfer guidelines in force where an employee was transferred on administrative ground will not be considered for transfer without completing five years stay at the station to which they were so posted."

..4/-

ASG

In the next para, the respondents have stated that "The medical problems expressed by the applicant is not covered under transfer guidelines as there is no indication in the medical record submitted by her establishing the presence of uncontrolled growth and spread of malignant cells".

5. The medical certificate which is placed on record by the applicant states that "First stage of Leg Cancer created out of leg ulcer from past 10 years".

6. The respondents have placed on record the Transfer Policy in which the word "Cancer" has been defined. It is reproduced as under :-

"Cancer (malignant)

It is the presence of uncontrolled growth and spread of malignant cells. The definition cancer includes leukaemia, lymphomas and Hodgkin's disease.

This excludes non-invasive carcinoma(s) in-Situ, localised non-invasive tumour(s) revealing early malignant changes and tumour(s) in presence of HIV infection or AIDS, any skin cancer excepting malignant melanoma(s) are also to be excluded."

On perusal of the definition, it is suffice to state that the word "Cancer" has been defined in the first sentence and on perusal of the subsequent sentence the definition is inclusive and not exhaustive. When there is a certificate that the applicant is suffering with first stage of leg cancer created out of leg ulcer from past 10 years, the case of the applicant is

S. L. D. M. —

..5/-

covered by the first sentence. Therefore, the reasoning of the respondents in last but one para that the "medical problems expressed by the applicant is not covered under transfer guidelines as there is no indication in the medical record submitted by her establishing the presence of uncontrolled growth and spread of malignant cells" appears to be incorrect.

7. Further, the reasons of the respondents that as per transfer guidelines where an employee is transferred on administrative ground will not be considered for transfer without completing five years stay at the station to which they were so posted also appears to be incorrect. The reason being the said guidelines for 5 years is operative only in normal cases while the applicant's case is being of cancer which is covered by the definition of the word "Cancer", which is a ground of transfer being an exception to the normal rule of 5 years. The applicant is seeking the transfer not only to Pune but even to nearby schools and said fact has not been considered by the respondents.

8. In the result, OA. is allowed. The respondents are directed to consider the case of the applicant in view of the interpretation putforth by the Bench, on the first available occasion for transfer of the persons who are holding the post of UDCs. No order as to costs.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

mrj.