

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 491 of 2001.

Dated this Friday, the 10th day of August, 2001.

Mrs. Sneha Anjeesh Gupte, Applicant.

Shri S. P. Saxena, Advocate for the
Applicant.

VERSUS

Union of India & Another, Respondents.

Smt. H. P. Shah, Advocate for
Respondents.

CORAM : Hon'ble Smt. Shanta Shastry, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library. ✓

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(Smt. SHANTA SHAstry)
MEMBER (A).

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Dated this Friday, the 10th day of August, 2001.

CORAM : Hon'ble Smt. Shanta Shastry, Member (A).

Mrs. Sneha Anjeesh Gupte,
Upper Division Clerk,
Kendriya Vidyalaya,
Varangaon, Dist. Jalgaon,
(Residing at Qr. No. II/2,
K.V. Colony, Varangaon,
District - Jalgaon).

... Applicant.

(By Advocate Shri S. P. Saxena)

VERSUS

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shahid Jeet Singh Road,
New Delhi - 110 011.
2. The Assistant Commissioner,
Kendriya Vidyalaya
Sangathan, I.I.T. Campus,
Powai, Bombay - 400 078. ... Respondents.

(By Advocate Smt. H.P. Shah).

ORDER (ORAL)

PER : Smt. Shanta Shastry, Member (A).

The applicant in this case is working as Lower Division Clerk on regular basis at Kendriya Vidyalaya at Varangaon. She has requested for a transfer to Pune vide her application in the prescribed format dated 09.02.2001. The respondents have not so far considered her application, according to the applicant.

Therefore, the applicant has prayed for her transfer to Kendriya Vidyalaya in and around Pune on the ground that she is suffering from cancer and is under treatment at Sassoon General Hospital, Pune.

2. Before coming to Kendriya Vidyalaya, Varangaon, the applicant was initially appointed as Lower Division Clerk at Khadki, Kendriya Vidyalaya, and worked there upto 07.11.1994. The applicant was transferred to Kendriya Vidyalaya, Southern Command, Pune, on promotion to the post of U.D.C. on 08.11.1994. After joining there, the applicant found certain irregularities with regard to the accounts, particularly, manipulation of accounts by the Principal of the School. She, therefore, brought this to the notice of higher authorities. A regular enquiry was conducted against the Principal and the Principal has been punished, and according to the applicant, a recovery of Rs. 1,17,800.00 has been ordered and effected from the retirement benefits of the Principal. The Principal retired in June, 2000. Thereafter, the respondents all of a sudden issued a charge-sheet to the applicant on 17.08.2000. There are five articles of charge. The charges are that the applicant misused the official position during her tenure at Kendriya Vidyalaya, Pune from 1995 to 1997, tampered with the record and manipulated over payment after making changes/corrections in the figures of 107 vouchers of Pupil Fund Account, she did not keep vouchers for an amount of Rs. 26,709/- in respect of the Pupil Fund Account, she also made payments of Rs. 31,518/- for purchase of sports material,

stationery items, etc., she manipulated materials in payment without verifying the stock entries of the Stock Register and she also embezzled to the tune of Rs. 9,240/- from the School Fund Account of the Vidyalaya. An Enquiry Officer has been appointed and the enquiry has started at Ambernath, as both the enquiry officer and the presenting officer are located there. A further enquiry was initiated against the applicant for unauthorised absence from 10.02.1999 till 10.08.2000. This enquiry was conducted at Pune. Learned Counsel for the applicant submits that the enquiry is complete but the result is not known.

~~The applicant submits that~~

3. ~~from 1991, the applicant developed ulcer in her right leg, for which she was taking treatment from the Sassoon General Hospital, while she was in Pune. Also, she was taking treatment from the K.E.M. hospital at Pune. Her absence, which has been enquired into as unauthorised absence, the Learned Counsel for the applicant submits, was really not unauthorised, but the same was regularised by sanctioning leave due. The entire period of her absence was covered by medical certificates issued by the Government/Government approved hospitals, and the same were submitted from time to time to the leave sanctioning authority. However, the applicant attended the enquiry at Pune and has been attending the enquiry at Ambernath inspite of the fact that the applicant had an ulcer in her right leg. The Learned Counsel for the applicant now submits that in February, 2001, further diagnosis has been made by the Sassoon General Hospital and it has now been diagnosed as Cancer of the leg and the applicant is~~

due for operation around 15.09.2001. The applicant has annexed the medical certificates given by the Sassoon General Hospital at page 21 of the O.A. This certificate is annexed to the application for transfer by the applicant. The applicant is finding it difficult to not only attend to the enquiry at Ambernath but also to come for treatment at Pune every second week, as directed by the hospital authorities. Therefore, the applicant is again pressing that she be transferred to Pune. Further, the applicant has also drawn my attention to certain instructions issued by the Government of India, whereby the facility of transferring an employee to the place of choice is given, where an employee is suffering from certain terminal disease like cancer, leprosy, etc. However, the applicant has not been able to produce the relevant O.M. in this context.

4. The respondents have so far not considered the applicant's request for transfer to Pune on the ground that as the enquiry is on, at Ambernath, and the applicant is likely to tamper with the evidence, the applicant need not be transferred to Pune.

5. The Learned Counsel for the applicant has submitted that whatever record is required in connection with the enquiry of the applicant, was already the record considered in the disciplinary enquiry conducted against the Principal at Hyderabad. There is no likelihood of the applicant now tampering with that record.

The applicant has also not pressed that she should be posted in a particular school but could be in any of the school in Pune. Further, the applicant is desparate due to her disease i.e. cancer in her leg.

6. 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 09.02.2001 within a period of one month from the date of receipt of a copy of this order.

7. The O.A. is disposed of accordingly. No order as to costs.

Shanta 9-
(Smt. SHANTA SHAstry)
MEMBER (A).

29-11-2001

C.P. NO: 98/2001

Applicant by Shri S.P. Saxena,
Respondents/contemnors by Smt. H.P.
Shah.

The applicant by O.A. No. 491/2001 made a prayer for transfer while an enquiry is pending against her. Considering the facts of the case on merit, this Tribunal did not grant the relief of transfer to applicant but directed the respondents to consider her case sympathetically. The applicant represented to respondents by making a request for transfer but the respondents have turned down the request for transfer to Pune for the reason that there is no clear vacancy of U.D.C. available at Pune. Ad. Counsel for the applicant argued that as the applicant is suffering from cancer, her case was not been considered sympathetically. Be that as it is. There is no wilful disobedience of the order of this Tribunal. The only direction ^{issued} was to consider the case of the applicant sympathetically, which has been done. The order of this Tribunal stands complied with and therefore the application is liable to be rejected.

The C.P. is dismissed as it is not a case of wilful disobedience of the order of this Tribunal. However, it is made clear that it is kept open to the applicant to challenge the order of the respondents according to law and rules if so advised.

dt. 29/11/2001
order/Judgment despatched
respondent(s)
on 20/12/2001

MS

Shah
(Smt. Shanta Shastri)
MCA

B. Dikshit
(B. Dikshit)
V/C.