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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 18.6.1999

OA No.262/99

Smt. Sita Pandey W/o Shri R.N.Agnihotri, aged 39 years last posting as PGT (Hindi) in Kendriya Vidhyalaya No.1, Khetri Nagar, Distt. Jhunjhunu.

.. Applicant

Versus

1. Kendriya Vidyalaya Sangathan through its Commissioner, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi.
2. Asstt. Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.

.. Respondents

Mr. A.C.Upadhyay, Counsel for the applicant

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

This application has been filed by Smt. Sita Pandey, PGT (Hindi), Kendriya Vidhyalaya No.1, Khetri Nagar, under Section 19 of the Administrative Tribunals Act, 1985 with a prayer to quash and set-aside the order dated 21.4.99 (Ann.A1) and that the respondents may be directed to post the applicant at the place where her husband, who is also a teacher in the Kendriya Vidhyalaya Sangathan (KVS), is posted or nearby. The applicant has also prayed for an interim order for staying the aforementioned impugned order dated 21.4.99 and that the applicant be treated as on duty on the date she was relieved by the impugned order.

2. I have heard the learned counsel for applicant and respondents and have also gone through the records. During the arguments, on the question of interim relief, it has agreed by both the counsel that the matter may be heard and disposed of finally at the admission stage.

3. The case of the applicant is based essentially on following

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arguments. One, with the closure of the Kendriya Vidhyalaya (for short KV) No.1, Khetri Nagar, as per policy of the Sangathan the priority is to be given to spouses to be posted at one place as far as possible and according to this policy the applicant should have been posted at Itarana (Alwar) as her husband has been posted there. But in violation of the rules and the policy and due to mala fide reasons, the applicant has been posted at KV, Dharenghdara (Gujarat) at a distance of 1500 Kms. from the place of her husband's posting. Two, the applicant made representations seeking either a posting near her husband's place of posting or a place where both of them could be accommodated as a spouse case. Three, the applicant is suffering from cardiac Aasthma for the last three years and cannot live alone. Four, in the note below the Office Order dated 31.3.99 (Ann.A2) the Sangathan has asked the Deputy Commissioner (Admn.) KVS (Hqrs,) for deployment of the staff working in these (four) KVs, which were closed to nearby KVs or their choice places depending upon the availability of vacancies and that suitable instructions may be issued to the concerned Asstt. Commissioners to this effect. Five, one Shri M.L.Sharma had been posted in KV No.4 on the post of PGT (Commerce) where no post of PGT (Commerce) has been sanctioned as such the applicant may also be posted at Itarana or Jaipur without any sanctioned post.

4. A copy of the application was given to the respondents who have filed preliminary as well as detailed reply. It has been strongly argued on behalf of the respondents that the issue of transfer and posting has been considered time and again by the Apex Court and the entire law has been settled by a catena of decisions by the Apex Court. The Apex Court has, inter alia, held that government instructions on transfer can be questioned in a Court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions; that the wheels of administration should be allowed to run smoothly and the Court or the Tribunal are not expected to intradict working of administrative system by transferring the officers to proper places and the Administrative Tribunal is not an Appellate Authority sitting in judgment over the order of

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transfer of the competent authority. The learned counsel for the respondents has cited a number of cases decided by the Hon'ble Supreme Court and the Hon'ble Rajasthan High Court in support of his contentions. He has stressed that neither any statutory provision has been violated by the impugned transfer orders nor the applicant has mentioned anything in the application which can even indicate presence of any mala fide at all. In view of this the transfer order is perfectly legal, issued in the interest of carrying on the administration in the Sangathan and may not, therefore, be interfered with by the Tribunal.

5. The learned counsel for the applicant has also filed a rejoinder in which the applicant has sought to bring out the fact that even after issuance of the impugned order dated 21.4.99 (Ann.A1) as many as seven postings have been done to accommodate spouse cases. It is alleged that this indicates that the respondents are using their power to transfer teachers in a colourable manner and people are being accommodated who approach authorities subsequently. He argued that this is a valid ground to quash the impugned order dated 21.4.99. It is found from the names mentioned in the rejoinder that out of 17 teachers transferred under the impugned order dated 21.4.99 ^{there are only} only 2 out of 7 cases listed in the rejoinder figure in the impugned order.

6. As regards the cases cited by the applicant in their application (Shri M.L.Sharma's and seven spouses cases mentioned in the rejoinder), these were irrelevant to the present case and in any case done under the administrative powers available to the authorities in the interest of administration, Shri M.L.Sharma was in fact, the Incharge Principal of KV, Jobner and was only attached at Jaipur to look after the closing work and Headquarters had already been approached to arrange his posting.

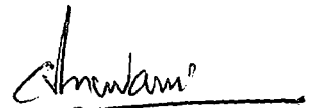
7. I have given my deep and anxious consideration to this case as it involves a lady teacher who and whose husband were serving at KV No.1, Khetri Nagar, together and who, on closure of the said school, had been posted at places which are alleged to be 1500 Kms. away from each other. The legal position is absolutely clear and the impugned order dated

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21.4.99 cannot be held as bad in law as neither mala fide has been attempted/proved nor violation of any statutory provision has been established. However, the Apex Court in Union of India and Ors. Vs. S.L.Abbas (JT 1993 (3) SC 678) has also quoted the observations made by that Court in Bank of India Vs. Jagjit Singh Mehta (JT 1991 (4) SC 460) that "even though their preference may be taken into account while making the decision in accordance with administrative needs.....No doubt the guidelines requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect alongwith the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees". The respondents in their preliminary objections have also mentioned in para 7 that "While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place". Again in para 13, the respondents have mentioned that "if the applicant has some personal difficulties, the proper course would have been to approach the departmental authorities rather than to challenge the order of transfer or file petition/s before the Court."

8. In view of what has been discussed in the preceding paragraphs and the arguments put forward by the learned counsel for the opposite parties, I come to the conclusion that no case is made out which may warrant interference by this Tribunal. However, the respondents may consider the representations made by the applicant sympathetically and expeditiously, against the background of what has been stated in the immediate preceding paragraph and give whatever relief is possible to this couple.

9. The application is accordingly dismissed with no order as to costs.


(N.P. NAWANI)
Adm. Member