

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 416 of 2004

Bilaspur, this the 28th day of July, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Smt. Nisha Dixit wife of Shri Girish Kumar
Dixit, aged about 49 years, Primary Teacher,
Kendriya Vidyalaya, Air Force Station,
Maharajpur, Gwalior, R/o. 2-D, Hariom
Colony, Murar, Gwalior. Applicant

(By Advocate – Shri S.C. Sharma on behalf of Shri R.K. Gupta)

V e r s u s

1. Union of India, through Secretary,
Ministry of Human Resource Development,
New Delhi.
2. Commissioner, Kendriya Vidyalaya
Sangathan, Shaheed Jeet Singh Marg,
New Delhi.
3. Assistant Commissioner, Kendriya
Vidyalaya Sangathan, Regional Office
(Bhopal Region), Bhopal (MP).
4. Principal, Kendriya Vidyalaya No. 2,
Air Force Station, Maharajpur,
Gwalior, (MP). Respondents

(By Advocate – None)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main reliefs :



“1. to quash the impugned letter dated 31.3.2004 (Annexure A-1) so far it relates to the applicant,

2. direct that the tenure of the applicant at Kendriya Vidyalaya No. 2 Air Force Station, Maharajpur, Gwalior shall be counted w.e.f. 5.9.2002 i.e. the date on which the applicant reported at Kendriya Vidyalaya No. 2, Air Force Station, Maharajpur, Gwalior after her transfer from Morena,

3. direct the respondents not to transfer the applicant on the basis of the impugned letter dated 7.1.2004 (Annexure A-1).”

2. The brief facts of the case are that the applicant is working as a Primary Teacher in Kendriya Vidyalaya No. 2 situated at Air Force Station, Maharajpur, Gwalior. She joined in 1979 at Kirandul. She was transferred from their to Air Force Station, Maharajpur, Gwalior in 1981 and again she was transferred from Kendriya Vidyalaya No. 2, Maharajpur to Kendriya Vidyalaya No. 4 in Gwalior on mutual transfer basis. Thereafter, under the scheme of transfer she was transferred from Kendriya Vidyalaya, Gwalior to Kendriya Vidyalaya, Murena by order dated 2.4.2002 and she joined there on 5.4.2002. The respondents invited applications vide letter dated 20.6.2002 for mutual transfer of the teachers. She applied for her transfer to Gwalior which was accepted vide order dated 20.8.2002 and she was transferred from Murena to Maharajpur, Gwalior on 5.9.2002 (Annexure A-6). The respondent No. 3 by the impugned order dated 7.1.2004 (Annexure A-1) has circulated a list of employees who have served for 5 years or more at their present station in the present post as on 31.3.2004. The name of the applicant is shown at serial No. 1 in this list. Her date of joining at the present station is shown as 4.8.1981 instead of 5.9.2002 i.e. the date on which she was transferred from Murena to Kendriya Vidyalaya No. 2, Air Force Station, Maharajpur, Gwalior (present place of posting). Hence the date of her joining at the present station should have been 5.9.2002 and not 4.8.1981 as mentioned in the impugned order Annexure A-1. The applicant is likely to be transferred from the present station of posting to any other station which will cause hardship to her, as her husband Shri G.K. Dixit is



working as Physical Teacher at Kendriya Vidyalaya No. 2, Maharjpur, Gwalior and they are staying together at Gwalior. This transfer will cause splitting of the family. The applicant's mother in law is an old and sick lady and she is staying with the applicant and is fully dependent on her. In the earlier list dated 17.11.2003, the name of the applicant was not included for transfer. She submitted representation dated 3.2.2004 (Annexure A-7) but has not received any response from the respondents. The applicant has filed an OA No. 230/2003 but the was dismissed as withdrawn by the order of the Tribunal dated 18.8.2003 (Annexure A-9). The impugned order is illegal and hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicant that the respondents had invited applications vide letter dated 20.6.2002 (Annexure A-4) for mutual transfer of teachers and in pursuance of the aforesaid letter the applicant had applied for her mutual transfer to Gwalior which was accepted by the respondents vide order dated 20.8.2002 (Annexure A-5). The applicant was transferred to Kendriya Vidyalaya No. 2, Air Force Station, Maharajpur, Gwalior on 5.9.2002 (Annexure A-6) and as such she is working there with effect from 5.9.2002, while the date of joining at the present station of the applicant is shown as 4.8.1981 while infact it is 5.9.2002. In the earlier list issued on 17.11.2003 the name of the applicant was not mentioned for transfer while in the impugned letter dated 7.1.2004 (Annexure A-1) her name is mentioned at serial No. 1 and her date of joining at this station is shown as 4.8.1981. Hence she is not covered under the alleged policy of 5 years of staying at one station. She further argued that Gwalior and Murena are not same division. According to the guidelines dated 28.1.2005 the station of Gwalior is mentioned at 061 while that of Murena is mentioned as 071. Hence, the impugned order



is not in accordance with any policy or law and the OA deserves to be allowed.

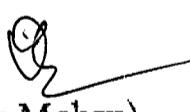
5. In the reply the respondents have submitted that the applicant has filed this petition on the basis of the apprehension and the same is premature and cannot be maintained as the letter dated 7.1.2004 (Annexure A-1) is not the transfer order of the applicant while it is preparation of the list of employees who have served at the present station in the present post as on 31.3.2003 for 5 years or more. The name of the applicant is correctly shown at serial No. 1 in the list having length of service of more than 5 years. Her earlier OA was dismissed. Her husband Shri G.K. Dixit is at present posted at Kendriya Vidyalaya, GAIL, Guna. The stay of the applicant in Gwalior was more than for a period of 22 years and she was transferred on her own request to KV Murena and again came back on mutual transfer from Murena to Gwalior within 5 months on her stay at Murena. Hence, she stayed in Murena for a period of 5 months which was also at her own request and on no occasion she was transferred on public interest. She was transferred for a simple period of 5 months and it cannot be treated as transfer and the whole period of her stay at Gwalior station was taken as uninterrupted as per rules and hence the decision taken by the respondents is proper. Thus, the OA deserves to be dismissed.

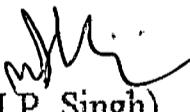
6. After hearing the learned counsel for the applicant and on careful perusal of the pleadings and records, we find that the letter dated 7.1.2004 (Annexure A-1) is not a transfer order of the applicant. It is mere preparation of the list of the employees who have stayed for 5 years or more in the present station as on 31.3.2003. Her husband is not serving at Gwalior as alleged by the applicant, while he is serving at Guna. This fact is not controverted by the applicant by filing ay rejoinder. The applicant was transferred to Murena under the scheme of request transfer from Gwalior vide order dated 2.4.2002 (Annexure A-2) and she joined there on 5.4.2002. While again on mutual transfer she came at Gwalior in



compliance with the order dated 20.8.2002 and joined at Gwalior on 5.9.2002. The stay of the applicant at Gwalior was more than for a period of 22 years and she was transferred at her own request to KV Murena and again she came back on mutual transfer from Murena to Gwalior within 5 months. Hence the applicant only stay in Murena for a period of 5 months which was also at her own request and no occasion she was transferred ~~on~~ ⁱⁿ public interest it cannot be treated as transfer and the whole period of her stay at Gwalior station was taking as uninterrupted by the respondents. The aforesaid arguments advanced on behalf of the respondents seems to be legal and justified. Though the respondents could not file the policy as directed by the Tribunal but after considering all the records available with us and contentions of both the parties. We are of the considered opinion that the contention of the applicant about the posting of her husband is also not correct, her husband is posted as Guna and i.e. other then the station on which the applicant is posted. In support of this contention the applicant has not filed any rejoinder.

7. After considering all the facts and circumstances of the case, this OA has no merit and deserves to be dismissed. Accordingly, the OA dismissed. No costs.

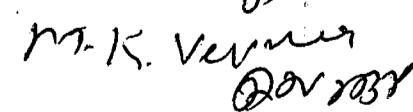

(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

पूछांकन सं ओ/न्या.....जवलपुर, दि.....
या लिखियि तरये खिल :—

- (1) राधिक, उच्च व्यायालान दार एसोसिएशन, जवलपुर
- (2) अमेरक श्री/श्रीगती/त्तु.....ने आठासल
- (3) प्रत्ययी श्री/श्रीगती/त्तु.....ने आठासल
- (4) चंथपाल, योग्या, जवलपुर द्वाराधीन
सूचना एवं आवश्यक कार्यकारी हेतु


Dr. R.K. Gupta
DVRBP


M.K. Verma
DVRBP


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