

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,  
JABALPUR

Original Application No. 719 of 2004

Indore This 18<sup>th</sup> the day of October, 2005.

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

Mrs. Malti Gupta  
W/o Shri O.P. Gupta  
Aged about 50 years,  
PGT,(Biology)  
Kendriya Vidyalaya Dhana (M.P.) Applicant  
(By Advocate – Shri Manoj Sharma)

V E R S U S

1. Kendriya Vidyalaya Sangathan,  
18 Institutional Area,  
Shaheedjeet Singh Marg,  
New Delhi 110 016.  
Through it's Commissioner.
2. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Jabalpur Region, GCF Estate, Jabalpur. Respondents  
(By Advocate – Shri M.K. Verma)

O R D E R

By M.P. Singh, Vice Chairman –

By filing this Original Application, the applicant has sought the following main relief :-

“ii) Quash and set aside the impugned order dated 13/19.7.2004 (Annexure-A-1).

iii) Direct the non-applicants to regularize the intervening period of transfer of the applicant with effect from 26.6.2003 to 30.1.2004 and period spent on duty and be further pleased to direct payment of full salary along with consequential benefits of pay, perks and status with appropriate interest thereon and arrears thereof, in the interest of justice.”



2. The admitted brief facts of the case are that the applicant while working as a Trained Graduate Teacher (for short 'TGT') at KV 2, Sagar was promoted as Post Graduate Teacher (for short 'PGT') vide order dated 1.5.2003 <sup>and 2</sup> was posted at Guna. Aggrieved by her posting to Guna, the applicant had filed an OA No.294/2003, which was disposed of vide order dated 9.5.2003(Annexure-A-5) with a direction to the respondents to decide the pending representation of the applicant and till the disposal of her representation, the order of transfer shall not be implemented in respect of the applicant. In pursuance of the directions of the Tribunal, the respondent no.1 had passed the order dated 16/17.6.2003 (Annexure-A-6), rejecting the request of the applicant. Thereafter, the applicant had filed another O.A.No.415 of 2003 which was disposed of vide order dated 1<sup>st</sup> July,2003 with a direction to decide the representation of the applicant dated 25.6.2003. In the said representation dated 25.6.2003, the applicant had taken a ground that there is a clear vacancy of PGT(Bio) available at Dhana and she should be considered for posting in that place. In the order dated 1.7.2003, the Tribunal had further directed that till her aforesaid representation dated 25.6.2003 is decided by the appropriate authority, the applicant shall not be compelled to join at the new place of posting. The respondents vide order dated 5.9.2003 (Annexure-A-9) had rejected the aforesaid representation of the applicant. Thereafter, the applicant had filed O.A.No. 615/2003 and the Tribunal vide its order dated 11.11.2003 had disposed of the said OA, by directing the respondents to consider her posting at KV Dhana, District Sagar itself. Thereafter the respondents have posted the applicant at Dhana and she has joined the promotional post of PGT on 31.1.2004. After joining, the applicant has again submitted a representation dated 27.3.2004 (Annexure-A-11) requesting the respondents to consider the period from 23.6.2003 to 30.1.2004 as the period spent on duty and she be granted all benefits including

salary. The respondents vide order dated 13/19.7.2004 have rejected her request and have asked her to apply for the leave of the kind due for the period ~~between her relief and~~ <sup>from the date she was relieved to the</sup> joining at the modified station. She had also been informed that the aforesaid period in question cannot be treated as duty period and will be regularized by grant of the leave of the kind due. It is against this order, the applicant has filed the present O.A.

3. Heard the learned counsel of both the parties.
4. The learned counsel for the applicant has submitted that the applicant has been promoted and transferred to a far off place at K.V.Guna vide order dated 1.5.2003. He has drawn our attention to Annexure-A-3 stating that it may be seen from the said order itself that there were two vacancies of PGT available at Dhana and the respondents had posted two outsiders, against these two vacancies at Dhana, mentioned at serial nos.41 and 45 of the said order, which is against clause 15 of the transfer guidelines, which provides as under:

“subject to availability of vacancies lady staff members on promotion may be posted in the same station but in a different vidyalaya from which she has been promoted provided that she has not completed 5 years of service in the same station. In case the teacher has completed 5 years of service in the same station, she will not be posted in the same station but to the nearest available vacancy outside the station”.

According to the learned counsel for the applicant, the applicant has not completed five years in the same station and there were vacancies in the same station but in different KV at Dhana and thus the respondents have violated clause 15 of the transfer guidelines circulated vide letter dated 8.1.2003, as on her promotion, she was transferred to a far off place at Guna. He has also submitted that the Tribunal while disposing of OA 294/03 vide order dated 9.5.2003 had directed the respondents not to implement the impugned order dated 1.5.2003 in respect of the applicant till the disposal of her representation. Thereafter also the Tribunal vide

order dated 1.7.2003 in OA 415/2003 has directed that the applicant shall not be compelled to join at the new place of her posting till her representation is decided. Moreover, the respondents had relieved her on her promotion from KV No.2 Sagar, where she was working on 23.6.2003. It is for these reasons that the applicant could not be treated on leave and the intervening period between 26.6.2003 to 30.1.2004 is required to be treated as spent on duty. The learned counsel has also submitted that this period can otherwise also be regularized by treating it as extended joining period.

5. On the other hand, the learned counsel for the respondents has submitted that the Tribunal has not issued any direction to the respondents to treat the aforesaid period from 26.6.03 to 30.1.2004 as spent on duty while disposing of aforementioned OAs 294/2003 and 415/2003. It is clear that the applicant has not worked and remained absent from duty during this period and, therefore, she cannot be granted salary and also this period cannot be treated as duty. He has also submitted that her transfer order from Sagar to Guna was modified to Dhana not because it was directed by the Tribunal. He submitted that Dhana was not under Bhopal Region but was under jurisdiction of Jabalpur Region and it was because Sagar was also moved from Bhopal to Jabalpur Division, she was posted at Dhana. It was on this ground that the applicant's order of transfer was modified from Guna to Dhana. In view of these facts, since the applicant has not worked, she cannot be granted salary for the intervening period. He has also relied upon the judgment of Hon'ble High Court of Madhya Pradesh in W.P.No.4881/2002 wherein the Hon'ble High Court vide order dated 30.6.2005 has ordered that the intervening period be treated as leave of the kind due and the said period be not treated as break in service for the purpose of counting the service. In the said writ petition the petitioner was transferred from Chhatarpur to Uri.



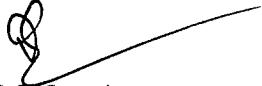
6. We have given careful consideration to the rival contention of both the counsel.

7. The admitted facts of the case are that the applicant was promoted as PGT and was transferred to Guna. She had been relieved from the duties of the post of TGT on 25.6.2003 to join her duties as PGT at Guna. She had not joined her duties as per the order of transfer and had instead filed OAs No.294/2003, 415/2003 and 615/2003. She had also submitted various representations. The Tribunal had not issued any directions in these OAs to the respondents about the manner in which the intervening period of her absence should be treated. Moreover, we also find from the order passed by the respondents on 16/17.6.2003 that her request for modification of transfer order had been rejected and while rejecting her representation, the respondents had given her clear direction to join her duties at the transferred place immediately or to "decline her offer of promotion and thus can remain in the same station". Again on 5.9.2003, while deciding the representation of the applicant in pursuance of the direction given by the Tribunal, she was again asked to join her duties at the transferred place. Despite the clear instructions given by the respondents to join her duties, the applicant had neither joined her duties at the transferred place at Guna nor she had made a request to the respondents indicating her willingness to remain at her earlier place of work at Sagar till the final decision is taken by the respondents about her transfer on promotion. Had she done so, it would have been presumed that she was willing to work but was prevented by the respondents to do so. In fact, the respondents on the other hand have been asking her to join her duties immediately while disposing of her representation.

8. We also find that the applicant had remained absent from duty at her own will and not worked during the period from 25.6.2003 to 30.1.2004. In fact we find that while giving her representation, she herself had mentioned in her representation

dated 27.3.2004 that she was relieved from her duty on 23.6.2004 for joining at KV Guna. The contention of the learned counsel for the applicant that there was a violation of clause 15 of the transfer guidelines, while transferring the applicant from Sagar to Guna on promotion and therefore she remained absent from duty is not tenable and is rejected. In view of the aforesaid facts and circumstances of the case, we do not find any merit in this O.A.

9. In the result, the O.A. is dismissed, however, without any order as to costs.

  
**(Madan Mohan)**  
 Judicial Member

  
**(M.P.Singh)**  
 Vice Chairman

rkv

पृष्ठांकन सं. ओ/व्या.....उद्यापुर, दि.....  
 प्रतिलिपि अच्युत:-

- (1) अधिक. उच्च व्यापार वाद प्रतिवेदन, उद्यापुर
- (2) अधिक. श्री/मि. ३/८३.....वा. काउंसल
- (3) व्यापारी श्री/मि. ३/८३.....के काउंसल
- (4) व्यापार, कैपिटल, उद्यापुर

सूचना एवं आवश्यक प्राप्ति

उप सचिव

*Approved  
T.G. Gillings*

*Manoj Kumar 20/7/07  
M.K. Kumar 20/7/07*