

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 764 of 2003

Jabalpur, this the 7th day of May, 2004

Hon'ble Shri Madan Mohan, Judicial Member

Mrs. Jyotsna Mukherjee, W/o. Shri
Milan Mukherjee, Aged about 47 years,
Music Teacher, Kendriya Vidyalaya,
Balaghat (M.P.).

... Applicant

(By Advocate - Shri M. Sharma)

V e r s u s

1. Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New
Delhi, Through it's Commissioner.

2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Jabalpur Region, Kendriya
Vidyalaya, GCF No. 1, Jabalpur. ... Respondents

(By Advocate - Shri M.K. Verma)


O R D E R

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

"ii) quash and set aside the impugned order dated
13.10.2003, Annexure A-1,

iii) issue appropriate orders/directions directing
the respondents to forthwith consider the transfer
and posting of the applicant against the vacant post
at KV Ordnance Factory, Khamaria (Jabalpur)."

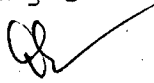
2. The brief facts of the case are that the applicant
is a Music Teacher working in Kendriya Vidyalaya Sangathan
and at present is posted as such at Kendriya Vidyalaya,
Balaghat. She has put in 24 years of service having
excellent service record. In June, 2001 the applicant was
transferred from Kendriya Vidyalaya, CMM, Jabalpur to
Kendriya Vidyalaya, Balaghat, wherein the applicant joined
on 27.6.2001 despite serious physical ailments. The
applicant had undergone a major surgery of removal of
Fibroid Uterus on 14.4.2001. The applicant submitted her



request on 21.9.2002 alongwith the relevant medical certificate endorsed by Gynecologist, District Hospital, Balaghat, indicating serious ailments, such as Ischemic hear disease, Fatty liver disease and hypertension. The Assistant Commissioner, Jabalpur Region constituted a medical Board which examined the applicant and confirmed the ailment of the applicant, whereafter the applicant was assured that her request would be seriously considered. According to the computerised priority taken on 18.2.2003, the applicant in her category was placed at Sl. No. 6 having choice No. 1 in priority list 1 for 274 (Jabalpur). The applicant submitted her representation on 19.1.2003. Apart from the ailment of the applicant her family circumstances in as much as her husband, Shri Milan Mukherjee is also a Cardiac patient and has undergone Angioplasty in the year 2001. The sister-in-law of the applicant died on 2.1.2001, thereby causing acute family crisis as late Chandana Mukherjee (sis-inlaw) being family member could take care of the family, in the extreme event, the applicant was to remain away from the family. Besides this her daughter is a student of Class XII in Jabalpur and her son is a student of 2nd year B.Com. also at Jabalpur. Under these facts and circumstances the applicant was fully hopeful of her consideration in as much as other teachers, have also been considered but the case of the applicant was not yet still considered. Aggrieved by this the applicant has filed this OA claiming the aforesaid reliefs.


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

4. The learned counsel for the applicant argued that she had undergone a major surgery on 14.4.2001 and she is also having serious ailments, such as Ischemic heart



disease, fatty livery disease and hypertension etc. The Assistant Commissioner, after constitution of the medical Board confirmed the ailment of the applicant. The husband of the applicant is also a Cardiac patient and has undergone Angioplasty in the year 2001. The learned counsel for the applicant further argued that the respondents have arbitrarily exercised their powers for considering the case of three persons, while the case of the applicant has not been considered. The applicant has drawn our attention towards the judgment of the Hon'ble Supreme Court in the case of Home Secretary, U.T. of Chandigarh and another Vs. Darshjit Singh Grewal and others, (1993) 4 SCC 25. The learned counsel for the applicant further argued that according to the orders of this Tribunal vide order dated 6.11.2003 one post of Music Teacher is still lying vacant at Jabalpur with the respondents and the same has not yet been filled in so far. The respondents are trying not to transfer the applicant to Jabalpur on this post.

5. The learned counsel for the respondents argued that KVS is situated all over the country and abroad also. The employees appointed in KVS are liable to be transferred any where in India in the light of Article 54(k) of the Education Code, whereby an employee who accepts the terms and conditions of the appointment in KVS is liable to be transferred any where in India. He further argued that though in priority list the name of the applicant was in serial No. 6 but all the prior employees were not transferred to Jabalpur and in the second priority list one more senior employee to the applicant is to be considered for transfer at Jabalpur. Hence the three senior persons are to be considered for these posts. The priority list are prepared for each and every year. The learned counsel for the respondents also argued that the argument advanced



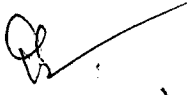
by the applicant that Smt. Shivatri, PRT at Balaghat has been transferred back to KV Bacheli within two years of her posting to Balaghat from Bacheli, Shri BP Pandey, TGT Maths had not even completed one year at Balaghat and had been adjusted to KV No. 1 GCF, Jabalpur and Shri Sarvesh Pandey, PET who had been transferred from Jabalpur to Dhar upon his request, the transfer order is modified to Satna, are accommodated against the guidelines framed by the respondents are not correct because the cases of the above three persons are different to that of the applicant. So far as the ruling cited by the applicant it is about the transfer of the student from one engineering college to another and not about the employees, while in the present OA the applicant is a Teacher and not a student. Hence the aforesaid citation is relevant in the present case. He further argued that in the various rulings of the Hon'ble Supreme Court it is held that the order of transfer often causes a lot of difficulties and dislocation in the family set up of concerned employees but on that score, the order of transfer is not liable to be struck-down. In another case the Hon'ble Supreme Court held that Transfer of the Government servants appointed to a particular cadre of transferable posts from one place to the other is incident and a condition of service. No Government servants or employees of public undertakings has legal right for being posted at any particular place. Transfer from one place to other is general condition of service and the employee has no choice in the matter.

6. I have given careful consideration to the rival contentions made on behalf of the parties and I find that the argument advanced on behalf of the respondents that as per priority list first and second three senior employees



are to be considered prior to the applicant and cases of three persons cited by the applicant are absolutely different to that of the applicant. The present post held by the applicant is a transferable post through out the country and she has also not completed the period of her tenure at Balaghat as argued by the learned counsel for the respondents. The applicant can be transferred even from Balaghat to any other place which may be at more distance from Jabalpur because the post which the applicant holds is a transferable post through out the country. It is a settled legal proposition that the transfer of an employee is not only an incident, but a condition of service and unless the order issued is outcome of a malafide exercise of power and violative of any statutory provisions, the Courts and Tribunals cannot substitute their own decisions in the matter of transfer for that of the management. Apparently in the present case there seems to be no malice because the respondents have to consider already three senior employees to the applicant for the said post which is left vacant by the earlier orders of this Tribunal passed on 6.11.2003 in the present case.

7. Considering all the facts and circumstances of the case I am of the opinion that the applicant has failed to prove her case and the Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs. The interim order passed on 6.11.2003 in the present case stands vacated.


(Madan Mohan)
Judicial Member