

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 648 / 2002

DATE OF DECISION 06/05/2003

Dr. R.K. Shastri APPLICANT (s)

Shri Manoj Sharma Advocate for the Applicant (s)

V E R S U S

VOI & Ors. RESPONDENTS

Shri M.K. Verma Advocate for the Respondents

CORAM :

Hon'ble Shri R.K. Upadhyaya -- Administrative Member
Hon'ble Shri J.K. Kaushik -- Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgments ? - YES / NO
2. To be referred to the Reporter or not ? YES / NO
3. Whether it needs to be circulated to the Principal Bench of the Tribunal ? YES / NO

J.K. Kaushik
(J.K. Kaushik)
Judicial Member
06/05/2003

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 648 of 2002

Jabalpur, this the 6th day of May 2003

Hon'ble Shri R.K. Upadhyaya -- Administrative Member.
Hon'ble Shri J.K. Kaushik -- Judicial Member.

Dr. R.K. Shastri,
Trained Graduate Teacher (Sanskrit),
Kendriya Vidyalaya No. 2, Bhopal,
(U/o. of suspension - H.Q. at K.V.,
Bairagarh, Bhopal). ... Applicant

(By Advocate - Shri Manoj Sharma)

V e r s u s

1. U.O.I. Through, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheedjeet Singh Marg, New Delhi. Through its Commissioner.
2. The Joint Commissioner, 18, Institutional Area, Shaheedjeet Singh Marg, New Delhi.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bhopal Region, Opposite Central India, Flour Mills, Bhopal-11.
4. The Principal, Kendriya Vidyalaya, Bairagarh, Bhopal-482 030. ... Respondents

(By Advocate - Shri M.K. Verma)

O R D E R

By J.K. Kaushik, Judicial Member :-

Dr. R.K. Shastri has primarily challenged the order dated 06/08-07-2002 (Annexure A/1) to the extent for applicant's posting to K.V., Karimganj inter-alia he has also prayed for quashing of the impugned orders dated 09/12-08-2002 (Annexure A/2) and 06/09/2002 (Annexure A/3).

2. A very short controversy is involved in this case.

The applicant while working on the post of T.G.T. Sanskrit with Headquarter at K.V., Bairagarh(Bhopal) at K.V. No. II, Bhopal was placed under suspension/vide memo

J dated 13/07/2001 (Annexure A/5) on the ground that the

disciplinary proceeding was contemplated against him. He preferred an appeal against the same vide Annexure A/6. While the applicant was continued under suspension he was sought to be transferred from K.V. Bhopal No. II to K.V. Khamaria No. I O.F., Jabalpur vide letter dated 02/04/2002 (Annexure A/7). But the same was cancelled by the respondents vide office order dated 20/04/2002 (Annexure A/8).

3. Further facts of the case are that the respondents having become wiser have resorted to a subterfuge, by which apparently the representation which was languishing since 05/11/2001 has suddenly caught the attention of the respondents and they issued an order of revocation on dated 06/08-07-2002 (Annexure A/1). An original application No. 487/2002 was filed before this Tribunal assailing the prospective allegation of suspension-cum-transfer order. The said original application came to be disposed of on 06/08/2002, wherein the respondents were directed to consider the pending representation of the applicant within a time bound period of 4 weeks. The Tribunal was further pleased to stay the operation of the impugned order to the extent of transfer of the applicant to K.V.S., Karimganj (Assam) meaning thereby that the suspension of the applicant stood revoked. Accordingly the applicant submitted his joining report on dated 12/08/2002 to the Principal K.V., Bairagarh (i.e. at his headquarter during suspension). But he has not been permitted to resume his duties. Another order dated 09/12-08-2002 (Annexure A/2) was issued intimating that his representation stands rejected with further direction to the applicant to get himself relieved from K.V., Bairagarh. The applicant submitted another representation keeping in view the high tradition of Master and Servant relations, but the same has also been rejected. There is a specific provision to deal with the temporary vacancy, but one Smt. Rakesh

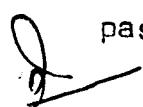
Sharma was transferred in the place where the applicant was working prior to his suspension. The applicant was given clear instruction that during suspension he is being relieved to report for duty to the Principal K.V., Karimganj (Assam) which is in contravention to the existing instructions.

4. The original application has been filed on multiple grounds as mentioned in the body of the application. However we shall be dealing with the grounds which are pressed by ~~xxxxxx~~ the learned counsel for the applicant during the arguments.

5. The respondents have filed a detailed reply to the original application and have contested the case. They have filed certain preliminary objections stating therein that the applicant was *prima-facie* found guilty of misbehaviour. He has been charge-sheeted and his representation against the impugned orders dated 06/09/2002 has been rejected, wherein he has asked for five reliefs. Thus the original application is totally misconceived and is liable to be dismissed. However it is submitted that Annexure A/1 has been stated to be transfer order whereby the suspension order has been revoked and he has been posted to a particular place. Annexure A/1 is not at all a transfer order, therefore the sole basis of the original application is incorrect. The respondents have categorically denied the impugned order as Annexure A/1 his transfer order. They have narrated that his retention in the school will create administrative problem and will be detrimental to over all good academics of the region. He has been transferred in the interest of administrative after revocation of suspension. The circular dated 08/09/1956 (Annexure A/14) is not applicable to a person who is placed under suspension. The applicant has been posted out on a regular vacancy.

6. We have heard the learned counsel for the parties at a quite considerable length and have bestowed our consideration to the arguments, pleadings and the records of this case.

7. The learned counsel for the applicant has submitted that the applicant was transferred without even reinstating him after revocation of the suspension order. He has also submitted that the language used in the paragraph 4 of the impugned order dated 06/08-07-2002 (Annexure A/1) seems to be invented by the respondents so as to suit their own objective. He has also taken us to the standard form as serial No. 5 of the CCS(CCA) Rules which simply provides that in case of revocation of suspension order the word "hereby revokes the said order of suspension with immediate effect", has been mentioned and the language which has been used in the impugned order is foreign to the rules. The same seems to have been designed for victimising the applicant by putting the cart before the horse. He has elucidated and has made further submissions on this impugned order and has urged that there is no rule under which suspension can be revoked with conditions. He has also submitted that the respondents have filled up the post which was held by the applicant without any authority of law and there is a specific provision for filling up such post only by some substitute or through officiating arrangements. The applicant had lien on that post and he was definitely the employee of the respondents during the suspension period and only he was not required to perform his duties. He has also pointed out that his transfer as such was not justified since neither there was any question of tampering the evidence nor correction of the evidence been disturbed, since by the time the impugned order has been passed the enquiry itself was completed.



8. On the other hand the learned counsel for the respondents has tried to repel the arguments submitted on behalf of the applicant. It has been submitted that Annexure A/1 is not a transfer order but it is only ^{an order} by which the applicant has been posted to another Kendriya Vidyalaya directly from the headquarter, which was fixed on his suspension. It has also been submitted that who should be posted where is the business of the executive. The respondents have infact filled up the vacant post of T.G.T., Sanskrit and to meet the urgent need the same had to be so filled up. Since the post has already been filled in, it became impossible ^{for} the respondents to put the applicant on his post prior to the revocation of suspension. In this way the applicant has been ordered to be posted out in the interest of administration and to meet the administrative exigencies. He has also drawn our attention to certain portions of his reply wherein it has been submitted that his stay will cause administrative problem and will be detrimental to over all good academics of the region and it was not in the interest of administration and educational atmosphere of the school to post the applicant in K.V. No. 2, Bhopal and therefore in the interest of administration and educational atmosphere of the school a decision was taken to post the applicant out of the region after revocation of suspension. He submitted that it is a case of posting on revocation of suspension order and not a case of transfer as such. In the transfer matter there is hardly any scope of interference by the Tribunal.

9. We have considered the rival contentions submitted on behalf of the parties. At the very outset and to appreciate the controversy involved in this case it would be necessary to extract the relevant para i.e. para 4 of Annexure A/1 which is extracted as under :

"Now therefore, the undersigned taking into consideration the above facts and circumstances of the case, in exercise of the powers conferred by Clause (c) of sub-rule (5) of Rule 10 of the CCS(CCA) Rules, 1965, revokes the suspension in respect the said Dr. Shastri and posts him to Kendriya Vidyalaya, Karimganj with effect from the date he joins duty at Kendriya Vidyalaya, Karimganj without prejudice to the Disciplinary Proceedings pending against him."

The standard form of order for revocation of suspension order is also extracted as under :

"Standard form of order for revocation of suspension order
(Rule 10 (5)(c), CCS(CCA) Rules)

No.
Government of India
Ministry of.....
(Place of issue.....)
Dated.....

ORDER

Whereas an order placing Shri.....(name and designation of the Government servant) under suspension was made/was deemed to have been made by..... on.....

Now, therefore, the President/the undersigned (the authority which made or is deemed to have made the order of suspension or any authority to which that authority is subordinate) in exercise of the powers conferred by clause (c) of sub-rule (5) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby revokes the said order of suspension with immediate effect.

(By order and in the name of the President)

Signature
Name and designation of the authority making this order"

The extract of substitute arrangement is also relevant and the same is also reproduced as under :

"40. Substitute arrangement

In an establishment where provision for leave reserve exists, any vacancy caused on account of suspension of a Government servant should be filled by a reservist and where a reservist is not available, the post should be filled by an officiating appointment. It is not necessary to create an extra post."

10. The perusal of the impugned order clearly indicates that the applicant has been ordered to be directly posted from his temporary headquarter to K.V., Karimganj. The same involved change of place and the word post seems to be a misnomer and infact it is a transfer order. The order of

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revocation is to be passed by an authority in statutory capacity as per Rule 10 of CCS(CCA) Rules. As regards the transfer order it is an executive order and the same is passed by the competent authority in its executive capacity.

11. It is clear from the above that order of revocation of suspension is separate from the administrative order and we obviously find that the official who communicated this order has been negligent in including the administrative portion of order alongwith the order of revocation of the suspension order. The portion of the order where it has been decided to post the applicant out of Bhopal cannot be read as a part of the order of revocation of suspension order. Now that it has been communicated as such to the applicant this portion is required to be omitted from the revocation of suspension order. Thus the order of the transfer and the order of revocation of suspension could not have been clubbed and this position is evident from the very format which has been reproduced above as well as the statutory powers regarding revocation of suspension order and the executive power regarding the transfer orders. In this proposition of the law the portion of the impugned order Annexure A/1 so far it relates to posting the applicant to K.V., Marimganj, cannot be sustained. Our view gets a support from the decision of a co-ordinate bench of this Tribunal in Ashok Sharma Versus Union of India and others reported at 2003(1) CAT SLJ 117, wherein a penalty was imposed and alongwith the penalty order one was also ordered to be transferred. The portion relating to the transfer was ordered to be omitted.

12. Now looking to the controversy from other angle, when a person is suspended his lien is maintained on the post from where he was suspended. He is no doubt not required to work on the post but he very much remains the employee of the

[Signature]

particular employer and thus during the period of suspension the employer employee relation exists. After revocation of suspension one is in fact required to be reinstated on the post from which he was suspended and thereafter only another question for further posting or transfer could arise. The word reinstate means replace in a formal position, restore a person etc. to former privileges. Thus in the present case after revocation of the suspension the natural consequences would have been to bring to the position where he was prior to his suspension i.e. he should have been given the post of T.G.T. Sanskrit in K.V. No. 2, Bhopal.

13. As regards the various grounds and justification put forward on behalf of the respondents that one could be transferred in the administrative interest and in exigency of service, the statement of law is well settled but this case is quite different and is not a case of transfer simpliciter. As such the principle of law relating to the transfer simpliciter would have no application to the present case. Even otherwise the very instructions regarding the suspension provided that cases of suspending a person, the competent authority could consider even transferring a person instead of resorting to suspension. There is also a provision of changing the headquarter during the suspension. Nothing prevented the competent authority to take resort to such instructions. In the present case we are concerned with the legality of the impugned order Annexure A/1 & Annexure A/2 and Annexure A/3 are species of the same.

14. In the result the original application has ample force and the same deserves to be allowed. The impugned order Annexure A/1, so far it relates to posting the applicant to K.V., Karimganj is concerned and the impugned orders dated 09/12-08-2002 (Annexure A/2), 06/09/2002 (Annexure A/3) and



11/09/2002 (Annexure A/4) are hereby quashed. The suspension order is deemed to have been revoked on 06/08-07-2002
the applicant
(Annexure A/1) and shall be entitled to all consequential benefits. This order shall be complied with, within a period of two months from the date of receipt of copy of this order. However there shall be no order as to costs.

DK

(J.K. KAUSHIK)
JUDICIAL MEMBER

R.U.

(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

पूछांकन सं. नो/वा. तात्पुर, दि.
क्रमांक

(1) ना
(2) ना
(3) ना
(4) ना

पूछांकन मानिय शर्मा, Adv.
काउन्सल मानिय शर्मा, Adv.

DK
9.5.03