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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT CAMP AT GWALIOR

Original Application No. 809/2002

Gwalior, this the 26th day of August, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. A.K. Bhatnagar, Judicial Member

Nagesh Kumar S/o Shri Surendra Singh,
Age 43 years,
Post Graduate Teacher, Geography
Kendriya Vidyalaya No.3
Morar, Cantt. Gwalior

APPLICANT

(By Advocate - Shri A.Katre)

VERSUS

1. Union of India,
Through Secretary,
Department of Human Resources,
Shastri Bhawan, New Delhi.
2. Commissioner,
Kendriya Vidyalaya Sangthan,
Shaheed Jeet Singh Marg, 18
Institutional Area, New Delhi.
3. Assistant Commissioner,
Kendriya Vidyalaya Sangthan,
Calcutta Region, Calcutta.
4. Kendriya Vidyalaya Khapral,
Through Principal,
District Darjling, West Bengal
5. Through Principal,
Kendriya Vidyalaya, No.3
Morar, Cantt. Gwalior

RESPONDENTS

(By Advocate - Shri P.N. Kelkar)

ORDER (ORAL)

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the following
main reliefs :-

7.1 the period of forced transfer w.e.f. 19.1.96 to 15.4.96 may kindly be directed to be treated as joining period or special casual leave with pay not to be debited in the accumulated for sanctioned leave account of the OA.

7.2 the order dated 19.1.96 Annexure A/18 and order dated 22.1.96 Annexure P/26 be directed to be quashed.

7.3 the period from 16.4.96 to 2.6.96 total period 48 days including summer vacation period which was illegally regularized for joining period may kindly be directed illegal and period of 30 days of summer vacation and rest of joining period 15 days may kindly be directed to be credited in the earned leave A/c of O.A.er Period of 2 days which actually availed of the OAer for joining from K.V. Khaprail to K.V Morar may only be treated as joining time.

[Signature]

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7.4. the non-O.A.er be directed to pay full pay and allowances for the period of 19.1.96 to 15.4.96 which was period of wrongful and illegal transfer.

7.5 Non-O.A.er No.5 be directed to send all the papers of service record, service book, personal filed & I.P.C. to K.V.No.3 Morar Cantt. Gwalior forthwith. Non-O.A.er No.5 be directed to explain the reason for willful withhold of regular increment of the O.A.er falling due to January 96.

7.6 the non O.A.er be directed to pay special damage at least Rs.10 Lacks. Or any other amount which this Hon'ble Court deem fit & proper in the circumstances of series of malafied transfers".

2. The brief facts of the case are that the applicant is working as Post Graduate Teacher, Geography in Kendriya Vidyalaya, Morar Cantt, Gwalior. Earlier he was working at Kendriya Vidyalaya Khaprell, District Darjiling, West Bengal. He was transferred to Masimpur ^{Assam} vide order dated 3.1.1996 (Annexure-A-1). He submitted a representation on 30.1.1996. He had also filed a Writ Petition before the Hon'ble High Court, Calcutta against the said transfer. The said writ petition was decided on 4.3.1996, giving liberty to the applicant to make a representation to concerned authorities, and the respondents were directed to dispose of the same within six weeks, and in the meantime the applicant shall continue to remain on leave. Thereafter, the representation of the applicant was decided and he was transferred from Kendriya Vidyalaya Khaprell to Kendriya Vidyalaya Amritsar on 15.4.1996. As there was no post of teacher in Geography at Amritsar, the transfer order was modified vide order dated 6.5.1996 and the applicant was transferred to Kendriya Vidyalaya, BHEL, Haridwar. As there was also no post of Post Graduate Teacher in Geography in Haridwar, the applicant was again transferred to Kendriya Vidyalaya Morar, Cantt, Gwalior vide order dated 31.5.1996. The applicant then joined at Kendriya Vidyalaya No.3 Morar Cantt. Gwalior on 3.6.1996. Thereafter, the applicant submitted an application on 5.6.1996 and further representation on 6.8.1996 for treating the intervening period as duty, which were disposed of by the authorities. and it was ordered that the absence of the applicant from 16.4.1996 to 2.6.1996 be treated as joining time in conjunction with vacation, and the period from 20.1.1996 to 15.4.1996 was directed to be treated as leave and if no leave is due then the applicant will be entitled for extra-ordinary leave. Thereafter, the applicant represented for treating the

~~the~~ period from 20.1.1996 to 15.4.1996 as duty period. When his request was not acceded to, he filed a writ petition before the Hon'ble High Court of Madhya Pradesh vide Writ Petition No.520 of 1998, and the Hon'ble High Court vide order dated 15.3.1999 disposed of the said Writ Petition in the following terms:


- "5. In the facts of the case, it is directed that the respondents after calculating the leave due to the petitioner, shall grant leave to the petitioner, as he was prosecuting his case before the Calcutta High Court. If no leave is due to the petitioner, then as decided by the respondents, the petitioner shall be granted extra-ordinary leave-
6. With the aforesaid observation, the petition is disposed of".

Thereafter, the applicant also moved an L.P.A No.64/2000 before the Hon'ble High Court of M.P. at Gwalior, which was dismissed vide order dated 29.4.200 in the following terms-

"Learned counsel for the applicant prays for and is allowed to withdraw this appeal with liberty to file fresh petition before Central Administrative Tribunal if permissible under law.
L.P.A. is accordingly dismissed as withdrawn".

Hence, the applicant has filed this OA claiming the aforementioned reliefs.

3. Heard the learned counsel of both sides, and carefully perused the order passed by the Hon'ble High Court in W.P.No. 520/1998. We find that the question to be decided before us is to regularise the period from 19.1.1996 to 15.4.1996 i.e. the date from which the applicant was relieved from K.V. Khaprell West Bengal to the date of joining ^{at} K.V. Morena. The Hon'ble High Court of Calcutta vide its order dated 4.3.1996 directed that ^{in the meantime} the "applicant shall continue to remain on leave". Thereafter, the Hon'ble High Court of Madhya Pradesh in Writ Petition No.520/1998 vide order dated 15.3.1999 has also given categorical finding that "the petitioner is entitled to leave admissible under law. If no leave is admissible to the petitioner, then the question of grant of extra-ordinary leave will arise". Against this order the applicant filed an LPA before the Hon'ble High Court, which he had withdrawn. Accordingly, the respondents have regularised the period by grant of the leave of the kind due or extra-ordinary leave if no leave is due. Against this action of the respondents, the applicant has filed this OA, claiming the same reliefs. We are



of the considered view, the matter which has already been decided at the level of the Hon'ble High Court, cannot be readjudicated by this Tribunal and, therefore, the present O.A. is not maintainable and is accordingly dismissed.

No costs.

(A.K. Bhatnagar)
Judicial Member

(M.P. Singh)
Vice Chairman

rkv.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
पतिमिपि अवे धित:-

- (1) सति, उच्च न्यायालय बार एसोसिएशन, जबलपुर
- (2) श्री/श्रीमती/कु.....के काउंसल
- (3) श्री/श्रीमती/कु.....के काउंसल
- (4) वेशपाल, के.प्र.अ., जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

उपे रजिस्ट्रार

Shri A. Kabra, Counsel
Shri P. N. Kulkarni, Counsel

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