

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 21st November, 2005

RA No.21/2005 (OA No.140/2005)
MA No.361/2005 (RA No. 21/2005)

R.N.Dubey
s/o Shri Janaki Prasad Dubey,
aged about 57 years,
r/o Type IV-1, Kendriya Vidyalaya
Sangathan, Regional Office,
Residential Complex,
92, Gandhi Nagar,
Bajaj Nagar, Jaipur.

.. Applicant

(By Advocate: Shri Manish Bhandari)

Versus

1. The Commissioner,
Kendriya Vidyalaya Sangathan (Hqrs)
18, Institutional Area,
S.J.S. Marg,
New Delhi
2. Shri R.K.Jamuda, I.A.S.,
Commissioner,
Kendriya Vidyalaya Sangathan (Hqrs.)
18, Institutional Area,
S.J.S. Marg,
New Delhi.
3. Shri R.B.Meena,
Presently posted as Education Officer,
Kendriya Vidyalaya Sangathan (RO)
Hyderabad.

.. Respondents

ORDER (By circulation)

The applicant has filed this Review

Application thereby stating that while disposing of

the OA vide order dated 18th May, 2005, no direction has been given regarding treating the intervening period i.e. w.e.f. 5.4.2005 to 14.7.2005 (when this Tribunal has granted interim stay which remained till representation of the applicant was decided pursuant to the judgment dated 18.5.2005).

2. Alongwith this Review Application, the applicant has filed Misc. Application No.361/2005 for condonation of delay.

3. Briefly stated, facts of the case are that the applicant filed OA against the impugned order of transfer dated 4.4.2005 whereby the applicant, who was working as Education Officer at Jaipur was transferred from Jaipur Regional Office to Bhubaneswar Regional Office. In place of the applicant, respondent No.3 Shri R.B.Meena, who was working as Education Officer, Kendriya Vidyalaya Sangthan, Hyderabad was ordered to be posted. Pursuant to transfer of respondent No.3 Shri R.B.Meena, he was relieved by the Bhubaneswar Regional office. However, he was not permitted to join at Jaipur, though there was no stay order granted by this Tribunal to the effect that respondent No.3 be not permitted to join the post held by the applicant. After noticing the contention raised by the learned counsel for the respondents that the applicant stand relieved, the only stay which was granted by this Tribunal in the OA filed by the applicant on 6.4.2005 was that status quo as stands today be maintained,

meaning thereby that the applicant who stood already relieved from Jaipur office and had not joined on his transfer at Bhubaneswar office, be not forced to join the new station. The said stay was continued till the disposal of this OA and vide order dated 18th May, 2005 this Tribunal passed fresh order that till such time, the respondents did not pass appropriate order on the representation of the applicant he shall not be forced to join at new place of posting. It will be useful to quota Para 12 of the judgment which is in the following terms:-

“12. Looking into the entire facts and circumstances of this case and the manner in which the impugned order of transfer Annexure A/1 has been passed, I am of the view that ends of justice will be met if applicant make representation to the higher authorities thereby brining to the notice of the higher authorities of personal hardship as well as the manner in which the order of transfer has been passed in the instant case. Admittedly, the applicant has not made any representation to the higher authorities, as such, there was no occasion for the competent authority to consider such representation. Under these circumstances, it will be open to the applicant to make representation to the Chairman, KVS, New Delhi, about personal hardship and the manner in which impugned order of transfer has been passed by respondent No.2. If such representation is made within a period of 7 days from the passing of this order, the same should be considered by the competent authority expeditiously as practicable and pass appropriate order. Till such order on the representation of the applicant is not passed by the Chairman, KVS, the applicant shall not be forced to join at new place of posting. Interim order granted on 6.4.05 and extended from time to time shall stand vacated.”

4. However, the representation of the applicant was decided and order of transfer was modified vide order dated 8.7.2005 and the applicant was directed to join at Regional Office, Lucknow instead of Hyderabad. Accordingly, the applicant joined at Lucknow on 15.7.2005, as can be seen from order dated September,

2005 (Annexure to MA/1 for condonation of delay). Now by way of this Review Application, the applicant has made out entirely separate case that the judgment of this Tribunal be reviewed and the period of the applicant w.e.f. 5.4.2005 till 14.7.2005 when he joined the new station on account of modifying the impugned order dated 4.4.2005 be treated as duty period and the applicant be held entitled for entire benefits as was done in the case of respondent No.3, Shri R.B.Meena in whose case interverning period w.e.f. 5.4.2005 to 14.7.2005 was treated as duty without joining at Jaipur.

5. I have considered the averments made by the applicant by way of this Review Application. According to me, the Review Application is wholly misconceived. In the OA filed by the applicant, the grievance was regarding his transfer from Jaipur to Hyderabad vide impugned order dated 4.4.2005 and the said OA was disposed of vide order dated 18.5.2005 and the authorities has passed fresh order thereby modifying the impugned order, pursuant to the direction given by this Tribunal. For that purpose, the applicant has no grievance. By way of this Review Application, the applicant has raised entirely a different ground which was not subject matter of dispute in the OA i.e. the period w.e.f. 5.4.2005 to 14.7.2005 be treated as spent on duty for all intended purposes and other

benefits which were given to respondent No.3. who, though transferred from Hyderabad, but could not join at Jaipur. From the averments made in the Review Application it can be seen that in fact the applicant want to challenge the order dated September, 2005 (Ann.MA/1) whereby it has been decided that the applicant may apply for the leave of kind due and admissible to him to regularize his absence from 5.4.2005 to 7.7.2005, since his transfer was modified vide order dated 8.7.2005 and he joined at RO, Lucknow on 15.7.2005, he is entitled to joining time from 8.7.2005 to 14.7.2005 i.e. 7 days. According to me, the applicant cannot raise entirely a new plea which was not a subject matter of the OA. Thus, the Review Application is wholly misconceived. At this stage, it may also be observed that the applicant cannot equate his case with respondent No.3, as the respondent No.3 was relieved from Hyderabad office and he was not permitted to join at Jaipur by the official respondents despite the fact that this Tribunal has not restrained the respondents to allow respondent No.3, Shri R.B.Meena to join at Jaipur. Not only that, respondent No.3 has also moved an application and also filed OA in this Tribunal thereby seeking directions to the respondents to permit him to join at Jaipur. Ultimately, his transfer from Hyderabad to Jaipur was modified and he was subsequently permitted to join at Chandigarh. Thus, the respondent No.3, Shri R.B.Meena

cannot be held responsible for the act of official respondents whereby he was not permitted to join at Jaipur despite his willingness. On the contrary, the case of the applicant is entirely different. When the interim stay to maintain status quo as on today i.e. 6.4.2005 was passed by this Tribunal, the fact remains that the applicant stood already relieved from Jaipur. He was legally bound to join his new place of posting at Hyderabad. Thus, from what has been stated above, it cannot be inferred that the applicant was allowed to continue at Jaipur by virtue of the stay granted by this Tribunal. In ordinary course, once the applicant stood relieved from Jaipur, he was supposed to join at the new place of posting till his order is not modified by the competent authority.

6. For the foregoing reasons, the Review Application is dismissed. In view of disposal of the Review Application, no order is required to be passed on the application of condonation of delay, which shall also stand disposed of accordingly.



(M.L.CHAUHAN)

Member (J)

R/