

(W)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
<p>Power and Short Reply filed on 18/3/06</p>	<p><u>OA No. 69/2006.</u> <u>13.3.2006.</u> Mr. Mahesh Sharma proxy counsel for Mr. Rajveer Sharma counsel for the applicant. Mr. V. S. Gurjar counsel for the respondents.</p>
<p>Defence reply not filed</p>	<p>Learned Counsel for the respondents submits that he has filed a short reply. Registry is directed to place the same on record. Let the matter be listed for hearing on 21.3.2006.</p>
<p>Rejoinder filed on 21/3/06.</p>	<p> (M. L. CHAUHAN) JUDICIAL MEMBER</p>
	<p><u>P.C.</u> <u>OA No. 69/2006.</u> <u>21.03.2006.</u> Mr. Rajveer Sharma counsel for the applicant. Mr. V. S. Gurjar counsel for the respondents.</p>
	<p>Learned Counsel for the applicant submits that rejoinder is ready and will be filed during the course of the day today. Let the matter be listed on 27.03.2006.</p>
	<p> (M. L. CHAUHAN) JUDICIAL MEMBER</p>
	<p><u>OA No. 69/2006.</u> <u>27.03.2006.</u> Mr. Rajveer Sharma counsel for the applicant. Mr. V. S. Gurjar counsel for the respondents.</p>
	<p>Heard the Learned counsel for the parties. For the reasons dictated separately, the OA is disposed of.</p>
	<p> (M. L. CHAUHAN) JUDICIAL MEMBER</p>
	<p><u>P.C./</u></p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 27th day of March, 2005

ORIGINAL APPLICATION No 69/2006.

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Mahendra Kumar Sahu, s/o  
Shri Brij Mohan Sahu,  
aged about 49 years,  
T.G.T.Maths in Kendriya Vidyalaya No.1, Kota  
r/o opposite R.A.P.P.Rest House,  
Bhimgarh Mandi,  
Kota Junction (Rajasthan).

.. Applicant

(By Advocate: Mr. Rajveer Sharma)

Versus

1. Kendriya Vidyalaya Sangthan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi through its Commissioner.
2. The Asstt. Commissioner,  
Kendriya Vidyalaya Sangthan,  
91, Gandhi Nagar Marg,  
Bajaj Nagar,  
Jaipur.
3. The Principal,  
Kendriya Vidyalaya No.1,  
Bhim Mandi,  
Kota Junction (Rajasthan)

.. Respondents

(By Advocate: Shri V.S.Gurjar for resp. No.1 to 3,

60

### O R D E R (ORAL)

The applicant who was working as T.G.T. (Maths) in Kendriya Vidyalaya No.1, Kota has filed this OA against the order dated 3.2.2006 (Ann.A1) whereby the applicant was temporarily attached to Kendriya Vidyalaya, BSF Dabla. The Grievance of the applicant in this OA is that the impugned order has been passed without any administrative exigency. It is further stated that the applicant has also submitted representation to cancel or withdraw the impugned order, but his genuine request has not been considered by the competent authority. Hence, filed this OA thereby praying that the impugned order dated 3.2.2006 be quashed and set-aside so far as it relates to the applicant and respondents may be directed to allow the applicant to work at Kendriya Vidyalaya No1. Kota in all respect with all consequential benefits.

2. Notice of this application was given to the respondents. The respondents have filed reply. In nutshell, the stand taken by the respondents in the reply is that group of parents, whose children are students of Kendriya Vidyalaya No.1, Kota, made a complaint against the applicant that the applicant is involved in private tuitions and pressuring the students with dire consequences if they did not take private tuitions. It is further stated that several students made specific complaint about involvement of

the applicant in private tuitions and with specific details of favour/dis-favour shown to a student. It is further stated that the complaint addressed to the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi was sent to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Jaipur with direction to inquire into the matter and submit comments. Accordingly, the Assistant Commissioner, Regional Office, Jaipur appointed the Principal Kendriya Vidyalaya, Swaimadhopur to conduct a fact finding inquiry into the complaint lodged by the group of parents as well as some of the students in reference to few teachers indulging in private tuitions/coaching including the applicant. It is further stated that the relevant documents/complaints made by the students and the group of parents shall be kept ready for kind perusal of this Hon'ble Tribunal at the time of hearing/arguments of this original application. It is under these circumstances, that the applicant was transferred by the Assistant Commissioner vide impugned order dated 3.2.2006 (Ann.A1) as per provisions contained in para 16 of the transfer policy and guidelines which is in operation from 19.1.2005.

3. The applicant has filed rejoinder thereby controverting the stand taken by the respondents. In the rejoinder, it has been specifically stated that

the order dated 3.2.2006 has been passed by the incompetent authority. It is further stated that the session starts from 1<sup>st</sup> April to 31<sup>st</sup> March and the power granted to the Assistant Commissioner is only to change the headquarter of a teacher within an academic session. The order dated 3.2.2006 is against this policy because this order if it says that it is for 180 days then it will cover two sessions that is not possible so the order is bad in law. As regards complaints received from parents whose children are students of Kendriya Vidyalaya No.1, Kota, it has been stated that no complaint in this respect has been made by any parent or student against the applicant. For that purpose, the applicant has annexed copy of the affidavits filed by group of parents thereby showing that the applicant is not involved in any private tuition.

4. I have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The learned counsel for the applicant while drawing my attention to para 16 of the transfer policy dated 19.1.2005 on which reliance has also been placed by the respondents, argued that the impugned order dated 3.2.2006 even if it is held that the same has been passed by the competent authority i.e. the Assistant Commissioner, in that eventuality also, the same cannot be made operative for 180 days as

contended by the respondents, as the academic sessions starts from 1<sup>st</sup> April to 31<sup>st</sup> march and power granted to the Assistant Commissioner is only to change headquarter of a teacher within the academic session. Thus, according to the learned counsel for the applicant, even if for arguments sake it is assumed that the Assistant Commissioner has authority to pass such order in view of para 16 of the transfer policy dated 19.1.2005, the same can be operative till 31.3.2006 as the academic session will come to end on 31.3.2006.

4.2 I have given due consideration to the submissions made by the learned counsel for the applicant. I am of the view that the applicant has made out an alternative case for grant of relief. Thus, without going into merit of the case, whether the applicant was transferred vide impugned order as the applicant was indulged in private tuitions and there were complaints received against him which were inquired into by the appropriate authority and it is only thereafter the impugned order was passed, the applicant has made out a case for grant of relief in terms of para 16 of the transfer policy dated 19.1.2005. At this stage, it will be useful to quota para 16 of the transfer policy and guidelines operative w.e.f. 19.1.2005 which in the following terms:-

"the Assistant Commissioner, Kendriya Vidyalaya Sangthan is competent to change the headquarter of a teacher on administrative exigency for a period not exceeding 180 days at a stretch within an academic session to any place within the region as deemed fit and direct him to discharge duties there, under intimation to KVS Hqrs."

4.3 Thus, from the portion as quoted above, it is clear that the Assistant Commissioner, Kendriya Vidyalaya Sangthan is competent to change the headquarter of a teacher on administrative exigency for a period not exceeding 180 days at a stretch within an academic session. Admittely, the academic sessions will come to an end on 31.3.2006. Further, as can be seen from the impugned order dated 3.2.2006 passed by the Assistant Commissioner, it has been stated that the teacher mentioned therein are temporarily attached to the Kendriya Vidyalayas mentioned against their respective names with immediate effect till further orders. This transfer order whereby the applicant has been temporarily attached does not mention the period for which the said order is in operation. Further, perusal of the impugned order also reveals that this is not a final order which has come into effect with immediate effect i.e. on 3.2.2005 till further orders. If this order is seen in the light of provisions contained in para 16 of the transfer policy effective from 19.1.2005, relevant portion of which has been reproduced hereinabove, it is clear that the Assistant Commissioner was competent to transfer the applicant

till the end of academic session viz. 31.3.2006 and in case the Assistant Commisioner wants to transfer the applicant again on administrative exigency during the coming academic session, in that eventuality, he has to pass a fresh order not exceeding 180 days at a stretch. Thus, if the impugned order dated 3.2.2006 (Ann.A1) is seen in the light of para 16 of the transfer policy which is in operation from 19.1.2005, the only irresistible conclusion which can be drawn is that the order dated 3.2.2006 (Ann.A1) can be valid only upto end of the academic session i.e. 31.3.2006. Otherwise, the power of transfer of the applicant from one place to another in terms of transfer policy and guidelines is with the Commissioner of the Kendriya Vidyalaya Sangthan. Accordingly, it is held that the impugned order dated 3.2.2005 shall be effective upto 31.3.2006.

6. Accordingly, the present OA is disposed of with the direction that operation of the impugned order dated 3.2.2006 so far as it relates to the applicant shall remain operative upto 31.3.2006 and beyond that period, the Assistant Commisioner has no authority to temporarily attach the applicant to another Kendriya Vidyalaya within an academic session in terms of provisions contained in transfer policy.

7. With these observations, the OA shall stand disposed of with no order as to costs.



(M.L.CHAUHAN)

Member (Judicial)

R/

