

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

09.02.2009

OA No. 51/2009

**Mr. R.D. Tripathi, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.**

Learned counsel for the respondents submitted that Interim reply has been filed today in the Registry. The Registry is directed to place the same on record for hearing.

List the matter on 10.02.2009.

Interim
Reply filed
on 9/2/09
B

DLK
(B.L.KHATRI)
MEMBER (A)

AHQ

10/2/09 Mr. R.D. Tripathi, Counsel for applicant
Mr. V.S. Gurjar, counsel for respondents.

Heard learned counsel for the parties.

The case stands disposed of by a separate order at admission stage itself.

DLK
(B.L.Khatri)
10/2/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 10th day of February, 2009

ORIGINAL APPLICATION NO.51/2009

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Shish Ram Jat
S/o Shri Jagdish Prasad,
R/o Kirtapura Post,
Sarund, Tehsil Kotputli,
District Jaipur.

... Applicant

(By Advocate : Shri R.D.Tripathi)

Versus

1. Union of India through
Joint Commissioner (Adm),
18, Institutional Area,
Sahid Jeet Singh Marg,
New Delhi.
2. Commissioner,
18, Institutional Area,
Sahid Jeet Singh Marg,
New Delhi.
3. Assistant Commissioner,
KVS, Regional Office,
92, Gandhi Nagar Marg,
Bajaj Nagar, Jaipur.
4. Principal,
KVS, Itarana,
Alwar.

... Respondents

(By Advocate : Shri V.S.Gurjar)

ORDER (ORAL)

PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA thereby challenging the order dated 30.1.2009 (Ann.A/1), whereby he has been transferred from Kendriya Vidyalaya Itarana, Alwar, to Kendriya Vidyalaya Sri Ganganagar with immediate effect on administrative grounds, and the order of the same date i.e. 30.1.2009 (Ann.A/1(a)), whereby the applicant has been relieved. Through this OA, the applicant has prayed for the following relief :

- "i) to quash the impugned orders dated 30.1.2009 (Ann.A/1) and (Ann.A/1(a)) with all consequences.
- ii) to direct the respondents to place the applicant at Kendriya Vidyalaya, Itarana, Alwar, as he was before issuance of the aforesaid impugned orders."

2. Briefly stated, facts of the case are that the applicant was initially appointed as Work Experience Teacher (WET) on 19.10.93 in the Kendriya Vidyalaya Sangathan (KVS) and was posted at KV No.2, Jodhpur. He got transferred to KV Itarana, Alwar, on 24.11.2000, at his own request. The applicant is suffering from Polio in his right hand at upper limb and as such he is a physically challenged employee, as defined in Clause 2(1)(x) of the transfer guidelines, and comes under 'CDA' category, the 'category' whose dislocation will be avoided.

3. The applicant was working efficiently and hence got some appraisal certificates too but with the posting of the present Principal i.e. Smt. Neelam Srivastava [respondent No.4] his problem started because she recorded some adverse entries in the ACR of the applicant and on the basis of that adverse entries issued a memo dated 29.8.2008 (Ann.A/5) proposing action under Rule-16 of the CCS (CCA) Rules, 1965, directing to submit his representation within 10 days. The applicant, vide his letter dated 1.9.2008 (Ann.A/6), expressed his inability to submit representation as the memo dated 29.8.2008 contained no statement of imputation of misconduct or misbehavior. When respondent No.4 came to know about the aforesaid fact, she immediately issued another memo dated

15.9.2008 (Ann.A/9) to the applicant. The applicant could not know as to whether the subsequent memo was in continuation of the earlier one or was a separate one, therefore, vide letter dated 23.9.2008 (Ann.A/10), he requested respondent No.4 to clarify the position. Thereafter, respondent No.4, vide order dated 22.11.2008 (Ann.A/11) withdrew both the memos for administrative reasons and issued further memo dated 5.12.2008 (Ann.A/12) leveling the same charges. The applicant, vide letter dated 19.12.2008 (Ann.A/13) asked for supply of some documents to enable him to submit an effective reply. But instead of providing the documents asked for the applicant, respondent No.4, vide order dated 17.1.2009 (Ann.A/14), imposed penalty upon the applicant of reduction of pay at one lower stage in the time scale of pay for a period of one year without cumulative effect and not adversely affecting his pension. Being surprised by the said penalty order, the applicant immediately submitted an appeal dated 18.1.2009 (Ann.A/15) to the appellate authority i.e. respondent No.3 under Rule-22 of the CCS (CCA) Rules, 1965, which is still pending for consideration.

4. However, respondent No.3, instead of deciding the appeal filed by the applicant, vide order dated 30.1.2009 (Ann.A/1) has transferred the applicant to KV Sriganganagar with immediate effect under Clause 8(iv) of the transfer guidelines. Respondent No.4 has also relieved the applicant on the same date i.e. vide order dated 30.1.2009 (Ann.A/1(a)). Hence this OA.

5. The applicant has alleged bias against the Principal of the school i.e. Smt. Neelam Srivastava but he has not impleaded her as a respondent by name. He has relied upon two cases i.e. **Bakhtawar Singh v. State of Punjab and Others** [AIR 1971 Punjab & Haryana 220], whereby it was held by the Apex Court that; "It is not possible to find direct evidence of personal bias which has to be inferred like any other fact from the circumstances of the case. The causes which may lead to personal bias cannot be enumerated exhaustively and hostility of the authority called upon to exercise quasi-judicial functions

may result from variety of incidents." and **N.K.Singh v. Union of India and Others** [AIR 1995 SC 423], whereby it was held by the Apex Court that, "Mala fides has to be inferred by reading the record in between the lines and by taking into account attendant circumstances."

6. The respondents have also intervened as Caveator in this case and have filed their reply. Learned counsel for the respondents also relied upon the case of **H.H.Lall v. Kendriya Vidyalaya Sangathan and Others** [OA 256/2008, decided by Jodhpur Bench of the Tribunal on 19.1.2009] and **State of U.P. and Another v. V.N.Prasad (Dr)** [1995 Supp (2) SCC 151]. Learned counsel for the respondents has also enclosed a copy of the order/letter dated 2.2.09 with the reply as Ann.SR/1, whereby the Commissioner, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has directed respondent No.3 to consider the case of the applicant sympathetically and cancel the transfer order. But no such order has been passed. Appeal filed by the applicant vide Ann.A/15 is still pending consideration before respondent No.3.

7. I have heard learned counsel for the parties and considered the facts of the case. It is evident from perusal of para 4(4) of the OA that the applicant is a physically challenged employee, as defined in Clause 2(1)(x) of the new transfer guidelines w.e.f. 14.3.2006. At page-12 of the OA, the applicant has also submitted that his case is covered under Clause 2(1)(i) and 3(1) of the new transfer guidelines. I also find that the applicant had approached the Commissioner, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, by filing an application, assailing the action of the respondents in transferring him. The Commissioner, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, forwarded the application of the applicant to the competent authority i.e. respondent No.3 for reconsideration of the matter. However, on perusal of the facts, I find that the competent authority i.e. respondent No.3 has not reconsidered and reviewed the

transfer order in response to the letter/order dated 2.2.09 (Ann.SR/1). I also find that against the penalty order dated 17.1.2009 (Ann.A/14) the applicant has also filed an appeal on 18.1.2009 before respondent No.3, as per Ann.A/15, which is still pending consideration.

8. In the circumstances, the applicant is directed to make a self contained representation to respondent No.2 i.e. Commissioner, KVS, within a fortnight from the date of receipt of a copy of this order and respondent No.2 is directed to decide the said representation of the applicant within a month of the receipt thereof. While deciding the representation, respondent No.2 may consider applicant's request for his transfer to another school in the same city or a nearby town having regard to the fact that he is a physically challenged employee. In case the applicant is aggrieved by the order to be passed by respondent No.2, he may approach this Tribunal again.

9. With these observations, the OA stands disposed of at admission stage. No order as to costs.


(B.L.KHATRI)
MEMBER (A)

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