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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH,  
CHANDIGARH.

O.A.No.060/00618/2014

Date of Decision : 18.3.2015

Reserved on: 12.03.2015

CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER  
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER

Daljit Singh son of Sh. Gurdip Singh, aged 52 years, presently working as Librarian at Jawahar Navodaya Vidyalaya, Goindwal Sahib, District Tarn Taran (Pb.).

Applicant

Versus

1. Navodaya Vidyalaya Samiti (Ministry of Human Resources Development, Department of School Education and Literacy, Govt. of India), B-15, Institutional Area, Sector 62, Noida (U.P.) through its Commissioner.
2. Deputy Commissioner, Navodaya Vidyalaya Samiti (Ministry of Human Resources Development, Department of School Education & Literacy, Govt. of India), Regional Office, Bay No.26-27, Sector-31/A, Chandigarh.
3. Principal, Jawahar Navodaya Vidyalaya, Sector 25, Chandigarh.
4. Principal, Jawahar Navodaya Vidyalaya, Goindwal Sahib, District Tarn Taran.
5. Smt. Nisha, presently working as Librarian, Jawahar Navodaya Vidyalaya, Sector 25, Chandigarh.

Respondents

Present: Mr. H.S. Saini, counsel for the applicants  
Mr. D.R.Sharma, counsel for the respondents

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**ORDER**

**HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

- "8 (ii) quash the impugned order dated 26.09.2013 (Annexure A-1) whereby respondent no.2 has ordered the deemed transferred of the applicant on the post of Librarian from JNV, Chandigarh to JNV Goindwal Sahib, District Tarn Taran (Pb.) with retrospective effect i.e. 30.12.2008 illegally and arbitrarily.
- (iii) further quash the order dated 30.12.2008 (Annexure A-2) whereby respondent no.2 shifted the lien of the applicant from JNV, Chandigarh to JNV Goindwal Sahib, District Tarn Taran (Pb.) being illegal, arbitrary and without jurisdiction.
- (iv) and also quash the order dated 07.11.2012 (Annexure A-3) whereby the request of the applicant seeking withdrawal of order dated 30.12.2008 has been rejected by respondent no.2 totally in an illegal and arbitrary manner in violation of principles of natural justice.
- (v) Consequently issue appropriate directions to respondents no.1 & 2 to consider the claim of the applicant for shifting his lien from JNV Goindwal Sahib, District Tarn Taran (Pb.) to JNV, Chandigarh and post him back at JNV, Chandigarh immediately with all consequential reliefs, if any."

2. It has been stated in the OA that applicant who was working as Librarian at Jawahar Navodaya Vidyalaya, Chandigarh since 03.10.1995 on regular basis applied for ex-India leave w.e.f. 07.06.2008 which was duly sanctioned by the competent authority. Due to compelling family circumstances, the applicant did not join his duties after the expiry of the sanctioned leave and applied for extension from time to time. Ultimately, the applicant came back to India in May, 2010 and reported to Principal, Jawahar Navodaya Vidyalaya, Chandigarh i.e. respondent no.3

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for joining his duties. He was directed to report to Deputy Commissioner Navodaya Vidyalaya Samiti, Regional Office, Chandigarh, and vide order dated 26.05.2010, he was directed to join duty at JNV Goindwal, District Tarn Taran, pending finalization of the on going disciplinary proceedings against him (Annexure A-5).

3. In the grounds for relief it has, inter-alia, been stated as follows:-

- i) As per Fundamental Rule 14-B read with Rule 15, it is abundantly clear that only the President may transfer the lien of a Government servant from one post to another post in the same cadre who is not performing the duties of the post to which the lien relates and the President may transfer a Government servant from one post to another provided that except on account of inefficiency or misbehavior, or on his written request only not otherwise. Thus, in case of dealing with the lien of a Government servant, none-else except the President is only Competent Authority to pass such the orders but in the present case, the order dated 30.12.2008 (Annexure a-2) was allegedly passed by respondent no.2 who was not competent authority or authorized to pass such orders under the Rules.
- ii) There is no policy available in the NVS to shift the lien of an employee from one JNV to another JNV and further to the query that under which power NVS Regional Office could shift the lien of an employee from one JNV to another, it has been answered that there is no such Rule in the Samiti. As such, once it is admitted by the respondents that there is no power vested with respondent no.2 and there is no Rule in Samiti of shifting lien of the employee, then it is not understandable as to how and under which power, the impugned order has been passed by respondent no.2. Therefore, even as per the admission of the respondents themselves, the impugned order dated 30.12.2008 (Annexure A-2) has been passed by respondent no.2 without jurisdiction and thus, the same is unsustainable.

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- iii) It would be evident from the bare perusal of the RTI information dated 08.09.2011 (Annexure A-7) that the respondents have transferred 5 Librarians between September, 2008 to December, 2010 only on the basis of their request and not otherwise but the applicant's lien was illegally and arbitrary transferred by respondent no.2 without any request made by him and not even on administrative grounds but only in order to adjust respondent no.5 at Chandigarh with malafide motive who otherwise could not be posted as under the transfer policy in vogue at that time, as there was no provision for displacement and an employee could only be transferred either on administrative grounds, public interest or on request through centralized counseling as per policy dated 13.02.2008 (Annexure A-6). However, to adjust respondent no.5, respondent no.2 evolved a unique method immune to the rules especially one day prior to his date of retirement which establishes the allegations of malafide against respondent no.2. On this ground as well the impugned order is liable to be set aside.
- iv) Respondent no.2 initially attached respondent no.5 temporarily vide order dated 10.07.2008 (Annexure A-4) against the leave vacancy of the applicant and he himself allowed the applicant to resume duties vide office order dated 26.05.2010 (Annexure A-5) that applicant is allowed to join his duties pending finalization of the ongoing disciplinary proceedings against him. Thus, firstly, once the applicant was allowed to join back his duties and therefore, respondent no.5 was liable to be posted back to her original place of posting since she was attached temporarily at JNV, Chandigarh and secondly, when the disciplinary proceedings have completed, as is evident from DOS dated 15.03.2012 (Annexure A-4/A), respondents are bound under law to post him back to his original place of posting and cannot take 'U' turn now that applicant has no right of his posting at Chandigarh despite of the fact that order of shifting the lien of the applicant was without having jurisdiction. As such, the impugned order dated 30.12.2008 is liable to be struck down.

Hence this OA.

4. In the written statement filed on behalf of the respondents, it has been stated that the applicant sought permission to visit Ireland w.e.f.

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01.06.2008 to 28.07.2008 (during summer vacation) stating "social visit" as the purpose. The leave was granted subject to some conditions, one of which was that he would not extend his leave without prior permission. The applicant applied for extension of leave w.e.f. 01.08.2008 to 30.09.2008 which was sanctioned vide NVS (RO) letter no.1636 dated 26.05.2008 on humanitarian grounds (Annexure R-1). He again requested for extension of leave w.e.f. 30.09.2008 to 30.11.2008 on the similar grounds but the same was turned down by the Competent Authority vide letter no.7296-97 dated 17.10.2008 (Annexure R-2). Even the Applicant's immediate Controlling Authority i.e. Respondent no.3 i.e. Principal, JNV Chandigarh sent letters dated 23.10.2008 and no.1274-75 dated 07.11.2008 (Annexure R-3 and R-4) to the applicant directing him to report back. Instead of reporting back, the applicant sent an application dated 05.11.2008 requesting for open ended leave stating therein "**leave may be extended till the settlement of my children in Ireland**" (Annexure R-5). Memorandum no.9543-44 dated 09.01.2009 (Annexure R-6) was issued by NVS (RO) Chandigarh, clearly intimating the applicant that he was unauthorizedly absent and showing gross negligence towards his duties & directing him to report back immediately failing which disciplinary action would be initiated against him under rules. Instead of joining, he sent another application requesting extension of leave upto 28.02.2009. Again vide NVS (RO) letter no.10024-26 dated 23.01.2009 (Annexure R-7) he was categorically informed that he was declared unauthorizedly absent

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from duty w.e.f. 01.10.2008 onwards still giving him a final opportunity to report back by 09.02.2009. In between, the Principal, JNV Chandigarh (respondent no.3) informed that there was shortage of books in the library worth Rs.1,95,786 vide his letter no.55 dated 22.04.2009 (Annexure R-8).

5. The applicant left the library closed during vacation and Vidyalaya administration was finding it difficult to make it operational. On the request of Principal (Respondent no.3) Ms. Nisha (Respondent no.5) was initially attached on temporary basis to JNV Chandigarh. Later on, vide this office order dated 30.12.2008 (Annexure A-2), Smt. Nisha was allowed to continue at JNV Chandigarh by shifting the lien of the applicant to JNV Tarn Taran (Pb.). No doubt that while issuing the orders, the then competent authority, inadvertently mentioned 'shifting of lien' instead of writing 'transfer' on administrative grounds but undoubtedly it was within the powers of respondent no.3 to transfer an employee on administrative grounds. An extract of delegation of powers is annexed as Annexure R-9. The applicant was issued a charge sheet vide Memo 1479-81 dated 28.05.2009 (Annexure R-10) but the applicant failed to reply till 29.07.2009 and as such departmental proceedings for unauthorized absence and loss of books in library was initiated against him vide order no.3260-63 dated 06.08.2009. In spite of ongoing disciplinary proceedings, the applicant did not report for duty and only came present in May, 2010. He was directed to report to JNV, Tarn Taran, vide office order dated 26.05.2010 (Annexure

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● A-5). He was basically transferred on administrative grounds but shifting of lien was inadvertently mentioned in the order. The applicant joined at JNV Tarn Taran. After conclusion of the enquiry proceedings, the applicant was imposed penalty of reduction to a lower stage by three stages for a period of two years with a recovery of Rs.1,60,077 vide order no.F.31-8/Disc.Cases (DS)/NVS:CR/2014/7402-04 dated 17.11.2014 (Annexure R-11). It has further been stated that as per FR 14 the Government servant has permanent lien on the post but it is not at any particular station. Therefore, the lien of the applicant on the post of Librarian is intact. The powers for shifting an employee on administrative grounds has always been vested with the Regional Office and therefore there was no illegality in the impugned orders passed by the answering respondents.

6. In the rejoinder filed on behalf of the applicant, it has been stated that it is wrong to say that since a Training Centre in the name of Navodaya Leadership Institute was functioning in the School, therefore, the Library services were necessarily to be provided to them by the School in the absence of the applicant. This Institute has nothing to do with the school or library at JNV Chandigarh as the Institute has its own Deputy Commissioner, own building and staff and are not dependent upon the library of the school. As per orders Ms. Nisha was initially attached temporarily her at JNV, Chandigarh vide order dated 10.07.2008



(Annexure A-4) against the leave vacancy of the applicant, but when respondent no.2 was going to retire on 31.12.2008 on attaining the age of superannuation i.e. one day prior to his retirement, respondent no.2 issued office order no.NVS/RO/Chandigarh/2008/Estt./9271-75 dated 30.12.2008 which was punitive in nature affecting the civil rights of the applicant, without affording any opportunity of hearing to the applicant and shifted the lien of the applicant from JNV, Chandigarh to JNV Goindwal Sahib, District Tarn Taran, without spelling out the Rule or jurisdiction and in this very order, respondent no.5 was allowed to continue to work at JNV, Chandigarh till further orders despite the fact that she was only attached at this school for a fixed period upto 30.12.2008. Thus, since respondent no.5 was attached at NVS Chandigarh temporarily for a fixed period as a stop gap arrangement and once the applicant had come back and was allowed to join his duties, he should have been posted at NVS, Chandigarh. Shifting his lien or post vide impugned orders by respondent no.2 is absolutely illegal, arbitrary and without jurisdiction as explained in the OA. Further, after realizing the mistake by respondent no.2 regarding passing of the order dated 30.12.2008, he illegally and arbitrarily vide another order dated 26.09.2013 gave false color to the illegal order dated 30.12.2008 as transfer of the applicant on administrative grounds.

7. Arguments advanced by the learned counsel for the parties were heard when learned counsel for the applicant reiterated the facts and

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● grounds taken in the OA, rejoinder and written statement and hence the same are not repeated here.

8. Learned counsel for the respondents stated that the order regarding shifting of lien had been passed erroneously. The applicant had been directed to join at JNV Tarn Taran when he reported for duty in May, 2010 and there was no case for reverting him to JNV, Chandigarh.

9. We have given our thoughtful consideration to the matter. From the material on record, it is evident that the applicant remained away from his duties for a fairly long time and it was therefore necessary for the respondents to make arrangements for management of the work of Librarian at JNV, Chandigarh. Respondent no.4 had meanwhile been posted as Librarian at JNV, Chandigarh. The applicant cannot have any vested right to be retained as Librarian at JNV Chandigarh, after he continued to be on unauthorized leave w.e.f. 30.09.2008 onwards till May, 2010. The applicant has faced disciplinary proceedings on this account and penalty order has been issued against him.

3 10. The applicant is not entitled to question the action taken by the respondents to adjust respondent no.4 as Librarian at JNV Chandigarh as shifting of staff is within the authority of the Regional Office of NVS. Moreover, the applicant had already spent 13 years at JNV Chandigarh and cannot assert any claim to be posted there continuously, even after he

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remained on unauthorized leave for almost two years. It is however observed that the impugned order dated 30.12.2008 (Annexure A-2) regarding shifting the lien of the applicant is without any basis under the rules and is therefore quashed. The impugned order dated 26.09.2013 whereby respondent no.2 ordered the deemed transfer of the applicant on the post of Librarian from JNV Chandigarh to JNV Goindwal, District Tarn Taran with retrospective effect from 30.12.2008 is also irregular and is quashed. The applicant can only be treated as transferred to ~~Chandigarh~~ <sup>JNV Tarn Taran</sup> from the date when he joined at JNV Tarn Taran as per the directions of the Regional Office NVS in dated 26<sup>th</sup> May 2010. The competent authority may issue appropriate orders in this regard. The OA is disposed of with the above directions.

*As per*

(RAJWANT SANDHU)  
ADMINISTRATIVE MEMBER.

*B. A. Aggarwal*

(DR. BRAHM A. AGRAWAL)  
JUDICIAL MEMBER

Place: Chandigarh

Dated: 18.2.2015

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② Correction made in compliance of order dated 1/5/2015 passed in MA No 060/00490/2015 IN OA N.O 060/00618/2014.

*Chandigarh*  
18/5/15