

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2267/2005

Order Reserved on: 26.04.2016

Pronounced on:13.05.2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

R.G. Nangia,
S/o late Sh. Nounit Ram,
R/o 7/11, East Patel Nagar,
New Delhi-11008.

-Applicant

(By Advocate Shri M.K. Bhardwaj)

-Versus-

-Respondents

1. Kendriya Vidyalaya Sangthan,
18, Institutional Area,
Sahidjit Singh Marg,
New Delhi-110016
Through Its Deputy Commissioner (ACED).
2. Kendriya Vidyalaya Sangthan,
Delhi Region, JNU Complex,
New Mehrauli Road,
New Delhi-110067
Through its Asstt. Commissioner.

-Respondents

(By Advocate Shri S. Rajappa)

ORDER

Mr. K.N. Shrivastava, Member (A):

This is the third round of litigation between these two parties before this Tribunal on the controversy involved

in this OA. This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for read as under:

“i) To set aside the impugned order dated 24.2.2004, 25.2.2004ed by Assistant Commissioner, Delhi Region and Joint Commissioner on the basis of notification dated 4.9.2000 and the applicant be paid all the benefits accrued to him on his superannuation as available to other employees of the KVS. The salary w.e.f. 9.11.1999 till the date of superannuation may also be released with all consequential benefits.

ii. To quash the notification dated 4.9.2002 made applicable to the applicant vide show cause notice dated 31.12.2003.”

2. The brief facts of this case are as under.

i) The applicant joined as Trained Graduate Teacher (Maths) (in short, TGT, Maths) under the respondents' organization, i.e., Kendriya Vidyalayas Sangathan (KVS) on 03.07.1970 at R.K. Puram Kendriya Vidyalaya (KV).

ii) On 30.10.1999, he was transferred to KV No.1 Halwara, Punjab, which was an inter-regional transfer. He did not join at his new place of posting due to his personal reasons. At the time of his transfer the applicant was working at KV, Gole Market, New Delhi.

iii) The respondents initiated action as per Article 81 (D) of the KVS Education Code, which was brought into effect

by KVS through Annexure A-1 letter dated 04.09.2002 to all its Regional Commissioners. The said Article is reproduced below:

“Article 81 (d). Voluntary abandonment of Service

- (1) If an employee has been absent/remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall provisionally lose his lien on his post unless:-
 - (a) he returns within fifteen calendar days of the commencement of the absence or the expiry of leave originally granted or subsequently extended, as the case may be; and
 - (b) satisfies the appointing authority that his absence or his inability to return on the expiry of the leave as the case may be was for reasons beyond his control. The employee not reporting for duty within fifteen calendar days and satisfactorily explaining the reasons for such absence as aforesaid shall be deemed to have voluntarily abandoned his service and would thereby provisionally lose lien on his post.
- (2) An employee, who has provisionally lost lien on his post in terms of the aforesaid provisions, shall not be entitled to the pay and allowances or any other benefit after he has provisionally lost lien on his post;
Provided that payment of such pay and allowances will be regulated by such directions as the appointing authority may issue while ordering reinstatement of the employee in terms of Sub-clause (6) of this Article.
- (3) In cases falling under Sub-clause (1) of this Article, an order recording the factum of voluntary abandonment of service by the employee and provisional loss of his lien on the post, shall be made and communicated to the employee concerned at the address recorded in his service book and/or his last known address, to show cause why the provisional order above mentioned may not be confirmed.

- (4) The employee may make a written representation to the appointing authority, within ten days of receipt of the order made under sub-clause (3).
- (5) The appointing authority may, on receipt of the representation, if any, and perusal of materials available on record as also those submitted by the employee, grant, at his discretion, an oral hearing to the employee concerned to represent his case.
- (6) If the appointing authority is satisfied after such hearing that the employee concerned has voluntarily abandoned his service in terms of the provisions of Sub-clause (1) of this Article, he shall pass an order confirming the loss of employee's lien on his post, and, in that event, the employee concerned shall be deemed to have been removed from the service of the Kendriya Vidyalaya Sangathan with effect from the date of his remaining absent. In case the appointing authority is satisfied that the provisions of Sub-Clause (1) of Clause (d) of this Article are not attracted in the facts and circumstances of the case, he may order re-instatement to employee to the post last held by him, subject to such directions as he may give regarding the pay and allowances for the period of absence."

iv) Annexure A-2 show cause notice dated 31.12.2002 was issued to the applicant by the respondents asking him as to why action under Article 81 (D) should not be initiated against him. He was given 10 days time to submit his representation.

v) The applicant in the meanwhile came to this Tribunal and filed OA-2395/1999, challenging his transfer to Halwara. The Tribunal disposed of the said OA vide order dated 01.01.2002, the operative part of the order reads as under:

“In view of the above discussion and having regard to the interest of justice though on merits the applicant has no case, the OA is disposed off with a direction to the applicant to join at the transferred place forthwith thereafter the applicant is directed to make a representation under the calling back scheme of KVS of March, 2000 for his transfer back to Delhi within 15 days from the date of joining and thereafter, the Respondents are directed to consider the same in accordance with the extant rules and instructions and policy guidelines and pass a detailed and speaking order within a period of two months from the date of receipt of such representation. The Respondents are also directed to pass appropriate orders regarding intervening period i.e., from the date of transfer till the date of joining of the transferred place in accordance with rules. The OA is accordingly disposed of.”

vi) The applicant submitted a representation on 20.02.2004 requesting KVS for sanctioning him TA/DA advance so that he could go and join at Halwara. He also applied for VRS.

vii) The applicant filed another OA-62/2004 before this Tribunal, which was disposed of on 12.02.2004, the operative part of the order reads as under:

“Keeping in view the same we find that it will be proper if we decide the OA at this stage itself with the directions to the Respondents, as they have themselves have given the applicant an opportunity to show cause. Thus, Respondents shall afford him opportunity to reply to this show cause notice including personal hearing. Respondents shall also pass a speaking order on the various representations made by the applicant wherein he has been asking for joining of duties. This should be done within a period of one month from the date of receipt of a copy of this order. OA stands disposed off.”

viii) The applicant ultimately joined at Halwara on 02.03.2004.

ix) The applicant had challenged the order of this Tribunal in OA-2935/1999 dated 1.1.2002 before the Hon'ble High Court of Delhi in W.P. (C) No.645/2002. The said W.P. (C) was disposed of by the Hon'ble High Court with the observation that the W.P. (C) has become infructuous in view of the fact that the respondents have dismissed the applicant from service. The relevant part of the Hon'ble High Court's order dated 21.02.2004 reads as under:

“Learned counsel for the petitioner submits that for the purposes of OA NO.2267/05, petitioner be given the liberty of contending that the order of transfer was illegal and mala fide and not sustainable on merits despite the judgment of the Tribunal since the present writ petition is being dismissed as having become infructuous. Learned counsel for the respondents has no objection to the same as he says if the need arises he would also justify the order of the transfer. The said question is left open.”

x) The Disciplinary Authority (DA) pursuant to the Annexure A-2 show cause notice dated 31.12.2003 issued to the applicant under Article 81 (D) of the Education Code of KVS and after considering his representation dated 14.01.2004 against the said show cause notice passed the impugned Annexure A-4 order

dated 25.02.2004, dismissing the applicant from service. The applicant preferred an appeal before the departmental Appellate Authority (AA) challenging the order of the DA. His appeal was dismissed by AA vide Annexure A-5 order dated 17.12.2004.

xi) The DA vide order dated 24.02.2004, complying with the directions of this Tribunal in OA-62/2004 dated 12.02.2004 and in OA-2395/1999 dated 01.01.2002, *inter alia*, also refused the request of the applicant for grant of VRS to him.

xii) Aggrieved by the impugned order dated 24.02.2004 and the orders passed by the DA and AA, the instant OA has been filed.

3. Pursuant to the notices, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings the case was taken up for hearing of arguments of the parties on 26.04.2016. Shri M.K. Bhardwaj, learned counsel for the applicant and Shri S. Rajappa, learned counsel for respondents argued the case.

4. Learned counsel for the applicant, besides highlighting the points raised by the applicant in the OA and the rejoinder, submitted that the respondents have

acted unfairly towards the applicant. He was not paid TA/DA advance when he was transferred to Halwara as a result of which the applicant could not report at the new place of his posting immediately. It was also submitted that the applicant had applied for VRS but the same has been rejected by the respondents for no explicable reasons. The learned counsel further stated that the action of the respondents in issuing the termination order just two days before his attaining the age of superannuation speaks of mala fide intention of the respondents. The learned counsel said that the action against the applicant under Article 81 (D) of Education Code of KVS was illegal in view of the fact that the applicant has not abandoned his services and the Hon'ble Supreme Court in many judgments have ruled that the abandonment can be construed only when there is no intention of joining. The applicant had in fact gone and joined at Halwara on 02.03.2004 and as such the order passed under Article 81 (D) of the Education Code of KVS was not justified. The learned counsel further stated that the respondents had filed an affidavit in W.P. (C) No.645/2002 on 29.09.2003 wherein they have stated that the operation of law of voluntary retirement has

come into being and as such applicant cannot agitate for VRS in the said W.P. (C).

5. Per contra, the learned counsel for the respondents submitted that the applicant has indulged into an act of gross indiscipline. He ought to have joined at his new place of posting. His not going to Halwara had prejudiced the educational interest of the students and also exhibited his utter contempt to organizational discipline and as such the respondents were justified to initiate action against the applicant under Article 81 (D) of the Education Code of KVS. The learned counsel further submitted that VRS cannot be claimed as a matter of right and that the competent authority had given cogent reasons as to why his VRS application had been rejected. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court on the following cases in support of his contention:

- i) **Jaswant Singh v. State of Punjab**, [AIR 1958 SC 124];
- ii) **State of Bihar v. P.P. Sharma**, [1992 Supp.(1) SCC 222].
- iii) **Balram Gupta v. Union of India & Anr.**, [(1987) Supp SCC 228].
- iv) **Himachal Pradesh Horticultural Produce Marketing & Processing Corporation Ltd. V. Suman Behari Sharma**, [(1996) 4 SCC 584.

Concluding his arguments, the learned counsel submitted that the OA is devoid of merit and as such deserves to be dismissed.

6. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. From the records, we find that the respondents indeed had filed an affidavit on 29.09.2003 before the Hon'ble Delhi High Court in W.P. (C) no.645/2002 which is at pages 274-276 of the paper-book. The relevant portion of the said affidavit is extracted below:

“It is further submitted that the letter dated 8.10.2001 written by the petitioner has worked itself out in law and the effect of the law on voluntary retirement has already taken place and the petitioner in law cannot maintain the present petition before this Hon'ble Court as the consequences of the operation of law of voluntary retirement has come into being.”

7. We also find that the Deputy Commissioner working in the KVS, Headquarters had written a letter dated 09.05.2012 (page 322 of the paper-book) to the Regional Assistant Commissioner, Delhi Region in which he has said that the request of the applicant for VRS should have been considered. The relevant para of the said letter is extracted below:

“(4) Consequently upon non acceptance of request of Voluntary Retirement and etc. Sh. Nangia should have been afforded reasonable opportunity to join the duties but the same does not appear to have been afforded to him whereas number of employees who were transferred, not joined but were allowed voluntary retirement by KVS (RO) Delhi. The fact/information have been obtained by Sh. R.G. Nangia in response to his RTI application in the year 2006.”

8. We note that the applicant has served the respondent-organization for over three decades. Due to his personal circumstances, undoubtedly he evaded his transfer to Halwara for sometime but finally gave in. He applied for VRS on 08.10.2001 in terms of the VRS scheme of KVS and he was eligible for consideration. The respondents have not given any cogent reasons for rejecting his VRS request; instead they preferred to proceed against the applicant departmentally which triggered this avoidable litigation; which has now entered into the 17th years. Had the request for VRS of the applicant been considered when the application for the same was submitted on 08.10.2001 by the applicant, precious time and money of both the parties could have been saved. The learned counsel for the applicant has submitted in response to an RTI query, the applicant has been informed that his personal file was sent by the KV Gole Market to the learned counsel for the respondents

(who is the counsel in the instant case) and the said file has not been received from the learned counsel. The relevant portion of the said communication is extracted below:

“This is further reference to this office letter No.F.N.1-17/KVGM/I/2013-14/328-30 date 01/02-01-2014 file voll of Sh. R.G. Nangia was sent to Sh. S. Rajappa, Advocate KVS by then principal Vide letter dated 21-10-2003 (copy enclosed).

This office had also intimated to Sh. R.G. Nangia vide letter Nos.FRG/KVGM/I/2013-14/369(a) Dated 26.08.2013 (copy enclosed) & F2-29/KVGM/I/2012-13/868(a) dated 14-03-2013 (copy enclosed) that personal file has not received from Sh. S. Rajappa, Advocate KVS.”

9. Taking all factors into consideration and also keeping in view of the fact that this avoidable litigation has continued for 17 years, we feel that the litigation can come to an end if the respondents, even though belatedly, consider the request of the applicant for VRS. We also feel that grant of VRS to the applicant would be equitable and meet the ends of justice. As such, we direct the respondents to grant VRS to the applicant w.e.f. 08.01.2002 pursuant to his application dated 08.10.2001, in view of the fact that the statutory notice period of three months would have ended on 08.01.2002. We also direct the respondents to release the pension of the applicant, if not done already. These directions shall

be complied with by the respondents within three months from the date of receipt of a certified copy of this order.

10. As there has been some fault on the part of the applicant also, we make it clear that the applicant would not be eligible for getting any interest on the VRS compensation amount payable to him as per the KVS's VRS scheme then existing.

11. With the above directions, the OA is disposed of.

12. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

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