



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.350/01630/2014

Dated of order: 22.12.2015

PRESENT:

THE HON'BLE MR. JUSTICE G. RAJASURIA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Pramila Halder, daughter of Late Manindra Halder, wife of
Saugata Chakraborty residing at Jorahat Lane, Chinsurah,
PO & PS- Chinsurah, District: Hooghly, PIN: 712101, West
Bengal.

.....Applicant

For the Applicant: Ms.P.Bhawmik, Counsel

-Versus-

1. Union of India service through the Secretary, Department of School Education and Literacy, Ministry of Human Resource Development Department, Government of India having office at Sastri Bhawan, New Delhi-1.
2. The Commissioner, Navodaya Vidyalaya Samiti, B-15, Institutional Area, Sector-62, Noida-201307, Dist. Goutam Budha Nagar, Uttar Pradesh: 221407.
3. The Joint Commissioner (Administration), Navodya Vidyalaya Samiti, having office at B-15, Institutional Area, Sector-62, Noida-201307, Dist. Goutam Budha Nagar, Uttar Pradesh: 221407.
4. The Deputy Commissioner, Navodhya Vidyalaya Samiti having Regional Office at Boring Road, Patna, PIN: 800013.
5. The Deputy Commissioner, Navodya Vidyalaya Samiti, Regional Office, Nongrim Hills, Shillong, PIN: 793003;

6. The Principal, Jawhar Navodya Vidyalaya, Tufanganj, Post Office, Tufanganj, New Town, District: Cooch Behar, PIN-736160.
7. The Assistant Commissioner, Navodya Vidyalaya Samiti, Regional Office, Patna, Pin: 800013.

.....Respondents

For the Respondents: Mr.R.N.Paul, Counsel

ORDER

JUSTICE G.RAJASURIA, JM:

Heard both.

2. This OA has been filed seeking the following reliefs:

"(a) to issue a mandate upon the Respondent Authority particularly the Respondent No.4 herein to rescind and/or recall and/or revoke and/or withdraw and/or cancel the impugned order of transfer dated 17.09.2014 issued by the Respondent No.

(b) To issue a mandate upon the Respondent Authority herein to let the Petitioner continue with her service at the Jawhar Navodya Vidyalaya, Cooch Behar, Tufanganj in designated post with immediate effect upon resuming service, or transfer the petitioner to the Jawhar Navodya Vidyalaya, Nadia at Kalyani or Howrah or North 24 Parganas in her subject from the existing place of posting for the ends of justice regularizing the service of the Petitioner;

(c) To issue a mandate upon the Respondent Authority to release due payments of the petitioner and allowance with consequential benefits cropped up in this interregnum period from the date of order of impugned order dated 17.09.2014 to the till date of resuming service;

(d) To issue a mandate upon the Respondent Authority to certify and produce all original documents relating to this case so that on perusal of the same this Hon'ble Tribunal can render conscionable justice by directing the Respondents to withdraw the impugned order of placing the Petitioner under put off duty for



indefinite period and in consequent thereof the order of disciplinary proceeding against the petitioner;

(e) And/or pass such other and further order/orders, direction/directions as the Hon'ble Tribunal may deem fit and proper for the interest of justice and equity."

(Extracted as such)

3. The Applicant, what we could understand from the records as well as by hearing the arguments of both sides, was functioning as a Trained Graduate Teacher, Bengali in Jawahar Navodaya Vidyalaya Samiti "hereinafter called as JNV". She was served with an Office Order dated 17.09.2014 as under:

"Mrs. Pramila Haldar, TGT (Bengali), Jawahar Navodaya Vidyalaya, Cooch Behar (West Bengal) is hereby temporarily attached to JNV, Chatra (Jharkhand) with immediate effect till further order."

and she was also issued with another Office order dated 18.09.2014 and that also is extracted hereunder for ready reference:

"With reference to the Deputy Commissioner, NVS, Regional Office, Patna office order F. No. 4-9.9/P&E/NVS (PTR/2013-14/3447 dated 17.9.2014, Mrs. Pramila Haldar, TGT (Bengali) is hereby temporarily attached to JNV, Chatra (Jharkhand). Copy of office order issued by NVS, RO, Patna enclosed herewith.

She is granted 40 days Child Care Leave with effect from 18th August, 2014 to 26th September, 2014. Hence, she is hereby relieved from this Vidyalaya in the forenoon of 27th September, 2014 to the new place of temporary attached i.e. JNV, Chatra (Jharkhand).

She may join directly to the new place of Temporary attachment JNV, Chatra."

However, it appears, that the applicant did not join the JNV, Chatra, Jharkhand, as contained in the Office Order dated

18.09.2014 after the expiry of the 40 days child care leave. On the other hand, till date she did not join the post. According to her, she applied for leave.

The learned counsel for the applicant placing reliance on the grounds set out in the pleadings would submit that absolutely there is no provision in the transfer policy or in the rule or regulation governing the staff of JNV for transferring or attaching a teacher temporarily to a post or unit. In the NVS approved transfer policy vide annexure-AA/1, the following could be seen:

" 14. TEMPORARY CHANGE OF HEADQUARTERS:

Deputy Commissioner shall be competent to change the headquarters of a teacher for a period not exceeding 45 days an academic session to any other school within the region on following grounds of administrative exigencies only:-

- (i) In case no person is available for engagement on part time contract basis to fill a vacancy (including a leave vacancy) in a school, and
- (ii) For ensuring better utilization of manpower.

However, the Deputy Commissioner shall take due care while changing such headquarters temporarily so that the academic interest of the students at the employees present place of posting are not adversely affected."

4. There should be reason for such short term change of headquarters of a teacher but absolutely, there is no exigencies found set out in the impugned order dated 17.9.2014. In this case, the applicant, presumably, is intended to be proceeded against departmentally in connection with some complaint or allegation



and in that connection she was attempted to be shunted from JNV, Cooch Behar (West Bengal) to JNV, Chatra (Jharkhand) which is not presumably as per the extant rules quoted supra. Accordingly, she would pray for setting aside the impugned order of transfer and to pass consequential orders for regularising her service during her absence; as she was prevented from joining the unit at Cooch Behar.

Per contra, the learned counsel for the Respondents placing reliance on the reply would vehemently oppose the prayer in the OA. His argument could succinctly and precisely be set out thus:

5. In contemplation of an enquiry as against the applicant, she was, for a period of 45 days directed to join at the unit at Chatra but she disobeyed the order and she has not also submitted any leave application. As such, her conduct is against the Rules and no leniency could be shown to her conduct, and accordingly this OA has to be dismissed.


The learned counsel for the Respondents with all seriousness would submit that if the applicant joins the post at Chatra, Jharkhand and applied for bringing her back to Cooch Behar, the same could be considered by the authorities.

6. The point for consideration is as to whether the impugned order dated 17.9.2014 is against the rules.



At the outset itself, we would like to fumigate our mind with the trite proposition of law that the CAT or any Court for that matter would not entertain any prayer of an official against the transfer order except in cases of mala fides involved in the transfer or violation of the statutory rules. In this case no mala fide we could see because the respondents would state that enquiry as against her was going on and in that connection she was shunted from Cooch Behar to Chatra.

7. The pertinent question arises as to whether such shunting of the applicant, from Cooch Behar to Chatra could be termed as a punitive transfer or a punishment. We would like to draw inference from the judgment of the Hon'ble Apex Court in the case of **AJAY KUMAR CHOUDHARY Vr UNION OF INDIA THROUGH IT SECRETARY & ANR. CIVIL APPEAL No. 1912 OF 2015** (Arising out of SLP No. 31761 of 2013) disposed of on 16th February, 2015. A mere running over eye over it would show that pending enquiry, a Government servant could be transferred. Here, the learned Counsel for the Respondents would submit that the impugned order cannot be termed even as transfer. At this juncture, we would also like to highlight that when government or public servant receives an order of transfer or similar to that of the one contemplated under Annexure-A/6 should obey the order and thereafter could challenge. But in this case after expiry of the child care leave, she did not join the post till date and continued to be



away from the place of work. Instead of simply for academic purpose deciding on the validity or otherwise of the office order, we could very well dispose of this OA by passing this viable and practical order to the effect that the applicant should, at the first instance, join at Chatra, Jharkhand and, thereafter, apply for going back to Cooch Behar and in the meantime she is also given liberty to file leave application for availing whatever leave at her credit, if not already applied and thereupon, the authority concerned should consider the same sympathetically and grant the same to the extent possible as per leave rules. The applicant is also given liberty to apply to the authority concerned for taking her back to Cooch Behar and that also might be considered sympathetically by the authority concerned. Accordingly, it is ordered.

8. On balance this OA is disposed of. No costs.

(Jaya Das Gupta)
Admn. Member

(Justice G. Rajasuria)
Judicial Member

Knm