

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1237 of 2003

New Delhi, this the 6th day of June, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shyam Behari
S/o Shri Jamuna Prasad
R/o Suman Bihar Colony,
Ajit Nagar Gate,
Iheria Road,
Agra (UP).

-APPLICANT

(By Advocate: Shri D.N. Sharma)

Versus

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

2. The Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

-RESPONDENTS

(By Advocate: Shri S. Rajappa)

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By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has impugned order dated 16.1.2001 vide which he has been transferred from Agra, Kendriya Vidyalaya to KVS, Langjing, Imphal.

2. Facts in brief are that the applicant is a Group 'D' employee and is working as Laboratory Attendant under respondents Kendriya Vidyalaya Sangathan and as per the impugned order dated 16.1.2001 the applicant has been transferred in the same capacity to Langjing (Imphal). The applicant claims that this transfer does not serve any public interest but by all means it was punitive in its form. The applicant had already filed four OAs

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against this transfer order before Allahabad Bench but still not satisfied, the applicant has filed the present OA.

3. The applicant prays that earlier he had filed OA No. 822/2002 and stay was granted. However, the OA was dismissed with liberty to the applicant to file a fresh OA. therefore, the applicant prays that he has a good case for stay so stay should be allowed and the impugned order of transfer should be quashed.

4. We have heard the learned counsel for the parties and gone through the records of the case.

5. The learned counsel for the applicant submitted that when the latest OA was decided the court observed that since the applicant had become a member of the staff, KVS, Langjing so the cause of action to file the OA before the Tribunal was available either at Delhi where the order was passed or at Guwahati within whose jurisdiction the applicant is presently posted so for that reason the OA was dismissed. Thus the learned counsel for the applicant submitted that the OA can be entertained and the applicant is entitled for grant of stay.

6. The OA is being contested by the respondents. The respondents submitted that the controversy with

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regard to the impugned transfer order is concerned that the same has been finally adjudicated upon and is no more res integra and this Tribunal vide order dated 7.11.2001 in OA 944/2001 at Allahabad Bench had held that the applicant could not bring home the allegation of mala fide and it can also not be disputed that as per the service conditions he can be transferred and posted to any station within the KVS and also the transfer order under exigencies of service can hardly be interfered on judicial side and since the applicant had already joined the station where he had been transferred and therefore, no good reasons were found to quash the impugned order of transfer. Though the court had observed that since the applicant is a resident of Agra, UP and has been transferred to far off place the authority in the respondents establishment will consider his case sympathetically when some occasion arises and to adjust him at Agra or any nearby station, but the order of transfer had already been judicially tested upon, so no fresh OA lies.

7. However, the applicant in this OA has stated that the order of transfer is not justified in public interest nor it is in accordance with the transfer policy of the KVS.

8. I have given my thoughtful consideration to the rival contention raised by the respective parties.

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9                   Admittedly, the applicant had first filed OA 101 of 2001 at Allahabad Bench which directed the respondents to decide his representation and in the meanwhile the applicant was allowed to stay at Agra for a period of 6 weeks or till the representation is decided whichever is earlier. Thereafter applicant filed another OA 944/2001 which was disposed of with an observation that since the applicant was a resident of Agra District (UP) and has been transferred to far off place and the same will be considered sympathetically by respondents when some occasion arises to adjust him at Agra or any nearby station.

10                  I have gone through the order passed in OA 944/2001 and I find that the Tribunal did not find any fault with the transfer order. It was only observed that if any occasion arises in future then the applicant may be adjusted at Agra or nearby station.

11.                Thereafter the applicant filed another OA 265/2002 at Allahabad Bench wherein he had again asked for his representation to be disposed of. Thereafter the applicant filed OA 822/2002 which was decided vide Annexure A-3. In OA 822/2002 the court observed about the order passed in OA 944/2001 which was disposed of on 7.11.2001 wherein the court has emphasised that the the respondents will consider his case sympathetically when some occasion arises but the order of transfer passed

against the applicant was upheld and the court refused to grant any relief. So far as order of transfer is concerned, no fault was found. The observations made therein were only to help the applicant in future. While deciding the OA the court also observed that it was clear from the operative part of the order that on account of mala fide an arbitrariness was not accepted. Court declined to interfere noticing the judgment of Hon'ble Supreme Court and when the counsel for the applicant was confronted with this situation, the counsel made a statement to withdraw the OA with liberty to file a fresh OA before the competent Bench, so the OA was dismissed as not maintainable. Thus I find that the order of transfer which had been challenged and agitated upon earlier and the same had been finally adjudicated upon by this Tribunal, so fresh OA does not lie at all and in this OA the applicant has confined his relief for quashing of the impugned transfer order itself which has already been rejected by the Tribunal so the principle of res judicata will apply and the applicant cannot be allowed to re-agitate the same issue.

12. In view of the OA has no merits and the same is dismissed. No costs.

  
( KULDIP SINGH )  
MEMBER(JUDIL)

Rakesh