

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1718/2003

(2)

This the 14th day of July, 2003.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Shyam Behari, Lab. Assistant
S/O Jamuna Prasad,
Kendriya Vidyalaya No.2,
Langjing (Imphal).
Permanent address :
Suman Bihar Colony,
Ajit Nagar Gate, Kharia Road,
Agra (UP).

... Applicant

(By Shri D.N.Sharma, Advocate)

-versus-

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

... Respondents

O R D E R (ORAL)

Applicant has been serving in Kendriya Vidyalaya Sangathan as Lab. Assistant (Group 'D') since 1976. On 16.1.2001 he was transferred from Agra to Langjing (Imphal) in public interest. Applicant filed OA Nos.101/2001, 944/2001, 265/2002 and 822/2002 before the Allahabad Bench of the Tribunal. Vide order dated 23.7.2002 of the Tribunal in OA No.822/2002, his transfer order dated 16.1.2001 was temporarily stayed. On 26.7.2002 in that OA, respondents were directed to allow the applicant to rejoin duties at Agra. That OA was finally disposed of on 28.3.2003 as not being maintainable, cause of action being available either at

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Delhi where the order was passed or at Guwahati within whose jurisdiction applicant had been posted. Applicant then filed OA No.1237/2003 before the Principal Bench at New Delhi which was finally disposed of on 6.6.2003.

2. The learned counsel drew my attention to Annexure A-6 which are minutes of the meeting of Joint Consultative Machinery (JCM) held on 27.10.1999 whereby a decision was taken in the meeting modifying the transfer/posting policy. It was decided for considering proposals for transfer on administrative grounds in respect of employees of Kendriya Vidyalayas, the Chairman desired as under :

"iii) An enquiry should be conducted within three months of transfer of an employee on administrative grounds. On enquiry if it is established that the employee was not at fault, he/she should be transferred back to the place from where he/she was transferred."

3. The learned counsel stated that respondents did not hold any enquiry for transferring applicant on administrative grounds and he was transferred vide Annexure A-4 dated 16.1.2001. The learned counsel further stated that presently two posts of Lab. Assistants have fallen vacant at Kendriya Vidyalayas at Agra where applicant can be adjusted. applicant has been working at Agra since 1976, i.e., before he was transferred to Langjing he had worked at Agra for 25 years. In the impugned order it is stated that he has been transferred in public interest. He has filed various OAs on the same issue, the last before the

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present OA being OA No.1237/2003 which was decided on 6.6.2003. In the aforestated order, the Court had considered what had transpired in the earlier OAs and in paragraph 11 made the following observations/held as follows :

"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."

It was held that OA No.1237/2003 was barred under principle of res. judicata as applicant had agitated against the same issue. In the present OA, apart from stating that some posts have fallen vacant at Agra where he should be adjusted, basically the relief amounts to

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the same as in the earlier OA. i.e., that applicant should not be sent or kept at the new place of transfer.

4. As is clear from the track record of applicant he is habitual of indulging in litigation on his transfer to Langjing from Agra. He had stayed in Agra for 25 years. He had been transferred in public interest. The present OA is certainly hit by res judicata. The ground of enquiry not having been held in terms of Annexure A-6 was available to applicant when he had filed the previous OA. He cannot be allowed to take up this ground at present in this OA.

5. Having regard to the reasons discussed above. the OA is dismissed in limine.

V.K. Majotra
(V. K. Majotra)
Member (A)

/as/