

[O.A.NO.060/01221/2019]

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH

O.A.NO.060/001221/2019  
(ORDER ON STAY-RESERVED ON 19.12.2019)  
ORDER PRONOUNCED ON:24.12.2019

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).**

Anujit Kaur, Aged 57 years, W/o Sh. Kanwar Iqbal Singh,  
Presently Working as District Education Officer, U.T.  
Chandigarh, R/o House No.62, Sector-10-A, Chandigarh-  
160011 Group 'A'.

Applicant

**(BY: MR. R.K. SHARMA, ADVOCATE)**

Versus

1. Union Territory, Chandigarh through its Administrator,  
Sector-6, Chandigarh-160002.
2. Education Secretary, Union territory, Chandigarh, Sector  
9, Chandigarh-160009.
3. Director School Education, Union Territory, Sector-9,  
Chanidgarh-160009.
4. Smt. ALka Mehta, Deputy Director Adult Education-II,  
Govt. High School, Sector-22C, U.T. Chandigarh.

**(BY: MR. ARVIND MOUDGIL, ADVOCATE FOR  
RESPONDENTS NO.1-3  
MS. BINDU GOEL, ADVOCATE FOR  
RESPONDENT NO.4)**

...

Respondents



**O R D E R (on stay)**  
**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

1. This order would dispose of the prayer of the applicant for grant of interim relief, made in para 9 of the Original Application.
2. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the order dated 26.11.2019 (Annexure A-1), whereby she has been transferred from the post of District Education Officer (DEO) to an ex-cadre post of Deputy Director Adult Education-I (DDAE-I) and Smt. Alka Mehta (Respondent No.4) as District Education Officer (DEO), in her place, who was earlier working as DDAE-II and for issuance of directions to the official respondents to consider and promote her as DEO, in accordance with the Punjab Educational Service (School and Inspection General Cadre) Group 'A' Services Rules, 2018, read with Punjab Educational Service (School and Inspection) (Class-II), Rules, 1976, as applicable to U.T. Chandigarh with all the consequential benefits. Prayer has also been made to command the respondents not to post the applicant to ex-cadre post of DDAE or Deputy Director Vocational Education (DDVE), without her consent.



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In para 9 of the O.A. relating to "Interim Relief", it is prayed that the operation of impugned order dated 26.11.2019 (Annexure A-1), may be stayed and official respondents may be directed to maintain status quo qua the posting of the applicant as DEO and not to replace her by stopgap arrangement including by her junior till the respondent convene a DPC for filling the post of DEO etc. as she was working as such since 24.11.2017.

3. The case, as projected by the applicant in the Original Application, is that she was appointed as Lecturer (English) on 12.02.1987. She was appointed as Principal w.e.f. 30.08.2007. Then she came to be appointed as Deputy District Education Officer (DDEO) on 22.09.2016 and worked as such upto 24.11.2017. The promotion from the post of DDEO is to the post of DEO. Earlier, it was governed by Punjab Educational Service (School and Inspection) (Class-II), Rules 1976. The applicant was accordingly appointed as such vide order dated 24.11.2017. The work and conduct of the applicant is reported to be above board. Despite availability of the eligible candidates in feeder cadre, no meeting of DPC has been convened and instead adjustment/transfer orders are issued, posting the incumbents as DEO, without any remuneration. As per Punjab Educational Service (School and Inspection General Cadre) Group 'A' Service, Rules 2018, as



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applicable to U.T. Chandigarh, the post is filled-up 100% by promotion from amongst DDEOs and Principals of Govt. Senior Secondary Schools. It is pleaded that consciously, in the Recruitment Rules of 2018, the ex-cadre post of DDAE and DDV have not been included. In the gradation list of Inspection Cadre (Assistant Director/DEO/Dy. DEO/Principals) as on 01.05.2017 the name of applicant is at Sl. No. 6. It is pleaded that incumbents at serial no.1 to 5 have already retired. Mrs. Suman Sharma (Sr.No.2) is on yearly extension upto 30.04.2020 and working as DDSE. Smt. Rajinder Kaur (Sl. No.5) has completed her second extension on 30.11.2019. She was posted as DDVE. The post of Dy. DSE is a cadre post and the post of Dy.DVE is an ex-cadre post. She claims that she is senior most eligible candidate in the feeder cadre for promotion to the post of DEO which she has been occupying since 24.11.2017. She submitted representation dated 21.08.2019 for promotion on regular basis but to no avail. In the month of October, 2019, respondents sought to transfer the applicant from the post of DEO to an ex-cadre post of DDVE/DDAE and to post Mrs. Alka Mehta (Respondent No.4) as DEO, who is alleged to be junior to her (applicant), against which she submitted representation dated 09.10.2019.



4. The applicant then approached this Tribunal by filing instant O.A. However, respondent No.4 was not a party in the O.A. at that time. On 25.11.2019, Notice in O.A. as well as regarding stay was issued to the official respondents returnable for 29.11.2019. The applicant pleads that notice was supplied to her on 27.11.2019. The same were delivered to the respondents on same date in the morning. She performed her duties as DEO on that day and proceeded on leave. However, she came to know that she has been posted to an ex-cadre post of DDAE-I and Respondent No.4 (Smt. Alka Mehta) was posted as DEO, vide order dated 26.11.2019. She claims that to defeat the prayer of applicant for interim relief, all this was done in a hurry.

5. In view of change of events during pendency of O.A., the applicant filed M.A. No. 060/1909/2019 for amendment of the O.A. The O.A/M.A were taken up on 29.11.2019. Mr. Arvind Moudgil, Advocate, appeared for the official respondents on that date. He submitted that O.A. stands infructuous in view of passing of order dated 26.11.2019, as Smt. Alka Mehta, had joined post of DEO on 27.11.2019. Mr. R.K. Sharma, learned counsel for applicant had argued that respondents have played a trick to defeat the prayer of applicant for interim relief as a cadre officer cannot be posted against an ex-cadre post, without her consent and as such



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order dated 26.11.2019 is without jurisdiction. On the instructions of Ms. Amandeep, Law Officer, who was present in court, Mr. Moudgil, learned counsel for respondents informed that in fact post of DDAE is a cadre post and has been assigned to the State. The respondents were directed to file an affidavit in support of their plea. In M.A. for amendment of O.A. notice was also issued and case was posted for 7.12.2019. Mr. Moudgil, Advocate, accepted notice in M.A. and sought time to file reply to M.A which was allowed with specific directions to file reply to M.A/OP.A. on or before 7.12.2019. On 7.12.2019, Mr. Vinay Gupta, Advocate, appeared for the respondents and filed affidavit and case was posted for 19.12.2019.

6. When the matter came up for hearing on 19.12.2019, the respondents failed to file reply to the O.A. or M.A. In view of this, M.A. for amendment was allowed and amended O.A. was taken on record. In amended M.A. Ms. Alka Mehta, DDAE-II, was sought to be impleaded as a party (Respondent No.4) and challenge to order dated 26.11.2019 was also posed. There being no objection, M.A. was allowed. Notice was issued to Respondent No.4 and Ms. Bindu Goel, Advocate, appeared on her behalf.

7. Even though a Division Bench is not available at present, the learned counsel for the applicant vehemently



argued that the prayer of the applicant for interim relief may be heard and disposed of by the Single Bench itself, as D.B. is not available at present. He argued that the applicant has a prima facie case in her favour as she cannot be posted to an ex-cadre post, without her consent. The balance of convenience also lies in her favour. It is argued that the applicant would suffer irreparable loss and injury as she would be forced to perform her duties against a post which is not equivalent to the post of DDE, earlier held by the applicant. The learned counsel argued that the applicant is entitled to status quo ante and passing of order on 26<sup>th</sup> November, 2019 would be of no help to the respondents in view of illegality apparent on the face of the record. For this, he placed reliance upon decision of Hon'ble Jammu & Kashmir High Court in **SHRI KRISHAN AVTAR VS. OM PRAKASH**, 1981 (3) SLR, 65, in which it was held that Court has the power to make interim orders directing the maintenance of status quo ante while hearing a petition at interim stage, where the interest of justice so warrants. Such an interim order is to be made in aid of justice and to prevent miscarriage of justice.

8. Mr. Arvind Moudgil, Advocate, learned counsel for the official respondents, on the basis of the affidavit of Mr.



Rubinderjit Singh Brar, PCS, Director School Education, Chandigarh Administration, Chandigarh, (Respondent No.3), argued that pay scales of all the three posts i.e. DDEO-II, DDEO-I and DEO are the same i.e. Rs.15600-39100+5500 GP (on Punjab pattern) and are, therefore, inter changeable, considering the exigencies of work / administrative grounds. They have same feeder cadre and salary of posts is being met from State budget of U.T. Chandigarh. It is submitted that earlier a similar O.A. No. 415-CH-2007 was dismissed by this Tribunal on 19.7.2007 and another O.A. No. 954/CH/2003 filed by Dr. Saubhagya Vardhan Vs. UOI etc. was also dismissed on 8.4.2004. It is argued that transfer is an incident of service and cannot be interfered by a court of law. He submits that the relief claimed by the applicant, as an interim relief, is in the nature of final relief which cannot be granted at all. He further argued that Ms. Alka Mehta, was not even a party in the O.A. earlier filed and as such no order adverse to her interest could be passed by this Tribunal.

9. We have heard the learned counsel for the parties, on plea of the applicant for grant of interim relief and perused the material on file.

10. At the very outset, the Court gave an option to the learned counsel for official respondents Mr. Moudgil, whether the department would like to review/withdraw the





order dated 26.11.2019 (Annexure A-1), in view of specific allegation of applicant that applicant has been posted to an ex-cadre post but he expressed his helplessness and on instructions from departmental representative, present in court, submitted that if the Court passes any order in that relevant connection, then something can be done.

11. The learned counsel for the applicant informed this Court that the respondents are relying upon reply filed in O.A.no. 415-CH-2007 titled **SMT RAJESH MINHAS VS. THE ADVISER TO THE ADMINISTRATOR ETC.** decided on 19.7.2007 to support the impugned order but in fact that decision has been impliedly upset by the Hon'ble Jurisdictional High Court in CWP No. 10979 of 2007 titled **RAJESH MINHAS VS. THE C.A.T. & OTHERS**, decided on 5.10.2010. While holding that lis had been rendered infructuous, it was also held that question of law as to whether the practice of filling up the post of DDE from amongst two senior most principals and then giving them posting as DEO was left open and decision of Tribunal was not to be treated as a precedent for the proposition of law. Moreover, that case was decided on the basis of 2004 rules, which have been superseded by 2018 rules. The respondents should have checked the facts before making submissions on the basis of an order, which stands over-ruled in judicial review. The attitude and lackluster



approach shown by the respondents cannot be appreciated by a court of law.

12. The reliance placed by the respondents on O.A. No. 954-CH-2003 titled **DR. SAUBHAGYA VARDHAN VS. CHANDIGARH ADMINISTRATION ETC.** decided on 8.4.2004 is also of no help to the respondents, as in that case the allegation leveled by applicant was that there were complaints against respondent no.4 (therein) from girl students and to adjust him, applicant (therein) had been shunted out. So, the Court rejected the O.A. holding that in local transfers, Courts cannot interfere at all.

13. It is not in dispute that as per provisional Gradation List of Assistant Director/DEO/Dy. DEOs/Principals as on 1.5.2017, the applicant is at Sr. no. 6, whereas Respondent No.4 is at Sr. no. 8. The applicant has already been working as DEO since 24.11.2017. She filed a case on 25.11.2019 for issuance of direction to the respondents to promote her on regular basis and notice of motion was issued on 26.11.2019 and on 25/26.11.2019 itself, the impugned order, Annexure A-1, has been issued. The sequence of events indeed shows that the respondents were hell bent upon to defeat the claim of applicant for interim relief and in undue haste have passed the shifting orders on 25/26.11.2019 when applicant was on leave. It is also not in dispute that in the 2018 Rules, only



post mentioned is that of DEO and other two posts meant for Adult Education. The source of money for paying salaries of these posts is not material. The issue is whether the posts do find a mention in the rules or not. In any case, these issues can be decided only after the detail reply is filed by the respondents and on perusal of the record relating to the lis.

14. It is also well settled law that inter-cadre transfers are not permissible. Hon'ble Apex Court in the case of **KAVI RAJ AND OTHERS VS. STATE OF JAMMU & KASHMIR & OTHERS**, (2013) 3 SCC 526, has held that an employee can only be transferred to a post against which he is selected which would ensure his stationing, within the cadre of posts, under his principal employer unless his posting is regulated differently, by statutory rules, governing his conditions of service. It was also held that in absence of any such rules, an employee cannot be posted or transferred beyond his cadre to which he is selected, without his willingness / readiness. It was also held by Hon'ble Supreme Court in the case of **V. JAGANNADHA RAO & OTHERS VS. STATE OF A.P. & OTHERS**, (2001) 10 SCC 401, that a government servant is liable to be transferred to a similar post in the same cadre which is a normal feature and incidence of government service and he cannot be transferred without his consent to another cadre.



15. Not only this, even in the case of **VICE-CHANCELLOR, LALIT NARAIN MITHILA UNIVERSITY VS. DAYANAND JHA**, AIR 1986 SC 1200, the issue raised was power of vice-Chancellor to transfer a teacher from one department/college to another equivalent post in other department / college. The Court also examined the element of equivalency of posts. It was held that there can be no doubt that the two posts of Principal and Reader cannot be regarded as of equal status and responsibility. The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. It was held that the transfer of principal to post of Reader in another college was illegal.

16. Thus, court is of the opinion that the applicant has been able to make out a prima facie case in her favour. The balance of convenience lies in favour of the applicant. In that view of the matter, operation of impugned order, Annexure A-1, is stayed. It is, however, made clear that the observations made hereinabove would not have any effect on the final adjudication of the issue involved in the instant O.A.



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17. The respondents may file reply to the O.A. within four weeks, with copy in advance to the other side.

18. List on 16.1.2020.

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

Place: Chandigarh  
Dated: 24.12.2019

HC\*

