

(2022) 09 CAT CK 0042

In the Central Administrative Tribunal

Case No : Original Application No. 2671 Of 2022

Alka Maheshwari

APPELLANT

Vs

Kendriya Vidyalaya Sangathan & Ors

RESPONDENT

Date of Decision : 21-09-2022

Acts Referred:

Citation : (2022) 09 CAT CK 0042

Hon'ble Judges : Manish Garg, Member (J)

Bench : Single Bench

Advocate : Saurabh Kumar, Rishab Kapoor, S. Rajappa, R. Gowrishakar

Final Decision : Disposed Of

Judgement

Manish Garg, Member (J)

1. In the present case of the applicant seeks to challenge impugned order dated 13.09.2022. The applicant has been presently working on the post of Primary Teacher at No. 2 Agra Cantt, (Zone 26). Now as per the impugned order dated 13.09.2022, he has been transferred to Kaniha NTPC, (Zone 4). It is brought to the notice that pursuant to the impugned order the applicant has made a representation dated 14.09.2022 (Annexure A-4))

2. It is the case of the applicant that there is a challenge to office notice F.No. 11-E-II019/34/2022-Estt-II/2431 dated 12.09.2022 wherein all the provision given in Para 6 of the Transfer Guidelines 2021 are kept in abeyance.

3. It is also pointed out by the learned counsel for the applicant that in the mid-session without even considering that the applicant is a female, she has been transferred which put her, in great difficulty. She has already urged various grounds in the representation itself.

4. Learned counsel for the applicant further refers to Office Order No. F.19046/2022/KVS(DR)/Admin./10896-10966 dated 19.09.2022 vide which the respondents have permitted the applicants, who have been granted stay, to

rejoin their parent schools from where they have been relieved.

5. On the other hand Mr. Rajappa, learned counsel appearing on advance service on behalf of the respondents vehemently opposes grant of prayer for interim relief inter alia contending that it is a policy matter. The decision has been taken due to administrative exigencies, as there is shortage of teachers in absence of fresh recruitment. He further relies on interim order passed in O A No. 834/2022 by the co-ordinate Allahabad Bench of this Tribunal, wherein it has been held that

“13. After hearing the arguments put forth by both the learned counsels and perusing the documents available on record, I am of the considered view that the transfer of the applicant has been made in both administrative exigencies and in public interest and that she has already been relieved from her present place of posting. There is nothing on record to demonstrate that impugned transfer order is malafide or illegal. Considering all the facts and circumstances, this Tribunal is of the view that no interference is warranted in the impugned transfer order at this stage. Since the applicant has already submitted a detailed representation dated 13.09.2022 to the competent authority, it is expected from the respondents to consider and decide the same at the earliest by way of a reasoned and speaking order.”

6. The submission of the learned counsel for the respondents is opposed by the learned counsel for the applicant on the ground that the notice dated 12.09.2022 itself is under challenge.

7. Be that as it may be, it is not disputed that representation of the applicant is pending consideration and has not been adjudicated by the Competent Authority till date. Also, the Competent Authority has taken the decision regarding transfer without considering the earlier existing Annual Transfer Policy in light of office circular dated 12.09.2022.

8. In the OA No. 834/2022, Allahabad Bench of this Tribunal had no occasion to deal with the Office Order dated 19.09.2022, whereby the instructions have been issued by the Competent Authority, permitting the teacher(s), who have been granted stay, to rejoin their parent schools from where they have been relieved.

9. It appears that the said decision has been taken in a particular manner ignoring the principle of natural justice inasmuch as no opportunity has been afforded to the applicant on the pretext of policy decision.

10. In the present circumstance, the present OA is disposed of with a direction to the Competent Authority to consider the representation of the applicant in light of the existing policy which was prevalent on 12.09.2022. It is to be decided on its own merits in view of the earlier Annual Transfer Policy, within a period of 30 days from today after giving an opportunity of personal hearing by passing a reasoned and speaking order.

11. As a matter of fact, as already noted above, the respondent authority has passed the Office Order dated 19.09.2022.

12. In view of the above facts and circumstance, till the speaking order is passed the impugned order/ transfer order dated 13.09.2022 shall be kept in abeyance for a period of two months. Further, the applicant is allowed to rejoin if any relieving order is passed.

13. The OA stands disposed of in aforesaid terms. There shall be no order as to cost.