
(2020) 06 CAT CK 0008

In the Central Administrative Tribunal

Case No : Original Application No. 4273 Of 2015

Laxmi Malik

APPELLANT

Vs

Director Of Education & Others

RESPONDENT

Date of Decision : 23-06-2020

Acts Referred:

Citation : (2020) 06 CAT CK 0008

Hon'ble Judges : Ashish Kalia, Member (J); Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : A. K. Behera, Sumit Chander, Saurabh Chadda

Final Decision : Dismissed

Judgement

1. The applicant is working as Trained Graduate Teacher (TGT), Natural Science in the Directorate of School Education, Government of Haryana since her appointment on 24.12.2008. Applicant's husband is posted in Delhi and working with Delhi Government. In view of inconvenience of commuting and other family commitments the applicant requested for a posting on deputation to Delhi Government vide her representation dated 17.02.2012. Her application was duly forwarded by her parent department i.e. Directorate of School Education, Government of Haryana to Directorate of Education, Government of National Capital Territory of Delhi (GNCTD). The GNCTD accepted her request duly forwarded by her parent department and vide office order dated 15.06.2012 she was appointed on deputation basis to the post of TGT (Natural Science) under GNCTD for a period of one year. Her deputation was extended subsequently, for another period of one year vide office order dated 31.07.2012 and for another year vide office order dated 02.09.2013. She was also advised that her grading in ACR is good for the 2012-13, good for 2013-14 and very good for 2014-15. Vide letter dated 09.09.2014 her tenure was extended for the period 10.07.2014 to 30.06.2015. The respondents had also mentioned that this is third and final extension of her deputation. As the deputation was coming to an end in 2015, the applicant made a representation for her permanent absorption in the

Directorate of Education, GNCTD.

2. Her request was forwarded to the Competent Authority i.e. Lieutenant Governor (LG) of Delhi for his approval. The LG vide impugned order dated 18.06.2015 rejected the request of the applicant for permanent absorption in the Department of Education, GNCTD. The applicant was not granted any further extension on deputation and was relieved by the GNCTD to join back at her parent department. Aggrieved by the order of LG, the applicant has sought the following relief:-

"(a) Call for the record for the entire proceedings of the matter;

(b) Quash and set aside the order dated 18.06.2015 passed by the Hon'ble LT. Governor , GNCT of Delhi being arbitrary and discriminatory against the applicant.

(c) Direct the Hon'ble Lt. Governor of Delhi to allow the request of the applicant for permanent absorption in the Directorate of Education, Government of NCT of Delhi in the light of the facts mentioned in the present OA.

(d) The petitioner in alternative prays for relief for permission to move an application before the Director of Education, Govt. of NCT of Delhi for further extension of deputation which be considered by the respondents on merits.

(e) Pass any such further or other orders that this Hon'ble Tribunal may deem fit and expedient in the facts and circumstances of the present case in the interest of justice, equity and good conscience."

3. She has sought relief in terms of quashing and setting aside of the order passed by LG and requested that the Tribunal directs the respondent to absorb her permanently. The applicant in alternative, prays for relief for permission to move an application before the Director of Education, Govt. of NCT of Delhi for further extension of deputation which be considered by the respondents on merits.

4. The applicant contends that the respondent has rejected her application stating that relaxation of Recruitment Rules cannot be done for specific individuals and her request for extension of deputation is also not considered on merits. The applicant contends that the decision taken by the LG is arbitrary and not justified. It is also submitted that she has been graded good in her ACRS for the year 2012-13, 2013-14 and very good for the period 2014-15 and therefore on the basis of her performance further extension should not be denied to her.

5. Respondents in their counter affidavit have opposed the OA submitting that the applicant's request was accepted and she was taken on deputation initially w.e.f. 10.07.2012 for a period of one year. Further, her deputation for third and final year was extended till 30.06.2015 with the approval of the LG. While granting the third extension, it was clearly mentioned by LG as under:-

"OK.-but considering her record, no further than 30.06.2015".

The applicant also sought permanent absorption under Delhi Administration on the grounds that her husband is posted in Delhi and she has to look after the family and children staying in Delhi. However, as per the existing instruction on the matter of deputation dated 08.06.2007 of GNCTD no request from any individual on deputation, for absorption will be considered. The LG turned down her request for permanent absorption noting that the relaxation clause at point No. 4 of the notes in the recruitment rules (page 149/C), stipulates that any of the provisions of the rules can be relaxed with respect to "class or category of persons/posts". This is not applicable in the instant case as the matter pertains to the proposed absorption of a specific individual, and not a class or category of persons/posts. The rules do not have any provision for either deputation or absorption. The Hon'ble LG rejected the request of the applicant for permanent absorption in accordance with law and also rejected her further extension of deputation. The applicant has accordingly been relieved and joined back in her parent department in Haryana. It is submitted that in view of the rules and the decision of the Competent Authority her case has been rejected and the same cannot be considered.

6. We heard Mr. A. K. Behera and Mr. Sumit Chander, learned counsel for the respondents and Mr. Saurabh Chadda, learned counsel for the respondents, perused the pleadings and documents on record.

7. It is evident that the applicant is working in Directorate of Education, Government of Haryana. She applied for deputation to Delhi Government vide her representation dated 17.02.2012 in view of her husband being posted in Delhi on non-transferable job and also to look after her family and children. Her request for deputation was approved by respondents vide order dated 15.06.2012. The conditions stipulated in the order dated 15.06.2012 and accepted by the applicant are as under:-

"Lt. Governor of National Capital Territory of Delhi is pleased to accord his kind approval for taking Smt. Laxmi Malik, serving as a Science Mistress in Government of Haryana presently posted at Govt. Middle School Nehara, Sonipat on deputation basis to the post of TGT (N.Sc) in the Directorate of Education, GNCT of Delhi in the pay scale of Rs.9300-34800+4600 grade pay plus usual allowances as admissible from time to time to the employee of Govt. of NCT of Delhi, initially for one year.

The deputation of Smt. Laxmi Malik, TGT (N.Sc), will be governed by following Terms and Conditions to her acceptance.

1. She will not be entitled for any deputation Allowance during the deputation period.

2. She will continue to be governed by the rules and regulation as applicable to her parent Department during the deputation period. Leave Salary and pension contribution, shall be settled in accordance with GOI, Ministry of Finance department of expenditure OM No. 14(5)/86/TA/1029 dated 09/10/1986. This

Directorate shall not bear any liability to pay Retirement Benefits or carry forward of leave for the period of service in this Directorate.

3. She will continue to subscribe towards G.P.F. in the same manner as if she was not transferred on deputation and subscription applicable to her shall be sent to the concerned Pay and Account Office of her parent Department regularly every month during the term of deputation.

4. The deputation period is initially for one year from the date of joining the Directorate.

5. The deputation of the teacher will not entitle her to absorption in the Directorate of Education, Govt. of NCT of Delhi at a later date.

6. The expenditure on account of TA and joining time both on joining the post on deputation in the Directorate and on reversion to her parent department will be borne by her parent department.

7. She will submit an affidavit that after the expiry of period of deputation she will report back to her parent department for duty and not claim for any adjustment/permanent absorption.

Smt. Laxmi Malik, may be relieved to join in E-III Branch, Directorate of Education, Govt. of NCY of Delhi, old Sectt. Delhi immediately after accepting the terms and conditions of deputation."

8. It is specifically mentioned in Para -04, 05 and 07 that the deputation is initially for a period of one year and will not entitle her to absorption in the Directorate of Education, GNCTD at a later stage. It was also directed that she will submit an affidavit that after the expiry of the period of deputation she will report back to her parent department for duty and not claim adjustment/permanent absorption. The applicant was granted the last extension for the 3rd year w.e.f. 10.07.2014 to 09.07.2015 with the approval of LG, Delhi. While approving the 3rd year extension, the LG, had remarked, "OK.-but considering her record, no further than 30.06.2015". Subsequently, the applicant made a representation seeking permanent absorption under Delhi Administration on account of her husband's posting in Delhi. Her parent department i.e. Department of Education, Govt. of Haryana also granted her the Non Objection Certificate for seeking permanent absorption under Directorate of Education, GNCTD. Her case was considered and it was observed that in the existing Recruitment Rules of TGT of Directorate of Education of GNCTD, there is no provision to fill the vacant post through appointment/deputation of TGT from other States/Union Territory. The Recruitment Rules prescribed that vacant post of TGT of Directorate of Education, GNCTD are to be filled through direct recruitment up to 25% and by promotion 75%. It has also been observed that in terms of Recruitment Rules the relaxation can only be granted by the Administrator of Delhi i.e. the LG. As per the RRs, "Where the Administrator is of the opinion that it is necessary or expedient to do so, he may by order for

reasons to be recorded in writing relax any of the provisions of the rules with respect to class or category of persons/posts.

9. The applicant's request for absorption was processed by the department and put up to the LG, Delhi seeking approval. The LG, Delhi vide order dated 18.06.2015 rejected the same. The order passed by the LG, reads as under:-

"162. I have seen the file and observed that the relaxation clause at point No. 4 of the notes in the recruitment rules (page 149/C), stipulates that any of the provisions of the rules can be relaxed with respect to "a class or category of persons/posts". This is not applicable in the instant case as the matter pertains to the proposed absorption of a specific individual, and not a class or category of persons/posts. The rules do not have any provision for either deputation or absorption.

163. Also, while considering extension of deputation at 36/N, I had noted that the record of the officer did not justify extension beyond 30.06.2015. Therefore, the officer does not merit consideration on merit either.

164. I, therefore, reaffirm my observation dated 28.08.2014 at 36/N that no further extension beyond 30.06.2015 be granted."

10. It is evident that LG has not considered the request for permanent absorption of the applicant and also ordered that even extension of her deputation beyond 30.06.2015 does not merit consideration. It was categorically mentioned that no further extension beyond 30.06.2015 will be granted. It has been stated that the applicant was accordingly repatriated to her parent department i.e. Directorate of Education, Govt. of Haryana and has since joined there. Learned counsel for the applicant has argued that the LG in his order dated 18.06.2015 has not agreed to relax the rules in case of specific individual as the powers given to him are for a class or category of persons/posts. He has further relied upon the judgment of Hon'ble Apex Court in Sandeep Kumar Sharma vs. State of Punjab and Others (1997) 10 SCC 298 wherein the Government Rule pertaining to the Police Department of Government of Punjab were considered and interpreted. The ratio of the judgment is to follow Rule - 7 which permits relaxation of physical standard with special sanction of the Government. Rule - 14, however, provides that the Government by order may relax provision of these rules with respect to any class or category or persons. Hon'ble Apex Court has ruled that in view of the special consideration of the case of particular individuals, the Government decision to relax the rule in terms of Rule - 7 was justified. The facts of the relied upon judgment are entirely different from those of the present OA.

11. It was also argued that in the past a few cases of individual teachers were considered and they were granted absorption. Although, no specific dates have been mentioned for the same. It appears that these decision have been taken by the then LG while approving guidelines dated 08.06.2007 that no request by any individual for deputation/absorption will be considered, as stated by the

respondents in their counter reply.

12. The applicant is working under Directorate of Education, Govt. of Haryana which is a different State and sought deputation under Directorate of Education, GNCTD. This was considered and she was appointed on deputation basis with certain conditions for a period of one year initially specifically seeking an affidavit from her that after the expiry of the period of deputation, she will report back to her parent department to duty and not claim for absorption or extension. The applicant was granted two subsequent extensions and the last extension was granted till 2015. Her request for absorption during the 3rd year was examined and put up for the approval of the LG. The LG vide impugned order did not agree to her request for extension and directed that no further extension be granted and the applicant may be relieved. The RRs quoted also did not indicate any such provision regarding absorption of teacher from other States. The Competent Authority i.e. the LG has considered the case and rejected the same. The applicant has joined back to her parent department.

13. In view of the above mentioned, we do not find any infirmity in the order passed by the LG, GNCTD dated 18.06.2015. The OA is devoid of merit and the same is accordingly, dismissed. Pending MAs, if any, shall stand disposed of. There shall be no order as to costs.