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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

CA No.2460/2002

Date of decision: 17.7.2003

R P.Goel

... Applicant

(By Advocates: Sh. Yogesh Sharma)

versus

Kendriya Vidyalaya Sangathan & Others ... Respondents

(By Advocates: Sh. S.Rajappa)

CORAM:

Hon'ble Sh. Shanker Raju, Member(J)

- 1 To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?

S. Raju
(Shanker Raju)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A.No.2460/2002

Hon^{ble} Shri Shanker Raiu. Member(J)

New Delhi. this the 17th day of July, 2003

R.P.Goel
s/o Late Sh. Net Ram
r/o Type-IV.91. North West Moti Bagh
New Delhi. Applicant

(By Advocate: Sh. Yodesh Sharma)

Vs.

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

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

3. The Education Officer
I/C E-III (H.Q.)
Kendriya Vidyalaya Sangathan
Institutional Area
Shaheed Jeet Singh Marg
New Delhi.

4. The Principal
Kendriya Vidyalaya
Sanik Vihar
New Delhi - 34.

5. Ms. Radhika Sharma
P.G.T. (Hindi) *cl/o PRINCIPAL*
Kendriya Vidyalaya
Sanik Vihar
New Delhi - 34.

... Respondents

(By Advocate: Sh. S.Rajappa. for Respondents No.1 to
4. None for Respondent No.5)

O R D E R

By Shri Shanker Raiu. M(J):

Applicant impugns transfer order dated
19.6.2002 posting him to Kendriya Vidyalaya Sangathan
(herein after called as 'KVS'). Silchar(Assam) as well
as Memorandum dated 10.9.2002 where his representation
for cancellation of transfer was rejected. He has

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sought quashment of the aforesaid orders with a direction to post him at KVS. Sainik Vihar. New Delhi with all consequential benefits.

2. Applicant was initially appointed as TGT. Hindi on 15.8.1945 and while working at Dehradun as PGT (Hindi). on medical grounds. the competent authority by an order dated 31.10.1998 transferred the applicant to KVS. Lawrence Road and by an order dated 5.11.1998 further posted him at KVS. Sainik Vihar.

3. On account of allegations. pertaining to failure to maintain absolute integrity by removing the papers unauthorizedly from the office and wilfully withholding and not settling the LTC Advance. applicant was placed under suspension on 31.4.2000 with the stipulation that his Headquarters would be KVS. Sainik Vihar. The major penalty charge sheet under Rule 14 of the CCS (CCA) Rules was served upon the applicant where in the list of documents four documents were cited which were in possession of the respondents. to substantiate the charges as well as in the list of witnesses. no witnesses have been cited. The inquiry has not progressed at all after memorandum till date.

4. By an order dated 14.6.2002. respondents had revoked the suspension of the applicant with immediate effect and by an order of even date. applicant had been directed to contact Education Officer. KVS. HQ. for further place of posting.

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5. By an order dated 19.6.2002. applicant was transferred to KVS. Silchar.

6. Being aggrieved. applicant preferred a detailed representation. and as the same was not disposed of. OA 2053/2002 filed by the applicant. was disposed of by this Court on 6.8.2002 directing the respondents to pass a detailed and speaking order within a period of two weeks. and till then respondents were restrained from compelling the applicant to join at KVS. Silchar.

7. In compliance of the above. respondents. have passed a detailed order dated 10.9.2002. rejecting the request of the applicant for cancellation of his transfer order and directed him to report at the place of posting immediately.

8. By an order dated 24.9.2002. status-quo has been maintained by this Tribunal and on the strength of which. applicant is continuing at Delhi.

9. MA 558/2003. for taking the additional documents on record. is allowed in view of the facts and circumstances mentioned in the MA.

10. Shri Yogesh Sharma. learned counsel appearing for the applicant. contends that as the applicant was placed under suspension. and retains lien on the permanent post held by him substantively at the time of suspension at KVS. Sainik Vihar. one Ms. Radhika Sharma. Respondent No.6 was adjusted against the post of PGT(Hindi) at KVS. Sainik Vihar.

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and on revocation of suspension the applicant was transferred to KVS. Silcha. a hard station. Accordingly. the respondents' action is mala fide with a view to adjust Respondent No.6 in place of applicant.

11. Shri Sharma further contended that the applicant has been suffering from Heart ailments having blockage of 50% as well as diabetes. Keeping in mind his request he had been transferred from Dehradun to Delhi and was undergoing treatment. in AIIMS. Safdarjung Hospital as well as Maharaja Agrasen Hospital (Heart Institute). At the transferred place. i.e.. KVS. Silcha. proper facilities are not available for heart patients. As the applicant has been advised operation. the same would not be possible at the transferred place.

12. By referring to the transfer guide-lines. it is stated that in such cases. on medical grounds as per clause 8(b)(iii) of the KVS being a serious illness transfer should not be resorted to.

13. Shri Yogesh Sharma relies upon the case of Sh. D.K.Gupta v. Union of India & Others. OA 2449/99 decided by a Co-ordinate Bench on 31.1.2001 as well as decision in OA 2390/2001. Smt. Ratna Varshnev v. Commissioner. KVS & Others. decided on 11.1.2002 to substantiate the aforesaid plea.

14. By referring to the personal difficulty as wife of applicant being a Government employee. highlighting the spouse case. it is contended that the

daughter of the applicant was studying in 12th. it is not possible for the family to get along with the conditions. the aforesaid grounds have not been taken into account by the respondents.

15. By referring to the additional documents. it is contended that as per the amended guide-lines. on transfer. by an order dated 5.12.2002. those who are due to retire on 31.3.2006. are exempted from displacement and cannot be posted outside.

16. By referring to transfer guide-lines. it is stated that in a case both husband and wife are employed in KVS. they have option to seek posting at one station.

17. Sh. Sharma describes the transfer as punitive. based on collateral purposes. By referring to the order on representation. it is stated that the transfer has been effected only on the ground that on revocation of suspension. the presence of the applicant is detrimental for collection of evidence and there is every likelihood of applicant to tamper with the evidence. Accordingly. he has been transferred.

18. In this background. it is stated that the aforesaid ground is unfounded as no witnesses have been cited to prove the charge along with memorandum served upon him. and the documents relied upon are already in the possession of the respondents. Accordingly. there is no likelihood of tampering with

evidence or any material to show that his presence is detrimental. He relies upon the following decisions to substantiate the aforesaid plea.

(1) N.S.Bhullar v. Punjab State Electricity Board. SLR 1991(1) 378.

(2) A & A v. Union of India. 2001(1) ATJ 394.

(3) Dr. Ram Suman Pandey v. State of M.P. 1999(7) SLR 17.

19. It is further stated that the applicant was transferred from Dehradun on 6.11.1998 on his own request. the respondents had not followed the principle of longest stay employees to go first. Seniors having longer stay have been retained whereas applicant has been displaced. which is not in consonance with their own policy guide-lines on transfer.

20. As the applicant was placed under suspension. and for nearly two years. no further action have been taken in the disciplinary proceedings. transfer to a hard station is punitive for collateral purposes to punish the applicant otherwise which is not possible for the respondents through the disciplinary proceedings.

21. Shri Sharma states that normally a person cannot be transferred during the pendency of the disciplinary proceedings. unless the charge-sheet is finalised. The transfer resorted to is neither in any administrative exigency nor in public interest.

22. It is stated that assuming as per apprehension of respondents, presence of applicant was detrimental to collection of evidence, he could have been transferred to nearby School but not to a hard station.

23. Sh. Sharma states that the order passed on representation, is illegal and without justification.

24. On the other hand, respondents' counsel Shri S. Rajappa denied the contentions and stated that as per the transfer policy, the transfer resorted against the applicant is on his all India transfer liability and is for organisational reasons and on administrative grounds as per Clause-7(i) of the policy guide-lines. According to him, the applicant has failed to establish that the transfer is not on administrative or organisational reasons.

25. In so far as the question of lien is concerned, it is stated that the person has a lien on a post but not at a particular place.

26. According to Shri Rajappa mala fides are to be established on a firm foundation. Mere averment and vague assertions would not be sufficient to establish the mala fides.

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27. As the disciplinary proceedings were pending against the applicant, there existed a reasonable possibility of tampering with the evidence. respondents have relieved the applicant on revocation of his of suspension without any motive or mala fide.

28. Distinguishing the cases referred to by the applicant, it is stated that in D.K.Gupta's case wife was suffering and in Smt. Ratna Varshnev's case Clause 10(i) of the transfer guide-lines was violated and in case of Jasbir Kaur Gill's case, the case is pending before the High Court in appeal.

29. By referring to the medical reports, it is stated that applicant has not been suggested any heart surgery, and as per the guide-lines at Sl. No.14 of the KVS letter dated 14.8.2001 for annual transfer during the academic year 2002-2003 it is only in case where on admission of an incumbent on account of coronary artery disease, surgery has been suggested, the officer cannot be displaced. As in the present case no such surgery has been suggested so far the ground taken by the applicant is not justifiable.

30. Briefly it is stated that respondents had already considered the request of applicant for transfer from Dehradun to Delhi on medical grounds.

31. It is stated that even at Silchar keeping in view the present state of health of the applicant the requisite treatment is available.

32. In so far as the posting of husband and wife together is concerned, it is stated that the same is not a thumb rule and depends on the facts of each case and as the applicant has been, along with the wife, staying at Delhi for the last five years, keeping in view of the larger interest of organisation, transfer is within the ambit of guide-lines. Referring to the decision of this Tribunal in Geeta Khanna v. KVS & Others, OA No.1878/2000, decided on 6.9.2001, it is contended that the same, in all fours, covers the case of the applicant and instead of holding disciplinary proceedings and suspending an employee in larger interest of the organisation to maintain the efficiency of the organisation transfer has been held to be within the rules and the aforesaid decision was affirmed by the Apex Court in CWP No.5734/2001 on 7.11.2001, by the High Court of Delhi. He further places reliance on a decision in Neena Arora v. KVS, OA 1245/2001, decided on 17.7.2002 to substantiate his pleas.

33. I have carefully considered the rival contentions of the parties and perused the material on record.

34. At the outset, in judicial review, it does not lie within the jurisdiction of this Court to interfere in transfer, except when it is without jurisdiction, mala fide or is in violation of statutory rules.

35. Mala fides cannot be alleged on mere averments. a specific, firm foundation is to be laid and established as held by the Apex Court in Rajinder Roy v. Union of India. AIR 1993 SC 1236. The first contention put forth by the applicant is that immediately on revocation of suspension order on punitive basis, in the midst of inquiry which was initiated in the year 2000 which could not be proceeded 2002, under the guise of an apprehension on the part of the respondents as to presence of the applicant detrimental to the proceedings which is one of the grounds reflected in the reply to the representation, the aforesaid transfer is mala fide exercise of the power on the part of the respondents and punitive for collateral purposes.

36. The contention raised is that in the disciplinary proceedings, no witnesses have been cited and the documents are already in possession of the respondents which negates any possibility of tampering of disciplinary proceedings in any manner by the applicant.

37. In so far as the aforesaid ground is concerned, even during the course of disciplinary proceedings, it lies within the jurisdiction of administrative authorities to transfer and post a Government servant, if there is an apprehension of his being detrimental to the inquiry.

38. The Apex Court in State of Punjab of Vs. Joginder Dhutt, AIR 1993 SC 2486 held that "the Court has time and again expressed his disapproval of the

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Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employee to decide when and where and at what point of time public servant is transferred from his present posting." In the aforesaid case, respondent, a Superintendent Grade-II working with the Punjab Government on being charge-sheeted to ensure that he did not tamper the evidence in the inquiry proceedings was transferred. In the aforesaid conspectus the above observations have been made.

39. If one has regard to the above, it does not lie within my jurisdiction to examine as an appellate authority the issue of presence of officer whether detrimental to the collection of evidence or likelihood of his tampering with the evidence. Respondents are the best judge being custodian of all the documents and their evaluation as to the possibility of tampering with the evidence cannot be reassessed. Applicant, whose suspension had been revoked was transferred in the interest of the organisation and in the administrative exigency, during the pendency of the disciplinary proceedings, the proceedings would be continued even at the transferred place. As the proceedings has not made much headway, no prejudice has been caused to the applicant. It is within the domain of the respondents during the pendency of the proceedings, to decide the posting of the applicant. In a judicial review, wheels of administration cannot be stalled on assumption of appellate jurisdiction, the aforesaid ground fails.

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49. The other contention put forth by the applicant is that his wife is posted at Delhi and as a spouse case, as provided in the policy for the guide-lines of the KVS regarding transfer, applicant should have been retained in Delhi. I find that on account of mitigating circumstances as a result of severe illness of the applicant, he has been brought from Dehradun to Delhi in 1998 and had remained in Delhi more than four years.

50. Though the guide-lines provides for consideration of posting of husband and wife together, but the same depends on the administrative exigency and interest of the organisation, the aforesaid rule cannot be used as a thumb rule. It is for the administration to explore and evaluate the request, keeping in view of the other factors as well. Accordingly, merely because the wife of the applicant is posted in Delhi would not be a valid ground to retain him in Delhi. Organisational interest and administrative exigency outweighs any personal exigency.

51. In so far as the medical grounds is concerned, though it cannot be denied that in 1998 applicant had been brought to Delhi, having suffered from heart ailment as well as from the diabetes, from the perusal of the medical record and in the conspectus of the guide-lines of KVS on medical grounds where the displacement of an employee, is precluded. I find that the case of the applicant does not come within its ambit. Displacement is precluded only in cases where heart surgery has been done.

Whereas in the instant case, from the perusal of the medical record produced by the applicant, he had been observed to be a patient of unstable Angina and on Echocardiography he has been found to be having 50% blockage in the artery, which even in an ordinary man would exist. Keeping in view the present scenario and conditions of life prevalent, I do not find from medical record any recommendation for Angiography, Angioplasty or even CABG.

52. I also find that even at Silchar, for heart patients, medical facilities are available. Applicant's treatment can be continued there.

53. In so far as the issue that applicant had three years to go in for retirement on superannuation, the applicant was transferred on 19.6.2002 when the policy guide-lines on transfer for the academic year 2002-2003 were in vogue. As per these guide-lines, there was no provision for non-posting on transfer of an employee who had three years in superannuation. However, in the academic session 2003-2004 as per the amended guide-lines, those who are to retire on superannuation by on or before 31.3.2006 should be considered for grant of benefit of the exemption from transfer and their names should be placed in the priority list. These guide-lines cannot act retrospectively. However, I observe that on transfer if the applicant makes a request, in the academic session 2003-2004, the same would be dealt with by the respondents in accordance with law.

54. As per the regulation 49(k) having all India transfer liability in absence of any mala fide or incompetence of the authorities ordering transfer, the same cannot be interfered with. The cases cited by the applicant will have no applicability and are distinguishable. Applicant's transfer is a routine transfer in exigencies of service without any mala fide and also not in violation of statutory rules. In view of the decision of the Apex Court in **State Bank of India v. Anjan Sanval**, AIR 2001 SC 1748 and **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan**, 2001 (8) SCC 574 having no right to be posted at a particular place, in a transferable post, transfer in public interest, in administrative exigency, without mala fides cannot be interfered.

55. In the result, for the foregoing reasons, as the OA has been found bereft of merit, is dismissed. Interim relief already granted is vacated. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/