

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 737/2002

NEW DELHI THIS 23rd DAY OF AUGUST 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Mr. B P Chahar, S/O Late Sh. Lekh Ram
DG-1, 443 Vikaspuri, New Delhi

employed as

Post Graduate Teacher (PGT Maths)
Kendriya Vidyalaya NTPC,
Vidyut Nagar, Dadri, UP

...Applicant

(By Sh. Shrikant Verma, Advocate)

VERSUS

1. Ministry of Human Resources Development,
through its Secretary,
Shastri Bhawan, New Delhi
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Industrial Area, Shaheed Jeet Singh Marg,
New Delhi - 110016
3. The Principal Sh. S P Mittal
Kendriya Vidyalaya ntpc,
Vidyut Nagar, Dadri (UP)

...Respondents

(By Sh. S. Rajappa, Advocate)

O R D E R

Transfer of the applicant (Sh. B P Chahar) from
Kendriya Vidyalaya, NTPC Dadri to Kendriya Vidyalaya, ONGC,
Srikona, by order dated 1.10.2001, is under challenge in this
O.A.

2. S/Shri Shrikant Verma and Rajappa, learned
counsel appeared for the applicant and the respondents
respectively during the hearing.

3. The applicant is a Post Graduate Teacher - PGT -
(Maths) in Kendriya vidyalaya Sangathan (KVS) since 1987, in
which capacity he worked in Kendriya vidyalaya (KV) Arjun

Garh, for six year, in KV Noida for six years and in KV Vidyut Nagar from November 99, wherefrom he has been transferred on 6.10.2001. Thus while the normal tenure is five to six years in a school the present and impugned transfer is just within two years. His transfer ordered all of a sudden has caused both personal difficulty for himself and has adversely affected the Mathematics syllabi in the School, leading to fall in performance. His performance has been admirable throughout and the same had been appreciated by all concerned. The applicant had been at the receiving end of harassment and humiliation at the hands of respondent No. 3, in KV Dadri, who even made him Class Teacher, Class XII of Humanities/Arts stream, while he belonged to the Science stream. Respondent No. 3 had committed irregular acts and the applicant had declined to be a party therein, which had annoyed him. This resulted in the respondent no. 3, acting against him, with the approval of respondent no. 2. The applicant also fully participated in and co-operated with the inquiry got conducted by respondent no. 2 but the result thereof did not amount to much. Respondents 1 & 2 also did not take any action against the respondents no. 3 but transferred the applicant on 6.10.2001, in order to permit the perpetration of irregularities by him. Transfer of the applicant is therefore wrong, irregular and arbitrary. It is also harsh as the posting is to far off Assam and that too in the mid-session. The same is not a routine transfer, but one issued before time and was not in public interest, as is being claimed. It was also vindictive and improperly undertaken. Hence this OA.

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4. Grounds raised in the OA are that the transfer is arbitrary and punitive and meant to harass an honest official, like himself, and was made in guise of public

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interest though no such public interest is disclosed or brought on record. His transfer also has come in the way of teaching Mathematics in the School. As it was malafide and issued in colourable exercise of power interference from Tribunal was called for, in the interest of justice, more so as it was given effect to as a short cut to dealing with the applicant, in accordance with law, if he was in fact in the wrong.

5. In the reply filed by respondent no. 3 the pleas raised by the applicant are strongly rebutted. It is stated that the transfer has been ordered, in pursuance of the guidelines and in public interest. Still the applicant had attempted to avoid receipt of the same, leading the respondents to seek other modes of service. Still he has pretended that the order had not been served on him, which was a travesty of facts. He has raised baseless allegations on respondent no. 3, as the latter had pointed out lapses on the part of the applicant. His track record was indicative of academic unaccountability and administrative misdemeanour of various kinds which have resulted in complaints from students and parents on the one hand, indiscipline and quarrelsome behaviour in school. respondents could not have, in the interest of administration and academic needs tolerated the behavioural pattern of the applicant. The applicant was also callous and indifferent in performance of his duties on account of which other teachers had to be deputed for teaching his classes, so that the students did not suffer. All these led to the respondents to take the decision to issue the impugned order transferring the applicant which in the circumstances was fully justified and deserved to be endorsed.

6. Respondent No.2 fully endorses the affidavit of respondent no.3. He has further averred that K.V. NAPC was a Project School and meant to cater to the interest of the staff in that Project. Chairman of the Vidyalaya Management Committee (VMC) had written to the Commissioner of KVS, expressing dissatisfaction about the performance, among other of the applicant which on enquiry by the Assistant Commissioner KVS was found to be correct. This has led to the transfer and it was therefore legal. Tribunal had upheld the action of the respondents in similar circumstances as in OA No.1772/2000 (R.P.Bhargava Vs. KVS). Besides, the Hon'ble Supreme Court in the case of Silpi Bose (AIR 1991 SC 532), Gujarat Electricity Board (1998 ATC 270) and N.K.Singh (1994 (6) SCC 98), has laid down that transfer should not be interfered with unless they are against accepted guide-lines and malafide.

7. During the oral submissions, Shri Srikant Verma strongly reiterated his written pleas and urged that the transfer of the applicant being malafide and based on complaints not disclosed to him was liable to be set aside. He also averred that the transfer was meant to punish him for his honesty. In reply, Shri Rajappa stated that the applicant's transfer had been ordered in accordance with that the guide-lines for transfer notified by KVS which had been upheld time and again by the Tribunal. Besides, it was also necessitated by the complaint from the VMC, followed by an enquiry conducted by the Assistant Commissioner. The action of the respondents had been correct and the allegations being raised by the applicants were wholly unfounded. OA, therefore, had to be dismissed, he prays.

8. I have carefully obliterated on the matter. The applicant challenges his transfer from KV Dadri, UP to K.V.S.Sirkona Assam as being malafide and punitive while the respondents describe it as having been issued in the proper exercise of their power and in public interest. It is settled law that the Courts and Tribunals shall not interfere with transfer of officials, which are within the exclusive domain of the executive unless they are ordered in violation of the accepted and notified guide-lines or are malafide in nature. Decisions of the Hon'ble Supreme Court in Shilpi Bose and Gujarat Electricity Board's cases (supra) have laid down the law. It is therefore for me to find out whether the transfer has been against the guidelines and malafide. Validity of the guide-lines for transfer notified by the KVS had been repeatedly upheld by the Tribunal. The same does provide for transfers on administrative grounds and in public interest. These include transfers recommended by V.M.C. and/or Principal which are examined at KVS level, before issuing orders. In this OA, the transfer has been recommended by VMC of K.V. NTDC, Dadri which has been got verified and enquired into by KVS, through Assistant Commissioner. The transfer was ordered only thereafter. It is also seen that the enquiry was got conducted, after informing the applicant and not at the back of the applicant as alleged by him. That being the case, the decision of the Hon'ble Supreme Court in the case of State Bank of India and Others Vs. D.C. Aggarwal (AIR 1993 SC 1197) relied upon by the applicant, would not come to the assistance of the applicant. It is thus evident that the transfer order was clearly in accordance with the guidelines for transfer issued by the respondents and the same cannot be faulted. On the aspect of malafides, the applicant has not made out any convincing case. It is found that memos had been issued to

the applicant by respondent no.3, advising him to improve upon his performance as a teacher but the same did not have the desired results. The tenor and the content of the letters issued by the applicant to the Principal does show him out to be someone who is not disciplined. It would also appear that the applicant was one among the group of individuals, acting against the interests of school and the students. That being the case, Chairman, VMC, NTPC, Dadri was fully justified in recommending the case of the transfer of the applicant from the School and the KVS totally in the right, ordering the transfer after enquiring into the contents of the recommendation. This was the only proper course of action to do and therefore alleging malafides on the part of the respondents was clearly avoidable. When the respondents had acted well within the parameters of the duly notified guidelines on transfers and postings and in the interests of the School and the student community, any interference by the Tribunal in the said action would be wholly unwarranted.

9. Incidentally, I observe that the applicant had not enclosed the impugned transfer order dated 1-10-2001 on the ground that he had not received it. The said averment is rather strange, especially as the OA has been filed on 11-3-2002. Obviously, the respondents are correct when they say that the applicant has been avoiding to receive the order on one pretext or the other.

10. Applicant, to my mind, has not made out any case for the interference of the Tribunal in this matter. OA, therefore, fails and is accordingly dismissed. No costs.

(Govindan S. Tampli)
Member (A)

Patwal/