

Central Adminisrative Tribunal
Principal Bench

O.A.No.3193/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 24th day of July, 2003

R.K.Mandal
H.No.24/715, DDA Flats
Madangir
New Delhi. Applicant

(By Advocate: Sh. M.K.Bhardwaj)

Vs.

1. The Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi-1 10 016.
2. Dy. Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi - 110 016. Respondents

(By Advocate: Sh. S.Rajappa)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 19.4.2002 transferring the applicant from KVS Pushpa Vihar to Kendriya Vidyalaya, Cachar, Panchgram, Assam. Also assailed an order passed, on representation of the applicant, on 21.11.2002 rejecting his request for cancellation of transfer. Quashment of the above orders has been sought.

2. By an order dated 4.12.2002 transfer order dated 19.4.2002 has been stayed by the Court.

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3. Applicant joined KVS as TGT (Maths). He was transferred on 1st September, 2000, from KVS, Andrews Ganj to KVS, Delhi Cant. He was transferred from KVS, Delhi Cant. to KVS, Pushp Vihar on 17.10.2000.

4. Respondents, in terms of their policy in vogue, sought options from the Teachers of the KVS and details of their choice of transfer in the year 2001, applicant had opted for KV, Muradnagar, Palwal, Babugarh, Jhajjar and Rohtak.

5. On 2.4.2002, in public interest, Shri S.Peshwani TGT (Maths) employee was transferred to KV, Cachar.

6. By an order dated 19.4.2002, transfer of Shri Peshwani was cancelled as he was not the senior most teachers in the station whereas applicant who was senior to him has been transferred in his place to Cachar.

7. Applicant, immediately, made a representation on 19.4.2002 contending that he had already attained 55 years of age and he is suffering from high blood pressure and undergoing treatment, as he was in priority No.1 he should be transferred to his choicest station.

8. By an order dated 12.9.2002, a show cause notice was sent to the applicant under Article 81(d)(3) of Education Code regarding his loss of lien.

9. Applicant being aggrieved, filed OA 2602/02 before this Court. By an order dated 8.10.2002 OA was disposed of with the directions to respondents to decide representation of the applicant and during this interregnum not to force him to join and applicant has been advised to go on leave.

10. In compliance, by an order dated 22.11.2002 respondents rejected the request of applicant against transfer, giving rise to the present OA.

11. Shri M.K.Bhardwaj, learned counsel for applicant, assailed transfer and order on representation, as illegal passed without application of mind.

12. By referring to the transfer guide-lines, it is stated that in September, 2001 applicant as per Clause 8 of the guide-lines, opted for one of the choicest station at Babugarh, where a vacancy existed. Being seniormost, the applicant as per the transfer guide-lines should have been posted at Babugarh but in order to accommodate one Shri Papiya Das from KV Sevok, in public interest transferred, seniormost incumbent Shri Gopal Prasad which violates the policy which is statutory force of law rendering the transfer illegal.

13. Shri Bhardwaj further contends that a Teacher as per the guide-lines is to be transferred only after three years whereas in the present case, applicant has been transferred six times within a period of two years.

14. It is also stated that had the choice made by the applicant acted immediately when there was a clear vacancy, the applicant would have been transferred to his place of choice.

15. While referring to the personal grounds, it is stated that applicant has been suffering from chronic diseases, it is illegal to transfer him outside the region.

16. It is also stated that as applicant has attained 55 years of age, having liability of marriageable daughter, and in absence of any public interest or administrative exigency, transfer is mala fide.

17. By referring to the case of one Sh. U.K Bajpai, it is contended that thought his request was acceded to, applicant who was similarly circumstance, has not been accommodated at his choicest station.

18. On the other hand, Shri S.Rajappa, learned counsel for respondents, vehemently opposed the contentions and stated that as per Clause 10(i) of the transfer guide-lines applicant was transferred in public interest to accommodate Shri U.K.Bajpai from a hard station as per his priority, and as applicant was

seniormost in the KVS, transfer of one Peshwani which was inadvertently made not being the seniormost as per the guide-lines was cancelled and applicant was transferred in his place.

19. In so far as the guide-lines are concerned, it is stated that under Clause 6, for organisational reasons and administrative grounds, an employee of KVS is liable to be transferred. In accordance with Clause-8, for organisational reasons and interest, a classification has to be made, and performance is to be rated. In this background, one has to fill up the choicest station and as per Clause 10(i) a Teacher who had continued stay of three years in North East and a hard station and five years elsewhere, the vacancy shall be created to accommodate if a transferring Teachers with longest period of stay at the Station. While transferring such Teachers, in case vacancy cannot be created at a station of choice of a Teacher, the exercise will be repeated for the station which is next choice.

20. It is stated that in order to give effect to the transfer policy two priority lists were prepared. In first priority list, application received for transfer as per entitled points, were to be operated against the vacancies available during the normal course for being filled up. Whereas the second priority list, is with reference to and as per entitlement of para 8 of the guide-lines and the incumbents are to be accommodated by transferring Teachers with longest stay.

21. It is stated that as per Clause 12 mutual transfers are permitted on satisfaction of the Commissioner and are to be completed as per Clause 8 and by 30th September of the year.

22. Having regard to the aforesaid, it is stated that the applicant's choicest station, could not be accorded to him at Babugarh and other places as there was none to be displaced. At Babugarh on a mutual transfer, Gopal Prasad was transferred to Sevok whereas person at Sevok has been adjusted at Babugarh in public interest.

23. In so far as case of one Sh. Peshwani is concerned as his transfer was against guide-lines not being the seniormost his transfer was cancelled and the applicant who was seniormost has been displaced.

24. It is stated that as far as medical grounds and marriage of the daughter is concerned, medical treatment, is available at the transferred place, and the decease is not serious enough to be covered under the guide-lines for non-displacement of applicant.

25. In so far as the other personal inconvenience are concerned, it is stated that the paramount interest of the organisation cannot be outweighed on personal grounds.

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26. Learned counsel for respondents, further stated that as per the regulation 49(k) of the Education Code, KVS employee has an all India transfer liability, case of applicant is covered under Clause 10 of the guidelines. Accordingly, he is to be replaced being the longest stayee, could not be adjusted at choicest station, as such was sent to Assam.

27. In so far as the plea of one Shri Bhagat who is a non-teaching employee though. Accordingly, Shri Bhardwaj in accordance with guide-lines there cannot be any discrimination between teaching and non-teaching as per Clause 19 the guide-lines. However, case of Sh. Bhagat cannot be compared with the applicant as in the case of Bhagat, his transfer from Patna to Dehradun was not on displacement. Accordingly, the same was cancelled and modified to Delhi.

28. It is stated that whereas the applicant was in priority No.2, his transfer was to be adjusted not against the normal vacancy but on displacement. As there was none to displace at the choicest station in accordance with policy, transfer resorted to is in administrative exigency.

29. Shri S. Rajappa further contend that no mala fides has been alleged and established to render the transfer as illegal.

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30. Lastly, it is contended that transfer guide-lines annexed by the applicant are not the authentic one, whereas the authenticated transfer guide-lines are Annexed at R-1 with reply, which were in vogue at the relevant time.

31. In so far as the superannuation is concerned, applicant was transferred in September, 2000, whereas the amended policy issued was valid only for the academic reasons from 2003-2004 and was applicable to those who retires upto 30.6.2003, their cases are to examined for their non-displacement.

32. It is further stated that if the applicant in the current academic session gives his choicest station as per Rules his case would be considered in accordance with guide-lines in vogue.

33. I have carefully considered the rival contentions of the parties and perused the material on record. It is a settled position of law that unless a transfer is against the statutory rules, without jurisdiction, and is actuated with mala fides, the same cannot be interfered in a judicial review, wheels of administration cannot be stalled and the Tribunal cannot act as an appellate authority.

34. No one has right to pick his choicest place of posting and on an All India transfer liability one is liable to be transferred anywhere in the exigency of service and also in public interest.

35. In so far as the contention put forth that one Peshwani has been adjusted discriminating the applicant is concerned, I find that as per clause 10(i) of the transfer guide-lines and admittedly, applicant being in priority list No.2 his transfer is to be with reference to the longest stay and as the Peshwani was not a longest stayee, inadvertently transfer order issued in his case has been recalled and applicant undisputedly the longest stayee was transferred. I do not find any legal infirmity in the aforesaid action which is strictly in accordance with the guide-lines.

36. In so far as the contention put forth that despite vacancies the option for choicest station has not been acted from September, 2001 to April, 2002 is concerned, applicant has no indefeasible right for a posting at a particular place. Being in priority list 2 his case is covered under Clause 11(b) where he is to displace the longest stayee. At Babugarh one Shri Gopal Prasad, having longest stay, was transferred but keeping in view of the mutual request, and also the priority list one, the incumbent from Sevok was adjusted against Mr. Gopal Prasad. As the applicant has no indefeasible right to be posted at Babugarh, in absence of any one to be displaced at the choicest station, transfer is valid. Posting is further dependent on various factors including administrative exigency, availability of vacancies, other provisions of the guide-lines.

37. In so far as the contention put forth alleging discrimination vis-a-vis Shri Bhagat the non-teaching employee, though the guide-lines are to be applied mutatis mutandis to non-teaching staff also, displacement as per the Clause-10 of the guide-lines is always against the similarly circumstance and identically situated, i.e., a teaching staff.

38. The comparison of a non-teaching staff with the applicant, being a teaching staff, is not well founded.

39. In so far as the personal difficulties are concerned, the treatment taken by the applicant is very much available at the transferred place. However, his illness is not so serious to bring his case within the ambit of exceptional cases under the guide-lines, for non-displacement.

40. However, personal grounds cannot take march over the paramount interest of organisation.

41. In so far as his contention that he had already turned 56 years, and would not be displaced as per the policy in vogue in 2001-2002, the guide-lines did not stipulate non-displacement. In fact for the academic Session 2003-04 only those are not to be displaced are those who attain the age of superannuation on or before 30.6.2006. As the applicant will be superannuated in 2007, the guide-lines would have no application.

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42. As the applicant has miserably failed to bring his case within the ambit of judicial review as no mala fides have been established which is to be done by a specific foundation, the grounds raised are vague assertions cannot be countenanced. The transfer orders have been issued by a competent authority..

43. I do not find any violation of the statutory rules or guide-lines, rather the transfer is in public interest and in administrative exigency. As our jurisdiction is limited in judicial review, the present OA does not call for any interference.

44. In the result, having found OA bereft of merit, the same is dismissed. No costs.

Interim order already issued is vacated.

S. Raju
(Shanker Raju)
Member(J)

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