

25

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1293/2001

New Delhi, this the 26th day of September, 2002

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri M.P. Singh, Member (A)

Shankar Sharma
J-4/128-B DDA Flats
Kalkaji, New Delhi-19 .. Applicant
(Shri M.L. Chawla, Advocate)

VERSUS

1. Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
SJS Marg, New Delhi
2. N.N. Mishra
Principal, KVS, Sector ~~VII~~
R.K.Puram, New Delhi
3. Ms. Neerja Shukla
Reader, NCERT/EC Member
New Delhi
4. Baldev Mahajan
Chairman, VMC KV Sec. VIII
D-72, Defence Colony, New Delhi .. Respondents

(Shri S. Rajappa, Advocate)

ORDER

Shri M.P. Singh, Member (A)

Order dated 30.4.2001 passed by the respondents by which the applicant has been removed from service, along with orders dated 29.12.2000 and 30.12.2000 by which he was transferred from Kendriya Vidyalaya (KV, for short) to KV, Uri, Jammu Region and relieved ~~in absentia~~ respectively are under challenge in the present OA.

2. Brief facts of the case are that the applicant, who joined service as Lower Division Clerk on 2.1.1987 at KV, Mullanpur (Punjab), was lastly transferred to KV, Sector VII, R.K.Puram and continued to serve respondent department till 24.10.1998. He had earlier filed OA No.53/2001 challenging the aforesaid transfer orders. He

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had also filed MA 711/2001 in that OA seeking the protection of the Tribunal against the show cause notice issued on 5.3.2001. While no reply was filed by the respondents to the MA, respondents proceeded to pass the removal order dated 30.4.2001. That OA was disposed of by order dated 14.5.2001 directing the applicant to file a fresh OA to impugn the transfer order as well as removal order. That is how the applicant is before us by the present OA praying for directions to set aside the aforesaid orders.

3. It is the case of the respondents that the applicant was transferred by order dated 29.12.2000 from KV, R.K.Puram to KV, Uri in public interest on administrative grounds in terms of transfer guidelines. In pursuant to the said order of transfer, Principal, KV was directed to relieve the applicant. In compliance thereof, relieving order dated 30.12.2000 was issued. Since the applicant was absenting himself unauthorisedly without any sanctioned leave, a show cause notice dated 5.3.2001 was issued under Article 81(d) of the Education Code. Applicant gave his reply on 23.3.2001. The applicant was given enough opportunities to prove that he was not absenting wilfully. Since the applicant failed to prove that he was not absenting wilfully, the loss of lien on the post was confirmed and as a consequence, an order of removal was passed. The applicant made an appeal on 14.6.2001 challenging order of removal which was rejected by an order dated 7.8.2001. He submitted a revision petition which was also rejected by Commissioner, KVS by



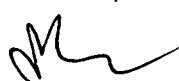
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his order dated 17/18.1.2002. In view of this position, the applicant is not entitled for any relief and the OA be dismissed.

4. We have heard the learned counsel for the parties and perused the records.

5. During the course of the arguments, the learned counsel for the applicant has taken several grounds, the main grounds being that the disciplinary authority has neither been appointed by a competent authority nor the impugned order has been passed by the authority competent to do so; newly inserted rule under Article 81(d) has already been challenged by the Association of KVS in a separate OA and therefore the respondents cannot misuse the said power. It is further contended that the appeal/revision of the applicant have been rejected by cryptic and bald orders.

6. On the other hand, the learned counsel for the respondents has denied the aforesaid contentions and has submitted that personal opportunity of hearing was given to the applicant by the Commissioner as well as Joint Commissioner (Admn.) who are the competent authorities under the Rules. The transfer order has been passed in accordance with Transfer Guidelines. It is further submitted by him that this Tribunal vide its judgement dated 13.5.2002 in OA 2351/2001 has upheld the validity of 81(d) as also the validity of order issued under the said provision and in the present case as well the ratio squarely applies.



7. The learned counsel for the applicant next has drawn our attention to the order dated 9.10.2000 of the Chandigarh Bench of the Tribunal by which OA 470-HF-2000 involving the transfer of the applicant therein was allowed and CWP No.17954 C-2000 filed against this order by the Union of India was dismissed by the High Court of Punjab & Haryana vide order dated 22.12.2000. According to the learned counsel, the applicant herein also is similarly placed. We have gone through the same and we find that the applicant's challenge in the aforesaid OA was to his transfer to out of region. In the instant case, the impugned order of removal was passed by the respondents because of the unauthorised absence of the applicant after the transfer order was passed. Applicant was duly issued show cause notice under Article 81(d) to explain his case. Issue of show cause notice under this article in a similar case has already been upheld by this Tribunal in OA 2351/2001 (supra). In view of this, applicant's reliance in OA 478-HF-2000 would not render him any assistance.

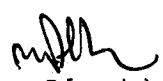
8. It is a settled legal position that transfer from one place is generally a condition of service and the employee has no choice in the matter. Transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. No such ground is established in the present case. It is also a settled legal position that who should be transferred where is a matter for the appropriate authority to decide and that court/Tribunal

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is not appellate forum to decide on transfer of officers on administrative grounds. We also find that this Tribunal in its judgement dated 14.5.2001 in OA 53/2001 filed by the applicant has not quashed the transfer order of the applicant. It is also an admitted position that the applicant has absented himself unauthorisedly after issue of the transfer order instead of obeying the transfer order.

9. In view of the above position, we do not find any valid ground to interfere with the action taken by the respondents. In the result, present OA fails and is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)
(V.S. Aggarwal)
Chairman