

Central Administrative Tribunal, Principal Bench
New Delhi

(13)

O.A. No.1691/2001

New Delhi this the 3rd day of January 2002

Hon'ble Mr. M. P. Singh, Member (A)

Shri B.P. Singh
U.D.C. Kendriya Vidyalaya,
R/o 54, Bhagwat Pura,
Meerut City, (U.P.).

... Applicant

(By Advocates : Shri D.S. Mahendru and
Shri S.K. Anand)

Versus

Kendriya Vidyalaya Sangathan, through

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. The Principal,
Kendriya Vidyalaya,
Muzaffarnagar (U.P.),
251001.

- Respondents

(By Advocate : Shri S. Rajappa)

ORDER (ORAL)

By filing this OA under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought a direction to quash and set aside the impugned orders dated 16.5.2001 and 21.5.2001 and also direct the respondents to re-transfer him to the same place where he was earlier working.

2. Brief facts of the case are that the applicant was working as Upper Division Clerk (in short 'UDC') under respondent No.2 in Kendriya Vidyalaya (KV), Muzaffarnagar (U.P.). Vide order dated 16.5.2001, he was transferred from KV, Muzaffarnagar to KV, Loktak (Manipur) in public interest. According to the

applicant, his transfer was effected upon the written complaint of the Principal of the Vidyalaya, i.e., respondent No.2. The complaint was with regard to the poor working of the applicant. As per the guidelines, the transfer of an employee can be made on administrative ground on the recommendation of both the Principal and the Chairman of the Vidyalaya Management Committee (VMC) of the concerned Vidyalaya. It has been further provided in clause 3, that an inquiry should be conducted within 3 months of the transfer of an employee on administrative grounds. On an inquiry, if it is established that the employee was not liable to be transferred on administrative grounds, he should be transferred back to the place from where he/she was transferred or nearby places, depending upon the availability of vacancy. Aggrieved by the impugned transfer order, the applicant made a representation on 26.5.2001. In terms of the guidelines on the transfer of an employee on administrative grounds and upon the aforesaid representation of the applicant, a confidential inquiry was got conducted by the District Officer through the Addl. District Officer. The said inquiry was concluded with the findings that his work and conduct was found to be satisfactory. The District Officer, therefore, recommended to the respondents to cancel the impugned transfer order and post him to a nearby place (Annexure A/5). The respondents, despite the above out-come of the inquiry, have not taken any action to cancel the impugned transfer order.



Aggrieved by this, he has filed the present OA seeking the aforesaid relief.

3. The respondents have contested the case and have stated that the order of transfer transferring the applicant from KV, Muzaffarnagar to KV, Loktak, Manipur has been passed in exercise of power conferred under the Transfer Guidelines and has been passed in public interest and on account of administrative exigencies. The applicant carries an all India transfer liability and he can be transferred to any place in India as per Article 49 (k) of the Educational Code for KVs. It is also stated by the respondents that the order of transfer has been passed under Clause 5 (1) of the Transfer Guidelines. Immediately, thereafter an inquiry was conducted by the Asst. Commissioner, being the appointing authority for UDCs who confirmed that the order of transfer of the applicant was justified. It is also stated by the respondents that the applicant was never obedient nor loyal. He was always disobeying the orders of the superiors and was careless in his work. The applicant never used to submit the cash books on time in spite of several reminders even when directed by the Audit party. He was also not punctual in his attendance as he used to report for duty late and leave office early. According to them, the District Officer, Muzaffarnagar, who is stated to have conducted an enquiry has not done at the instance of the KVS as he is neither nominated officer of KVS nor deputed by the KVS authority for that purpose. The



Asstt. Commissioner, Dehradun Region had conducted an enquiry on the complaint against the applicant wherein he has stated that the order of transfer has been passed in accordance with the Transfer Guidelines. In view of the foregoing, OA deserves to be dismissed.

4. Heard the learned counsel for the rival contesting parties and perused the record.

5. I have carefully considered the rival contention of both the parties. During the course of the argument, learned counsel for the applicant drew my attention to the clarification issued by the KVS authority in the month of March 2000 (Annexure A/3) which reads as under:-

"1. The proposal for transfer of employees on administrative grounds should be forwarded both by the Principal as well as Chairman, VMC and not by the nominee of the Chairman. However, in the case of office bearer of a recognised Association, the proposal will require the recommendation of Asstt. Commissioner of the Region also."

2. XXXXX XXXXX XXXXX

3. It has also been decided that an inquiry should be conducted within 3 months of transfer of an employee on administrative grounds. On inquiry, if it is established that the employee was not liable to be transferred on administrative grounds, he should be transferred back to the place from where he/she was transferred or nearby places, depending upon the availability of vacancy. It is made clear that the inquiry needs to be confined to ascertain whether the transfer of the employee was necessary on administrative grounds or motivated by extraneous consideration."

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6. He further submitted that an inquiry has already been held by the District Officer (Annexure A/5), and a copy thereof was sent to the Commissioner, KVS, New Delhi vide letter dated 31.5.2001. According to this report, the complaint against the applicant has been found baseless and the applicant has been exonerated. Since no charge has been proved against the applicant as per this report, the applicant should be transferred back to KV, Muzaffarnagar in terms of the aforesaid clarification issued by the KVS in March 2000. He also submitted that the guidelines which are applicable to the teaching staff are not applicable to the applicant as he is an UDC and comes under the category of non-teaching staff.

7. On the other hand, learned counsel for the respondents drew my attention to para 11 of the counter reply which reads as under:-

"These Guidelines shall mutatis mutandis apply to non-teaching staff to the extent applicable."

8. He also drew my attention to the letters/OM at Annexure R-4 and R-5 respectively to the reply and stated, that the work of the applicant was highly unsatisfactory. He was coming late to the office and was not attending to his work properly and effectively. He was also not obeying the orders of the principal of the school. He also drew my attention to Swamy's Manual on Disciplinary Proceedings Chapter 3 Para (3) (C) which reads as under:-

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"While placing an official under suspension the competent authority should consider whether the purpose cannot be served by transferring the official from his post to a post where he may not repeat the misconduct or influence the investigations, if any, in progress. If the authority finds that the purpose cannot be served by transferring the official from his post to another post then he should record reasons therefor before placing the official under suspension."

9. The learned counsel for the respondents further submitted that in view of the above guidelines, a decision has been taken by the competent authority in the HQs to transfer the applicant from KV, Muzaffernagar to KV, Manipur instead of taking disciplinary action against him. He also submitted that the inquiry conducted by the District Officer exonerating the applicant of all the charges is a one sided inquiry. The District Officer was not authorised by the competent authority of the KVS to hold such inquiry. It is only a stage managed thing by the applicant in order to defend himself. Learned counsel for the respondents further stated that there is one UDC in the Vidyalaya and he has to perform all clerical duties including handling of cash.

10. The legal position is well settled by the Hon'ble Supreme Court that the transfer order cannot be interfered with by the courts unless, it is violative of the statutory guidelines or it is malafide. It is an admitted fact that the applicant has an all India service liability. Transfer is an incident of service. There are catena of judgements of the Hon'ble Supreme Court that it is for the



administration authority to decide about the deployment of the persons as per their requirement. In the present case, neither malafide has been established by the applicant against the officers of the respondents' organisation nor there is a violation of any statutory guidelines. The applicant has been transferred on administrative grounds and in the exigency of service on the recommendation of the Principal and the Chairman of VPC. I do not find any ground to interfere with the order dated 16.5.2001 passed by the respondents transferring the applicant from KV, Muzaffernagar to KV, Manipur.

11. For the reasons recorded above, the present OA is devoid of merit and is, therefore, accordingly dismissed. No costs.

12. Interim order passed on 13.7.2001 stands vacated.


(M.P. Singh)
Member (A)

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