

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH



OA 1954/2001
OA 2018/2001
OA 2156/2001

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

Hon'ble Sh. Govindan S.Tambe, Member (A)

OA 1954/2001

Sh. Sham Avtar Paliwal
PRT, R/o Quarter No. 241, Type-III
Kendriya Vidyalaya (NSG) Campus
Manesar, Gurgaon (Haryana).

(By Advocate Sh. R.Prasad)

...Applicant

V E R S U S

1. Union of India
through Secretary, Ministry of HRD
Shastri Bhawan, New Delhi.
2. The Deputy Commissioner (Admin)
Kendriya Vidyalaya Sangathan
S. Institutional Area
Shaheed Jeet Singh Marg
New Delhi - 110 016.
3. The Principal
Kendriya Vidyalaya (NSG)
Manesar, Gurgaon (Haryana).
4. The Station Commandant
Station Head Quarters
National Security Guard
P.O. NSG Camp, Manesar
Gurgaon (Haryana) - 122 051.

(By Advocate Sh. S.Rajappa)

...Respondents

OA 2018/2001

Sh. Y.P.Sinh
PRT, R/o Quarter No.2, Type-III
Kendriya Vidyalaya (NSG) Campus
Manesar, Gurgaon (Haryana).

(By Advocate Sh. R.Prasad)

...Applicant

V E R S U S

1. Union of India
through Secretary, Ministry of HRD
Shastri Bhawan, New Delhi.
2. The Commissioner
Kendriya Vidyalaya Sangathan
S. Institutional Area
Shaheed Jeet Singh Marg
New Delhi - 110 016.

3. The Principal
Kendriya Vidyalaya (NSG)
Manesar, Gurgaon (Haryana).

4. Station Commandant
NSG Headquarter, Manesar
Gurgaon (Haryana).

... Respondents
(By Advocate Sh. S.Rajappa)

OA 2156/2001

Ms. Priti Lata
R/o 78, Nai Anai Mandi
Gurgaon.

... Applicant
(By Advocate Sh. R.K.Gaur)

V E R S U S

1. Union of India
through Secretary, Ministry of HRD
Shastri Bhawan, New Delhi.

2. The Deputy Commissioner (Admn)
Kendriya Vidyalaya Sangathan
S. Institutional Area
Shaheed Jeet Singh Marg
New Delhi - 110 016.

3. The Principal
Kendriya Vidyalaya (NSG)
Manesar, Gurgaon (Haryana).

4. Assistant Commissioner
Kendriya Vidyalaya Sangathan
S. Institutional Area
Shaheed Jeet Singh Marg
New Delhi - 110 016.

... Respondents
(By Advocate Sh. S.Rajappa)

O R D E R

By Sh. Govindan S.Tampi.

This combined order disposes of three OAs. all
directed against Office Order FV2-1 (8) (iii)/2000-KVS
(EIV) dated 20.04.2001 issued by the respondents,
transferring the applicants from Kendriya Vidyalaya
(K.V.) Manesar to some distant locations. They were
also heard together.

2-A OA No.1954/01 is filed by Sham Avtar
Paliwal against his transfer from K.V. Manesar to
K.V. Satakha (Nagaland) M.A. No.2107/01 filed by

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respondents for vacating the interim stay. MA No.2253/01 filed by the applicant seeking direction to the respondents to produce the records and MA No.2280/02 filed by the applicant to have the name of respondent No.4 deleted have been dealt with the OA. Shri R. Prasad, learned counsel appeared for the applicant.

B. OA No.2018/01 is filed by Y.P. Singh challenging his transfer from K.V. Manesar to K.V. Loktak. MA No.2116/01 from the respondents for vacating the interim relief. MA No.2321/2001 by the applicant seeking directions to respondents for production of records and MA No.2279/2002 from the applicant for deleting the name of the respondent No.4, have been dealt alongwith the OA. Shri R.K. Gaur was the learned counsel for the applicant.

C. OA No.2156/01 has been filed challenging applicant's transfer from K.V. Manesar to K.V. Udhampur (J&K). Shri Prasad was the learned counsel for the applicant.

Shri S. Raiappa, learned counsel for the respondents represented them in all the OAs.

3. All the three applicants are PRT (Primary Teachers) attached to Kendriya Vidyalaya of National Security Guards, Manesar. They have been transferred by the impugned order dated 20.04.2001 to Sataka (Nagaland), Loktak (Manipur) and Udhampur (J&K). They have also been ordered to be relieved on the same day. S.A. Paliwal (OA 1954/01) states that he had already

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worked in hard stations that the school to which he is transferred does not have the 11th standard to admit his son, that he is a widower and is an elderly person. The transfer has also cost him residential accommodation. According to Y.P. Singh (OA 2018/01) both his daughters and himself are patients undergoing treatment and the transfer would hurt them. Loss of residential accommodation is also apprehended by him. Priti Lata (OA 2156/01) is also similarly shocked and inconvenienced by the sudden transfer order. According to the applicants there are a number of teachers in the school who have done greater time in the school. Still they have been transferred under the garb of public interest just to favour three other teachers. In terms of clause 49 of KVS Education Code employees upto TGT will be posted only in their home states and are not to be shifted except on their request. That being the case the above transfer orders are in clear violation of the guide-lines but inspite of representations their pleas have not been considered. They have also learnt that Chairman VMC Manesar had not recommended their transfers. Still the transfer orders have been issued by colourable exercise of power by the authorities. The transfer orders are highly unreasonable improper and illegal. Hence the OAs.

Grounds raised in the OAs are enumerated as below:-

- i) Guidelines in Clause 5(i) provide for transfer only on the recommendations of the Principal/Chairman VMC which had not taken place.

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iii) Transfer on Administrative Grounds should not have exceeded to:

iii) Clause 49 of the Education Code has been violated:

iv) "Special Reasons" and "Public Interest" have not been explained:

vi) Equality before law and fair play have been denied:

vii) The orders were arbitrary and lacking in transparency:

viii) Discretionary powers vested in the respondents have not been properly used:

ix) There was no rational nexus between the imputed transfer and the objects sought to be achieved by ~~it~~ and the transfer was a colourable exercise of power:

x) Applicants in OA 1954/01 and 2018/01 were also not keeping good health.

All the above points were forcibly reiterated by the learned counsel for the applicants, who also relied upon a few decisions which according to him, supported their cases like Geeta Khanna Vs. UOI (CWP No. 5734/2000); Kamlesh Singh Vs. KVS & Ors. (2033/2000); O.P. Tripathi Vs. UOI (OA No. 819/96) &

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Ramadhar Pandey Vs. State of U.P. & Others (Civil

Appeal No.1478-79 of 1993). In view of the above, the OAs should succeed with appropriate reliefs to the applicants. plead the learned counsel for the applicants.

5. In identical replies filed on behalf of the respondents -it is pointed out that Kendriya Vidyalaya Sangathan (KVS) was a registered society set up with the purpose of imparting quality education to the wards of the transferable Central Govt. and Defence Personnel all over the country. K.Vs are set up along the length and breadth of the country and follow the same syllabi. Naturally the teachers and staff attached to K.V.S. have All India transfer liability as shown in Article 49 (k) of the Education Code which states as below :-

"Employees of Kendriya Vidyalaya Sangathan will be liable to be transferred anywhere in India".

In that backdrop, the averments made by the applicants to the contrary are not acceptable. The impugned transfer order involving the above three applicants has been issued in public interest as complaints have been received from parents of the students against them. All the orders have been duly served on them and their signatures have been obtained in the Dispatch Register as proof thereof. The applicants have rushed to the Tribunal without waiting for the disposal of the representations filed by them. As transfer was an incidence of service and has been ordered properly, the applicants cannot have

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any grievance. The transfers have been ordered in terms of the guidelines which are duly notified and the validity of which has been time and again upheld. All the three applicants have been transferred out on account of their activities which are detrimental to the interest of the students and the organisation. In the circumstances, they cannot take shelter behind the plea that transfers on Administrative Grounds cannot exceed ~~two~~ at a time. A duty is cast on the Administration to ensure that the fair name of the organisation is not tarnished and the proper upbringing of the children is ~~not~~ hampered. The respondents have taken the proper step of shifting the individual outside the school instead of proceeding against them departmentally, which was in the fair name of the organisation also. Organisation cannot be expected to remain a mute spectator to the indisciplined behaviour of erring teachers. Their action was therefore proper and the applicant's attempt to call in question respondents' action was improper. The transfers were not made to help out any one else but only to cleanse the school. Such actions would have to be endorsed instead of being interfered with.

6. Principal of K.V. Manesar, in her counter had indicated that she had only relieved the teachers, in terms of the transfer orders issued by the Kendriya Vidyalaya Sangathan correctly and nothing further remained to be done by her.

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7. Station Commandant, NSG, Manesar, and Respondent No.4 in OA 1954/01 and 2018/01 had in his counter averred that the applicants were given residential quarters in Manesar NSG Camp, as they were working in the Kendriya Vidyalaya and were asked to vacate the same when they were transferred out. (It is relevant to note that both the applicants have moved to have respondent No.4 deleted from the list of respondents).

8. During the oral submissions, learned counsel, from both sides reiterated their pleadings. According to the applicants the transfer could not at all be justified, while the respondents argue eloquently for the transfers. The latter also relied upon the decisions of the Tribunal in the OAs filed by Geeta Khanna (OA 1878/2000), R.P. Bhargava (OA No.1772/2000) and S.P. Goswami & Others (OA 755/2001), decided on 06.09.2001, 13.03.2002 and 04.07.2002, respectively dismissing the OAs and upholding the order of transfer. They urged that these three OAs should also be dismissed, as being devoid of any merit. Shri Rajappa, learned counsel for the respondents also placed for my perusal relevant file in which the above transfers were dealt with.

9. I have carefully considered the rival contentions as well as perused the documents brought on record. The Tribunal had on many occasions spelt that transfers of employees fall within the exclusive domain of the administration that the administration are the best judge as to where to put an employee to

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ensure that he provides the best to the organisation and causes least embarrassment and ighosity for the organisation and that unless the transfers are totally at variance with the notified guidelines and are clearly malafide there should not be any interference in transfers ordered. Hon'ble Supreme Court's directions in the case of UDI & Ors. Vs. S.L. Abbas (AIR (1993) Supreme Court 2444) and Gujarat Electricity Board & Anr. Vs. Atmaram Sungomal Poshani (AIR (1989) Supreme Court 1433) have laid down the above principles. It is in the above context that the above transfers have to be seen.

10. By the impugned orders, three Primary Teachers (PRT) working in K.V. at NSG's Headquarters, Manesar have been shifted to places in Nagaland, Manipur and J&K. The applicants have assailed the transfer as malafide, meant to favour a few and as flying in the face of the guidelines which is contended by the respondents. Applicants have relied upon Article 49 of the K.V.S. Education Code in terms of which teachers upto TGT are generally posted within the State they are recruited and are not generally shifted except on request. Therefore, according to them the transfer of the applicants to far off places was bad in law. They have, however, conveniently overlooked the last sentence in the same paragraph which states that "the Kendriya Vidyalaya Sangathan, however, reserves the right to transfer personal, in special cases: in its discretion (emphasis supplied). This is exactly what the Sangathan has done in the instant case: and, therefore, their action cannot be assailed as improper.

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iii. ... K.M.S.I. has drafted and circulated guidelines to be followed in respect of posting and transfers of the staff. Validity of those guidelines have been tested and found favour with by the Tribunal. Therefore, if the instant transfer orders are in consonance with the guidelines they cannot be called in question. It is indicated by the applicant that neither the Principal of the school nor the Chairman of the Vidyalaya Managing Committee had recommended the transfer of the three teachers and therefore, they could not have been shifted. On the other hand, the respondents have gone on record that there have been complaints against the teachers from the parents of the students, that their activities are not conducive to the well-being and reputation of the school. Enquiries conducted thereon by Education Officer had confirmed the above and therefore, the competent authorities have initiated action to transfer them. These have been duly brought out in the records placed before me. That being the case, the respondents could not be faulted for transferring the applicants. In the circumstances no malafides on the part of the respondents is evident, inspite of the applicants' averment to the contrary. Respondents cannot be directed to keep the applicants in the same school, when their conduct has been nothing complimentary or helpful. Nothing has also been brought out on records showing that the applicants have been dealt with in a prejudicial manner or that they have been shifted to accommodate some favourites. In the circumstances, the applicants cannot get any assistance from the number of decisions relied upon by

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them. as all of them can be distinguished. On the other hand, the circumstances of the case are very much akin to the OAs of Geeta Khanna, R.P. Bhardwaj as well as S.R. - Goswami and Others (supra).

Decisions of the Tribunal rejecting them would be applicable to these OAs as well. OAs would therefore call for dismissal. The only extenuating feature in respect of the applicants - those in OAs 1954/2001 and 2018/2001 - is that they are in need of constant consultation in AIIMS, New Delhi on account of their illness and their case could be considered by the respondents favourably.

12. In the above view of the matter, all the three OAs fail, being devoid of any merit and are accordingly dismissed. Respondents are, however, advised to consider the case of S.A. Paliwal (in OA No.1954/2001) and Y.P. Singh (in OA No.2018/2001) for being posted somewhere not far from Delhi so that their requirement of treatment in AIIMS is taken care of. To facilitate the above, the applicants are directed to file a fresh representation to the respondents within 15 days from the date of receipt of a copy of this order with supporting evidence of their medical record and the respondents shall take a decision thereon favourably within a month from such receipt. No costs.

(Govindan S. Tampi)
Member (A)

24/11/02

Attached
vksn/

C.L. Bhowmik
31/11/02
Court of Queen
Court No. 11