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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2642/2001

New Delhi, this 12th day of December, 2001

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

Dr. P.L. Dhingra  
983, Sector 16, Faridabad (Haryana) .. Applicant  
(By Shri Shyam Moorjani, with Shri A.P.Dhamija,  
Advocates)

versus

1. Commissioner  
Kendriya Vidyalaya Sangathan  
18, Institutional Area  
Shaheed Jeet Singh Marg, New Delhi
2. Asstt. Commissioner  
Regional Office of Kendriya Vidyalaya  
Sangathan, JNU Campus Police (Armed Police)  
New Mehrauli Road, New Delhi
3. Chairman/General Manager (NTPC)  
Kendriya Vidyalaya School Management  
Committee, Kendriya Vidyalaya  
NTPC, Badarpur  
New Delhi-110044 .. Respondents

(By Shri S.Rajappa, Advocate)

ORDER(oral)

Heard the learned counsel for the parties at length. The challenge in the present OA is to the order dated 11.6.2001 by which the applicant stands transferred from Delhi to Jhunjhunu (Rajasthan) and also the order dated 19.9.2001 by which his representations against the said transfer order was rejected by the respondents.

2. Admitted facts of the case are that the applicant, who is working as Principal, Kendriya Vidyalaya, NTPC, Badarpur, was issued order dated 11.6.2001 transferring him from KVS, NTPC, Badarpur, Delhi to KVS, Jhunjhunu. He challenged the said order by filing CWP No.3902/2001 before the Delhi High Court which was dismissed by order dated 31.7.2001 with liberty to the applicant to move



this Tribunal. He filed OA No.1946/2001 and the same was disposed of by this Tribunal vide its order dated 2.8.2001 with the following observations:

"I think that this OA can be disposed of at this stage itself with a direction to the respondents to consider the representation of the applicant and pass a reasoned and speaking order thereon within a period of one month from the date of receipt of a copy of this order and in the meanwhile the respondents shall not insist upon the applicant to join at his transferred place of posting and it shall not be taken as if disobedience or misconduct for not complying with the transfer order and the applicant may remain on leave for further 15 days if leave is available to his credit from the date of disposal of his representation"

3. Applicant made further representation on 22.8.2001 for cancellation of his transfer but the same was rejected by the impugned order dated 19.9.2001. Thereafter, he filed the present OA challenging both the orders dated 11.6.2001 and 19.9.2001. This Tribunal vide its interim order passed on 04.10.2001 directed to maintain status quo in respect of applicant's transfer. In the meantime, applicant filed MA No.2578/2001 on 2.11.2001 seeking directions to the respondents to make payment of his salary for the months of September and October, 2001 and also continue to pay salary till disposal of the OA. When the case came up for hearing, along with this MA, on 21.11.2001, on the submission made by the learned counsel for the applicant that one Shri Srivastava, who had joined in place of the applicant has unfortunately died on 16.11.2001 rendering the post earlier occupied by the applicant vacant once

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again, this Tribunal directed the respondents to adjust the applicant against the aforesaid post by allowing him to join for the present.

4. Thereafter, respondents filed MA No.2651/2001 for recalling the order dated 21.11.2001 in MA 2578/2001. When this MA came up for hearing on 29.11.2001, the learned counsel for the respondents produced a copy of order dated 20.11.2001 passed by the respondent-authority by which one Shri Gajraj Singh, Principal has been transferred to occupy the vacancy in question at Badarpur. He also produced a copy of paper supporting the fact that Shri Gajraj Singh was relieved on transfer on 22.11.2001 and another paper dated 27.11.2001 showing that Shri Gajraj Singh has been allowed to join his duties in KVS(RO), Delhi in the afternoon of 23.11.2001 as a temporary measure until the transfer matter is decided by the Tribunal. On that day, this Tribunal has observed as under, vide its order dated 29.11.2001:

"I have considered the matter and find that though the respondent-authority were within their rights to pass Shri Gajraj Singh's transfer order on 20.11.2001, they should have desisted from relieving Shri Gajraj Singh aforesaid in the manner done on 22.11.2001 for the reason that the order of this Tribunal dated 21.11.2001 had already been served on the respondents. Moreover, the aforesaid order had been passed in the presence of the learned counsel for the respondents. All the same, apparently on second thoughts, the respondents have instead of allowing Shri Gajraj Singh to join at Badarpur, have made him join duties in the KVS (RO) in the forenoon of 23.11.2001. Thus, an attempt to commit contempt initiated on 21.11.2001 has been stalled. The learned counsel appearing on behalf of the respondents expressed regrets on behalf of the respondents for having relieved Shri Gajraj Singh on 22.11.2001 and undertakes to



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ensure that the applicant is allowed to join as Principal at KVS Badarpur latest by 3.12.2001."

5. During the course of the arguments, Shri Shyam Moorjani, assisted by Shri A.P.Dhamija, learned counsel for the applicant, has taken a variety of grounds in support of his claim for the cancellation of the transfer order of the applicant, which are as under:

- (i) Applicant has been functioning as Principal, KV, Badarpur since 9.8.1996 and has thus not completed the statutory period of five years prescribed for a principal to continue in a particular school; That apart, routine transfers, cannot be effected during mid-academic session; moreover, he is going to retire from service on 31.1.2004.
- (ii) Respondents have disposed of the representation of the applicant by a non-speaking order simply by reiterating the observations made by the Tribunal but without taking into consideration or discussing the various grounds taken by the applicant in his representation for cancelling the transfer order;
- (iii) Applicant is a chronic patient of hypertension, severe arthritis and under constant medication; He is also required to undergo knee surgery for which he is already under treatment; his wife is also working as Vice Principal, KVS, Tuglakabad; she is a cardiac patient and had recently undergone angiography for clearance of her arteries veins. She is also required constant and regular medical attention which cannot be met if applicant is sent outside Delhi;
- (iv) Applicant's unmarried daughter is working at Faridabad and her marriage negotiations are in advanced stage while his son is studying in Apeejay Engg. College, Sohna (Gurgaon), Haryana;
- (v) It is a policy of the Govt. as well as of KVS that as far as possible both husband and wife should be posted at one place;
- (vi) If it is necessary to transfer him, he may be transferred to any of 35 KVS within Delhi, as his departure at this stage from Delhi will severely hamper the academic carrier of his children and would have a telling effect on the health of his wife also.

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(vii) There are persons who are not transferred from Delhi for the last 20 years and there are also persons who have been transferred within Delhi;

(viii) There is no administrative exigency in transferring the applicant at this stage as claimed by the respondents;

(ix) Even though Shri Srivastava was transferred in place of the applicant who had unfortunately expired after his joining, respondents should not have issued the transfer order of Shri Gajraj Singh that too on a Sunday (closed holiday) i.e. 18.11.2001 (later on corrected as 20.11.2000). Instead the applicant should have been adjusted against the same post. Thus, this was done in an arbitrary manner and with malafide intention.

6. Para 5 of the amended transfer guidelines formulated by the respondents provides as under:

"5. The maximum period of service at a station shall generally not exceed five years in case of Principals/Educational Officers and three years in case of Asstt. Commissioners. They are, however, liable to be transferred even before completion of maximum period of service of five years or three years as the case may be, depending upon their efficiency, effectiveness, conduct, organisation interest or admn. exigencies. Principals with outstanding record in terms of their performance as reflected in ACRs and CBSE results may be retained in a Kendriya Vidyalaya even after completion of five years as aforesaid to promote excellence in the Vidyalaya."

Para 8 (b)(iii) further provides that transfer on request is to be considered on ground of such of serious illnesses of teacher himself or his spouse or son/daughter as may be prescribed and subject to production of such documents and on fulfilment of such terms and conditions as the Commissioner may notify from time to time.

7. In so far as grounds at 6(i) to 6(iii) are concerned, I find that the applicant on his promotion as Principal was posted at KV, Rajkot from 3.5.88 to 13.9.93. Thereafter, he was transferred to Palwal (Haryana) on his personal request and again to Badarpur where he joined duty on 9.8.96. The impugned transfer order has been issued on 11.6.2001, i.e. before completion of 5 years tenure in the garb of

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administrative exigency. I also find from the materials available before me that the applicant has furnished copies of various documents in respect of the medical treatment he and his wife are undergoing. Thus, the respondents should have considered the request of the applicant keeping the aforesaid guidelines in view. As rightly pointed out by the applicant, the respondents have not at all considered various contentions raised by the applicant in his detailed representation and have only passed a nonspeaking order, without application of mind, by simply reproducing the observations made by this Tribunal.

8. As regards the remaining grounds, I am of the view that they are also worth consideration and respondents instead of transferring him to a distant place, if at all they are compelled to transfer him they should have posted him in any of the schools within Delhi keeping in view the health condition of the applicant as well as his wife and also education of his children.

9. The learned counsel for the applicant has relied upon the judgements of the Hon'ble Supreme Court in the cases of M.Sankaranarayanan, IAS Vs. State of Karnataka AIR 1993 SC 763 and Chief General Manager Vs. Rajendra Ch. Bhattacharjee AIR 1995 SC 813 and contended that in view of the legal position set out in the aforesaid judgements, no malafide can be attributed to the respondents in transferring the applicant from Delhi to Jhunjhunu.

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10. I am aware of the legal position that unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the court can not interfere with it (see Union of India Vs. S.L. Abbas, 1993(2) SLR 585 (SC)). In the instant case, despite this Tribunal's direction to adjust the applicant in Delhi itself when Shri Srivastava had unfortunately expired after he joined in place of the applicant, respondents have posted one Shri Gajraj Singh in a hurried manner and without any valid reason, which only goes to show the arbitrariness and malafide intention on their part. When the applicant has given a detailed representation explaining therein the medical treatment being taken by himself and his wife, he should have been considered for retention in the same school where he was working that too when the new incumbent Shri Srivastava had expired, but respondents have chosen to reject his appeal without assigning any reason.

11. In the case of Shri A.D.Dhande V. State of Maharashtra & Ors., (JT 1997(6) SC 229) the apex court held that "On facts that the transfer is nothing but malafide and arbitrary action at the behest of persons interested to victimise honest officers - A case to demoralise honest officer - Transfer order quashed". The present case is covered in all fours by the aforesaid case as it has been established that the transfer has been ordered in a arbitrary manner and with malafide intention to accommodate somebody at the cost of the applicant. In this view of the matter, the

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judgements relied upon by the respondents in para 9 above are distinguishable and will have no application to the present case.

12. For the reasons aforementioned, the present OA is allowed and the impugned transfer order dated 11.6.2001 in so far as it concerns the applicant is quashed and set aside. The rejection order dated 19.9.2001 is also quashed. The interim order passed on 4.10.2001 is made absolute. Respondents are directed to allow the applicant to join duty at KVS, Badarpur forthwith. They are further directed to release the salary of the applicant due to him, if not done already. This shall be done within a period of two months from the date of receipt of a copy of this order. No costs.

  
(M.P. Singh)  
Member(A)

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