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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2849 of 2001

and

Original Application No.2853/2001

New Delhi, this the 29th day of November, 2001

HON'BLE MR.V.K. MAJOTRA, MEMBER (A)
HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)

OA 2849/2001

1. Dr. Vivekanandini Jain
Yoga Teacher
Vishesh Kendriya Vidyalaya
Kamla Nehru Nagar,
Ghaziabad.
2. Vipin Kumar Anand
Yoga Teacher
Kendriya Vidyalaya
Gole Market, New Delhi.
3. Smt. Poonam Sehgal
Yoga Teacher
Kendriya Vidyalaya, Gole Market
New Delhi

...Applicants

Versus

The Commissioner,
Kendriya Vidyalaya
Sangathan, 18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi. ...Respondents

OA 2853/2001

Arun Kumar Vashisht
S/o Shri T.N. Sharma
House No.48, K.V. No.2, Delhi Cantt.
Delhi-110 010. ...Applicant

Versus

1. The Chairman, KVS
And the Hon'ble Minister of HRD,
Shastri Bhavan, New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi. ...Respondents

Shri Anil Srivastava, Counsel for the applicants in
OA 2849/2001

Sh.K.B.S. Rajan, Counsel for applicant in OA No.2853/2001

Shri S. Rajappa, Counsel for the respondents in both the
cases.

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O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

By this common judgment we shall decide two OAs, namely, OA No. 2849 and 2853 of 2001 as the applicants in both the OAs have assailed an order dated 20.9.2001 whereby the respondents had passed the impugned transfer order in respect of the applicants.

The facts in brief are that all the applicants are working as Yoga Teachers with the Kendriya Vidyalaya Sangathan (hereinafter referred to as KVS) in different schools.

These very applicants were transferred vide order dated 9.8.2000 from one school to another and the reason for transfer was that due to fixation of staff strength in Kendriya Vidyalayas for the year 2000-2001 and the staff in excess of the sanctioned strength in certain Vidyalayas was required to be redeployed against the other vacancies in the KVS and for the said purpose the applicants were also transferred. The applicants of present OA 2849/2001 had filed OA 1584/2000 which was disposed of vide order dated 15.5.2001 with the following directions:-

" In the result, the OA is allowed, the impugned order of transfer dated 9.8.2002 (Annexure A-1) is quashed and set aside qua the applicants. However, respondents would be at liberty to effect transfer orders of Yoga Teachers and other staff only after a regular decision of the BOGs taken on the report of the committee to be set up to study workload in KVs. etc. No costs.

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The OA filed by the applicant of OA 2853 of 2001 was registered as OA 1728/2000 and was dismissed on 29.5.2001. Thereafter both the parties filed a Writ Petition before the Hon'ble High Court. Various other petitioners had also approached the Hon'ble High Court. The Writ Petition filed before the Hon'ble High Court was registered as CWP 4092/2001 which was decided by the consent of both the counsel and following directions were given:-

" The Board of Governors of Kendriya Vidyalaya Sangathan, is directed to reconsider the Baldev Mahajan committee report regarding freezing of Selections of the Sangathan in the light of Parliamentary Proceedings and HRD Minister's statement on the subject matter and to pass appropriate orders within four weeks thereon. In the even Committee's Report is accepted, yoga teachers shall be retained within Delhi region and posted suitably against available vacancies. These teachers shall in the meanwhile remain suitable attached to await their posting orders depending upon the decision to be taken by the Board.

It is ordered that Commissioner Kendriya Vidyalaya shall take steps to release 50% of salary of these teachers for the disputed period from 9.8.2000 to 31.7.2001. Their remaining claim for salary; for this period and the treatment of the same shall be considered and examined by him in the totality of circumstances and orders passed in this regard after the Board takes a decision in the matter as directed. In case Board's decision goes against the teachers they be allowed to stay in Delhi region for 2 weeks to enable them to taken any appropriate remedy, if they are so advised. Any proceedings before CAT shall remain in abeyance and await the outcome of Board decision".

The Writ Petition filed by the applicant of OA 2853/2001 was held to have become infructuous in view of the orders passed in the above Writ Petition.

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In compliance of the directions given by the Hon'ble High Court in CWP 4092/2001, the Board of Governors of KVS reconsidered the Mahajan Committee report regarding freezing of sections in KVS and took a decision that since the recommendations of the Mahajan committee can be implemented only if the KVS has a flexible salary budget and it has been made clear that as this condition cannot be met, so the Board of Governors decided to reject the recommendations made by the Mahajan Committee and took a decision that the earlier decision on this subject with regard to strength of teachers as taken by the Academic Advisory Committee and confirmed by the Board of Governors that the same may continue unchanged. This was so done when the Boards of Governors met on 7.9.2001 and since the Board of Governors had rejected the Mahajan Committee report, so the KVS issued the impugned transfer orders. It is these transfer orders which have been challenged by the applicants in the present OAs.

The OAs are being contested by the respondents. The respondents pleaded that since the fixation of staff strength for teaching and non-teaching has been done on the basis of Academic Advisory Committee reports which has been confirmed by the Board of Governors so the applicants cannot challenge the same as such the OAs be dismissed.

We have heard the learned counsel for the parties and gone through the record.

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Shri Anil Srivastava appearing for the applicants submitted that the impugned order of transfer has been passed on the recommendations of the the Board of Governors but the Minutes of the Board of Governors were required to have approval from Government of India. In support of his contention, the counsel for the applicant referred to the proceedings of the Rajya Sabha where the Hon'ble Minister of Human Resource Development made a statement that the Board of Governors of KVS had agreed with the recommendations and had decided to recommended to the Government to keep the salary budget of KVS flexible so that the Commissioner may be in a position to sanction new posts whenever required. He has also made a statement in answer to the question that the Board of Governors will also require approval of Other Ministries and these recommendations have not yet been received by them.

The counsel for the applicants also submitted that the decision of the Board of Governors had not been put up before the Government of India nor the approval of the Government of India has been sought by the KVS nor it has been agreed by the Government so the decision which required the approval of the Government of India could not have been implemented without obtaining the approval of the Government of the India. The counsel for the applicant relied heavily upon the statement made by the Hon'ble Minister at the floor of the Rajya Sabha. The counsel for the applicant then also referred to an order passed in this very case on 30.10.2001 where it has been observed and has been stated that as per the corum of BOG which included the Minister of Human Resources

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Development, Minister of State for Education so this has to be treated as Government approval to the BOG and the proceedings are valid. Coming heavily on this submission made by the respondents before this very court on 30.10.2001, the learned counsel for the applicant submitted that though there was Corum of Board of Governors comprised of, Minister of HRD as Chairman of the KVS and Minister of State for Education but that does not mean that this Corum of the BOG could elevate itself to the status of the Government of India and a deemed approval as submitted by the respondents could be treated to have been accorded by the Government of India unless the proposal was, in fact, sent to the Government of India and actual approval was received.

The counsel for the applicant further submitted that once having stated at the floor of Rajya Sabha the KVS could not have passed the orders of transfer. The counsel for the applicant further submitted that the Minutes of the Board of Governors which could have taken effect only after the approval by the Government of India.

Shri K.B.S. Rajan appearing for the applicant in OA 2583/2001 besides adopting the arguments of the counsel for the applicant in OA 2849/2001 also submitted that when the posts of Yoga Teachers were advertised in the Employment News dated 17.1.1981, it was clearly mentioned therein that the candidates selected for the post of Yoga Teacher will be posted in the region from which they apply. They shall not ordinarily be transferred out of region except on request and no

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request for outside posting will be entertained within 3 years of their appointments. Thus Shri Rajan submitted that it was in the terms and conditions that ordinarily all the Yoga Teachers would be kept in the region from which they apply and now the respondents are contemplating to transfer the applicants outside the region and even are not prepared to give them transfer of the choice which is in the violation of the terms and conditions as advertised in the Employment News, so on that score also the transfer order is liable to be quashed.

In reply to this, Shri Rajappa submitted that as regards the Minutes of the Board of Governors are concerned, the same does not require the approval of the Government of India and only if the decision of the Board of Governors involve some financial implication, then the approval of the Government of India is required. Since the report of the Mahajan Committee had recommended restructuring and to implement the Mahajan Committee's report, the Sangathan required a flexible budget which the Government was not likely to approve, so for those constraints the Board of Governors did not accept Mahajan Committee's report and continued to follow the Academic Advisory Committees report confirmed by the Board of Governors given earlier which remain unchanged.

The counsel for the respondents also stated it is correct that the Hon'ble Minister has stated that the KVS has agreed with the recommendations and has to get the salary budget of the KVS flexible so that the Commissioner of the KVS may be in a position to sanction

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news posts whenever required but since the Board of Governors found it difficult to get approval from the Government of India with regard to the getting of the salary budget of the KVS flexible so for that constraint the Board of Governors had to reject the Mahajan Committee's reports and decided to continue fixing of strength as per the earlier Advisory Committee's report and decided to keep it unchanged.

The counsel for the respondents also submitted that the KVS is a Society registered under the Societies Registration Act, 1860 and any Society Registered under the Societies Registration Act, 1860 has to function as per Memorandum adopted by the Society. According to the Memorandum of Association it is the Board of Governors who is to carry out all the objects of the Sangathan and it is the Board of Governors who have all the powers to frame regulations for the administration and management of the affairs of the Sangathan and it is only as per Clause 4 and 5 of the Memorandum of Association the Government of India can review the progress of the Sangathan and can issue directions to the Sangathan for furtherance of the objects of the Sangathan and to ensure its proper and effective functioning and thus KVS is bound to comply with those directions. The counsel for the respondents then submitted that as per the Memorandum of Association and the rules framed thereunder the Board of Governors is competent with regard to the fixing of strength of teachers in the KVS. The approval of the Government is required only if there is budgetary problems and it is in that context the Hon'ble Minister had made a statement before the Rajya Sabha that since

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for the purpose of implementation of Mahajan Committee report KVS required a flexible budget so the Government approval was necessary.

In our view also the fact that KVS is a Society registered under the Societies Registration Act, 1860 is not disputed and it is a well established law that the Society is to conduct its business in accordance with the Memorandum of Association adopted by the Society and Rules framed thereunder. Since as per the Memorandum of Association the Board of Governors is itself competent enough to fix the strength of the teachers of KVS and if it does not involve any fiscal problem, then the approval of the Government of India is not required. The Minutes of the meeting of the Board of Governors placed on record by the applicant as per the Annexure 5 itself show that the recommendations of the Mahajan Committee was rejected solely on the ground that the recommendations could be implemented only if the KVS has a flexible salary budget and it has been made clear that as this condition cannot be met so the Board of Governors decided to drop the recommendations made by the Mahajan Committee. It further decided that the decision taken on the subject by the Academic Advisory Committee on 16.3.99 has to be followed which was confirmed by the Board of Governors on 19.3.99 and decided that the same system may continue unchanged. Since the Mahajan Committee's report was itself rejected by the Board of Governors, so there was no question for obtaining approval of the Government of India as the Board of Governors had decided not to implement the Mahajan Committee Report. Thus we are of the considered view that this contention of the counsel

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for the applicants that the transfer order has been passed without obtaining the approval of the Central Government has no merits and the same is liable to be rejected.

Coming next to the contention raised by Shri K.B.S. Rajan with regard to the terms and conditions of the appointment as advertised in the Employment News the advertisement inserted in the Employment News contained the following terms for transfer:-

" Teachers of Kendriya Vidyalayas are transferable throughout India and only those candidates who are prepared to serve anywhere in India need apply. Candidates selected for the post of Yoga Teacher will be posted as far as possible in the region from which they apply. They will not ordinarily be transferred outside the region except on request. No request for transfer outside the state of initial posting will, however, be entertained within 3 years of their appointments".

A perusal of this would show that the respondents in their advertisement had made clear that the teachers of KVS are transferable throughout India and only those candidates who are prepared to serve anywhere in India need apply. Thus there was no doubt left in the advertisement itself that the teachers have an all India transfer liability. This insertion also says that the candidates selected for the post of Yoga Teacher will be posted as far as possible in the region from which they apply and they will not ordinarily transferred outside the region except on request. Use of the words "as far as possible" and "ordinarily" would go to show that the KVS would try to keep the teachers in the region from which they apply and shall not be ordinarily transferred outside the region except on request. These insertions

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go well if the circumstances and conditions remain the same. The advertisement and the appointment process was started sometime in January, 1981 and today we are in the year 2001. 20 years have passed. The conditions have not remained the same. The studies conducted by the KVS had come to the conclusion that there is a surplus staff in the category of Yoga Teachers and in order to adjust those teachers, the transfers have been made. So neither the term 'ordinarily' nor the term 'as far as possible' to retain the teacher in the region can come to the help of the applicants because the conditions have undergone a great change and the requirement of the teachers has been reduced in a particular region and the teachers are required in other regions, so in these circumstances the transfer orders have been passed, hence we find that the respondents are within their rights to transfer the applicants to the places where the vacancies are available.

It is also a well settled law that the transfer orders can be challenged if they are in violation of any statutory rules or the same have been passed with some mala fide intention. The applicants are unable to show that these transfer orders have been passed in violation of the statutory rules or there was any mala fide reason behind the transfer of the applicants, so we find that there is no ground to quash the transfer orders which have been issued only to adjust the surplus teachers.

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The OAs are completely devoid of merits and the same are liable to be dismissed. Accordingly the same are dismissed. No costs.

Let a copy of this order be placed In OA Nos. 2849 and 2853 of 2001.

Kuldeep Singh
(Kuldeep Singh)
Member (J)
27.11.2001.

V.K. Majotra
(V.K. Majotra)
Member (A)

Rakesh

Affected

Brijwari

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