

Central Administrative Tribunal, Principal Bench

O.A. No. 2058 of 1999

New Delhi, this the 6th day of December, 1999

Hon'ble Shri Kuldip Singh, Member (J)

Shri Ashok Kumar Sharma S/o Late Shri S.L. Sharma  
R/o 11/3 New APS Colony, Delhi Cantonment  
Delhi-110 010. .. Applicant  
New Delhi.

By Advocate Shri Sekhar and Associates.

Versus

1. Union of India through Additional Secretary,  
Department of Education,  
Ministry of Human Resource Education also holding  
the additional post of Vice-Chairman,  
Kendriya Vidyalaya Sangathan,  
Shastri Bhawan,  
New Delhi-110 001.

2. Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-110 016.

3. Deputy Commissioner (Admn.),  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-110 016.

4. The Principal,  
Kendriya Vidyalaya  
I.N.A. Colony,  
New Delhi-110 023. .. Respondents

By Advocate: Shri S. Rajappa.

ORDER

Shri Ashok Kumar Sharma, the applicant in this case has filed this OA against an order dated 13.9.99 whereby his representation dated 29.7.99 filed against the transfer order issued against him has been rejected. This is the third OA challenging the order of transfer dated 12.7.99 vide which he has been transferred from New Delhi to Silchur.

2. The facts in brief are that the applicant is a Post

(9)

Graduate in Physical Education and is working with Kendriya Vidyalaya. The Kendriya Vidyalaya vide an order dated 12.7.99 transferred the applicant to Silchur. The applicant challenged the same and the matter was heard by a co-ordinate Bench of this Tribunal and vide order dated 20.7.99, the OA was dismissed at the admission stage itself. Aggrieved from the said order, the applicant filed a petition before the Hon'ble High Court of Delhi vide CW 4407/99. However, before the Hon'ble High Court of Delhi, the petitioner made a statement that since certain vacancies had arisen in Delhi region itself so he would like to approach by way of representation to the management directly, therefore, he may be permitted to withdraw this petition. The request was allowed.

3. Thereafter, he stated to have made a representation to the Commissioner of Kendriya Vidyalaya at Delhi for keeping the transfer order in abeyance but his representation has been rejected. So now the applicant has filed a fresh OA against the rejection of his representation. While challenging the rejection of his representation, the applicant has also challenged along with it the original transfer order dated 12.7.99.

4. In the grounds for challenging the transfer order he has taken the grounds of mala fide and also stated that his representation has not been decided by a competent authority and further he has stated that the transfer order is not in public interest but it has been issued only at the behest of the Principal, Kendriya Vidyalaya, I.N.A. since he had made

kr

(10)

certain complaints against the Principal about irregularities in projects.

5. The application is being contested. The respondents in their counter have stated that the applicant has been transferred in view of the administrative exigencies and in public interest and no mala fide is stated to have been proved. Besides that, respondents have taken an objection that since the applicant has earlier challenged the transfer order and his OA had been dismissed, so he cannot take up the same grounds and in this case he should confine only to the rejection of his representation. The respondents' counsel also stated that the application is otherwise barred and should not be entertained.

6. I have heard the learned counsel for the parties and have gone through the records.

7. From a perusal of the order passed by the co-ordinate Bench of this Tribunal in OA No. 1601/99 filed by the applicant, I find that the applicant therein had taken three grounds. Firstly that the transfer order did not indicate the administrative exigencies for the transfer of the applicant from Delhi to Silchur, secondly that the order is vague inasmuch as there had been no indication of the school to which he was posted and thirdly it stated that in the background of the applicant's complaint against the Principal and the fact that the Principal relieved him the very moment he received the transfer order, indicate that the transfer order is the result of the mala fide and ill will of the Principal. All these

kr

(11)

three grounds taken had been considered and rejected vide order dated 20.7.99 passed by this Tribunal and the OA was dismissed.

8. When a petition against this order was filed before the Hon'ble High Court of Delhi, the petitioner had withdrawn his petition by making a statement that since 8 vacancies had arisen in Delhi region itself, he would like to approach by way of a representation to the Management directly, so he may be permitted to withdraw this petition and request was allowed. Thus, to my mind, the applicant before the Hon'ble High Court had abandoned his challenge to the orders passed by this Tribunal as well as his challenge to the transfer order. He simply wanted to make a representation to the authorities so that he may be adjusted in one of the 8 vacancies which had arisen in Delhi region itself. Accordingly, he had made a representation wherein he had prayed that as there are 8 vacancies of PET's in Delhi region, he may be posted near Delhi. In his representation there was a prayer that he may be posted somewhere near Delhi such as Noida, Hinton No.1, Palwal, Muradnagar, Panipat etc. perhaps he was not satisfied with the orders of transfer.

9. Now in the background of this development it is to be seen whether the transfer order can be challenged in this petition; whether the same is vitiated or tainted one because of mala fides against the applicant or it is in accordance with the guidelines of transfer policy which is followed by the respondents. To my mind, in this OA, the applicant should have

kr

(12)

confined himself only to the point that he should be adjusted in one of the 8 vacancies which are available in the Delhi region itself. But instead, he has adopted a course to challenge the transfer order again, which to my mind he cannot challenge. Assuming for the sake of arguments that he may be permitted to challenge the order being tainted with mala fides against him, I find that his main plank is that a case has been registered against him at the behest of the Principal and Principal is acting against him so that is why he is being transferred. This contention of the applicant has no merit because a criminal case had been registered on 12.7.99 and the transfer order is also of 12.7.99 itself. So this case could not have been a ground for transfer of the applicant since on the same day of registration of case at the behest of the Principal, the file at the regional office could not have moved for his transfer. So this ground is devoid of any merits.

10. As far as his other grounds are concerned, the same had been dealt with by the earlier order of this Tribunal and I find no reasons to differ with the same.

11. The applicant has also relied upon a judgment of this Tribunal issued in Aditya Gaur Vs. U.O.I. & Others. I find that the facts of that case were totally different as the transfer order in that case was issued because of the applicant's involvement in molestation of a girl student for which an enquiry was held and he had appeared in that as a witness and there was some reflection in the background of that transfer order was made which could be said to be punitive.

h

(13)

But in this case, nothing was alleged in the earlier OA nor any facts have been alleged in this case which may prove any mala fide on the part of the respondents. Hence, I find that the judgment relied upon by the learned counsel for the applicant is not applicable to the present case.

12. In view of the above discussion, I find no merit in the OA and the same is dismissed. No costs.

Kul  
(Kuldeep Singh)  
Member (J)

Rakesh

A.