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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2449/99

New Delhi this the 31st day of January, 2001.

Hon'ble Dr. A. Vedavalli, Member(J)

Sh. D.K. Gupta,
S/o Sh. Dharam Pal Gupta,
R/o P-5/1, Residential Complex,
K.V. No.3,
Delhi Cantt.-10.

.... Applicant

(through Sh. M.L. Chawla, Advocate)

Versus

1. Union of India through
Addl. Secretary-cum-Vice-
Chairman, Kendriya Vidyalaya
Sangathan, Deptt. of Education,
Ministry of HRD, Shastri Bhawan,
New Delhi.

2. Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-16.

3. Dy. Commissioner (Admn.),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-16.

4. Mrs. Rama Sharma,
Principal,
Kendriya Vidyalaya No.3,
Ring Road, Naraina,
Delhi Cantt-10.

.... Respondents

(through Sh. S. Rajappa, Advocate)

O R D E R

Hon'ble Dr. A. Vedavalli, Member(J)

Applicant, D.K. Gupta, a Trained Graduate Teacher (Maths) is aggrieved by his transfer from Kendriya Vidyalaya (KV for short) No.3, Delhi Cantt to KV NERIST Itanagar (Arunachal Pradesh). He has impugned

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in this O.A. the concerned transfer order dated 21.09.99 (Annexure A-1) and the relieving order dated 27.09.99 (Annexure A-2). He seeks mainly the quashing and setting aside of the said impugned orders and a direction to the respondents to permit him to resume duties at Delhi/New Delhi.

2. Heard the learned counsel for both parties. Pleadings and the material papers and documents placed on record and also the relevant original records (File No. 33/9/99-KVS(E-III)) have been perused.

3. Applicant has challenged the impugned orders on three main grounds, namely, (i) malice and mala fides on the part of Principal of the School (Respondent No.4); (ii) illegality; and (iii) ignoring of compassionate grounds.

4. Re the first ground, applicant submitted that Respondent No.4 has issued several memos and advisory notes which are annexed with the O.A. against him. He contended that the said action on the part of Respondent No.4 shows clearly that she is personally prejudiced against him and hence the impugned orders deserve to be quashed as they are vitiated by malice and mala fides.

5. Respondents No. 2 & 3 in their reply have denied the above allegations. They have submitted that the issuance of advisory notes and memos against the applicant by Respondent No.4 by no stretch of

imagination can be termed as mala fide or illegal and that since the applicant failed to take corrective steps the respondents had to take resort to clause 6(i) of the Amended Transfer Guidelines (Annexure R-1).

6. Respondent No.4 in her counter-affidavit has adopted the reply of Respondents No. 2 & 3 on merits. She has denied all the allegations of mala fides and prejudice against her made by the applicant. She also submitted that the action taken by her against the applicant is only in the interest of the institution as she has a duty to maintain discipline and ensure smooth running of the school. She further stated that the applicant applied for transfer advance of Rs. 44,700/- stating that he is shifting his family to Itanagar. He was granted a sum of Rs. 38,000/- which was received by him on 28.09.99 but he has neither joined the KV Itanagar nor has shifted his family.

7. Re the second ground, the applicant submitted that though the job which he is holding has an All India transfer liability, the impugned action taken by the respondents is in violation of their own transfer policy. He stated that earlier he was working at KV, Vidyut Nagar, Ghaziabad from 08.10.92 to 23.10.98 and at his own request for transfer on the ground of his wife's illness he was posted to KV Delhi Cantt. While so, respondents have transferred him to NERIST Itanagar by the impugned order dated 21.09.99 (Annexure A-1) within a few months of his transfer from Ghaziabad in the guise of public interest. He contended that this action of the respondents is illegal and violative of the transfer

policy. It is also a colourable exercise of power. He has also stated that the circumstances under which he was transferred from Ghaziabad to Delhi Cantt were totally disregarded by the respondents and if he was guilty of any misconduct a departmental enquiry should have been conducted, hence the order is violative of the principles of natural justice also.

8. In reply, the respondents have stated that the applicant was transferred by the impugned order in public interest on administrative grounds as per Clause 6(i) of the Amended Transfer Guidelines (Annexure R-1) on the recommendations of the Chairman of the Executive Committee of KVS No.3 and also of Respondent No.4 and that there is no illegality or colourable exercise of power by the respondents in issuing the impugned orders. They have submitted that the applicant was transferred from KV Surda, Ghatishela to KV, Ghaziabad at his own request. It was also submitted that the applicant is known for using intemperate and abusive language in school against the superior officers etc. He also used foul language against the Head of the Institution which is unbecoming of a teacher. Respondents have given certain instances and incidents regarding the applicant's conduct and behaviour in their reply. It was also contended by the respondents that they have no knowledge about the illness or treatment of the applicant's wife. Respondents have denied that the order of transfer is punitive in nature. It was submitted that there is no rule against transfer of a teacher even within a period of less than one year's service at any place to some other place and that the

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applicant has an All India Transfer liability as per the terms and conditions of his appointment.

9. Re the third ground, the applicant submitted that his wife is mentally disturbed being a patient of Psychosis and is under going treatment at New Delhi and is showing some improvement. His transfer at this juncture would effect her adversely and the respondents have ignored this aspect totally in transferring him to Itanagar. He submitted that on compassionate grounds also he should not have been transferred.

10. In reply to the above ground, the respondents have reiterated their submission that they were not aware of the ailing condition of applicant's wife.

11. I have given my careful consideration to this matter.

12. It is seen from the first impugned order dated 21.09.99 (Annexure A-1) that the applicant was transferred from KVS No.3 Delhi Cantt. to KV NERIST Itanagar in public interest. He was relieved of his duty w.e.f. 27.09.99 (AN) and was directed to report to the Principal of the School at Itanagar (Guwahati Region) immediately by the second impugned order dated 27.09.99 (Annexure A-2). He submitted a representation dated 03.10.99 (Annexure A-21) against the said transfer to the respondents. Respondents have stated in their counter that it is still pending with them. However, respondents in their additional affidavit filed on 08.08.2000 have stated that the said representation has since been disposed of by an office order dated 07.08.2000 (Annexure-A to addl. affidavit) whereby the

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applicant was informed that his representation cannot be acceded to and was directed to report to the Principal of the KV School NERIST, Nirjuli to which he was transferred.

13. Re the first ground raised by the applicant, namely, malice and mala fides on the part of Principal of KVS at Delhi Cantt. (Respondent No.4), it is noticed that the various memoranda; and advisory notes etc. (Annexures A-5, A-7, A-9, A-11, A-13 & A-17) have been issued by the said respondent against the applicant for specific acts and incidents etc. mentioned therein. The said memoranda etc. have not been impugned in the present OA. Even otherwise, the aforesaid advisory notes and memoranda etc. by themselves do not strictly prove any malice or mala fides on the part of Respondent No.4. However, in view of the specific allegation made by the applicant regarding mala fides and malice against the respondents, they were called upon to produce the relevant records in this connection. The original records produced by them have been perused.

14. It is seen that Respondent No. 4 in her letter dated 07.08.99 (F.33/9/99-KVS(E-III)) to the Chairman, VMC, KV No.3, Delhi Cantt., inter alia, stated that the applicant "does not observe the decorum of this

office and disturbs the smooth functioning of the Vidyalaya by his absurd and arrogant behaviour. He has insulted the undersigned by using unparliamentary and abusive language many times." She has also referred to the incident which took place during the visit of OSD (Def.) on 06.08.99 and stated that" the applicant

behaved in a very absurd and arrogant manner which is unbecoming of a KV employee" and requested the Chairman to recommend his transfer from the Vidyalaya as the "presence of Mr. Gupta T.G.T.(Maths) is adversely affecting the behaviour of other staff members and is spoiling the atmosphere of the institution."

15. The Chairman of the Executive Committee of KV No.3, Delhi Cantt. has given the following recommendations in his note dated 26.08.99:-

"1. Investigations have revealed that Mr. DK Gupta has been harrassing the Principal to the extent that she is not able to perform her duties as Principal effectively. He has also been setting a bad example for other teachers and staff by his arrogant behaviour.

2. I endorse the views of the Principal and strongly recommend that Mr DK Gupta be transferred to some other station, so that the Principal is relieved of her tension and the school atmosphere is more congenial."

16. It is seen from the notings on the aforesaid file (Page-3) that on the above recommendations of both the Principal (Respondent No.4) and the Chairman, Kendriya Vidyalaya No.3 Executive/Management Committee, the applicant was transferred by the impugned order to NERIST Itanagar after obtaining the approval of the Commissioner on 16.09.99. If the conduct of the applicant was considered to be unbecoming of a KV employee, disciplinary action could have been taken as per the procedure prescribed under the relevant rules of Conduct

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and Disciplinary Rules. Penalty could have been imposed if after due enquiry he was found guilty of any specific charge or charges against him. Instead, the respondents have resorted to transfer as a punishment without even giving an opportunity to the applicant to defend himself against the allegations against him merely on the complaint of the Principal of the School where he was working. (Respondent No.4), inter alia, for some of the actions on his part during the visit of OSD (Defence) for which a warning has already been issued to him (Annexure A-11). As noted supra, several ^{other} memos and advisory notes of displeasure have already been issued to the applicant by Respondent No.4. The note of the Chairman (VMC) supra also does not disclose details about the "investigations" conducted by him or by others under his direction. If any enquiry has been held regarding the allegations against the applicant he should have been given an opportunity to defend himself as per the rules as well as the basic principles of natural justice.

17. It is quite apparent from the above that the foundation for the transfer is the complaint made by Respondent No.4 which is motivated by her personal prejudice and views about the conduct and behaviour of the applicant even after action was taken by her by issuing memos/notes of displeasure/advisory notes etc. if there had been any other act on the part of the applicant which is considered to be an act of misconduct or misbehaviour nothing prevented her from taking necessary action to initiate disciplinary proceedings against him in accordance with law.



18. It is also noted that the transfer of applicant from Ghaziabad to Delhi Cantt was on his own request. Presumably the said request was acceded to by the respondents after considering the same on merits. While so, the applicant was transferred to a distant place within a period of less than one year. The plea of the respondents that they were not aware of the health condition of applicant's wife is, therefore, not capable of being accepted. Even otherwise, the representation filed by the applicant against his transfer on the ground of his wife's health and personal problems was disposed of by the respondents only after the O.A. was filed with certain documents showing the medical problem from which the applicant's wife is suffering and the treatment being given for the same. Respondents cannot, therefore, say that they were not aware of the health condition of applicant's wife. It is clear that the compassionate grounds urged by the applicant have not been considered and in fact were totally ignored by the respondents while rejecting his representation. Provisions of Clause 8(b)(iii) of the Amended Rules.....(Annexure R-1) relating to "serious illness of teacher himself or his spouse" have not been considered by the respondents also. Moreover, Rule 6(i) of the Amended Guidelines of Transfer (Annexure R-1) which has been invoked by the respondents for transferring applicant does not justify the said action since the recommendations of the Principal (Respondent No.4) and the Chairman VMC cannot be considered as valid and tenable recommendations as is evident from the foregoing discussion.

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19. In the facts and circumstances of this case and in view of the foregoing discussion, I am of the considered opinion that the impugned transfer order dated 21.09.99 (Annexure A-1) and the relieving order dated 27.09.99 (Annexure A-2) are punitive in nature and are vitiated by mala fides and illegalities for the reasons given supra and cannot therefore be sustained under the law. The aforesaid orders are, therefore, quashed and set aside. Respondents are directed to pass appropriate orders retaining the applicant in school in which he was working if no incumbent has since been posted in his place or in any other KV School in Delhi or New Delhi within a period of one month from the date of receipt of a copy of this order.

20. The O.A. is disposed of as above. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)

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