

17

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 2736/99

New Delhi this the 26th day of June 2000

HON'BLE DR. A. VEDAVALLAI, MEMBER (J)

Dal Chand,
Son of Shri Dauji Ram,
Kendriya Vidyalaya A.P.S.,
Tughlakabad, New Delhi.

Applicant

(By Advocate: Ms. Rita Kumar)

Vs.

1. Commissioner,
Kendriya Vidyalaya Sangathan,
18, Shaheed Jeet Singh Marg,
New Mehrauli Road,
New Delhi.
2. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
J.N.U. Campus, New Mehrauli Road,
New Delhi.

Respondents

(By Advocate: Shri S. Rajappa)

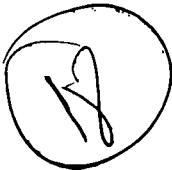
O R D E R

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

The applicant, Dal Chand, a Group 'D' employee (Chowkidar) working in Kendriya Vidyalaya Air Force Station, Tughlakabad, New Delhi is aggrieved by his transfer to Babugarh by an order dated 19.11.1999 passed by the Respondents and has challenged the said order in this O.A.

2. A copy of the impugned order was not filed by the applicant along with the O.A. He filed an affidavit subsequently in the Court on 17.12.1999 stating that he had come to know that the said order had already been prepared and enclosed a copy of his relieving order dated 1.12.1999. However, a copy of the impugned order dated 19.11.1999 had been filed by the Respondents along with their counter (Annexure R-5).

17



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3. Heard the learned counsel for both the parties. Pleadings and material papers and documents placed on record have been perused. Matter is being disposed of at the admission stage itself at the request of the learned counsel for both the partis.

4. The applicant has sought the following reliefs in this OA .

(i) to set aside the transfer order of the applicant in the interest of justice.

(ii) to partially modify the transfer order of the petitioner from Delhi to Delhi, so that he can look after his family.

5. The applicant admittedly had been working in the same school for the last seven years. He has challenged the impugned order allegiling that the same has been issued in an arbitrary, malafide and illegal manner by the respondents with the sole motive to prevent him from pursuing ^{another} OA No. 1680/99 filed by him before this Tribunal regarding his duty hours and holidays etc. He has also stated that he is juniormost employee\$ and should not have been transferred when his seniors are still working and his transfer out of Delhi will disturb his family life.

6. Learned Counsel for the applicant, Ms. Rita Kumar contended that the Babugarh to which the applicant was transferred is not in "Delhi Region" and a Group 'D' employee cannot be transferred to a place outside his region



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7. Learned Counsel for the Respondents, Mr. S. Rajappa in reply vehemently opposed the above contentions raised by the Learned Counsel for the applicant. He submitted that (KVS) the employees of the Kendriya Vidyalaya Sangathan are liable to be transferred anywhere in India as per Para 49 (k) of the Kendriya Vidyalaya Sangathan the Education Code and the applicant is aware of this position as it was clearly indicated in the offer of appointment dated 26.1.1992 (Annexure R-1 colly). He further submitted that even otherwise Bahadurgarh is very much within "Delhi Region" as per the list of all the Regions under KVS filed as an additional document (Sl. No. 4 under Delhi Region). He has also contented that the allegations of malafide, arbitrariness and illegality made by the applicant are baseless and are not supported by any material or proof and that the transfer order is a valid and legal one passed in public interest.

8. It was submitted by the Learned Counsel that the transfer order could not be served on the applicant as he refused to accept the said order when it was given to him on 30.11.1999 in the morning and sent an application for casual leave and later absented himself. Subsequently, he sent a medical certificate by post. Relieving order, therefore, was not issued in absentia. The transfer order as well as the relieving order were sent to the applicant by speed post on 1.12.1999 which was duly received by him on 3.12.1999 as per

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the postal endorsement at Annexure R-4 i.e., much before he filed the present OA on 16.12.1999. He prayed that the OA is, therefore, devoid of any merit and deserves to be dismissed with costs.

9. I have considered the matter carefully.

10. The impugned Order dated 19.11.1999 (Annexure R-5), it is seen has been issued by the Respondents in public interest. The applicant is not the only person who has been transferred. Three other Group 'D' employees have also been transferred along with him to various places mentioned therein. He has not been able to establish with supporting material his plea that a Group 'D' employee cannot be transferred from the place where he has been initially appointed. Moreover, he has been transferred to "Babugarh" which is within "Delhi Region" and he has not been able to show that the concerned list of all the Regions under Kendriya Vidyalaya Sangathan produced by the Respondents is not correct. The applicant has not produced any strict proof as to the malafides on the part of the Respondents in transferring him after seven years of his service in the same school in public interest. The applicant in his rejoinder has only denied the relevant averments made in the counter by the Respondents in a routine and casual manner and no details are given. His contention was that he has not received the transfer order is also not acceptable since he himself has filed a copy of his relieving order along with his affidavit dated

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93

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17.12.1999 and as per the averments of the Respondents, the transfer order also was enclosed with the relieving order and both were sent by speed post on 1.12.1999 and were delivered to him on 3.12.1999 i.e. before the filing of the OA as noted ~~in~~ (Supra). Even if he has not actually received the transfer order along with the relieving order, ~~in~~ nothing prevented him from making a request to the Respondents to supply to him a copy of the same and thereafter submit a representation to the concerned authorities instead of rushing to the court in haste in this manner. It is quite clear that the applicant has been evading service of the impugned order on him.

11. It is well settled as per the law laid down by the Supreme Court in a catena of cases including the decision in Union of India and Ors. Vs. S.L. Abbas 1993 (4) SCC 357 that an order of transfer is an incident of Government service and it can be interfered with by a Court only if it is vitiated by malafides or violation of any statutory provisions or on any other valid and legal and sustainable ground and not otherwise.

12. In the facts and circumstances of the case and in the light of the foregoing discussion, I am of the view that the applicant has not been able to establish with supporting material that the impugned order is vitiated by any malafides, violation of statutory provisions or any other legally sustainable ground.

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13. In the circumstances, I find that the impugned order of transfer is devoid of any merit and does not warrant any interference by this Tribunal. The O.A. is therefore dismissed. Stay Order earlier granted stands vacated. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
MEMBER (J)

Mittal