

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

✓ O.A. No. 454 of 1999 decided on 1.7.99

Name of Applicant . Shri K.P. Dubey

By Advocate . Shri Sudhir Kulshreshtha

Versus

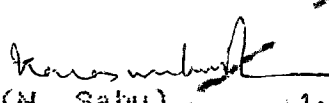
Name of respondents: Shri V.K. Gupta, AC, KVS and others

By Advocate . Shri S. Rajappa

Coram.

Hon'ble Mr. N. Sahu, Member (Adminy)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. - No


(N. Sahu)
Member (Adminy)

17/7/99

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.454 of 1999

New Delhi, this the 1st day of July, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Shri K.P.Dubey, TGT (Maths), K.V.Jayant Colliery, Sidhi Dist. (M.P.) presently C/o Shri P.K.Mishra, C-1/54, Railway Colony, Chhoti More Sarai, Delhi

- APPLICANT

(By Advocate Shri Sudhir Kulshreshtha through proxy counsel Shri Vishal Arun)

Versus

1. Shri V.K.Gupta, Assistant Commissioner (Admn), Kendriya Vidhyalaya Sangathan (Hqrs), 18, Institutional Area, Sahidjeet Singh Marg, New Delhi-110016

2. Smt. Indra Singh, PGT (Hindi), Officiating Principal, Kendriya Vidhyalaya, Central Workshop, Jayant Colliery, Sidhi District (M.P.).

3. The Commissioner, Kendriya Vidhyalaya Sangatan (Hqrs.), 18, Institutional Area Sahidjeet Singh Marg, New Delhi - 110 016

- RESPONDENTS

(By Advocate Shri S. Rajappa)

O R D E R

By Mr. N.Sahu, Member(Admnv)

In this Original Application the applicant impugns the transfer order dated 18.1.1999 passed by respondent no.1 transferring the applicant from Kendriya Vidyalaya, Jayant Colliery (in short "KVJC"), Sidhi (Madhya Pradesh) to Kendriya Vidyalaya, Carnicobar (in short "KVC") in Andaman on the ground that the order is malafide and not in public interest. He states that he was transferred from Imphal to Sidhi on 30.7.1998. The applicant joined at Sidhi on 17.8.1998 and within less than six months, he was transferred to a very distant place. He also mentioned that before relieving order was

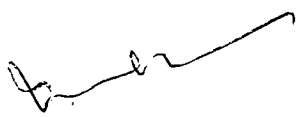
issued he was entitled to transfer allowance as well as salary for the months of December, 1998 and January, 1999 as well as an advance pay for two months. He stated that he filed representations by his letters dated 2.2.1999, 11.2.1999 and 22.2.1999. These representations remained unanswered and hence he filed the OA on 25.2.1999. He prayed in the representations for quashing the impugned order of transfer dated 18.1.1999 and pointed out that he was transferred to the remotest and hardest station. He mentioned that he has to look after his old mother 70 years of age and old father 75 years of age at his native place in Ghazipur District, UP. The applicant in particular refers to the background of his service. He was working in the North East Region. He challenged removal order from service in CWP No. 1595/91 before the Delhi High Court, while he was posted as TGT (Maths) in Kendriya Vidyalaya, Chura Chandpur, Manipur. The removal order dated 13.3.1997 was set aside. I would respectfully extract two paragraphs of the High Court's order dated 13.3.1997 from page 9 of the OA as follows -

"During the period when the petitioner was placed under suspension, he was transferred at the instance of respondents 4 & 5 from one place to another. These transfers were made primarily to harass and humiliate the petitioner and his family members. Such frequent transfers of a teacher, ordinarily cannot be construed as a part of administrative exigencies and in public interest. Such transfers which are made primarily to harass an individual ultimately prove disastrous for the students and institutions because their teaching and instructions are frequently interrupted and the institution's prestige and reputation are tarnished.

That is a classic case where because of personal bias and prejudices, not only the petitioner and his family suffered, but also thousands of students and the institution had also suffered. If we properly comprehend the charge and the punishment imposed, it becomes abundantly clear that even if charge as framed and levelled against the petitioner is accepted in toto, even then, the punishment awarded to the petitioner is totally disproportionate. The punishment which was awarded by the respondents clearly substantiate the allegations of bias and prejudice levelled against by Respondents 4 and 5." (11)

2. Thereafter he was posted at Imphal on 4.4.1997 though he opted for Allahabad, Kanpur or Varanasi. Again within one year he was transferred from Imphal to Sidhi in MP. Within six months as mentioned above the present impugned order has been passed transferring him to Andaman island.

3. There are two counter affidavits - one by the Principal of the Sidhi School, respondent no.2 and the other by respondent no.3. Respondent no.2 mentions that "the applicant started creating more problems and hindrances in the smooth functioning of the Vidyalaya". She referred to the unauthorized absence of the applicant for which an enquiry is pending. It is pleaded by the respondents that the KVJC at Sidhi was set up by the Northern Coalfields Limited, as a project school with a view to impart high standard of education to the children of the employees. The said Coalfields provides all the payment and infrastructure. It is denied by the Principal that the applicant had made any representation. It is stated that he had approached the Tribunal with unclean hands. The Principal had



made a report to the Assistant Commissioner Kendriya Vidyalaya Sangathan (in short "KVS") alleging the insubordinate and indisciplined behaviour of the applicant citing a number of instances as also his conduct unbecoming of a teacher. It is urged that the applicant brought functioning of the school to a halt. He used abusive language to fellow teachers who had given written complaints against him. The parents of the students also have sent complaints. A committee was set up to enquire into the acts of misdemeanor and it was found that the applicant did not conduct himself in a manner befitting a teacher. The Assistant Commissioner also set up a committee to enquire into the conduct of the applicant and this committee found him guilty of various misdemeanor. In fact the management of the School, Northern Coalfields Limited requested respondent no.3 to transfer the applicant and another teacher Shri S.B.Singh because both these teachers have ruined the discipline of the school and spoiled the atmosphere.

4. The learned counsel for the respondents relied on the decision of Union of India and others Vs. S.L.Abbas, AIR 1993 SC 2444 wherein their Lordships have held that "who should be transferred where, is a matter for the appropriate authority to decide". He has also relied on the case of State of Punjab and others Vs. Joginder Singh Dhatt, AIR 1993 SC 2486 wherein their Lordships have held that "[I]t is entirely for the employer to decide when, where and at what point of time a public servant is

transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer".

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5. In the rejoinder the applicant states that the allegations were manufactured documents and there was a conspiracy to oust him.

6. I have carefully considered the rival submissions. I am of the view that the order of transfer is eminently justified. The applicant earlier was working in Manipur in the North East. He was transferred to Sidhi in Madhya Pradesh. It is not possible to believe that the teachers, the parents of the students as also the Management of the school have all conspired against him and manufactured the allegations. It is a specialized project school which expects high standards of discipline and teaching. There must be something terribly remiss in the conduct and character of the applicant that had compelled the teachers, the parents and the Management of the Coalfields to voice their protest against the continuation of the applicant. The Principal has unmistakably recorded indisciplined and insubordinate behaviour as well as use of unparliamentary language. No school can function with a teacher who allegedly has been involved to such acts of misdemeanor.

7. There is something uncouth and hasty in the conduct of the applicant even in filing this OA. The transfer order was dated 18.1.1999. The relieving

order was dated 28.1.1999. He filed the representations on 2.2.99. and 11.2.99. The respondents deny having received those representations. There are interim orders staying the transfer of the applicant.

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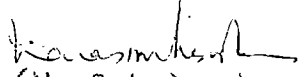
8. While I uphold the order of transfer I find that the respondents have not discharged their duty in not paying the salary of the applicant or his TA & DA. I also cannot ignore the findings of harassment and humiliation he was subjected to and found by the High Court to be true. I think there is something terribly unimaginative on the part of respondent no.3 to transfer the applicant from one corner of the country to another. It appears to me that the action is motivated by a certain prejudice, a certain bias that has informed this administrative decision of transferring the applicant to Andaman island. A teacher is not a criminal. Till he joined the KVJC Sidhi I hold that he cannot be accused of any misdemeanor because the High Court had cleared him completely. In this background transferring the applicant to such a distance without keeping in mind the fact that he had served in the North East, the most difficult area, indicates certain bias that had informed respondent no.3 in ordering this transfer. If the applicant had been remiss in his duties the remedy is not in resorting to cross country transfer from one end of North East to the other end of South. This shows a certain degree of vindictiveness, vendetta. It is not a clean and clear judgment arising out of objective facts. The respondents may

not post him in any of the KABAL (Kanpur, Agra, Banaras, Allahabad & Lucknow) towns but they can consider him in a place in many other Central Schools that dot Western UP. In the circumstances I direct respondent no.3 to take the representation in the OA as the representation before him and consider modifying the transfer order to Nicobar island by substituting it to any Central School in Uttar Pradesh within a period of four weeks from the date of receipt of a copy of this order. The salary for the period which he alleges was not paid from December shall also be considered for payment. Till respondent no.3 reconsiders and gives a posting in UP, the orders of stay passed by this Court earlier shall continue and he shall be treated as part of the staff of KVJC Sidhi.

9. Respondent no.3 may devise such ways as to discipline the applicant if he is remiss in his duties and watch his conduct and consider appropriate disciplinary proceedings approved by law and procedure. Transfer is not the surest of all remedies in improving a person. If as is alleged the applicant is indisciplined in KVJC, he cannot become an angel in KV Nicobar. It is also appropriate to suggest to respondent no.3 that the applicant should be posted in a large school where monitoring his activities would become easy and accessible.

10. With the above directions, the OA is disposed of. No costs.

rkv.


(N. Sahu)
Member (Admnv) 1/7/99