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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 729 of 1999

New Delhi, this the 2nd day of July, 1999

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

Dr. M. Pandey, S/o late Shri
R.P. Pandey, aged 57 years, 3 months,
R/o House No.1, Patel Garden, Kakrola-
Papankala More, New Delhi.

- APPLICANT

(Applicant in person)

VERSUS

1. Union of India through the Secretary,
Ministry of Human Resources
Development, Shastri Bhawan, New
Delhi-110001

2. Commissioner, Kendriya Vidyalaya
Sangathan, 18, Institutional Area,
Saheed Jeet Singh Marg, Katwaria
Sarai, New Delhi.

- RESPONDENTS

(By Advocate Shri S. Rajappa)

ORDER

By Mr. N. Sahu, Member (Admnv)

The applicant has impugned the order of transfer dated 30.10.1998 transferring him to Kendriya Vidyalaya Jaboner, Rajasthan which was later on modified to Kendriya Vidyalaya Darbanga (in short KVD). His representation has been disposed of by the Minister himself who by his letter dated 22.2.1999 to Dr. C.P.Thakur, Member of Parliament conveyed that it might not be possible to cancel the applicant's transfer because he has already completed five years tenure in one station and, therefore, the said transfer is only made in compliance with the transfer guidelines approved by the Board of Governors of Kendriya Vidyalaya Sangathan (in short KVS).

2. The applicant is a Principal in the KVS. His grievance is that he is a chronic diabetic heart patient. He had undergone open heart surgery on 22.5.1998. He was posted to Delhi entirely on medical grounds for his own treatment and the treatment of his son Master Rakesh who is a patient of cerebral palsy. He has been declared by the All India Institute of Medical Sciences (in short AIIMS) as 60% handicapped. He has to rehabilitate his son as well as look after his education. His wife is a chronic patient of Esthonia and is under treatment at Patel Chest Institute, New Delhi. His mother, 85 years old is also ailing. The medical certificates and documents in regard to the treatment of his disabled son at AIIMS shows that the treatment is still continuing. The treatment relates to speech, neuro and deafness therapy. He has also been taking training from Multipurpose Training Centre for Deaf, Special Institutional Area, New Delhi-67. It is stated that the applicant would retire on 31.1.2002. After the open heart surgery in May, 1998 medical opinion directed him to undergo a further Angioplast surgery. The respondents have granted him a surgery medical advance for this purpose. His daughter has to be admitted in the 11th class and there is no 11th standard in Darbanga.

3. The respondents in reply submitted that under the transfer guidelines a Principal has to be transferred on completion of five years of service. The applicant had put in 6 1/2 years of service in various schools in Delhi. Therefore, he is due for

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his transfer. Because of the weak and indifferent health of the applicant he is unable to exert in all the schools in Delhi. Each of the schools of KVS caters to a larger number of students. The Principal has to strain considerably so that the standards, efficiency, discipline and the academic result of the school are maintained. In the interest of KVS and the students they considered it necessary to transfer the applicant to a small school where he need not strain as much as he is required to in Delhi School. As Jobner is no longer a functional school he has been transferred to Darbanga which is within the home State of the applicant. This posting would reduce his stress and would be conducive to his health and Darbanga also has a Medical College and proper medical facilities.

4. The learned counsel for the respondents cited the decision of the Hon'ble Supreme Court in the case of Joginder Singh Dhatt, AIR 1993 SC 2486 wherein the Hon'ble Supreme Court has held "where and how" a person should be transferred would be in the discretion of the Government as an employer and the Courts should not normally interfere with the same. It is submitted that a transfer is a normal incident of service and unless the order of transfer violates the statutory rules or is malafide it cannot be questioned.

5. I have carefully considered the submissions. The applicant's case is an unusual case of extreme suffering. It has to be noted he was specifically

directed to the AIIMS for special treatment as the Apex referral hospital. There was an open heart surgery in AIIMS on 22.5.1998. This did not relieve him of his heart problems. He had to take a TMT test and he was advised Angioplast surgery. He was also advised a separate intensive treatment for his Diabetes due to which his power of sight in the left eye had considerably diminished. On going through the medical reports I entirely agree with the submission that he has to be under constant attention and treatment of the Specialists in AIIMS who are treating him for this purpose. That apart his wife is a chronic patient of Esthonia and is again under specialized treatment in Patel Chest Institute, New Delhi. Finally, the rehabilitation of his son by another specialized institution in Delhi is a matter of record and fact. The respondents cannot be insensitive to the acute medical problems of the applicant, his wife and his son and the educational problem of his daughter. A transfer to Darbanga will not help him in any manner. In this type of treatment of acute conditions only exclusive specialized institutions can do justice in treating the applicant. When the respondents themselves have advanced a large amount of money for Angioplast surgery in AIIMS, how can they transfer him even before the said surgical operation is complete? The applicant besides being a Government servant is also a human being and as a citizen his right to life and good health are fundamental rights. All guidelines must conform to protecting, preserving and promoting the right to good life and good health of a citizen

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and more so in a welfare State. The respondents cannot quote the rule book and destabilize the applicant by transferring him in the midst of the specialized treatment his family members are undergoing in AIIMS, Patel Chest Institute, New Delhi and at Multipurpose Training Centre for Deaf, New Delhi. In fact on the other hand every effort should have been made by the Government to allow the applicant all facilities to complete the process of treatment that has begun in these specialized institutions. I am convinced that the order of transfer violates the right to life and health which the applicant is entitled to under Article 21 of the Constitution and is accordingly set aside.

6. In the result, the OA is allowed. The order of transfer is quashed. The respondents are directed to post the applicant in any of the KVS schools located in Delhi. If KVS schools in Delhi city are important centres of education and the applicant as the Principal is not in a position to strain himself to discharge the onerous responsibilities: the respondents can consider the applicant for small schools in satellite towns located near to Delhi like Noida, Rohtak, Gurgaon, Faridabad etc and select such a school which is small in size and does not call for much exertion on the part of the applicant or they can put him in an equivalent post in the Commissionerate or in the Regional Office of the KVS at Delhi. Respondent no.2 should have kept this in view while filling up the schools in satellite townships mentioned above. Even now they should

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consider any vacancy that is available either in the administrative offices of the KVS Commissionerate or in the Zonal Offices at Delhi or finally he can be considered for some other posts on deputation in Delhi.

7. The respondents are directed to grant the appropriate leave for the intervening period to the applicant, as well as his pay and allowances, should be made over to him in accordance with the rules along with the order of posting within a period of four weeks from the date of receipt of a copy of this order.

8. The parties shall bear their own costs.

N. Sahu
(N. Sahu) 2/7/99
Member (Admnv)

rkv.