

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 110 of 2000

New Delhi, this the 9th day of August, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri V.K. Aggarwal
WET,
K.V. No.1,
Delhi Cantt.,
New Delhi-110 010.

-APPLICANT

(By Advocate: Shri R.K. Gupta)

Versus

1. Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016
Through Its Principal Secretary/
Deputy Commissioner (ADMN.).
2. Assistant Commissioner (Delhi Region)
KVS, JNU Campus, New Mehrauli Road,
New Delhi-110 067.
3. Shri D.D. Kaushik
Principal,
Kendriya Vidyalaya No.1,
Sadar Bazar Road,
Delhi Cantt.,
New Delhi-110 010.

-RESPONDENTS

(By Advocate: Shri S. Rajappa)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA whereby he is assailing the order dated 30.10.99 vide which he has been transferred from K.V. No.1 Delhi Cantt. to K.V.S. Babugarh. He has also challenged an order dated 4.11.99 whereby he was relieved from the post in pursuance of the order dated 30.10.99. Further he has challenged an order dated 6.1.2000 vide which he has been declared as unauthorised occupant. The applicant has prayed for quashing of these orders.

2. During the pendency of this OA, the applicant was again transferred to Bhowal in Chandigarh zone vide order dated 25.10.2000.

3. The main grievance of the applicant is that he is working as a teacher in K.V. No.1 Delhi Cantt. and this order of transfer has been passed in a mala fide manner as the then Principal of K.V. No.1 Delhi Cantt. wanted to get rid of the applicant since the applicant had made certain complaints against the Principal with regard to certain purchases.

4. It is also submitted that K.V. No.1 Delhi Cantt. being an Accredited Institution of National Open School and Mr. Ghosh of the school had been nominated as the Co-ordinator of the accredited institution where the applicant was also a nominated member and both were authorised to open and operate jointly the bank account in the name of Co-ordinator of the AI No.7707 for the money received from and on behalf of National Open School. He also claims that he is an active member of the Sangathan and has been nominated in various committees for the purchase of furniture, Maintenance and Development Fund and under the education code, the Sangathan is required to constitute a Vidyalaya Managing Committee under Article 32 of the Code, for running of the Vidyalaya.

5. The applicant further claims that he is the office bearer of the Rashtriya Kendriya Vidyalaya Ahdyapak Sangh (RKVAS), a recognised institution of KVS where he is holding the office of the Unit Secretary.

Besides that it is stated that the applicant is suffering from various diseases but still he was working with utmost satisfaction of his superiors and that is why he has been nominated to various committees.

6. However, after the respondent No.3 has joined as Principal, KV No. I, Delhi Cantt. he started feeling uneasy as the applicant never agreed to share with him about his illegal work and the applicant always requested respondent No.3 not to indulge in financial irregularities but the respondent No.3 never paid any heed to the suggestion of the applicant and committed various irregularities. Even some of the dealers who used to make certain supplies to the K.V.S. also felt uneasy because of respondent No.3 and a complaint was also made by one Shri Mahesh Arora, the General Secretary of Bhartiya Janta Party, Delhi Cantt. For these irregularities being pointed out by the applicant, respondent No.3 became hostile towards applicant and had approached the respondent No.2 for his transfer and respondent No.3 made direct allegations against the applicant stating therein that the complaint made by Sh. Mukesh Arora was made at the behest of the applicant though the applicant was transferred by respondent No.2 in public interest but the order has been issued in colourable exercise of power and the fact that the order of transfer was passed on 30.10.99 but the respondent No.3 relieved him on 4.11.1999 that shows the mala fide attitude of the respondent No.3 to get rid of the applicant as soon as possible so it is stated that since the order has been passed in colourable exercise of power so the same should be quashed.

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7. The respondents are contesting the OA. They have filed a short reply and submitted that the applicant has been transferred only on administrative grounds in public interest. It is also stated that the applicant carries an all India transfer liability and in the interest of KVS, he can be transferred to any part of India on administrative grounds.

8. It is denied that the transfer order has been passed to victimise or punish the applicant. It is also submitted that the applicant has no right to be posted at a particular station.

9. The respondents in their detailed reply have also submitted that the performance of the applicant has never been upto the mark. He has been issued number of memos regarding irregularities in service matters and he is working in the same cadre since last 32 years and he has been working as Work Experienced Teacher (WET) for the last 26 years, therefore, it is submitted that he has not got a permanent right to stay where he has worked.

10. It is also stated that the applicant had indulged in misconduct such as misappropriation of funds of National Open School by way of forging false signatures of others for which a fact finding enquiry was conducted in which the applicant was involved in the misconduct and the applicant has been issued letter of displeasure by the authorities. As a nominee of Accredited Institution of National Open School the applicant was involved in arranging cheating while

examinations were being carried out and there was a complaint that the applicant used to charge extra money on one pretext or the other and it is because of the administrative policy that the applicant became a member of the co-ordination committee.

11. As regards the allegation that the applicant is a Unit Secretary of the association at K.V.No.1, it is stated that the information supplied by the applicant is misleading to present himself to be the office bearer of the main association. As far as the KVS is concerned only those office bearers who comes under the term "Association/Unit/Federation" which is the main association are considered to be the office members and are protected under the terms of policy but the members belonging to the unit are not protected. It is denied that the applicant has been performing his duties to the utmost satisfaction and out of 32 years of service 26 years in the same school and he cannot be allowed to indulge in such type of acts and moreover the association of which he is saying that he is the officer bearer (Unit Secretary) cannot be termed as the main association and is liable to be transferred..

12. I have heard the learned counsel for the parties and gone through the records of the case.

13. The short question involved in this case is whether the impugned order of transfer has been passed by the respondents in any mala fide manner or it is the order passed in exigencies of service in public interest or on administrative grounds. From a perusal of the

allegations as referred to by the applicant in the OA I find that none of the allegations proved that any mala fide exercise has been made by the respondents which prompted them to pass the impugned order. The allegations of financial irregularities are levelled by both the parties against each other but that does not mean that the order of transfer has been passed by any mala fide exercise of powers by the respondents. A perusal of the impugned order shows that the first order of transfer, from KV No.1 Delhi Cantt. to Babugarh, had been passed by Assistant Commissioner of Schools is duly approved by the Commissioner of Schools and subsequently the second order of transfer had been passed transferring the applicant to Bhowal has been passed by the Assistant Commissioner of Schools which is also duly approved by the Commissioner of KVS. Moreover the fact remains that the applicant has served in one school for the last 26 years also gives a sound ground to transfer him to some other school on administrative grounds.

14. As regards the mala fide alleged by the applicant that a complaint was made by one Shri Mahesh Arora against the then Principal, the counsel for the respondents has filed on record a letter written by Shri Mukesh Arora which shows that his letter pad has been misused by someone and he denies having made any complaint, as alleged by the applicant. The mere fact that applicant had levelled some allegation against the Principal that will not show that it is the Principal who was instrumental for the transfer of applicant. Since order of transfers had been passed by two separate Assistant Commissioner of Schools and they had also

obtained the approval of Commissioner. The allegations even read as a whole do not show how there is mala fide action on the part of respondents to transfer the applicant.

15. Even otherwise I may mention that during the arguments it was pointed out at the bar by the learned counsel for the respondents that even the Principal has been transferred to some other school which rules out any mala fide act on the part of the Principal to get rid of the applicant.

16. In these circumstances, I find that the applicant having an all India transfer liability is unable to establish any mala fide on the part of the respondents which resulted in his transfer from KV No.1 Delhi Cantt. to Babugarh. Even the Hon'ble Supreme Court in the case reported in 1994 SCC (L&S) 1320 entitled as Union of India & Others Vs. S.L. Abbas has held as follows:-

"A. Transfer - Judicial review - Scope - Unless order is mala fide or is made in violation of statutory provisions Court/Tribunal cannot interfere - Not following instructions/guidelines not sufficient to quash order as being mala fide - Authority not obliged to justify the transfer by adducing the reasons therefor".

17. The applicant has failed to prove violation of any statutory rules in order to challenge his transfer rather it is admitted by the parties that there are no statutory rules with regard to KVS, so I find that there has been no violation of any rules or instructions which may vitiate the transfer order.

18. In view of the above discussion, OA fails.
Hence, the same is dismissed. No costs.

Kuldeep
(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh