

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1729/2000

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

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

B.S. Rana,
P.E.T. Kendriya Vidyalaya,
Keshavpuram,
New Delhi.

-Appliant

(By Advocate Shri Anil Srivastava)

-Versus-

The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

-Respondents

(By Advocate Shri S. Rajappa)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant a Physical Education Teacher (PET) working at Kendriya Vidyalaya (KV), Keshavpuram has assailed an order dated 30.8.2000 whereby he has been transferred from KV Keshavpuram to KV Kasipur.

2. Briefly stated, the applicant has been working at New Delhi in KV Keshavpuram since 31.1.95. It is submitted that the said KV has a sanctioned strength of e P.E.Ts. One Shri K.C. Yadav has been posted at KV Keshavpuram as PET since 13.1.84 and another P.E.T. Mrs.. S. Dahiya is in the school since 20.9.85. As per the decision of the Board of Governors taken in their 66th and 67th meetings held on 16.9.99 and 17.12.99 respectively it has been decided that the seniormost Teacher in terms of length of stay should be posted out and as such the applicant cannot be rendered surplus and consequently transferred. The learned counsel for the applicant Shri Anil Srivastava contended that in view of the meeting of

the Board of Governors on 16.9.99 a policy has been laid down and it has been decided that in pursuance of freezing of the staff and those who have rendered surplus the seniormost Teacher in terms of length of stay in the school should be first posted out. By placing reliance on a letter dated 30.3.2000 it is stated that only those Teachers who have been identified surplus and having left with two years to retire would not be identified and in his place next Teacher with longer stay will be identified as surplus and redeployed. The period of two years shall be calculated with reference to the date on which the post has been found to be surplus by KVS. In this backdrop placing reliance on a letter dated 24.3.2000 it is stated that one post of PET was rendered surplus in KVS Keshavpuram and as per the office order dated 30.3.2000 the period of two years in respect of a Teacher who is to retire will be calculated with reference to 24.3.2000 and on 29.4.2000 the Principal, K.V. Keshavpuram issued a notice on the notice board of the school requiring all Teachers who had been identified as surplus to give a choice of five stations for transfer. The applicant has been declared surplus in April, 2000. As on the date of identification of the surplus post, i.e., 24.3.2000 Shri K.C. Yadav had two years, two months and seven days left for retirement as such Shri Yadav is squarely come within the guidelines regarding the transfer of surplus Teacher and as such having the longest stay in case of being declared surplus he has to be redeployed rather than the applicant. It is also contended that the wife of the applicant is also a Teacher and as contained in the policy of KVS as well as the OM of 12.6.97 of DOPT the husband and wife who are having children less than 10 years of age may invariably be

posted together to enable them to live normal life. In this view of the matter it is stated that the applicant should not be transferred and the orders are bad in law as contrary to the policy and having no statutory rules the same has the force of law. Further placing reliance on the decision of the KVS it is contended that the transfer of an office bearer of a recognized service association who are also members of JCM transfer shall not be resorted and the persons should not be relieved. In this view of the matter it is stated by placing reliance on a letter dated 1.6.2000 at Annexure A-6 that the applicant is President of RKVAS (J) PET, Lawrence Road and the association is also one of the representatives of the staff association in JCM, as such the transfer orders issued are illegal and against the policy. The learned counsel for the applicant further placing reliance on two letters issued by KVS on 21.3.2001 and 24.1.2001 wherein one H.P.S. Chauhan, who was General Secretary of an Association and Member of JCM his transferred orders have been cancelled. In this backdrop, it is stated that the applicant has been arbitrarily discriminated in the matter of transfer and the transfer is vitiated by legal mala fide and is contrary to the rules. It is also stated that the applicant was found surplus in pursuance of the post being declared surplus and the transfer order is not ^{an} identified ^{the} post. As the respondents have not filed any additional reply to his rejoinder his contentions taken therein are deemed to have been admitted.

3. On the other hand, strongly rebutting the contentions of the applicant Shri S. Rajappa contended that the applicant has all India transfer liability under Article 49 (k) of the Education Code of KVS and as the

applicant was found in excess of the staff strength in the school an employee who had put in longest stay in that particular school has to be redeployed. Identification of the surplus staff was carried out as per the decision of the Board of Governors, permitting the Commissioner to carry out the exercise of fixing the staff strength. Seniormost PET at KVS Keshavpuram was not identified as excess to requirement because on the date of the order passed he has less than two years before retirement. As Mrs. S. Dahiya a lady PET on the basis of the policy was also not identified as Teacher in excess and the policy has been upheld by the Tribunal in OA-1943 of 2000 and OA-1728 of 2000, the action of the respondents cannot be found fault with and it is neither mala fide nor contrary to any statutory rules. It is also stated that on spouse ground too the guidelines are that the husband and wife shall be posted at the same station subject ^{to} ~~for~~ availability of vacancies and other administrative exigencies. It is also stated that there is no rule that an office bearer or member of the JCM cannot be transferred in administrative exigencies and in the interest of organisation. The learned counsel further stated that the question of cut off date to consider the longest stay is the date on which the post has been found to be surplus and in this case it is the date of the order of transfer, i.e., 30.8.2000 that the post has been found surplus as such the applicant has been re-deployed at Kasipur and Shri Yadav having less than two years to retire has been retained as per the policy laid down. It is lastly contended that the order of transfer cannot be lightly interfered with by this court in the absence of any mala fide and the same is not violative of any statutory rules or instructions.

(21)

4. The applicant in his rejoinder re-iterated his contentions taken in the OA and contended that the transfer is not on the basis of any policy decision but a punitive measure and the applicant is an office bearer of a recognized service association the guidelines relating to the transfer have not been adhered to.

5. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view the present OA deserves to succeed. The order passed by the respondents transferring the applicant and their action declaring the applicant as surplus is without following their own guidelines and is not legally sustainable. The claim of the applicant by placing resort to the latest transfer policy wherein it is provided that in case the Teacher falls in the category of either General Secretary or President of the recognized association who are also the members of JCM he should not be relieved and this information should be further communicated to the KVS for record. Admittedly, it is not disputed by the respondents that the applicant is a President of a recognized union which is also member of JCM having a tenure of three years. In this view of the matter the contention of the respondents that this is not a rule of thumb that an office bearer or the member of the JCM cannot be transferred in the administrative exigencies in the interest of organisation and in case of being declared surplus after the decision of the Board of Governors this clause would not apply is not valid and justifiable. There is nothing in the guidelines to indicate that the provision regarding not relieving the President of the recognized

22

✓ service association and transfer is not applicable in case where the transfer is the result of Teacher being declared surplus. The provision has universal application and as the respondents have not adhered to their own guidelines and transferred the applicant despite his being President of the recognized service association and representative of the staff side in JCM the transfer order is rendered as illegal as contrary to the guidelines which has force in absence of statutory rules on the subject. The aforesaid guidelines are invariably followed by the respondents by effecting transfer of their officers/Teachers. Apart from it, I find that previously one H.P.S. Chauhan, General Secretary and the member of the JCM, who has been transferred from Lucknow to Kanpur, the transfer order has been cancelled and in case of U.D. Das the same guidelines have been followed. By not adhering to these guidelines in the case of the applicant and treating equals unequally is clearly a discrimination under Articles 14 and 16 of the Constitution of India, which cannot be sustained. Apart from it, the transfer order also suffers from another legal infirmity and which cannot be countenanced, as after the Board of Governors has approved the question of freezing etc. it has been decided in the meeting on 16.9.99 that the Teachers who have been declared surplus in the school the seniormost in terms of length of service should be redeployed. Admittedly, the post was found surplus on 24.3.2000 and as an after ^{mt}math on 29.4.2000 the Principal KVS Keshapuram put a notice on the notice board requiring all Teachers identified as surplus to give their choice of stations for transfer clearly indicates that the post was found surplus and identified on 24.3.2000 and not on the date as alleged by the respondents on the date when the

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applicant was transferred. The aforesaid contention of the applicant taken in the rejoinder has not at all been controverted by the respondents by filing an additional reply. Having regard to their own decision on 30.3.2000 the period of two years for a Teacher who has to retire is to be reckoned from the date the post has been found to be surplus. Admittedly K.C. Yadav as per the seniority was the seniormost in the matter of longest stay and as taking from 24.3.2000 K.C. Yadav was to retire on 31.5.2002 the period comes to be more than two years as such the action of the respondents by not identifying him as surplus and not redeploying him as per the policy having longest stay in the school is against the policy laid down and is not justifiable. The applicant who was not the seniormost with respect to the longest stay should not have been redeployed and identified as surplus by the respondents.

6. In this view of the matter the order of transfer cannot be held to be valid or in administrative exigencies. The respondents have flouted their own policy and the transfer order is against the statutory guidelines on transfer cannot be allowed to continue.

7. In the result, the OA is allowed. The transfer order dated 30.8.2000 is quashed and set aside. The respondents are directed to post the applicant in the present station and he shall be entitled to all consequential benefits. No costs.

S. Raju

(Shanker Raju)
Member (J)

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