

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.1878/2000

New Delhi, this the 6^m day of September, 2001

Geeta Khanna
PGT, Chemistry
Kendriya Vidyalaya No.1,
Faridabad.

... Applicant

(By Advocate: Shri Rajnesh Jaswal with Shri K.Datta)

VS.

1. Deputy Commissioner (Fin.),
Kendriya Vidyalaya Sangathan
18, Institutional Area
Saheed Jeet Singh Marg
New Delhi - 110 016.
2. Commissioner (Fin.)
Kendriya Vidyalaya Sangathan
18, Institutional Area
Saheed Jeet Singh Marg
New Delhi - 110 016.
3. The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office
Delhi.
4. Principal Kendriya Vidyalaya No.1
NH-4, Faridabad
5. Secretary
Ministry of Human Resources Development
Government of India.

(By Advocate: Shri S.Rajappa)

ORDER

By Shanker Raju, Member (J):

The applicant who is working as PGT Chemistry with the respondents has assailed an order dated 14.8.2000 wherein, on public interest, she has been transferred from Kendriya Vidyalaya No.1, Faridabad to Kendriya Vidyalaya, Bhavnagar (Gujrat) with immediate effect and further relieving order dated 17.8.2000 has also been assailed.

2. Briefly stated, the applicant had joined on promotion in Kendriya Vidhyalaya Sangathan (hereinafter called as 'KVS'), Faridabad in 1992. The claim of the applicant is that her record is excellent and she has achieved 100% result in Chemistry in Delhi Division of KVS and she has been recognised for her excellent efforts by the Principal. According to the applicant in April, 2000 an enquiry committee consisting of three Members met the petitioner regarding the performance of her student as she was a Class Teacher for Class-XII.. The applicant who had to join census duty on the same day had left for the work. On 14.8.2000 she was transferred and relieving order was passed/issued on 17.8.2000. The learned counsel for the applicant has stated that a show cause notice has been issued to the applicant on 17.8.2000 to present herself along with two others in connection with the enquiry regarding complaint against the Principal and the staff of KV-I, Faridabad. It is stated that on 21.8.2000, the complaint was found bogus as the no particulars of the complainant was not recorded. No details of the charges have been alleged and subsequently by a report dated 9.5.2000 it has been shown that as there was vocal against the applicant on the alleged charges of private tuitions and the laboratories were found in very bad shape and having no evidence of conducting practical was found, the Committee recommended the transfer of the applicant immediately in the order of priority. The representation filed against the transfer has not been replied with.

3. The learned counsel for the applicant contends that although the order has been issued in public interest but in fact it is a punitive order with a legal malafide. The transfer has been effected just to avoid holding the departmental enquiry against the applicant and on the basis of the recommendations of the Committee without according the applicant a reasonable opportunity to show cause the transfer has been resorted to which clearly shows the malafides on the part of the respondents. By referring to the consequent events where an enquiry held in April, 2000, the applicant was issued a show cause notice and without holding a proper enquiry and malafidely the transfer order has been resorted to in violation of principles of natural justice. The complaint was found bogus the transfer according to him is illegal. The applicant by referring to the various commendations given to her stated that performance of the applicant was above par and the parents of children at the School have justified regarding the efficiency of the applicant. It is also stated that by resorting to the Code of Conduct of the KVS under Clause 19 it is a misconduct undertake a private tuition which is amenable to a disciplinary action under CCS (CCA) Rules. Further placing reliance on the decision of the Apex Court in Kumaon Mandal, etc. Vs. Girija Pant, 2001(1) SCC 182, it is stated that in administrative law there should be fairness in procedures and the principles of natural justice are to be followed. It is also stated that the bias which amounts to a legal malafide should be construed on the basis of complying the test of a common prudent man

and in the event there exists real apprehension of bias the charges established legally. Further placing reliance on a decision of this Tribunal of Jodhpur Bench in OA No.43/2000, Smt. Sudhar Vs. UNOI belonging to KVS the transfer has been set aside on the ground that the same was in colourable exercise of the power amenable to the respondents proving malice against the applicant. In this case also there had been a complaint regarding taking private tuitions by the applicant. Further placing reliance on a decision of the Apex Court in Arvind Dattatraya Dhande Vs. State of Maharashtra, 1998(1) AISLJ SC 162, it is stated that the transfer which is not in public interest cannot stand. Further placing reliance on a decision in Andhra Pradesh High Court, 1993(3) SLR Page 1, J.Ramchandra Rao Vs. The A.P.State Cooperative Union Ltd. & Others, it is contended that transfer not made for professed purpose such as in normal course or in public interest or in the exigencies of service, is liable to be vitiated by arbitrariness and actuated by malafides. Further placing reliance on a decision of the Allahabad Bench of this Tribunal in OA 334/86 Kanhaiy Lal Agarwal Vs. Union of India and Others, 1988(3) SLJ(CAT) 234, it is stated that once the transfer is resorted to as a punishment to avoid holding an enquiry the same would be malafide and is not legally sustainable. Taking all the circumstances preceding and attending to the transfer order and from the totality of circumstances of the present case, the learned counsel for the applicant stated that it is apparent that the transfer has been resorted malafidely without application of mind without holding an enquiry and without any

justified grounds. The action is neither in public interest nor in exigency of service but rather by way of a punitive measure to avoid holding an enquiry. Despite, the applicant has been performing efficiently merely on surmises the allegations of taking private tuitions have been alleged.

4. Strongly rebutting the contentions of the learned counsel for the applicant, the learned counsel for the respondents states that the transfer order is prone to challenge only if the same is malafide or is against statutory rules or guide-lines. As the guide-lines of KVS having force of law and as per para 49(k) of the Education Code the employees of KVS are prone to all India transfer liability. It is also stated that in view of the decision of Apex Court in Union of India Vs. S.L. Abbas, 1993(2) SLR 585 the principles of natural justice has no applicability in transfer. In the case of transfer the malafides are to be proved and should be established and there is no allegations of personal malafides against an individual to whom the applicant has not impleaded. The transfer which is in administrative exigency and in public interest cannot be interfered with. It is also stated that normally the transfer is effected by an Assistant Commissioner of the concerned region but in this case keeping in view the gravity and circumstances, the same has been issued from the Headquarters to be carried out by the Principal.

5. It is further stated by the respondents that the fact finding enquiry has been held against the applicant on a complaint and instead of resorting

to suspension and disciplinary proceedings the alternative action of transferring the applicant in public interest was resorted to and placing reliance on Clause 3(c) of the instructions of suspension, it is stated that the same is permissible. Placing further reliance on AIR 1957 Assam Page-141 (144) HC, it is stated that Court is precluded from conducting the roving enquiries. The learned counsel for the respondents has placed reliance on a decision of Apex Court in C.G.M. North East Telecom Circle Vs. R.C. Bhattacharya, 1995(2) SCC 532 employee has no vested right to insist on a particular posting where the service is transferable. The learned counsel for the respondents contended that the complaint against the applicant was received from the parents and various students pertaining to private tuitions taken by the applicant and being an activity against the interest of public & KVS, it has been decided to transfer the applicant which has no iota of malice or arbitrariness. It is stated that it was not incumbent by the respondents to proceed under CCS (CCA) Rules for a misconduct as the continuance of the applicant in the same School was detrimental as she was violating the Code of Conduct which would have tarnished the image of KVS as such on administrative exigency the transfer was necessary.

6. In the rejoinder, the applicant has reiterated the pleas taken in his OA.

7. I have carefully considered the rival contentions of the parties and perused the pleadings available on record. In my confirmed view the order

passed by the respondents transferring the applicant does not suffer from any legal infirmity and is not an order actuated by malafides and is an order of transfer in public interest as well as in exigency and due course of administration. Admittedly the staff working under KVS has an all India transfer liability. As per Para 49(k) of the Education Code, one has no right to remain in a particular place indefinitely. The contention of the applicant that though no malafide is alleged against any individual but there exists a real apprehension of bias and malice and which constitute legal malafides on the basis of circumstances preceding and attending to the transfer order does not hold any water. I find that on a complaint received from various parents and on investigation carried out by a Committee, it has been found that the applicant has been carrying out private tuitions, the laboratory was not in order and there was no signs of any practical being conducted there. Taking the over all view and in the administrative exigencies as paramount interest was to up keep the reputation of KVS interest of students, after placing the enquiry committee before the appropriate authority as an incidence of service As per the terms and conditions of appointment, the applicant was transferred. The contention of the applicant that no charge-sheet has been issued and to avoid holding of an enquiry an alternate punishment has been awarded to the applicant by transferring her, is not legally tenable. As as per the guide-lines issued with regard to the suspension it has been provided that before placing an employee under suspension, this is to be seen whether the same can be avoided by transferring

the Government servant to some other place. Admittedly, the provisions of CCS (CCA) Rules are applicable on KVS as such the respondents have acted accordingly and inspite of holding the departmental proceedings against the applicant, transferred her which cannot be found fault with. In this case, unlike other cases, the matter was apprised to the Headquarter and from their the orders for transfer have been issued to be implemented by the Principal. The applicant has violated Code of Conduct taking private tuitions it has been confirmed by the Committee and observed by the appropriate authority, the transfer order has been issued. The applicant has failed to show that the transfer is against any of the statutory rules or provisions of guide-lines contained in KVS and has also failed to establish either the personal or legal malafides. These are the only two grounds on which the transfer order can be impugned. Apart from the resort of the applicant to Para 19 of the Code of Conduct to show that the taking private tuitions would entail a disciplinary action is not valid. It is the respondents who are to decide whether to hold the disciplinary proceedings or to take proper action and having decided not to go ahead with the enquiry, and to maintain their efficiency in the KVS, the transfer was resorted to as per the guide-lines and also the fact that the applicant had been working at KVS, Faridabad for the last nine years, the aforesaid action has been taken by the respondents on the ground that the applicant cannot flourish at the cost of KVS and at the cost of children studying therein. The case law cited by the applicant in Sudhakar Joshi's case would be no avail

to him as in that case there is a clear malafide on the part of the respondents 2 and 3 and was a colourable exercise of power establishing the malice which is lacking in the present case. As regards the Apex Court in Pant's case supra pertains to departmental enquiry where on account of personal bias the same was set aside at an interlocutory stage and as such the same would not have any application in the facts and circumstances of the present case.

8. In my considered view, as supported by Bhattacharjee's case supra an employee has no vested right to insist and to be posted at a particular place whereas the services are transferable on all India basis. This has also been held by the Apex Court in S.L. Abbas' case supra that there cannot be an application for principles of natural justice in case of a transfer and once it is not found to be actuated with malice and against the guide-lines and rules, the same should not be interfered with. The applicant's plea that there has been an legal malafides as from the sequence of events that on 14.8.2000 he has been issued an order of transfer and on 17.8.2000 she was relieved and by issuing the show cause notice on 17.8.2000 without going any details of the charge and without according her an opportunity to rebut the allegations and without holding an enquiry would clearly indicate as to the malice involved is not correct. The applicant has been transferred on the basis that firstly she is having an all India transfer liability and secondly there has been complaints of taking private tuitions and the transfer has been resorted to in the administrative exigency and in

public interest which to my considered view is correct and no fault can be found with the action of the respondents. In the result, having failed to establish any malafide and punitiveness in the order of transfer the OA is found bereft of merit and is accordingly dismissed but without any order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/

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