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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.2152/2000

New Delhi, this the 1st day of January, 2002

Janki Singh
TGT (Maths)
KV No.3 Delhi Cantt.
New Delhi.

... Applicant

(By Advocate: Shri R.K.Gupta)

Vs.

1. Kendriya Vidyalaya Sangathan
18, Institutional Area
Shahidjit Shigh Marg
New Delhi - 16
through Dy. Commissioner (Acad.)

2. Smt. Rama Sharma
Principal KV No.3, Delhi Cantt.
New Delhi - 110 010.

3. National Commission for SC/ST
Lok Nayak Bhawan
New Delhi
through its Chairman.

... Respondents

(By Advocate: Shri S.Rajappa)

O R D E R

By Shanker Raju, Member (J):

The applicant, a TGT (Maths), has assailed an order passed on 22.12.1999 whereby in public interest he has been transferred from Kendriya Vidyalaya No.3, Delhi Cantt. (hereinafter called as 'KV No.3') to KV, Tinsukia, and also an order dated 23.12.1999 relieving him from duty. The applicant has sought quashing of these orders with consequential benefits.

2. Briefly stated, the case of the applicant is that he joined as TGT (Maths) in KVS on 30.9.1994 and was transferred to KV No.3 on 14.11.1996. The applicant was in possession of Government accommodation. As he had not become a member of the Welfare Association, he has been harassed. It is

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✓ stated that certain enquiries have been made against the applicant by the Principal of the KV and he was asked to give his statements without supplying the copies of the relevant documents and the enquiry was proceeded. The applicant approached, through a compliant, to the Chairman, National Commission for SC/ST. The letter dated 30.6.1999 was forwarded to the Commissioner, KVS and the Commission recommended the transfer of the applicant to be kept in abeyance. It is stated that with a view to defeat the efforts of Respondent No.3, Respondent No.1 filled up the vacancy of the applicant by posting Shri K.P.Sharma, TGT (Math) against the post of the applicant vide order dated 10.1.2000, who had earlier been transferred from KV, AGCR Colony to Mathura Cantt. The applicant furnished his comments, on the enquiry reports submitted by Shri G.D.Sharma, before the Commission. The applicant was ultimately transferred by the respondents.

3. The learned counsel for the applicant filed written submissions wherein he has assailed the order of transfer and as a preliminary objection contended that the counter affidavit has been filed by Joint Commissioner who is neither a party nor has been authorised by the Board of Governor to file the same under the Education Code. Under Article 55 of the Memorandum of Association and on merits too, it is stated that the transfer is punitive and vitiated by personal as well as legal malafides. In this background, it is stated that Respondent No.2, Principal of KV No.3, Delhi Cantt has been impleaded as necessary party. To establish the malafide, it is

✓ stated that as the applicant belongs to Scheduled Caste, a reserved community, he has been victimised and discriminated as well as harassed. According to him despite keeping the transfer orders in abeyance, the Commission's directive has not been gone into and as per Circular dated 24.6.1985 issued by the Ministry of Personnel, Public Grievances and Pensions and in view of the decision of the Tribunal in B.S.Verma Vs. Union of India, there cannot be harassment and discrimination against the Scheduled Caste and Scheduled Tribe employees in Central Government Service/Posts, the Government should desist any act of discrimination against the members of the SC/ST.

4. It is also contended that malafides are established on the ground that the Welfare Association requested the respondents to pay a monthly sum and when this Association was dismantled the Assistant Commissioner, Delhi Region and Respondent No.3 formed a Committee and conducted an enquiry against the applicant and one Shri Balwant Yadav. Wherein a questionnaire proforma was filled in on 1.5.1999 from the applicant without his wishes and the statement of witnesses were recorded in his absence. A copy of the complaint has not been served despite various reminders. The enquiry has been conducted without following the Rules by Mr. G.D.Sharma without supplying the relevant copies to the applicant.

5. The transfer of the applicant has been effected with an object of adjusting one Mr. K.P.Sharma. The applicant has further demonstrated various discrepancies in the statement before the

Commission. It is stated that on 4.7.2000, Shri Puran Chand, Joint Commissioner (Academic) agreed to post the applicant in Delhi itself but the promise made before the Commission has not been adhered to. The enquiry concluded by Shri G.D.Sharma who was involved as member of the said Association is not legal as one cannot be judge of its own cause. The applicant was illegally served with a show-cause notice under Article 81(d) of the Education Code and in this manner also he has been discriminated as number of teachers who have been transferred and most of them have not joined their new place of posting still no action has been taken against them under Article 81(d) ibid. The malafides are also shown by stating that when the Principals of these Schools have refused to admit the son of the applicant in Class-I, the applicant has filed CWP No.4416 of 2001. It is stated that without completing the enquiry and without according a reasonable opportunity to the applicant, the transfer is punitive and can be interfered as not in accordance with the transfer policy and is malafide. Applicant has placed reliance on a decision of Jodhpur Bench of this Court in B.S.Verma Vs. Union of India, decided on 18.9.1992 in OA No.532/92 as well as in Ramesh Chandra Chaudhary Vs. Union of India and Others, 1996(2) SLJ CAT 545 to contend that SC may be transferred only in exceptional circumstances. The learned counsel has also placed reliance on a decision of this Court in Jasbir Kaur Gill Vs. Kendriya Vidyalaya Sangathan & Others, OA No.53/2000, decided on 29.5.2001 wherein it has been held that without conducting the enquiry in accordance with the procedure rules, transfer is nothing but punishment

✓ and is by way of punitive measure. The learned counsel has further placed reliance on a decision in D.K.Gupta Vs. Union of India & Others, OA No.2449/99 decided on 31.5.2001. It is also stated that there is no public interest involved or administrative exigency to warrant the transfer. It is stated that transfer order of Smt. Ram Sharma have been cancelled by an order dated 23.5.2000 and the applicant has been meted out a differential treatment.

6. On the other hand, the respondents have filed their reply and also the written submissions. At the out set, it is stated that the applicant has brought about disrepute to the KVS by his indiscipline having established by two fact finding enquiries conducted by two Principals of different Schools at the behest of Assistant Commissioner, Delhi Range which was conducted in pursuance of the directions of the Commission as the interest of the KVS was stake and further not to have perpetuated the further damage, the transfer has been resorted in public interest. As provided under Article 338 of the Constitution of India, Special Officer is to investigate the matter relating to the safeguards provided for the SCs and STs. As the applicant has approached the Commission its decision not to interfere with the order of the transfer is also binding on the applicant. Mere allegations of malafide without documentary proof of the same is not to be interefered. The decision in OA 1878/2000 in Geetha Khanna Vs. Union of India which has been affirmed by the High Court in CWP No.5734/2001 it has been held that the employees of KVS are on all India

✓ transfer liability and it is not necessary that in every case the enquiry is proceeded with to punish the erring KVS employees if the authorities of KVS are satisfied upon complaints that the purpose would be served by transferring such erring employee, the transfer would not be interfered as punitive or vitiated by malafides. It is stated that the Commission has not forwarded any adverse comments to the President of India against the KVS. The applicant has himself abandoned the lien over the post of TGT and he has wilfully absented himself for which the proceedings have been initiated and the same are pending under Article 81(d) of the Education Code *ibid.* As the present case is squarely covered by the ratio in Geetha Khanna's case *supra* the OA is liable to be rejected on merit also.

7. The learned counsel for the respondents, Shri S.Rajappa, has stated that as per Article 49(K) of the Education Code, the employees of the KVS have an all India transfer liability and unless the transfer order is malafide or against the laid down rules, the same would not be interfered by this Court as held by the Apex Court in *Ms. Shilpi Bose Vs., State of Bihar*, 1991 Supl. (2) SCC 659 as the transfer has been affected in accordance with the guide-lines of transfer and in public interest, the present OA needs no interference.

8. I have carefully considered the rival contentions of both the parties and also perused the material available on record including written submissions filed by both the parties. I am unable to

✓ agree with the contentions of the applicant that he has been discriminated in any manner and the transfer has been resorted to adjust one Shri K.P.Sharma. In their reply to the National Commission for SC/ST, it has been apprised that Shri K.P.Sharma has not been adjusted replacing the applicant as incident involve the applicant has taken place on 2.4.1999 whereas thereafter an enquiry was ordered and its report has been forwarded to the Assistant Commissioner on 11.9.1999 and thereafter the transfer orders have been issued on 23.12.1999. The applicant has been afforded a reasonable opportunity to present his case. The time taken w.e.f. 2.4.1999 to 23.12.1999 was not with a view to keep Shri K.P.Sharma waiting to adjust him against the post to be created on transfer of the applicant. Shri Sharma was transferred on 30.10.1999 having declared surplus to Mathura Cantt. As the post had arisen on account of the transfer of the applicant, it was possible to accommodate Shri Sharma. This adjustment is permissible under the Rules and the posting orders of Shri Sharma were issued on 10.1.2000. The case of the Shri Sharma is not isolated one, certain other surplus Teachers have been transferred back to Delhi on availability of vacancies. This issue has been dealt with by the respondents at the highest level. In this view of the matter, it is not established that the applicant has been transferred to accommodate Shri Sharma. No material has been produced to substantiate the same, the contention of the learned counsel for the applicant is rejected.

9. Another contention of the applicant was that he has been transferred on a punitive measure and in pursuance of enquiry initiated against him, on the malafides of the two Principals, in particularly against Respondent No.2, and in the course of the enquiry, the documents have not been served and also the complaint was not furnished despite his persistent requests this shows that in order to avoid enquiry as a punitive measure without following the laid down procedure for holding the enquiry rather a short cut method was adopted to transfer the applicant which cannot be countenanced and is against the principles of natural justice. His resort to the various decisions of this Court to contend that the transfer was malafide and by way of punishment shall be of no avail to him. In pursuance of the complaint that the applicant was involved in the acts of indiscipline bringing down the reputation of the KVS on account of his misbehaviour, two fact finding enquiries have been conducted as well as the enquiry was conducted in pursuance of the directions of the Commission by the Joint Commissioner as the interest of the KVS was on stake and to ensure that the same would not be perpetuated the transfer has been resorted to in public interest to safeguard the interest of the organisation. Furthermore, as per Article 49(K) of the Education Code, the applicant has an all India transfer liability and he cannot insist upon a particular place of posting of his own choice. In one of the cases of Geetha Khanna's supra, the same controversy has been involved where on the basis of report without holding a further disciplinary

✓ proceedings on the alleged misconduct, the transfer order has been resorted to, instead of placing the incumbent under suspension, the Court was of the view that as the prime interest to keep the reputation of the KVS and on the basis of enquiry where the allegations against the applicant have been established, it is within the domain of the respondents as per the guide-lines to ensure reputation and effective working of KVS the employee under suspension and instead the purpose would be achieved by transferring the employee to some other place. As the matter has been, on enquiries, apprised to the higher authorities, they have taken a decision to transfer the applicant with a view to safeguard the reputation of the KVS on such misbehaviour and misconduct, the action taken by the respondents cannot be found fault with. This view of the Tribunal has already been affirmed by the High Court by rejecting the CWP, filed by the Petitioner therein, in limine. Apart from it, the Apex Court in Union of India Vs. S.L.Abbas, 1993(2) SLR 585 has held that principles of natural justice have no applicability in transfer and failure of the applicant to show any malafides and without establishing the same, it cannot be observed that the transfer order has been resorted to as a punitive measure to avoid the enquiry. In this view of the matter the contention of the applicant is liable to be rejected.

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10. As regards the contention that the respondents have not adhered to the Government guide-lines and have transferred the applicant who belongs to reserved category without any exceptional

✓ circumstances, I find that in pursuance of the complaint made to the Commission, the enquiry has been held as per Article 338 of the Constitution of India and Special Officer is to investigate the matter relating to the safeguard of the KVS and further report to the President of India. The decision of the National Commission not to interfere with the order of transfer clearly establishes that the respondents have not violated any guide-lines on this subject and the transfer is not by way of victimization and punitive and there is no harassment of the applicant as such the finding is equally binding upon the applicant. Further, Commission has not forwarded the adverse comments to the President of India against the KVS authorities. This clearly shows that the allegations levelled by the applicant alleging harassment in the matter of transfer of an employee belonging to reserved category have not been found to be genuine. It is at the instance of National Commission for SC/ST an enquiry has been gone into to find the applicant's involvement in indiscipline as such the transfer has been effected in the administrative exigency and in public interest. As such the decisions relied upon by the applicant pertaining to safeguard of SC/ST in transfer would have no application in the facts and circumstances of the present case.

11. Lastly, as regards the malafides, merely because the enquiry has been conducted which has revealed that the applicant was indisciplined would not be sufficient to indicate malafide. The instances put forth by the applicant and the material placed on record after careful examination does not inspire a

✓ prima-facie view that the transfer order has been vitiated by malafides. In absence of any legal malafides, the applicant has also failed to prove any personal malafides against Respondent No.2. In my considered opinion, the transfer order which was in public interest and administrative exigency cannot be interfered without any proof of the malafides.

12. In the result and having regard to the reasons recorded above, I do not find any merit in the present application, it is accordingly dismissed but without any order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

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