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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.2358/2000

New Delhi, this the 12<sup>th</sup> day of October 2001

Shri Anand Ballabh Durgapal  
PGT (Physics), Kendriya Vidyalaya No.2  
NHPC, Banbasa, P.O.-Chandani  
District-Champawat (UP). .. Applicant

(By Advocate: Shri Sudhir Kulshreshtha)

Vs.

1. Deputy Commissioner (Finance)  
Kendriya Vidyalaya Sangathan (Hqrs.)  
18, Institutional Area, Sahidjeet Singh Marg  
New Delhi - 110 016.
2. The Principal  
Kendriya Vidyalaya No.2  
NHPC, Banbasa, P.O.-Chandani  
District - Champawat (UP).
3. The Commissioner  
Kendriya Vidyalaya Sangathan (Hqrs.)  
18, Institutional Area, Sahidjeet Singh Marg  
New Delhi - 110 016. ... Respondents

(By Advocate: Shri S.Rajappa)

O R D E R

By Shanker Raju, Member (J):

The applicant in this OA has assailed order dated 16.10.2000/19.10.2000 whereby he has been transferred to Bhavnagar from KVS School No.1 Banbasa. The applicant seeks quashing of the aforesaid orders and to continue him at the KVS, NHPC Banbasa.

2. Briefly stated that the applicant was working as PGT (Physics) in KVS after initially appointed as TGT (Physics, Chemistry and Mathematics) in 1986. The applicant is facing acute problem of facial paralysis and the wife of the applicant is also suffering from allergic asthma and working as Teacher in Government School at Sitarganj. The applicant on his request and keeping in view the spouse case was

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transferred to KVS No.1, Banbasa Cantt. and was not granted any travelling allowances. The wife of the applicant was also transferred to Tanakpur by the UP Government on the basis of spouse case. The applicant had been awarded commendation certificate having achieved 100% results in his subject.

3. The learned counsel for the applicant has stated that these transfer orders issued by the respondents are not as per their policy. By referring to the memorandum of appointment, it is stated that the applicant was appointed against a temporary post of PGT and it is stipulated under Clause-5 that he will be borne on the cadre of the region only and normally would not be allowed to change region subsequently. The learned counsel for the applicant stated that though in the transfer orders it has been mentioned that the applicant has been transferred on public interest but the same is malafide, punitive and on extraneous grounds. It is stated that nearly after 15 days of transfer to KVS-I the resort of the respondents to transfer him outside the region without any justified grounds cannot be treated as in the exigency of service or in the public interest. It is also stated that the work of the applicant was more than satisfactory and was praised by the higher authorities. It is also stated that the spouses would not be separated as the husband and wife both are in Government service. As per the Government of India's guide-lines contained after 5th Central Pay Commission's recommendations in OM dated 12.6.1997 husband and wife may be invariably posted together in order to live the family together as one of the

children of the applicant is of 7 years age, the OM fully covers his case. Apart from the OM, by referring to the guide-lines issued by the KVS on transfer, it is stated that as per the provision regarding the spouse cases, the transfer should not be resorted to if the spouse is working in the same place. It is also stated that annual transfer may be made during the summer vacation and no transfer except on organisational reasons and mutual transfers would be effected after 31st August during mid session. Placing reliance on an advertisement, it is stated that after his transfer the respondents have issued an advertisement for an appointment of PGT(Physics) in KVS on part time basis thus show that the respondents have affected the transfer on malafides. This clearly shows that there was no availability of a Teacher to replace the applicant and as such the transfer was neither in the public interest nor in administrative exigency. It is also contended that after 14.11.2000 the applicant is yet to be paid his salary. The learned counsel for the applicant has stated that as per the performance the respondents have not applied their mind, for retaining the applicant at Banbasa and despite his request for his salary under the garb of a public interest issued an order dated 16.12.2000. The applicant is still temporarily attached at KVS, Banbasa, he is entitled for the salary.

4. Strongly rebutting the contentions of the applicant, the learned counsel for the respondents contended that the applicant was transferred and relieved on 13.11.2000 in the public interest and no malafides has been alleged by the applicant with

regard to the transfer order. It is also stated that having all India transfer liability, the applicant has no indefeasible or vested right to be placed at a particular place. Apart from the fact that the wife of the applicant is working as Teacher would not vest him a right to remain for ever at that place as per the guide-lines of the KVS and as per the Government of India's instructions dated 12.6.1997. Each case has to be viewed in its own circumstances and invariably the husband and wife may be posted together but in transfers the paramount interest is the welfare of the children and public interest involves interest of the School. As per the memorandum of appointment and Para 49(k) of the KVS Code the applicant has all India transfer liability and the statutory rules override the clauses in the memorandum of appointment. The appointment letter has been issued by Assistant Commissioner who is only competent to transfer within the regions the transfer orders have been issued from the Headquarter after application of mind. The learned counsel for the respondents has drawn my attention to an enquiry report forwarded to the Headquarters of KVS wherein on a complaint of one of the mother of a student Mr. Rajan regarding harassment by the applicant and two other Teachers the Committee found the involvement of the applicant and in this back ground, it is stated that instead of taking any action by putting the applicant under suspension and to hold a disciplinary proceedings against him, the alternative mode which has been decided to, in the interest of administrative exigency. Keeping in view of the paramount interest of reputation of KVS the applicant was transferred

which is not a punitive action but a reformative measure. As such the applicant's transfer is not to be interfered by this Court. The learned counsel for the applicant in his rejoinder, at the outset, has stated that the respondents have not at all brought into the pleadings the fact of court of enquiry and against which he has not been afforded an opportunity to rebut.

5. It is also stated that the applicant has not been given reasonable opportunity to defend the charges against him and with a view to circumvent the proceedings and as an alternative mode by way of punitive measure against the guide-lines the transfer orders have been issued. The applicant further stated that even the report was sent to the Board as agreed to the transfer from within the region and the transfer of the applicant subsequently after within 20 days has been made only on the basis of the report of the Committee. The applicant reiterated the medical grounds and stated that he had been put to two different places before this transfer and after attaining excellent results the allegation of harassment, etc. are absolutely vague and false. It is also stated that the respondents malafidely want to give charge of the Principal to one Shri J.Srivastava, PGT (Chemistry) who is junior to him. The applicant has stated that his children are also studying in the School and mid session, transfer is contrary to the decision of the Apex Court.

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6. I have carefully considered the rival contentions of the parties and perused the material on record. The claim of the applicant that the transfer orders had been issued by way of punitive measure and has been issued not in public interest and against the guide-lines of the KVS are not legally sustainable. Transfer in the administrative exigency or in the public interest and without any proof of any malafide as well as not contrary to any guide-lines on the subject is not to be interfered by the Tribunal. In case of Union of India Vs. S.L.Abbas, 1993(2) SLR 585, it has been observed that in case of transfer the malafide are to be proved and established. It was also held, in CGM North East Telecome Circle Vs. R.C.Bhattacharya, 1995(2) SCC 532, that an employee has no vested right to insist on the particular posting where the services are transferable. Para 49(k) of the Education Code of KVS clearly stipulates that the employees of KVS are amenable to all India transfer liability. The contention of the learned counsel for the applicant that while being appointed temporarily as PGT the stipulation in the clause in the Memorandum that he will be borne on the cadre of region only and normally would not be allowed to change region subsequently is also subjected to statutory rules. Para 49(k) of the Code, having the statutory power provides all India transfer liability. As such the clause in the memorandum of appointment would be redundant. Apart from it the orders have been issued by way of a memorandum which was issued by the Assistant Commissioner who is only competent to affect inter region transfers whereas the transfer order of the applicant has been issued by the

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Headquarter which is competent to do the same. In this view of the matter, the claim of the applicant cannot be countenanced.

7. As regards the plea of the applicant that having affected the transfer on 20.9.2000, from KVS, Banbasa to KVS-I at Banbasa exceeding the request of the applicant for getting him as a spouse case along with his wife who has been working in Government School as a Teacher the respondents cannot subject him to another transfer within 20 days without any justified reasons. The transfer guide-lines of the KVS do contain a provision for transfer on account of spouse case but that cannot be claimed as a matter of right. Even according to the Government of India's OM dated 12.6.1997, which was issued after the recommendations of the Fifth Central Pay Commission, it has been provided that husband and wife may invariably be posted together in order to maintain their normal family life. But the question remains that having pitted against the paramount consideration of interest and welfare of children/students and of the reputation of the KVS, the respondents have taken a decision to transfer the applicant from Banbasa to Bhavnagar and having taken a decision at the highest level on the basis of the relevant material, the claim of the applicant without establishing the malafide would not be legally admissible and is liable to be rejected. The applicant has no right even on a spouse case to be posted at a particular station. The learned counsel for the respondents has no doubt at the time of arguments has brought to my notice an enquiry report wherein having found involved in

harassment of a student instead of taking up the disciplinary proceedings or putting the applicant under suspension and initiating the disciplinary proceedings the alternative mode has been adopted as a reformatory measure by the respondents to transfer the applicant to Bhavnagar. This Bench in similar circumstance case in Geeta Khanna Vs. DC, KVS & Others, OA 1878/2000, dated 6.9.2001 taking into consideration the facts that therein the applicant was transferred as having found taking up private tuitions in the public interest and administrative exigency it has been held that one has no vested right to insist on a posting at particular place and in absence of any malafides established, and having all India transfer liability the decision of the respondents to transfer was found legally sustainable. The facts of the present case are in all fours covered by the ratio of Geeta Khanna's case supra. The applicant neither impleaded any respondents in person to allege any malafides. Apart from that, he had also failed to establish the same as legal malafides too.

7. The applicant has also not established the fact that the respondents have violated any of the guide-lines for transfer. As per the guide-lines normally the maximum period of service at a station should not exceed 5 years in case of Principals and other but they are liable to be transferred even before completion of maximum period, on account of their efficiency effectiveness conduct and organisational interest. The applicant whose request was considered has been transferred inter region to KVS Banbasa on account of the Committee report, it has

been found that in public interest and the foremost, keeping in view of the paramount interest of the organisation and students, the matter was reviewed and the Headquarters issued transfer of the applicant to Bhavnagar which cannot be observed as other punitive, malafide and in violation of the guide-lines/transfer policy. As regards the medical grounds are concerned the same treatment is available at Bhavnagar at Ahmadabad and the applicant can avail the same therein also. As the transfer has been affected and later on stayed the same, there is no question of mid session transfer as alleged by the applicant. Apart from it, the transfer cannot be claimed as a right. In this view of the matter and having regard to the ratio laid down in Geeta Khanna's case supra the transfer orders passed by the respondents are not found fault with and are perfectly within the parameters of administrative exigencies and public interest and is neither punitive nor issued in any colourable exercise of power or any breach of the transfer guide-lines. Having failed to establish the case on merits, the OA is devoid of merits and is dismissed but without any order as to costs. The interim order earlier passed is vacated.

8. However, before parting with the case, it is observed that in the event the applicant had worked on the post which he was holding in pursuance of the transfer orders, the respondents shall consider the claim of the applicant for payment of his salary in accordance with the rules and instructions on the subject. No costs.

S. Raju

(SHANKER RAJU)  
MEMBER(J)

/rao/