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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 2662/2000

New Delhi , this 14th day of January 2001

Hon'ble Shri Govindan S Tampi, Member (A)

Shri Jagbir Singh Khatri,
S/o Late Sh. Dariya Singh,
R/o B-6, Model Town II Stop
Delhi.

.....Applicant

(By Mrs. Meera Chhibbar, Advocate)

Versus

Union of India through

Commissioner at Hqr. KVS,
18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi

Dy. Commissioner (Finance)
K.V.S. HQ, 18 Institutional Area,
New Delhi.

Asstt. Commissioner (D.R.)
K.V.S. , Delhi Region,
New Mehrauli Road, JNU Campus,
New Delhi.

Principal Kendriya Vidyalaya
Pitampura, TP Block,
Delhi.

.....Respondents

(By Shri S K Gupta, Advocate,)

O R D E R

By Hon'ble Shri Govindan S Tampi, Member (A)

Challenge in this application is on the relief
by order dated 12.12.2000 of the applicant in the
absence of a properly issued transfer order.

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2. The applicant working as a Trained Graduate Teacher (T.G.T.) in Biology and posted at Kendriya Vidyalaya School Pitampura, New Delhi was transferred on 08.11.2000 to Kendriya Vidyalaya, Dimapur while one Smt. M. Gupta, also a Trained Graduate Teacher in Biology was transferred to Kanpur. This was done apparently as a part of the policy to post out two teachers from each stream with longest stay in Delhi and bring in two teachers from outside. However, the relief of lady teacher was held back in violation of Articles 14 and 16 of the Constitution. According to the applicant there were other TGTs in Biology with longer stay in Delhi like Shri B.R. Kaushik who should have been transferred out earlier. He, therefore represented against the transfer. Subsequently, Sh. Kaushik and S.Z. Abbas TGT in Biology with longer stay in Delhi were transferred by the order dated 28.11.2000 to Dimapur and Kanpur respectively and the post out of Smt. Gupta was cancelled. Though the post at Dimapur was filled by posting of Kaushik there and by the transfer of both Kaushik and Abbas two posts of TGT Biology have been consumed, the respondents did not cancel his order. He continued to work in Kendriya Vidyalaya Pitampura till 12.12.2000 at 12.30 PM, he was relieved by the Principal, with the instructions to report at Kendriya Vidyalaya Mohanbari, Dibrugarh. The applicant's request for retention was not acceded to, though two TGT in Biology had already been posted out and there were a number of others in the same category with longer stay in Delhi. Besides, the applicant was a patient of asthma who has been advised to remain in dry places and

Mohanbari was not one such place. his wife is working as a teacher in one of the Govt. Schools in Delhi and he had a right for continued posting in Delhi alongwith his wife. His representation was not being considered and he was being forced to join the Mohanbari. The transfer issued in mid session was also against the guidelines on transfer issued by the Kendriya Vidyalaya Sangathan themselves. In view of the above the applicant prays for quashing of the orders of his relief of 11.12.2000 as a prelude to his transfer to KV Mohanbari and for a declaration that persons with longer stay at Delhi should be transferred out before he is posted out. In the alternative he prays for being posted to KVS Palwal which he has indicated as his place of his choice for posting.

3. The applicant had appeared on 19.12.2000 before the Single Bench and obtained a stay of the order dated 12.12.2000 relieving him when the case came before the next single bench. The interim relief was continued on 2.1.2001 by another Single Bench. In between a MA No. 1/2001 was filed on behalf of one Smt. Mamata seeking her impleadment in the OA which was also allowed.

4. In their short reply filed on 4.1.2000 the respondents contest the pleas of the applicant. According to them the applicant has no right to stay in a particular place for ever and has been transferred to Dimapur in terms of para 2(1) of the Transfer guidelines, his being one with period of longer stay at the Delhi to make way for Mrs. Mamta a TGT in Biology who was working outside Delhi and there was no

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violation of the guidelines. His having been duly transferred on 6.11.2000 and been relieved on 12.12.2000 he cannot take a plea that he was not relieved properly. S/Shri B R Kaushik and S Z Abbas, both TGT Biology who were seniors to the applicant had been transferred and actually relieved on earlier dates and the applicant being the next person with longer stay in Delhi was duly relieved on 12.12.2000. Only those persons who have put in more than 5 years are being considered for the transfer as per the guidelines. There was nothing irregular or malafide in the transfer. According to the law laid down by the Hon'ble Supreme Court in S L Abbas case, the employee has no right to challenge an order of transfer unless the same is shown to have been vitiated by malafides. This was not such a case and the transfer should not be interfered with, urge the respondents.

5. Heard the learned counsel for the applicants and respondents and for the impleading party. Though the case was originally posted for considering the continuation of the interim relief, at the request of all the counsel, the OA itself was taken up for final disposal.

6. Smt. Meera Chhibbar the learned counsel for the applicant, vehemently argues and states that the transfer order was malafide and discriminatory and deserved to be set aside. The various pleas urged by her are enumerated as below:

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i) as the applicant is not the person with longest stay and of the TGT Biology and therefore could not have been shifted out before those with longer stay are transferred out.

ii) perusal of host of orders issued during that period by the Sanghatan shows only 2 teachers from ach stream were being sent out. As the 2 seniors i.e. Kaushik and Abbas had been shifted out to Dimapur and Kanpur respectively and the quota has been consumed, there was no justification for not cancelling the order of his transfer to Dimapur.

iii) Endorsement in the transfer order which directs the Principal of the Vidyalaya, where from teachers have been transferred to relieve them immediately but to hold back the relief of female and handicapped transferees was highly discriminatory and violative terms of article 14 and 16 of the Constitution.

iv) The transfer guide lines of the KVS in para 3 states that all employees of the KVS are liable to be transferred at any time depending upon the administrative exigencies /grounds and this cannot be violated merely on account of a person being a male or female teacher.

v) Paragraph 6 ibid states that the annual transfers may be made during the summer vacations and that except on grounds of organisational reasons, administrative grounds they cannot be made after 31st

August in the year. This has also been violated as no specific ground has been made out for the transfer in November.

vi) Ms Mamta, the pleading party who has been posted to KVS Pitampura was herself not working in Mohanbari but was in Dhanbad. She had got herself relieved and joined Mohanbari only as a ruse to reach Delhi and to dislodge the applicant. She had also not worked for three years in NE or hard states and her case did not merit to be considered for transfer to Delhi. In fact the guidelines adopted and circulated by the KVS themselves, had been sideliend while effectisng this transfer.

7. Smt. Chhibbar also stated that it defenitely appeared that the respondents were acting malafidely by shifting her client before time and before his seniors are shifted out. The unseemly haste with which the Principal of Pitampura KV had directed his relief smacks of malafide and mischief on the part of the respondent. Once two (2) TGT Biology were posted there was no justification at all to shift the applicant just to accommodate someone else. Even if they so wanted to accommodate her in Delhi, they could consider her for being posted elsewhere instead of in the KV Pitampura itself. In fact there was a vacancy of TGT in KV Nara (Code 118) where she could be adjusted without shifting out the applicant, in an unreasonable manner.

8. Smt. Chhibbar also seeks to rely on the Full Bench decision of the Punjab & Haryana High Court in the case of M C Sharma Vs Punjab University (AIR 1997 Punjab & Haryana 87) which held that in the matters of employment discrimination even in favour of one of the sexes was improper. This decision squarely covers the case of the applicant, as by the impugned order the applicant was sought to be discriminated in favour of a lady teacher. Further, decision of the Tribunal in Kamal Kumar Prasad Vs UOI in OA 1948/1990, decided on 15.11.99 was also relevant as the respondents were seeking to relieve the applicant without considering and deciding his representation. The applicant's case therefore, merits acceptance, pleads the learned counsel.

9. Shri ^{L.R.} ~~Sw~~ Khatana the learned proxy counsel appearing for the respondents reiterates the written pleadings and states that while Article 14 of the Constitution directs that the state shall not deny to any person equality before law or equal protection of the laws within the territory of India, Article 15 prescribes that the State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex or place of birth or any of them. However 15(iii) directs that nothing in that article prevents the State from making any special provision for women or children. He also refers to article 16 which grants protection to equality of opportunities in the matters of public appointment. Read together this would point to protection against any discrimination on narrow consideration with guarantee for special steps being taken for the sake of women and children etc.

who are not equal to men in all respect. Seen in that light, the directions in the transfer order to hold back the relief of female teachers and handicapped teachers, could not at all be described as violative of the constitution.

8. Shri Khatana further states that para 3 and 6 of the transfer guidelines of the KVS, refer to liability for All India Transfer to the employees and restriction of transfers to be made during the vacations. These provisions also refer to situations when these can be modified. He also referred to para 10(i) relating to the grant of request transfers for those who had continued stay in North East and hard stations and 5 years elsewhere. This clearly covered the case of Ms Mamta who has been brought to KV Pitampura. He also states that on account of the "Stay Granted" the person who has been posted to Pitampura has been languishing without any post and this would have to be set aside. According to him the transfer proposals are cleared by the Committee consisting of Additional Secretary Education, Chairman, Commissioner and Jt. Commissioner of KVS and it cannot be held that any of them had any grudge against the applicant. Moreover in paragraph 20 it is indicated that the Commissioner is authorised to pass orders for removal of difficulties. In as much as the transfers have been issued in pursuance of the guidelines and without any malafide there was no reasons for the applicant feel aggrieved and he should in all fairness as a disciplined employee should take up the new assignment, argues Sh. Khatana.

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9. Shri S K Gupta, the learned counsel appearing on behalf of Ms Mamata, the impleading party adopts and endorses the arguments of Sh. Khatana and states that it was in the interest of the justice that the STAY is vacated. According to him, his client has been spending time in Delhi, without a place, though she has been correctly and regularly transferred.

11. I have carefully considered the matter. To my mind this is a issue which has been blowout of size and proportion by both the applicant and respondents. A little give and take as well as understanding on both sides would not have caused any inconvenience to the administration or the school system. It also would have the saved the atmosphere from being polluted by bad blood.

12. The perusal of the papers placed before me and arguments advanced makes it clear that the transfer order passed by the Respondent on 8.11.2000 would come squarely within the parameters of the transfer guidelines issued by the KVS. The concepts of All India Service Liability, liability to ~~be~~ shifted from one school to another on completion of requisite period, favourable consideration of a request made by a lady teacher for posting to Delhi, consideration of the transfer proposals by an empowered committee etc appear to have been followed. In that scenario prima facie the transfer order cannot be assailed. At the same

time the facts ~~has~~ brought out also point to some disturbing trends and it would appear that the guideline have been used as a facade to teach the applicant a lesson, for what one does not fathom. There is something which more than meets the eye in the sequence of things. As the records show only two teachers each from every branch ~~of stream~~ have been taken out for being posted outside Delhi and therefore after Kaushik and S Z Abbas from amongst TGT Biology who have found to have put in long time in Delhi have been posted to Dimapur and Kanpur respectively there was no immediate need to have shifted the applicant also, more so the transfer of Ms. Gupta posted out alongwith applicant to Kanpur has been cancelled. The anxiety to have the post filled at Dimapur to look after the students, also appears to ^{be a} very thin veneer as with Kaushik's posting, the vacancy at Dimapur has been filled up. In fact the applicant's posting stands modified to Mohanbari, where from some one who has been posted to Dimapur almost technically and transferred to Delhi. Therefore, while confining within the four walls of the guidelines the attempt has been to get at the applicant. No reasons for the same are forthcoming. So long as those reasons are not brought out satisfactorily it gives the impression that everything is not fine. To permit such an impression to gain ground is not good for the reputation of a All India Organisation like the Kendriya Vidyalaya Sanghathan. Authorities should note this. The almost ugly haste with which the Principal, KV Pitampura was forced to relieve the applicant makes one believe that the administration was attempting to kill two birds with one stone - to help Ms. Mamta to reach Delhi,

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after a few days in Dimapur and to show the applicant his lowly place in the organisation. I would repeat it is a sorry state of affairs.

13. Normally the Tribunal does not intervene in matters of transfers which are issued as a routine on the grounds of administrative requirement or exigency and where no malafides in shown. This is in tune with the decision of the Hon'ble Supreme Court in the case of S L Abbas. In this case malafide has not been clearly brought out and the orders have been issued within the parameters of the guidelines. However, the sequence of events in this case gives one an impression that all is not well. The Tribunal therefore has to intervene in the matter. More so, as this is a mid session transfer for the applicant. At the same time, I observe that the posting at Delhi given to Ms Mamata, the impleading party has been made on acceptance of her request after she had completed more than 5 years outside to enable her to live with her family and the same has been cleared by the empowered committee as stated at the bar. I would not therefore like to disturb it. Adoption of a via media should, in my opinion save the situation for all concerned. At the bar of the Tribunal it has been indicated that there is a vacancy of TGT Biology at KV Nara (code 118) wherein Ms Mamata can be accommodated to tide over the situation. Even otherwise it would not be difficult to transfer one vacant post of TGT Biology to KV Nara or KV Pitampura to accommodate her.

14. In the above circumstances the application succeeds and is accordingly allowed. The impugned order relieving order of 12.12.2000 issued in respect of applicant with reference to KV Pitampura quashed and the interim Relief is made absolute. The respondents are directed permit him to continue till the end of the academic session 2000-2001 and to adjust Ms Mamta as TGT Biology in KV Nara against the existing vacancy or in KV Pitampura itself by diverting a vacancy from elsewhere till the end of the academic session. This order does not, however, preclude the respondents from transferring the applicant at the end of the academic session keeping in mind the guidelines, his comparative stay at Delhi vis a vis other TGT in Biology and request if any from him on genuine grounds of health.

No costs.

Patwal/

(Govindan S Tampi)
Member (A)