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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-67/2000
MA-55/2000

New Delhi this the 26th day of June 2000.

HON'BLE DR. A. VEDAVALLI, MEMBER(J)

1. Sh. Shishu Pal,
S/o Sh. Bhola Ram,
Group 'D' Employee,
Q.No.19, Staff Quarters,
Air Force Station Hindan
Ghaziabad(UP).
2. Sh. Vishwash Kumar,
S/o Sh. Shambhu Dutt Sharma,
Group 'D' Employee, Q.No.21,
Staff Qtr., Kendriya Vidhyalaya
No.1, Air Force Station, Hindan,
Ghaziabad(UP). Applicants

(through Ms. Rita Kumar, Advocate)

Versus

1. Commissioner,
Kendriya Vidhyalaya Sangathan,
18, Shaheed Jeet Singh Marg,
New Mehrauli Road, New Delhi.
2. Asstt. Commissioner,
Kendriya Vidhyalaya Sangathan,
JNU Campus, New Mehrauli Road,
New Delhi.
3. Principal,
Kendriya Vidhyalaya No.1,
Air Force Station, Hindan,
Ghaziabad(UP). Respondents

(through Sh. S. Rajappa, Advocate)

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Heard the learned counsel for both the parties. Pleadings and the material papers and documents placed on record have been perused.

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2. MA-55/2000 filed under Rule 4(5) of Central Administrative Tribunal (Procedure) Rules, 1987 for joining together is allowed. O.A. is being disposed of at the admission stage itself as requested by the learned counsel for both the parties.

3. The applicants, Shishu Pal and Vishwash Kumar, were working as Group-D employees in Kendriya Vidhyalaya No.1, Indian Air Force Station Hindan, Ghaziabad. They are aggrieved by an order dated 19.11.99 (Annexure A-10) issued by the respondents transferring applicant No.1 to Rohtak and applicant No.2 to Manesar and have impugned the said order in this O.A.

4. The applicants have sought the following reliefs in this O.A.:-

"(i) To set aside the transfer orders of the applicants in the interest of justice.

(ii) The respondent may be directed not to cancel the residential allotment of the applicants.

(iii) The applicant No.1 be treated as present on 29.9.99 and he be paid for that date."

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5. Shishu Pal (Applicant No.1) and Vishwash Kumar (Applicant No.2) were initially appointed as Group-D employees on 14.07.83 and 04.03.87 respectively and were appointed in a substantive capacity on 14.07.85 and 04.03.89 respectively by an order of the respondents dated 13.08.93 (Annexure A-2). Their seniority list is at Annexure A-1. The impugned transfer order dated 19.11.99 was not filed alongwith the O.A. stating that it was not served upon them. However, it was filed subsequently on 17.01.2000 as an additional document (Annexure A-10). It was stated by the learned counsel for the applicants Ms. Rita Kumar during the hear on 01.02.2000 that the same has been obtained from one Dal Chand whose name also is mentioned in the said order.

6. The applicants have challenged the impugned transfer order on the ground that it is arbitrary and is vitiated by mala fides and illegality.

7. Re the ground of mala fides, learned counsel for the applicants has referred to the averments made by the applicants, particularly, in paras 4.4, 4.5, 4.6, 4.8, 4.9 and 4.10 of the O.A. stating that the incidents including physical attack on applicant No.1 have taken place at the instance of Respondent No.3 and submitted that even though the applicants have made representation dated 21.8.99 (Annexure A-3) and dated 29.11.99 (Annexure A-4) to

Respondent No.1, no action was taken in this matter. Learned counsel contended that the impugned transfer order is, therefore, vitiated by mala fides and deserves to be quashed and set aside.

8. The respondents have filed a short reply, a detailed reply and an additional affidavit by Respondent No.3 in this O.A. No rejoinder has been filed by the applicants.

9. Learned counsel for the respondents Sh. Rajappa in reply to the arguments advanced by the learned counsel for the applicants regarding the ground of mala fides has submitted that there is not even a grain of truth in the allegations made by the applicants in this regard. He has submitted that all the above allegations made by the applicants are mere figments of their imagination and they have not furnished any strict evidence or proof regarding mala fides on the part of the respondents. He contended that the allegations regarding mala fides are baseless as is evident from the counters and the additional affidavit filed by the respondents denying the said allegations.

10. Regarding the ground of illegality, learned counsel for the applicants submitted that there is no provision in the rules for transfer of Group-D employees from the present establishment to any other establishment except when they are declared as surplus and not otherwise and hence the transfer is against the rules and is illegal.

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11. She has also submitted that Respondent No.3 is the Appointing Authority and Respondent No. 2 is not the competent authority to issue the transfer order and on this ground also transfer order is illegal as it is against the rules.

12. Learned counsel for the respondents in reply submitted that the applicant have an All India Transfer liability as per Article 49(k) of the Education Code of the Kendriya Vidyalaya Sangathan (Annexure R-5) and as such they can be transferred in public interest and on administrative exigencies. He further submitted that the All India Transfer liability is clearly stipulated in the offers of appointment of the applicants (Annexure R-6 and R-7 Colly. to additional affidavit) which were accepted by them.

13. Regarding the question of competency of the person who had issued the transfer order, learned counsel for the respondents submitted that the said order has been issued by the competent authority as per rules and the applicants have not given any material to show the incompetency of the said authority and hence this contention also is not tenable.

14. Learned counsel for the respondents submitted further that both the applicants have already been relieved by orders dated 25.11.99 (Annexures R-1

and R-2 to the short reply). It was also stated that though the transfer orders and the relieving orders have been sent to the applicants by registered post on 26.11.99 and the telegram (Annexure R-3 to short reply) was also sent to them on the same date as applicant No.1 left the school on 25.11.99 without getting any leave sanctioned when he got the information that he is being transferred by the impugned order dated 19.11.99 and applicant No.2 who was on a night duty refused to accept the relieving order. The relieving orders sent by registered post also were returned undelivered with the remarks by the Postal Department that they were not available as per Annexure R-2 Colly. to short reply. Learned counsel further contended that it is obvious that the applicants are evading service of the transfer order and relieving orders intentionally and deliberately and the O.A. is liable to be rejected as being devoid of any merit.

O 15. I have considered the matter carefully.

16. Transfer is an incident of service. It can be interfered with only on limited grounds. It is well settled as per the law laid down by the Apex Court in a catena of cases including U.O.I. & Ors. Vs. S.L. Abbas (1993(4)SCC 357) that unless the order of transfer is vitiated by mala fides or in violation of any statutory provisions or is void on any other legally sustainable ground, Courts cannot interfere with the said order.

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17. While so, the applicants have not furnished any strict proof establishing that the impugned order is motivated by mala fides on the part of respondents and in particular Respondent No.3. They have only made certain allegations in the O.A. as noted supra and have not given any substantial material supporting their allegations. The applicants have not even filed any rejoinder to the short reply, detailed reply and additional affidavit filed by the respondents wherein the aforesaid allegations have been denied by them. In the circumstances, I am of the view that the first ground raised by the applicants as to mala fides is not sustainable and it is, therefore, rejected.

18. Regarding the second ground raised by the applicants as to illegality, their first contention is that their job is not transferable. However, it is quite evident from the replies filed by the respondents and the documents annexed thereto that Group-D employees also have an All India Transfer liability as per the relevant rule noted supra. The applicants have not been able to show any rules to the contrary supporting their contention that their job is not transferable. Hence the said contention of the applicants fails and is rejected.

19. The second contention of the applicants on the ground of illegality, relates to the alleged incompetency of the person who has issued the impugned

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transfer order. It is noticed that the applicants have not even filed copies of their appointment letters and have not bothered to specify the particular rule, if any, which supports their contention. In the circumstances, the above contention can only be termed as a casual averment unsupported by any material. Such a contention is not tenable in law and is, therefore, rejected.

20. It is also quite clear from the contents of the replies filed by the respondents and the arguments advanced by the learned counsel that the applicants were quite aware of their transfer and relieving orders and they were evading service deliberately. It is evident from their own representation dated 29.11.99 to Respondent No.1 (Annexure A-4) that they had knowledge about their "proposed" transfer. They have not even filed copies of leave applications, if any, submitted before or after the impugned transfer order dated 19.11.99 was passed and have not made any averment in the O.A. as to their whereabouts on or after the date of issue of the said order. They have also not refuted the averments made by the respondents in their replies by filing any rejoinder.

21. In the facts and circumstances of this case and in the light of the foregoing discussion, I am of the view that the O.A. is devoid of any merit and

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the impugned order does not warrant any interference.
In the result, the O.A. is dismissed. The order of
stay granted earlier stands vacated. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
MEMBER(J)

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