

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/00472/2018

ORDER RESERVED ON 08.12.2020

DATE OF ORDER: 15.01.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

Dr.Ravi S.R.

Age: 48 years

S/o Sri.S.V.Ramaiah

Occn: TGT Kannada

JNV, D.G.Halli, Mysuru: 570 026.

(Under orders of transfer to JNV District Kalaburagi-I)

Residential address:

No.195, 2nd Cross

D.Subbaiah Road

Subbarayanakere

Chamaraj Mohalla

Mysuru: 570 024.

....Applicant

(By Advocate Shri P.A.Kulkarni)

Vs.

1. Union of India

to be represented by its Secretary.

Ministry of Human Resources Development

(Department of School Education and Literacy)

Government of India

North Block, New Delhi-110001.

2. The Commissioner

Navodaya Vidyalaya Samiti

B 15, Institutional Area, Sector 62

Noida: 201307.

District Gautam Budh Nagar, (U.P.)

3. The Deputy Commissioner
Navodaya Vidyalaya Samiti
Hyderabad Region
N.L.I. Buildings, Nalagandla Road
Post & Village: Gopanpally
Rangareddy District
Hyderabad: 500 107
Telangana State.

4. The Principal
Jawahar Navodaya Vidyalaya (JNV)
DMG Halli
Mysuru District: 570 026.

5. The Principal
Jawahar Navodaya Vidyalaya (JNV)
DAR Head Quarters, Opp. S.P.Office
Police Ground Premises
Kalaburagi – 585105.Respondents

(By Advocate Shri M.Rajakumar)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

- a. Quash the impugned order bearing No: PF TKN/22-69/NVS(HR)/(Est.II)/2018, dated 15.5.2018, Annexure-A2, passed by Deputy Commissioner NVS Hyderabad Region (R-3 herein) and consequential

relieving order bearing F.No:I-16/JNVMY/2018-19/116, dated 21.05.2018, Annexure-A3, passed by Principal JNV Mysuru (R-4 herein).

- b. Pass any other order or direction that this Hon'ble Tribunal may deem it fit and necessary in the facts and circumstances of the present case and in the interest of justice and equity.
2. The facts of the case as pleaded by the learned counsel for the applicant, Shri P.A.Kulkarni, are as follows:

- a. The applicant has the following service profile:

14.9.2001: Appointed as Trained Graduate Teacher in Kannada and posted to JNV Begusarai Bihar.

30.6.2006: Relieved from Begusarai on his transfer to Mysore.

7.7.2006: Reports for duty at JNV Mysore.

25.7.2012: Stands transferred from Mysore to Mahasamund in Madhya Pradesh.

02.02.2015: Transferred and posted to JNV Davangere.

26.06.2016: Transferred and posted to JNV Mysuru.

- b. The transfer policy for regulating transfer of employees of NVS is notified on 04.04.2012(Annexure-A1).
 - c. Under clause 6(c) of the notified transfer policy, an employee whose continuance at a particular station is not conducive from administrative point of view can be displaced by NVS. However, an employee is open

for such transfer by NVS to a Station/JNV as found appropriate on the basis of detailed enquiry as considered deemed fit in the case and after recording reasons of such transfers. It is further stated under this clause, that transfers will not be used as a punitive measure.

- d. Clause 4 of the transfer policy specifies that in case of PGT/TGT/Misc. Teachers, the normal tenure prescribed at one station is 10 years. The applicant has been working at JNV Mysuru since 26.6.2016.
- e. The applicant has been transferred from JNV Mysuru to JNV District Kalaburagi-1 vide office order dated 15.5.2018 reportedly in pursuance of instructions contained in Samiti's letter dated 26.4.2018 on administrative grounds with immediate effect. The applicant has also been relieved vide JNV, Mysuru office order dated 21.5.2018 when the applicant was on annual vacation.
- f. Learned counsel for the applicant has averred that even though in the transfer order, it is mentioned that it is on administrative grounds, however, as per the transfer policy, the administration can transfer an employee only on the basis of a detailed enquiry as considered deemed fit after recording reasons for such transfer. In this case no detailed enquiry and reasons for such transfer are forthcoming in the impugned transfer order(Annexure-A2). It is clearly stated that under the transfer policy clause 6(c), the transfer cannot be invoked as punitive measure. But

applicant's apprehension is that this may have been done as a punitive measure since respondent No.4 Principal has developed disliking towards him continuously without any justification. The transfer order and the consequential relieving order are, therefore, not sustainable. The applicant's wife is working at Kendriya Vidyalaya Sangathan at Mysore. The normal tenure of the applicant at JNV is ten years as per the transfer policy. His transfer therefore, is a premature transfer.

3. Shri M. Rajakumar, learned counsel for the respondents in his reply has averred as follows:

- a. The applicant while working as Trained Graduate Teacher (Kannada) at Jawahar Navodaya Vidyalaya, Mysuru(District) has engaged himself directly in private commercial business without prior permission of the competent authority by running a coaching centre by name "Navodaya Foundation & Mysore School of Banking", at Krushi, # 195, 2nd Cross, D.Subbaiah Road, Ramaswamy Circle, near Lakshmi Hayagreeva College, Chamaraja Mohalla, Mysore-24.
- b. An anonymous complaint dated 26.04.2017 addressed to the Commissioner (NVS), NVS Hqrs., Noida was received stating that Dr.Ravi S.R.(applicant) TGT, Kannada runs a coaching centre by name "Navodaya Foundation" where during summer vacation he runs classes

for 45 days for Navodaya students from all JNVs in Karnataka by charging them and even providing hostel facilities for girl students.

- c. On conduct of spot inquiry, it has been *prima facie* established that Dr.Ravi S.R., TGT Kannada, JNV, Mysore is openly involved in running a commercial coaching centre called “Navodaya Foundation & Mysore School of Banking” at Mysore at the address mentioned in the anonymous complaint, which has been verified. It is also established that the applicant was conducting coaching classes since 2006 onwards and he has a website of his coaching centre in which his name figures. He also possesses visiting card of the coaching centre containing his name. This act on the part of the applicant is violation of CCS(CCA) Rules 1964.
- d. In the light of the above, transfer of the applicant was ordered from JNV, Mysore to JNV, Kalaburagi-I on administrative grounds vide NVS, RO, Hyderabad Office Order NO.TKN/22-69/NVS(HR)/(Estt.II)/2018 dated 15.05.2018.

4. The applicant has filed rejoinder wherein he stated as follows:

- a. The allegations made against him that he is running a coaching centre are specifically denied. The stand taken by the applicant that transfer has been done as a punitive measure is evidenced by the statement contained in the reply statement of the respondents to the effect that the disciplinary

proceedings have been initiated against the applicant under Rule 14 of CCS(CCA) Rules 1969 vide charge sheet dated 30.05.2018. It is reiterated that this charge sheet has not been served on the applicant.

- b. JNV is a campus based system where both the students and teachers are housed in the campus of the JNV concerned and it is not possible to leave the campus without permission. Hence, the allegations made against the applicant are frivolous and absurd.
- c. The applicant's explanation had been called for by the Deputy Commissioner, NVS, Hyderabad on 16.01.2018 wherein a show cause notice has been issued to him which is annexed as Annexure-RJ2 wherein it has been alleged that he was running a coaching centre by name "Navodaya Foundation". On conduct of spot inquiry by Regional level Inquiry Committee constituted for the purpose, it has been prima facie established that the applicant was openly involved in running a commercial coaching centre called "Navodaya Foundation & Mysore School of Banking" at Mysore. It has also been established that Dr.Ravi S.R.(applicant) was conducting coaching classes for the last many years (2006 onwards) and he has also a website of his coaching centre in which his name figures and he also possess visiting card of the coaching centre bearing his name.

d. In his reply to the show cause notice, the applicant has stated vide his letter dated 03.02.2018 that the allegation of running the coaching centre is unfounded. However, it is a fact that a Charitable Trust known as “Navodaya Foundation” is existing at Mysuru and this deed of trust is registered before the Sub-Registrar Mysuru North on 31.10.2013. He is associated with this trust under intimation to all the authorities in NVS in an honorary capacity since he is interested to do social work during the free time available to him. He is not doing any commercial venture while associating with this Trust. His bonafide belief is that for carrying out such social service, there is no prohibition while being in the services of NVS Organization. In doing such work, he is not violating rule 3(1)(i) & (ii) of CCS (Conduct) Rules 1964 as alleged in the show cause notice.

e. The applicant has enclosed copies of trust deeds executed on 31.10.2013 wherein it is indicated that the applicant is the President and Author of the Trust. In the papers pertaining to the Trust, many activities, which the trust can take up are listed, including ‘Education Development’, ‘Health Development’ and other Development Programmes.

f. The applicant has alleged that the administration is making erroneous allegations against him and it amounts to persecution by the administration even though the applicant is at no fault whatsoever.

g. The applicant has alleged that there was further continuous harassment by the administration. When the transfer order was not stayed by this Tribunal, the applicant applied for leave to decide his further course of action after the final verdict in the present case. He submitted leave application directly to the Regional Office, Hyderabad under letter dated 23.05.2018. On 13.7.2018, Regional Office, Hyderabad advised the applicant to report first at the transferred place and then to submit the leave application. The Principal, JNV Mysuru also directed the applicant to vacate the quarter allotted to him in the JNV campus at Mysuru. These two acts by the administration amount to harassment.

5. In the additional reply statement filed by the respondents to the rejoinder filed by the applicant, the respondents have stated the following:

a. The applicant while working as TGT(Kannada) at JNV, Mysore allegedly engaged himself directly in private commercial business by running a coaching centre by name “Navodaya Foundation & Mysore School of Banking” at Mysore with creating trust deed wherein mentioned that the applicant is president and author of the said trust. Applicant also looking day to day business of said trust. The applicant was recruited as trained graduate teacher in the respondent's institute. As per the terms and conditions of the appointment order, the teachers are bound to be in the campus full time for safety and security of students. They are paid 10%

allowances for these purposes. They cannot leave the campus without permission. Therefore, charitable work without permission is not allowed.

b. Prior to his transfer order, the applicant left the campus on 06.09.2017 without obtaining proper permission from the respondents. He subsequently requested for Half Pay Leave from 7.09.2017 to 9.09.2017 on domestic grounds which was not sanctioned due to exigency of work. Still, he did not re-join his duties and requested for further extension of leave till 23.09.2017 on medical grounds based on a medical certificate issued by KR Hospital Mysore. The respondents denied the leave to him due to exigencies of work and also wrote to the Doctor who had issued the medical certificate to confirm/authenticate the certificate issued by him. However, no reply was received from the concerned Doctor. Even after this period, the applicant after rejoining worked for very short spells of few days and again remained on unauthorised leave from 7.11.2017 to 26.03 2018. The respondents had informed him that his leave cannot be sanctioned due to exigencies of work. However, the applicant did not turn up, thereby causing serious lapses in discharge of his duties.

6. The department had been directed to produce the original record in the matter pertaining to the transfer of the applicant from JNV Mysore to JNV Kalaburagi. The respondents have produced the records which have been perused. Perusal of the records indicates that there was a letter issued by

Principal, Jawahar Navodaya Vidyalaya, Mysore addressed to the Dy.Commissioner, Navodaya Vidyalaya Sangathan, Regional Office, Hyderabad vide F.no: PF/JNVMY/2017-18/26 dated 13.04.2018. In this letter, the duty report of Dr.Ravi S.R. for the past 6 months had been given as under:

"Dr.Ravi S.R., TGT (Kannada), left the campus on the a/n of 06.09.2017 without obtaining proper permission by merely sending an email followed by hard copy requesting for grant of HPL on domestic ground for 03 days from 07.09.2017 to 09.09.2017 suffixing 10.09.2017 being Sunday. In response, this office vide lr. cited under ref. ii) informed Dr.Ravi that his leave could not be sanctioned due to exigency of work. Further he extended his leave till 23/09/2017 requesting to sanction EOL on medical grounds with retrospective effect from 07.09.2017 enclosing medical certificate stating suffering from Orthopedic problem issued by K.R.Hospital, Mysore. In response, this office vide lr. cited under reference iii) informed Dr.Ravi that his leave cannot be sanctioned as the mid-term exams are fast approaching and directed him to report to his duty immediately. Since Dr.Ravi S.R. did not turn up to his duties, this vidyalaya vide letter cited under reference iv) informed him to his duties immediately. In response to this letter Dr.Ravi S.R. vide his letter dated 16.09.2017 replied stating he is suffering from L4L5 Orthopaedic and therefore unable to attend his duties. This office vide letter cited under reference v) informed him to report immediately as he was assigned the responsibility of evaluation of answer scripts and from the view point of students facing exams.

Further, this office wrote a letter vide even no. Dated 27.09.2017 to the Doctor who had issued him medical certificate to confirm the authenticity of the sickness and 3 week duration of rest. However no reply was received.

Dr.Ravi S.R., joined his duties on 25.09.2017 and after working for 3 days, availed Dussera vacation from 28.09.2017 to 20.10.2017. After vacation he was on duty till 06.11.2017 and further vide his letter dated 08.11.2017, he extended his leave for two months from 07.11.2017 stating his mother's health problem making a copy to RO Hyderabad and again vide his leave application dated 08.11.2017 he applied for grant of EOL for 2 months from retrospective effect from 07.11.2017 to 07.01.2018. In response, this office vide lr. Cited under ref.No: vi informed Dr. Ravi S.R. that his request for sanction of leave could not be considered due to ensuing PWT & Pre-Board exams.

The matter regarding applying of leave frequently and refusal by this office to consider his request for grant of leave was communicated to RO Hyderabad vide this office lr. Of even No: dated 23.11.2017.

Dr.Ravi S.R. vide lr. Cited under ref. Vii) was again informed that his request for grant of EOL from 07.11.2017 to 07.01.2018 was not considered hence to report back to his duties immediately. Dr.Ravi S.R. has directly forwarded advance copy of his letter dated 08.11.2017 to RO Hyderabad violating the norms of the Samiti. The employee vide his letter dated 03.01.2018 extended his leave upto 31.01.2018 on the grounds of his mother's ill-health without mentioning the nature of leave. In response this office vide lr. Cited under ref.no: viii) informed Dr.Ravi that his request for extension of EOL upto 31.01.2018 is refused from the academic point of view and earlier requests are also not considered and therefore to report to his duties immediately. Subsequently vide his letter dated 29.01.2018, Dr. Ravi S.R. extended his leave upto 28.02.2018 stating his mother's health problem. In reply this office vide lr. cited under ref. Ix informed Dr. Ravi that his request for extension of leave upto 28.02.2018 is refused due to exigencies of work and to report to his duties immediately. Dr Ravi again vide his letter dated 26.02.2018 requested his leave to be extended upto 27.03.2018. This office vide lr. Cited under ref. X) informed about the refusal for grant of leave from the academic view point, preparation of students to face the ongoing examination & evaluation of Kannada answer paper of class IX annual exam.

Dr Ravi S.R. joined his duties on 27.03.2018 and was subsequently relieved for CBSE evaluation duty of AISSE answer booklets. After completion of the evaluation, he reported on 09.04.2018 and left for summer vacation.

In spite of several letters Dr Ravi S.R. did not report to his duty till 26.03.2018. He is habitual in being absent to his duties. Since he showed no response and refused to join his duties at the crucial time of examination his absence for whole period will be treated as Dies-Non. Copy of the joining report is enclosed herewith for your kind perusal please.”

7. The above letter clearly reveals that the applicant was habitual in being absent of his dutiesunauthorizedly and had barely attend to his duties, despite being asked repeatedly to do so, from 06.09.2017 till 27.03.2018. Subsequent to

this letter, it was decided by the respondents, that the applicant be shifted from his present place of posting to some other place on administrative grounds. Accordingly, the impugned order of transfer was issued on 15.05.2018.

8. From the details provided by the respondents, it was quite clear that the applicant has not been attending to his duties properly during his posting in JNV, Mysore.

9. The applicant had enclosed copies of trust deeds executed on 31.10.2013 wherein it is indicated that the applicant is the President and Author of the Trust. Amongst the various activities which the trust can take up, the following are mentioned under the head of 'Education Development':

- a) *To provide education facilities to deserving students and to promote training of education activities.*
- b) *To establish and to run a Nursery, Primary, High School, CBSC, ICSE Schools, College, Technical Institutions, Graduation, Post Graduation, Adult Education, Commerce Training College, Management Course, Computer Education, Self Employment, Evening Colleges, Vocational Training Center, Etc.,*
- c) *To open School of Nursing, College of Nursing, Pharmacy, Paramedical Industrial Training Institute, Residential School, D.Ed., Computer Education in Hardware and Software, B.C.A., M.C.A., B.B.M, M.B.A, Dental College, Diploma, P.hd., Engineering, Law, Medical and other educational institutions. Fashion Designing, Interior Designing, Garment Technology and Self Employment Training, Job Oriented Course, Distance Education Courses etc.,*

- d) *To take up educational programmes and activities for all categories and disabled through integrated education and through special schools.*
- e) *To conduct study tours to places of cultural importance in or out of state.*
- f) *To start schools for imparting education in Hindi and Sanskrit, etc.,*
- g) *To open the Dental, Medical, Engineering College from the above said institutions.*
- h) *Cultural essay paining and competitive. To open the computer training centers.*
- i) *Child labour residential school, day care center, Deaddiction center and computer training center*
- j) *ShishupalanaKendras, to provide stay homes.*
- k) *To establish supervise and manage the religious, secular, technical and commerce education institutions.*

Besides the above, many other activities under health development and other development programmes are indicated in the trust papers.

10. The papers, submitted by the applicant himself, clearly indicate, that the Trust is involved in multifarious activities which also includes coaching students. The applicant has claimed that he was working only in an honorary capacity to help poor students. However, it is apparent that involvement of the individual in such activities would be affecting his duties as a full time teacher in a fully residential school under the JNV system.

11. The allegations regarding unauthorized involvement in commercial coaching by the applicant, in any case, is the subject matter of an enquiry, and it would be premature to comment on the merits of the case. However, it is very clear from the records that the applicant was not attending to his duties and remained absent unauthorizedly for a very long period between September 2017 to March 2018, even when he was being directed repeatedly to join his duties by the competent authority. The administration subsequently transferred him from the post of TGT(Kannada) JNV, Mysore to JNV, Kalaburagi, on administrative grounds, on 15th May 2018.

12. In a judgment reported in (2004) 11 SCC 402, in the matter of State of U.P. v. Gobardhan Lal, the Honourable Supreme Court has held as follows:-

Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with.

13. The applicant has challenged his transfer on the grounds that it is in violative of the statutory rules governing transfer which specify that an employee is open for transfer by NVS to a Station /JNV as found appropriate on the basis of detailed enquiry as considered deemed fit in the case and after recording reasons of such transfers. It is further stated under this clause, that transfers will not be used as a punitive measure.

14. In this case, it was noticed by the administration, that the applicant was habitual of remaining absent from his duties unauthorisedly although he was being directed repeatedly to join his duties. The act of transferring him on administrative grounds from his present post vide order dated 15.5.2018 was, therefore, fully justified. There was no need to give him any advance notice prior to the transfer, since he was, in any case, being directed repeatedly to re-join his duties, which for reasons best known to him, he did not choose to comply. Disciplinary proceedings have been initiated against him, after issuance of charge memorandum to him on 30.05.2018, on charges that the applicant was running a trust unauthorisedly and allegedly indulging in commercial activities in violation of rules. The punitive action was initiated by the disciplinary authority, subsequent to his transfer order. The transfer order, issued after receipt of the report of him remaining habitually absent from his duties unauthorisedly, cannot be viewed as a punitive measure for his alleged misdemeanour of running coaching classes. For that alleged misdemeanour, he has been chargesheeted separately and the disciplinary proceedings are being conducted separately.

15. The OA, therefore, being devoid of any merits is dismissed.

16. Before parting with the case, it is observed that subsequent to orders of transfer on 15.5.2018, the applicant has not joined his duties till date, for the past more than 2 years. No interim order staying the transfer orders had been

granted by this Tribunal. The charge sheet pertaining to the allegations against him regarding involvement in coaching class activities on commercial basis, had been issued on 30.05.2018 to which the applicant has chosen to reply only on 14.10.2020, denying the charges, after a gap of more than two years. No action seems to have been initiated by the competent authority for his continued absence from duty in this period. Subsequent to the denial of charges, the Inquiry Officer has been appointed on 13th November, 2020. There is gross negligence on the part of the administration, not to initiate any action against the applicant, after issuance of a charge memorandum on 30.05.2018, while the applicant remained absent on unauthorised leave for such a long period. The disciplinary authority is directed to complete the disciplinary proceedings expeditiously, within a period of two(2) months from the date of receipt of a certified copy of this order.

17. There shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)