

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the 18th day of December Two Thousand And Nineteen

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)

THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/651/2019

G. Suresh

Sub Staff {Employee Code: 4879}

Kendriya Vidyalaya

Dharmapuri.

....Applicant

(By Advocate: M/s. R. Arumugam)

Vs.

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
Head Quarters, 18 Institutional Area,
Shahid Jeetsingh Marg,
New Delhi- 110 016;
 2. The Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
IIT Campus, Adayar,
Chennai-600 036;
 3. The Principal,
Kendriya Vidyalaya,
CUTN Campus,
Nagakudi, Thiruvavur-610 005;
 4. Executive Engineer (Civil),
Central University of Tamil Nadu,
Nagakudi, Thiruvavur- 610 005;
 5. Principal,
Kendriya Vidyalaya,
Dharmapuri.
-Respondents.

(By Advocate: M/s. M. Vaidhiyanathan R 1-3&5)
M/s. Maimoona Badsha, R-4)

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

The applicant is a subordinate staff of the Kendriya Vidyalaya Sangathan (KVS in short) with effect from 25.11.1989. He had to work at various places due to transfers and deputations. While working at Kalpakkam, he was being sent on deputation to Thiruvarur on many occasions. Then he applied for a transfer to Thiruvarur in 2016 and he was given a transfer to Thiruvarur on 16.07.2016. But to his surprise, the respondents issued a relieving order from Thiruvarur on 22.12.2018 as per transfer order issued by Respondent No.2. But this transfer was against transfer norms without any warning or show cause notice. There upon, applicant filed OA 1729/2018 before this Bench challenging the transfer order. Since the applicant did not give any representation, the Tribunal directed the applicant to file an appeal to Respondent No.1 and Tribunal also directed Respondent No.1 to consider the representation and pass a reasoned order within three months. Accordingly, applicant submitted an appeal to Respondent No. 1 on 10.01.2019 as per order of the Tribunal. While the appeal is pending the fourth respondent directed the applicant to vacate the quarters by order dated 25.3.2019. Thereafter the respondent No.1 rejected the appeal by order dated 10.04.2019. According to the applicant, the impugned transfer order on administrative grounds dated 21.12.2018 is illegal and as it was done without constituting a transfer committee. The appeal filed against the transfer was also not properly considered. Hence, he seeks the following reliefs:-

“a. Call for the records pertaining to the 1st respondents’ impugned Memorandum bearing No. F.11029/2017/KVS HQ/Estt II dated 10.4.2019 and quash the same as illegal;

b. Call for the records pertaining to the 2nd respondent’s Impugned Memorandum bearing No. F. 17046/16/2018-19/KVS (CHER) dated 21.12.2018 and consequent 3rd respondent’s relieving order bearing No. F. No. KV/CUTN/TVR/2018-19 dated 22.12.2018 and quash the same as illegal and direct the respondents to permit the applicant to rejoin for duties at the 3rd respondent Vidyalaya.

c. Call for the records pertaining to the 4th respondents impugned letter bearing No. CUTN/Estate/EE/5-6/2017/648 dated 25.3.2019 and subsequent remainder bearing No. CUTN/Estate/EE/5-6/2017/17 dated 09.04.2019 and quash the same as illegal;

d. Costs of this Original Application be paid by the respondents;

e. Pass such further or and other order as may be required in facts and circumstances of the case.”

2. Respondent No.2 appeared and filed a detailed statement. Respondent No.4 also filed a detailed counter against the averments made in OA. According to Respondent No.2, the transfer of the applicant to Dharmapuri was made on administrative grounds. According to Respondent No.2, the allegations made in

the OA is to avoid attention to his indisciplined acts. The Registrar, Central University of Tamil Nadu, Thiruvarur had given a complaint against the applicant. As per Para 7(e) of the transfer guidelines, the Dy. Commissioner of the Region is given the power to exercise the authority of the Commissioner in transfer matters and there is no need for constituting a committee for it.

3. The fourth respondent submitted that the Kendriya Vidyalaya (K.V.) at Thiruvarur is functioning in the Central University of Tamil Nadu (CUTN) Campus. It is a school run under CUTN budget where children of the staff of CUTN and the children from private background are being given quality education. It is the CUTN paying the salary to the staff deployed in the K.V. School, Thiruvarur campus. There arose complaints against the applicant regarding consumption of alcohol in school premises regularly. There was a complaint that the applicant also used to view pornography using school computers after school hours. The Registrar of CUTN considering the safety and wellbeing of the students, brought the matter to the notice of the Dy. Commissioner (Respondent No.2) for necessary action on 18.12.2018. Thereafter, after close observation, the applicant was transferred on administrative grounds as per order dated 21.12.2018. Respondent No.4 had issued a notice dated 4.1.2019 to the applicant to vacate the quarters No.2024 within three months from 21.12.2018 i.e. on or before 21.3.2019. He sent a reply stating that he has challenged the transfer order and demanding to keep in abeyance the order for vacation.

4. The main contention of the applicant is that the transfer is punitive and it is liable to be quashed. He was not given any show cause notice or explanation before transferring him. The applicant's family is still at Thiruvavur and it will cause irreparable injury to him if the quarters has to be vacated.

5. On the other hand, counsel for the respondents would contend that the transfer was on administrative grounds taking into consideration of the interest of the students and public. If an employee behaves in an undesirable manner, the employer has a right to transfer him without affecting his service conditions. They rely on the decision of the Hon'ble Apex Court in Union of India & Ors. Vs. Janardhan Debanath & Anr. reported in ((2004)4 SCC 245).

6. We have gone through the pleadings and facts leading to the transfer of the applicant to Dharmapuri in this case. The Apex Court in Janardhan Debanath case referred to supra held at para 14 as under:-

"14. The allegations made against the respondents are of serious in nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehavior is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehavior or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted

upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated.”

8. The allegations are of such a nature that immediate action is necessary. We do not find that it was done as a punitive measure. As such, it is for the employer to decide to where the employee has to be transferred. When the OA was pending, the Executive Engineer, CUTN had filed MA 350/2019 stating that consumption of liquor and indecent behavior is being continued inside the CUTN campus and he sought for an undertaking from the applicant not to commit any misbehavior and not to come to campus in a drunken state. The applicant was not ready to give an undertaking and filed a counter denying the same.

9. The facts and circumstances revealed in this OA does not show any arbitrariness or illegality in the order of transfer made on administrative grounds as alleged in the OA. Hence, we find that there is no merit in the OA and it is dismissed accordingly. The interim order passed by this Tribunal on 3.5.2019 against vacating the quarters No. 2024 will stand vacated accordingly. No costs.

(T. JACOB)
MEMBER(A)

Asvs

18.12.2019

(P. MADHAVAN)
MEMBER(J)

Annexures referred to by the applicant in OA 651/2019

Annexure A1 : 2nd Respondent Office order dated 11.2.2013

Annexure A2 : 2nd Respondent Office Order dated 03.04.2014

Annexure A3 : 2nd Respondent Office Order dated 11.3.2015

Annexure A4 : 2nd Respondent Office Order dated 18.4.2016

Annexure A5 : Relieving Order with transfer order dated 16.07.2016

Annexure A6 : 2nd Respondent's Office Order dated 26.7.2017

Annexure A7 : Order in OA 1296/2017 dated 10.08.2017

Annexure A8 : Applicant's representation dated 19.08.2017

Annexure A9 : Transfer Policy of KVS dated 13.4.2018

Annexure A10: Impugned Transfer Memorandum dated 21.12.2018

Annexure A11: Relieving Order dated 22.12.2018

Annexure A12: Disability certificate of applicant's daughter

Annexure A13: Order in OA No. 1729/2018 dated 31.12.2018

Annexure A14: Applicant's appeal to 1st respondent dated 10.1.2019

Annexure A15: 4th Respondent's Impugned order for vacation of quarters
dated 25.3.2019

Annexure A16: Applicant's representation dated 5.4.2019

Annexure A17: 4th respondent's rejection order dated 09.04.2019

Annexure A18: 1st respondent's impugned Memorandum dated 10.04.2019

Annexures referred to by the 4th respondent

Annexure B1 : Letter issued by Registrar, CUTU to Deputy Commissioner, KVS, Chennai (CUTN-14(16)/2010-SS&H/1188 dated 18.12.2018;

Annexure B2 : Notice issued by the 4th respondent to the applicant to vacate the quarters (CUTN/Estate/EE/5-6/2017/476);

Annexure B3 : Reminder-I, Notice to vacate issued by the 4th Respondent to the applicant dated 07.03.2019 (CUTN/Estate/5-6/2017/625)

Annexure B4 : Letter from the Applicant to the 4th Respondent (F.No.1038/KV DPI/2018-2019 dated 18.03.2019

Annexure B5 : Notice issued by the 4th Respondent to the applicant to vacate the Quarters (CUTN/Estate/EE/5-6/2017/648) dated 25.03.2019

Annexure B6 : Reminder-II Notice issued by the 4th Respondent to the applicant to vacate the quarters and to clear outstanding dues. (CUTN/Estate/EE/5-6/2017/17) dated 09.04.2019;

Annexure B7 : Notice issued by the 4th Respondent to the applicant to vacate the quarters (CUTN/Estate/EE/5-6/2017/17/66) dated 29.04.2019.