

Through Video Conferencing**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/813/2019**

Jabalpur, this Thursday, the 14th day of January, 2021

HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER



Bhagwan Singh Ahire, S/o Late Shri Top Singh Ahire, aged about 48 years, aged about 48 years, Occupation – Principal, Kendriya Vidyalaya No.1, Raipur, Chhattisgarh, Resident of Principal Quarter, Kendriya Vidyalaya No. 1, P.O. WRS Colony, Raipur (C.G.) - 492008
-Applicant

(By Advocate – Shri Manoj Sharma)

V e r s u s

1. Union of India, Ministry of Human Resource Development, through its Secretary, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi – 110004.

2. Kendriya Vidyalaya Sangathan (HQ) through Assistant Commissioner (Establishment-1) 18, Institutional Area, S.J.S. Marg, New Delhi – 110016.

3. Kendriya Vidyalaya Sangathan, Regional Office Raipur, through Deputy Commissioner, Regional Office, Kendriya Vidyalaya No.2 Raipur Campus, Sector-4, Deendayal Upadhyay Nagar, Raipur, C.G.-492010.

4. Smt. K. Sujatha, Principal, Kendriya Vidyalaya, Ajni, Nagpur, Maharashtra – 440003
-Respondents

(By Advocate – Shri Pankaj Dubey)

O R D E R

By Naini Jayaseelan, AM.

The present Original Application has been filed by the applicant challenging the impugned order dated 05.09.2019 (Annexure A-2) by which

the applicant has been transferred from Kendriya Vidyalaya No.1, Raipur to Kendriya Vidyalaya, Janjgir on administrative grounds.

2. The applicant was initially appointed as PGT (Maths) and subsequently promoted as Principal on 18.10.2012 and on promotion, the applicant was posted in Kendriya Vidyalaya, Silchar, Assam, thereafter he was transferred to Kendriya Vidyalaya, B.S.F. Chura Chandpur, Manipur. Again the applicant was transferred to Kendriya Vidyalaya No.2, Raipur and then to Kendriya Vidyalaya No.1, Raipur vide order dated 14.08.2017 (Annexure A-1). The applicant contends that his transfer was on spouse ground as his wife is working as Joint Collector in Surajpur District and she has been transferred to Bemetara District, which is close to Raipur and she was again transferred to Raipur on 07.09.2019. Now, the applicant was transferred to Kendriya Vidyalaya, Janjgir vide impugned order dated 05.09.2019.

3. While the applicant was posted as Principal in Raipur, an incident took place on 20.08.2019 in school premises in the primary wing of the school which according to the applicant has triggered his transfer. The incident relates to a girl child of 1st Standard being sexually abused by 3 boys of Class V of the same school. The contention of the applicant is that as



Principal, he took all necessary action by constituting an internal enquiry committee on the same date and after the enquiry report was submitted, he lodged a FIR on 21.08.2019 (Annexure A-4). Further after convening a meeting of the Kendriya Vidyalaya Management Committee on 20.08.2019, the applicant also issued the transfer certificates (TC's) to the three boys of Class V involved in the said incident. The applicant submits that the present transfer on administrative grounds actually amounts to a punishment. The FIR was registered against the applicant on 30.08.2009 under Section 21(2) of POCSO Act and on the same date, the applicant got bail from the District Court, Raipur. It is also his contention that he has made no attempt to suppress the incidence but has taken timely action and there has been no dereliction of duty on his part. The applicant contends that his transfer on administrative ground amounts to punishment transfer, without giving any opportunity of representation to him.

4. Written reply filed by the respondents states that transfer of the applicant has been made purely on administrative grounds. However, in the reply statement mention has been made regarding the untoward incident which occurred on 20.08.2019 and that;



- (a) The applicant did not report to the same to the KVS till 21.08.2019.
- (b) No proactive steps were taken by the applicant to prevent the occurrence of such incidence by putting adequate checks and balance in the school.
- (c) Not adhering to the convention of assigning duty of class teacher of Class 1 to a lady teacher.
- (d) The girl child was not escorted by any teacher and sent back home and;
- (e) It was only after media attention that the Regional Office of Kendriya Vidyalaya Sangathan was informed. The internal inquiry was conducted on 21.08.2019, whereas it should have been conducted immediately on 20.08.2019 to assess the gravity of the situation.

The reply statement also mentions that the applicant has not disclosed the fact that he has been issued chargesheet on 30.08.2019 under Rule 16 of the CCS (CCA) Rules, 1965

5. The applicant in his rejoinder, apart from reiterating what has been stated in the Original Application, submitted that as soon as he came to know about the incident, he has immediately constituted the enquiry committee and called the parents of erring boys on the same day. It is stated in the rejoinder that neither the girl nor any teacher, i.e. Head Mistress



reported the incident as a case of sexual abuse and, therefore, the applicant did not call the parents of the girl child on the same day. The FIR was actually lodged even though the Deputy Commissioner categorically stated in her message 'No FIR'. The applicant further submitted that neither any action has been taken against the Class Teacher of the girl child who was more responsible than the applicant nor against the Deputy Commissioner, i.e. Respondent No.3 who advised the applicant not to lodge an FIR. Also, there is no rule to assign duty of class teacher only to a lady teacher. Also, during the arguments, the counsel for the applicant stated that due to shortage of staff, day to day working has been assigned to the contractual staff and, therefore, it is not possible to fully comply with the so called 'conventions' that have been listed out by the respondents.

6. During the course of arguments, learned counsel for the applicant has placed reliance on a judgment of Hon'ble Apex Court in the matters of **Somesh Tiwari vs. Union of India and others**, (2009) 2 SCC 592 to say that the transfer cannot be in lieu of punishment. The relevant paragraph 16 of the judgment reads as under:

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is



ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law.....”

Learned counsel for the applicant argued that this is a case where the punitive order of transfer is hit by malice in law. The applicant and the Head Mistress have been charge-sheeted for minor penalty and later on a minor penalty has been imposed. However, only the applicant has been transferred, while the Head Mistress has been retained in the school.



6.1 Learned counsel for the applicant has also relied upon a judgment of Hon'ble High Court of Rajasthan in **Yog Raj vs. State of Rajasthan and Another**, 1997 SCC OnLine Raj 408, wherein it has been held that, “*malice in law is an inference of existence of malice arising out of attending circumstances and not out of the person against whom the malice is alleged.*”

7. On the other hand, learned counsel for the respondents argued that the present transfer is not by way of punishment as it in no way affects applicant's service conditions, pay and other benefits attached to the post held by him. The very purpose of transferring the applicant in public interest or exigencies of administration is to enforce decorum and ensure probity in the Institution after the occurrence of untoward incidence on 20.08.2019. The

question of holding an enquiry before effecting the transfer is unnecessary and it is for the employer to decide depending upon the administrative exigencies. For this purpose, the respondents counsel has placed reliance upon the judgment of Hon'ble Apex Court in **Rajendra Singh and others vs. State of Uttar Pradesh and others**, (2009) 15 SCC 178 and **Union of India and others vs. Janardhan Debanath and another** (2014) 4 SCC 245. Learned counsel for the respondents also placed reliance on a decision of this Bench in the case of **Sushil Kumar Mishra vs. Union of India and others**, 2016 SCC OnLine CAT 675 to say that since there is no allegation of mala fide against any officer nor any allegation with regard to competency of the officer who has passed the order of transfer or violation of any statutory provision, the transfer order cannot be interfered with. Regarding the applicant's contention for posting husband and wife at one station, learned counsel for the respondents relied upon a judgment of Hon'ble Apex Court in **Bank of India vs. Jagjit Singh Metha**, (1992) 1 SCC 306, wherein it has been held that the guidelines regarding posting of the two spouses at one place do not enable any spouse to claim such a posting as of right when the departmental authorities do not consider it feasible.



8. We have heard both the counsels and perused the pleadings and the documents annexed therewith.

9. We are of the view that the applicant has already been chargesheeted for minor penalty and the minor penalty of withholding of two increments has already been imposed under Rule 3(1)(iii) of CCS (Conduct) Rules for actions unbecoming of a Government servant. We also feel that running of a school is not like any other institution and due care and sensitization of the entire staff (academic and non academic) is to be done for handling such incidents. The untoward incident which occurred on 20.08.2019 required a high degree of sensitive handling since the offenders were student of the same school. But to lay the entire administrative responsibility on the Principal is neither fair nor justified. An element of collective responsibility has to be there amongst the entire staff of any school while handling such sensitive incidents.

10. The applicant has already served in the North East, which is classified as a 'Hard Area' and the present transfer in the name of administrative exigencies prima facie appears to be punitive.



11. Accordingly, the impugned transfer order dated 05.09.2019 (Annexure A-2) is set aside and the Kendriya Vidyalaya Sangathan is directed to accommodate the applicant in any Kendriya Vidyalaya in Raipur itself.

12. A copy of this order may also be served on the Commissioner, Kendriya Vidyalaya so as to examine the possibility of the codifying the so called 'conventions', which have been mentioned by the counsel for the respondents so as to ensure sensitization of all staff in the Kendriya Vidyalayas not only to handle such incidents but also to prevent reoccurrence of such incidents within the school premises. No order as to costs.



(Naini Jayaseelan)
Administrative Member
am/-

(Ramesh Singh Thakur)
Judicial Member