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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.2235 OF 2004

New Delhi, this the 4th day of March, 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Ram Chander Dalal
S/o Late Shri R.K. Dalal
R/o H. NO.662, Sector-16,
Faridabad, Haryana.

....Applicant.

(By Advocate : Shri Arun Bhardwaj)

VERSUS

1. Kendriya Vidyalaya Sangathan,
Through its Commission,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. Smt. P.R. Srivastava,
Joint Commissioner (Admn.)
Kendriya Vidyalaya Sangathan,
Estt. ~~II~~ Section,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. Shri P. Devasana,
Education Officer,
Kendriya Vidyalaya Sangathan,
Estt. ~~II~~ Section,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

....Respondents.

(By Advocate : Shri S. Rajappa)

ORDER (ORAL)

Learned counsel heard.

2. Applicant impugns respondents' order dated 27.8.2004 whereby his earlier transfer from KV Mussorie to KV Tuglakabad was modified to KV No.1 Itarana.
3. By an order dated 29.2.2004 of this Tribunal in the present case, the aforesaid transfer order has been kept in abeyance.

4. Learned counsel of the applicant states that as per Kendriya Vidyalaya Sangathan (hereinafter referred to 'KVS') guidelines on transfer and posting, clause 6 (A) (ii) provides that transfer on account of death of spouse or serious illness when it is not practicable to defer the transfer till next year without causing serious danger to the life of the teacher, his/her spouse and son/daughter, the applicant has specifically requested the authorities that his son is suffering from occipital arteriovenous malformation, ultimately due to which his son has succumbed, and his wife is suffering from cancer/brain tumor and she is paralysed upto 75% for his transfer to Faridabad at the earliest. Learned counsel states that despite his persistent requests, instead of considering it, the respondent no.2 made certain remarks, which are inhuman in nature. However, learned counsel further states that subsequently this transfer was on an intervention of Minister, to which representation has been made, was re-modified vide order dated 26.10.2004 to K.V. Masjid Moth at his own request and it is also stated in the order that the applicant is not entitled to any transfer benefits.

5. Shri Bhardwaj further states that since the applicant, in compliance, has joined KV Masjid Moth, but his pay and allowances are yet to be released.

6. On the other hand, learned counsel for respondents Shri S. Rajappa states, though they have not filed any reply, that though transfer was in an administrative exigency, yet the same on the applicant's representation, which was made to the Minister, has been re-modified to Masjid Moth by invoking Clause 18 (b) of the KVS guidelines on transfer and posting. This

shows that the respondents were very much concerned about the circumstances of the family of the applicant.

7. It is also stated by the learned counsel for the respondents that after the examinations are being conducted, the applicant, if makes a representation, the same would be considered for transferring him to Faridabad subject to availability of vacancy.

8. However, Shri Bhardwaj, learned counsel of the applicant states that a vacancy is presently available at KV No.3 Faridabad.

9. I have carefully considered the rival contentions of the parties and perused the material available on record.

10. In the matter of transfer, as a trite law, judicial review is impermissible if it is undertaken in an administrative exigency or public interest. However, fair play is built in the rule of law and equity is also an important factor to be considered in administrative orders passed by the respondents. As a model employer, the respondents are obligated to look into the welfare and to see that the employee is not harassed to the verge that he loses faith in the organization in which he is working.

11. The rules and policy guidelines, which operate transfer and posting of KVS employees, inter alia, Clause 6 (a) (ii) of the same provides that transfer can be interfered and changed in a situation when transfers on account of death of spouse or serious illness when it is not practicable to defer the transfer till next year without causing serious danger to the life of the teacher, his/her spouse and son/daughter.

12. In the present case, applicant's son, who has succumbed to death, was suffering from occipital arteriovenous malformation, and the wife of the applicant is suffering from cancer/brain tumor and she is paralysed upto



75%. The applicant has in this situation prayed for deferment of his transfer. This was an extra ordinary situation for which a compassionate view was obligated.

13. Earlier when the applicant was transferred from KV Mussorie to KV. Tuglakabad, it has not put any assistance as transfer was rescinded. He was not allowed to join and the aforesaid order vide order dated on 5.8.2004 was further modified to KV No.1 Itarana. What has been done as contended by the learned counsel of the respondents is exercise of jurisdiction under 18 (a) and (b) of the guidelines ibid. In the light of the earlier transfer, keeping in view the request of the applicant as per his version, keeping in view the medical ground, the transfer was modified, which was earlier done at Tuglakabad to Itarana, was re-modified by an order dated 26.10.2004 to KV Masjid Moth.

14. However, this does not bring an end to the OA as in this OA the applicant has also requested for cancellation of transfer to Itarana and seeking his posting at Faridabad.

15. For the foregoing reasons and in the light of an averment made by the learned counsel of the applicant that a vacancy exists at KV No.3 Faridabad, this OA is partly allowed with a direction to the respondents that they would consider the case of the applicant for posting at Faridabad KV No.3 and in this regard, they would also consider availability of vacancy at KV No.3 Faridabad. The respondents shall also disburse the withheld salary of the applicant, if not paid, in accordance with law on the premises that the transfer order dated 27.8.2004 had been kept in abeyance.

16. However, before parting with this case, I must observe that in the matter of transfer and posting though administrative exigency rules, but

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there arises a situation when a Govt. employee is so peculiarly situated that his movement on transfer not only ruins the family but loss of a family member, which cannot be compensated in terms of money. This aspect is also to be taken into consideration and balancing view should be taken by the Govt. itself without dragging the employee to the Court to assail the transfer order. This would not only a good administration but would be consistent with the rule that State is expected to do all fairness as a model employer. No costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

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