

Central Administrative Tribunal
Allahabad Bench, Allahabad

O.A.No.187/2001

Friday, this the 2nd day of March, 2001

Hon'ble Shri S.A.T. Rizvi, M(A)

Smt. Sushma Arora,
Aged about 41 years,
D/O Shri K.L.Arora,
R/O C-9, Kendriya Vidyalaya Campus,
Air Force, Bareilly,

....Applicant

(By Advocate: Shri K.K.Mishra)

Versus

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. Assistant Commissioner,
Kendriya Vidhyalaya Sangathan,
Regional Office,
Dehradun.
3. Principal,
Kendriya Vidhyala, AFS,
Bareilly.

....Respondents.

(By Advocate: Shri V.Swaroop)

O R D E R (ORAL)

Heard the learned counsel on either side.

2. The respondents were granted a week's⁷ time to file their counter reply. This order was passed on 23.2.2001. The learned counsel appearing for the respondents has filed the respondents' reply only today, and a copy thereof has been served on the learned counsel for the applicant. I find that ~~the~~² filing of the reply has been delayed by the respondents by one day. No application has been given for condoning the delay in filing the counter reply. The filing of the reply is, therefore, not accepted. I proceed to dispose of this case accordingly on the basis of the material already placed on record and keeping in view the arguments advanced by the learned counsel on either side.

d

3. The applicant who is a Physical Education Teacher in Kendriya Vidhyalaya AFS, Bareilly has been transferred ~~to~~ from Bareilly to K.V.²Dharchula in ~~the~~ Dehradun District. on 7/8.8.2000 after about a years' stay at Bareilly.

4. The aforesaid order was challenged through an OA, being OA No.1093/2000, filed in this very Bench of the Tribunal. An ad-interim order directing maintenance of status quo was passed by the Tribunal on 29.09.2000 which, I am given to understand, is still in force though the same has become infructuous in view of the fact that the applicant has already been relieved of her charge at Bareilly. Later, the said OA was finally disposed of by an order dated 12.12.2000 with a direction to the respondents to consider the representation of the applicant and dispose of the same by a reasoned order. In compliance thereof, the respondents have passed a reasoned order placed on record at pages 16-17 of the paper book. The aforesaid order/memorandum dated 5.1.2001 is a fairly detailed order in which an attempt has been made to reason out the transfer of the applicant. * The ground stated therein is that the applicant was transferred in public interest, i.e., in the interest of K.V.Dharachula where the services of the applicant were urgently required. It is also stated therein that although 16 Sections ~~are~~ were in existence in the aforesaid K.V. at Dharachula, not a single games teacher was available to attend to the needs of the children. In the same order/memorandum, the respondents have denied that the applicant has been transferred by way of punishment. Punishment, according to the respondents, can be imposed only after following the prescribed procedure, and, therefore, it cannot be said that the applicant has been

2

punished. Moreover, according to the learned counsel appearing for the respondents, transfer is not listed as a punishment in the relevant rules. Transfers are always resorted to in accordance with the policy and keeping in view the exigencies of service and in the public interest.

5. The learned counsel appearing for the applicant placed reliance on the respondents' memorandum dated 30.10.2000 which is a notice served on the applicant to show cause as to why she ^{should} not ~~be~~ be proceeded against for her misconduct. The contents of the aforesaid memorandum disclose that the applicant stands charged with misbehaviour with a senior staff member. ² ~~Nearly~~ three months thereafter, an order dated 31.1.2001 has been issued by the respondents appointing a Presenting Officer in the departmental proceedings initiated against her in accordance with Rule 14 of the CCS (CCA) Rules, 1965. A little later on 19.2.2001, another letter has been issued by one Shri R.D.Arya, Principal who has been appointed as ~~an~~ Inquiry Authority in the aforesaid case. The same shows that the proceedings will be taken up at Haldwani. I thus find that the respondents have proceeded against the applicant in accordance with the prescribed procedure and hope that the disciplinary ~~with~~ proceedings will be concluded expeditiously. The plea advanced by the learned counsel for the applicant is that in the background of the departmental proceedings aforementioned, the ^{act of} transfer resorted to by the respondents should be viewed as a punitive measure and is, therefore, liable to be set aside. I do not ^{find} myself in agreement with the learned counsel for the reason that as already mentioned in ~~an~~ earlier ~~paragraph~~

2

(4)

transfer can never be treated as a punishment unless malafide is established or it is ~~was~~ shown that statutory rules have been violated or else the transfer has been resorted to in arbitrary exercise of power. None of these elements are, according to me, present in this case.

6. The learned counsel for the applicant has strenuously^u argued that since the transfer follows the alleged misbehaviour on the part of the applicant, the order transferring her should be deemed to have been made on extraneous grounds~~s~~ not relevant for the purpose. I do not agree with this contention either. I see nothing wrong^{-if-} in the circumstances of this case, including the circumstance of alleged misbehaviour, transfer is resorted to by the competent authority on administration^{-ve} ground and in the public interest.

7. In the background of the above discussion, the OA is found to be devoid of merit and is dismissed.

8. The learned counsel appearing for the applicant has, on the ground of convenience, advanced ~~the~~ plea that, pending conclusion of the departmental trial, the applicant should be allowed to stay on in Bareilly where, according to the applicant's information, one post of Physical Education Teacher is presently lying vacant. I find enough justification in this plea but would leave it to the discretion of the respondent~~s~~ authority to consider the aforesaid plea keeping in view ~~of~~ all the relevant factors. This the respondents should do as expeditiously as possible and in any event within a week from the service of ^a ~~the~~ copy of the order. The respondents are further

2

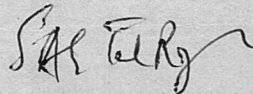
(5)

directed to conclude the departmental inquiry as expeditiously as possible and in any event within a period of three months from the date of receipt of a copy of this order.

It is clarified that the above-mentioned time limit will be adhered to subject to the applicant herself cooperating with the disciplinary authority during the departmental proceedings.

9. Present OA is ~~dismissed~~ in the aforestated terms.

No costs.



(S.A.T. RIZVI)
MEMBER (A)

/sunil/