

RESERVED.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application no. 50 of 2001.

this the 24th day of July 2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

Dr. (Smt.) Asha Khare, aged about 57 years, W/o Sri Sheo Kumar Khare, Principal, Kendriya Vidyalaya, Banaras Hindu University Campus (on transfer), resident of 167-A Brij Enclave, Sunderpur, Varanasi.

Applicant.

By Advocate : Sri O.P. Khare.

Versus.

1. Union of India through the Secretary, Human Resource Development, Govt. of India, New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan (Headquarters), 18, Institutional Area, New Delhi.
3. Sudhir Modawal, Asstt. Commissioner, Kendriya Vidyalaya Sangathan, Patna Region, Kankar Bagh, Patna.
4. Vice-Chancellor, Banaras Hindu University, Ex-officio Chairman, Vidyalaya Management Committee, Kendriya Vidyalaya, BHU Campus, Varanasi.
5. Sri B.P. Sinha, Principal, Kendriya Vidyalaya, BHU Campus, Varanasi.

Respondents.

By Advocate : Sri N.P. Singh & Sri Pankaj Naqvi

O R D E R

The applicant who is posted as Principal, Kendriya Vidyalaya, Banaras Hindu University Campus, Varanasi, has been transferred by the impugned order dated 8.9.2000

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and 6.11.2000 to Kendriya Vidyalaya, Parkakana. The applicant had challenged the validity of the aforesaid transfer orders by filing O.A. no. 1292 of 2000 before this Tribunal, which was disposed of vide order dated 17.11.2000 with the direction to dispose of the representation dated 30.10.2000 submitted by the applicant against her transfer order. The aforesaid representation of the applicant has been considered and decided by the respondents by the impugned order dated 4.1.2001 and representation of the applicant for modification of her transfer, has been rejected and the applicant has been advised to join the new place of posting. The applicant has also challenged the validity of the impugned order dated 4.1.2001.

2. Briefly stated the case of the applicant is that the applicant came to transfer to her present place of posting from Ghazipur on 21.7.98 on the ground of her medical treatment for her ailment at local Medical College. The applicant alleges that she has been transferred to Parkakana where no such medical facility is available equivalent to what she is getting at Varanasi. This fact came into knowledge after handing-over charge to the new incumbent namely Sri B.P. Singh (respondent no.5), who has been transferred to Varanasi in her place.

3. The main grounds on which the applicant has assailed the correctness of her transfer order are that the impugned order is punitive in nature because the same has been passed on the complaint made by one Member of Parliament. It is also claimed that her transfer order has been passed in violation of the transfer guidelines.

4. I have heard the learned counsel for the parties and have perused the pleadings on record.

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5. It is pertinent to mention at the outset that the apex court in the case of Union of India Vs. S.L. Abbas (1994 SCC (L&S) 230 has laid down the some important principles relating to the judicial review in the cases of transfer. (i) The order of transfer is an incident of Government service. Unless, the order of transfer is vitiated by malafide or is made in violation of any statutory provisions the Court cannot interfere with it. If there are guidelines on the subject, the same does not confer upon an employee ^{VR} ~~an R~~ ^{executive} a legally and ~~forceable~~ right because such instructions are in the nature of guidelines, but have no statutory force. (ii) The Tribunal is not an appellate authority sitting in judgment over the order of transfer. It cannot ~~xxxxxxxxxx~~ ^{2u} substitute its own judgment **for that of the authority** competent to transfer. (iii) If the order of transfer is questioned in a Court or the Tribunal, the authority is not obliged to justify the transfer by adducing the reasons therefor.

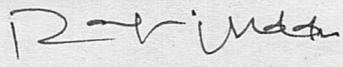
6. Considering the contentions of the learned counsel for the applicant in the light of the above principles, I do not find any force in the arguments. It has been contended that the respondents have not disclosed or mentioned the reasons in the impugned order dated 4.1.2001 while rejecting the representation of the applicant as directed by this Tribunal. Firstly, this Tribunal had not directed the respondents to pass a reasoned order, while considering the representation of the applicant against her transfer order. It was merely stated that the respondents would dispose of the representation of the applicant submitted by her. Secondly, the respondents are not supposed to pass a reasoned order while rejecting the representation of the applicant to justify the transfer order.

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7. It is next argued that the transfer order is punitive in nature because the same has been passed at the instance of one Member of Parliament. I find no indication in the impugned order that the same has been passed at the instance of one Sri S.P. Jaiswal, Member of Parliament, Lok Sabha. The impugned order is dated 8.9.2000, whereas the date on the letter of complaint is 27.9.2000. In other words, the impugned order had already been passed, whereas the complaint was made subsequent to the impugned order. It is also worth mentioning that the present O.A. was filed after the applicant had joined her new place of posting. As regards the problems of the applicant regarding her medical treatment at new place of posting, the same are to be considered by the respondents and the transfer order cannot be held invalid on this ground.

8. The learned counsel for the applicant has brought to my notice the relevant guidelines issued by the respondents which indicates that maximum period of service at a station incase of Principal is five years. They are, however, liable to be transferred even before completion of the aforesaid period depending upon the organisational interest for administrative exigencies etc. Therefore, in the case of the applicant I do not find that the transfer order of the applicant has been passed in violation of the transfer guidelines claimed by the learned counsel for the applicant.

9. For the reasons stated above, I do not find any merit in the O.A. and the same is dismissed. No costs.


MEMBER (J)

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