

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.1089 OF 2005

ALLAHABAD THIS THE 9th TH DAY OF November 2006.

HON'BLE MR. P.K. CHATTERJI, MEMBER-A

Sunaina Devi wife of Mr. Ashok Kumar Singh, Resident of D-29, Bhuwaneshwar Nagar Colony, Adarli Bazar, Varanasi.

.....Applicant.

(By Advocate: Sri D. Pathak)

Versus.

1. Union of India, through its Secretary, Ministry of Human Resource and Development, New Delhi.
2. Kendriya Vidyalaya Sanathan through its Chairman/Hon'ble Ministry, Minister of Home Resources and Development, New Delhi.
3. Commissioner, Kendriya Vidyalaya Sangathan 18, Institutional Area Saheed Jeet Singh Marg, New Delhi.
4. Assistant Commissioner, Kendriya Vidyalaya Sangathan Regional Office Patna.
5. Principal Kendriya Vidyalaya Varanasi Cantt. Varanasi.
6. Chairman, Vidyalaya Management Committee Kendriya Vidyalaya, Varanasi Cantt.

.....Respondents.

(By Advocate: Sri N.P. Singh)

O R D E R

This O.A. has been filed against the order of transfer of the applicant passed by respondents transferring the applicant for the post of T.G.T.(Hindi) from Kendriya Vidyalaya, Varanasi Cantt to Kendriya Vidyalaya, C.R.P.F Nagpur under clause 10 (2) of Transfer Guidelines of K.V.S.

2. Applicant is aggrieved that injustice has been done to her for the reason that as per Guidelines 10

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(ii), which is reproduced below, junior most teacher working at the Station should be transferred out of station to accommodate the special cases:-

"10 (2) Where transfer is sought by a teacher under clause 8 of the transfer guidelines after a continuous stay of 02 years in the VERY HARD STATION or 3 years in the North East, A & N Islands and other declared hard stations or by a teacher falling under the grounds of medical/death of spouse/less than three years to retire or very hard case involving human compassion, in the even of non-availability of vacancy at his choice station, the vacancy shall be created to accommodate him by transferring the junior most teacher in the service of KVS in the said station of the same category (Post/Subject). However, the principals who have been retained under clause 4 to promote excellence would not be displaced under this clause.

Note: Date of appointment on regular basis will be the criteria to decide service in KVS in the said post. While displacing teachers, immunity shall be granted to the teachers, as applicable, for identifying and redeploying excess to the requirement of teacher. Apart from them, President/General Secretary of the recognised service associations of KVS, who are also the members of J.C.M will also be granted immunity. This facility is applicable for regional level also".

3. Learned counsel for the applicant has stated that the impugned order is discriminatory because the applicant has been transferred although she does not happen to be junior most. In the same station there is one Smt. Manju Singh who was appointed to Kendriya Vidyalaya Sangathan after the applicant and Smt. Manju Singh is also working in K.V.S. Varanasi Cantt. The applicant has further stated in this O.A., that the respondents have shown malafide by choosing the applicant for transfer whereas someone junior to her was available. They have, thus, violated their own Guidelines i.e. Rule 10 (2) of Transfer Guidelines.

4. In this context, learned counsel for the applicant have cited from the judgment of Apex Court in B. Varadha

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Rao Vs. State of Karnataka and Ors. Special Leave Petition No. 7904 of 1986. The relevant portion of the applicant is as follows:-

"One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the educations of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally".

The applicant has also cited for the judgment of Principal Bench of the Tribunal in O.A. No.1504/02 in a similar case where in the same judgment and transfer order was quashed as it was in violation of Transfer Policy. Following extract will be reproduced below:-

- "7. Moreover, as per the settled law by the Apex Court if the transfer is in violation of the statutory rules or guidelines the same cannot stand scrutiny of law.
8. As transfer guidelines which are not disputed and are applicable to applicant being Group 'A' officers envisage transfer before completion of three years' tenure on administrative grounds but mandate the grounds for such a transfer to be spelt out in the transfer order itself, which would give a right of effective representation to the concerned government servant.
9. From the perusal of the transfer order whereby applicant has been transferred before completion of three years tenure at headquarters office, in absence of any grounds and reasons recorded the same violate policy guidelines issued for transferring Group 'A' officers.
10. As the transfer is in violation of the transfer policy the same cannot be sustained in law. Accordingly, O.A. is allowed. Order dated 30.5.2002 is quashed and set aside. As applicant in view of an interim order passed on 4.6.2002. Where the operation of the impugned order was stayed is still continuing, be continued in the aforesaid post. No costs".

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5. Learned counsel for the applicant has further brought to our notice that the person to accommodate whom the applicant the applicant was transferred meanwhile has again been transferred from Varanasi Cantt. and therefore, vacancy is available occurs there, and so there is no problem in accommodating the applicant at the same station.

6. Learned counsel for the respondents, in compliance with the direction of this Tribunal passed earlier submitted the records relating to the date of appointment of Smt. Manju Singh vis-à-vis the applicant. It was noticed that while the applicant got appointment in August 1993. Smt. Manju Singh was appointed in November 1993, therefore, he admits that as per date of appointment, the applicant may not be junior to Smt. Manju Singh.

7. The learned counsel for the respondents, however, defends the transfer order saying that when it is in the interest of service, the Tribunal/Courts cannot go into it unless there is clear case of malafide and extraneous consideration. In this context, he has quoted relevant extract from the case of Union of India and others Vs. S.L. Abbas, (1993) 4 Supreme Court Cases, 357 as follows:-

"A service Law- Transfer-Judicial review-Scope- Unless order is mala fide or is made in violation of statutory provisions Court. Tribunal cannot interfere-Not following instructions/guidelines not sufficient to quash order as being mala fide- Authority not obliged to justify the transfer by adducing the reasons therefor"

8. Learned counsel for the respondents emphasis that transfer order cannot be assailed merely on the violation of Guidelines unless malafide is manifest in

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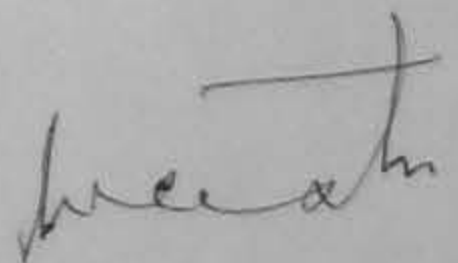
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the order. He has also cited from the decision by the Hon'ble High Court, Allahabad which was recently passed. In that case, Tribunal had set aside the transfer order of the applicant issued by the respondents on which the respondents filed writ petition in the Hon'ble High Court, Allahabad. The Hon'ble High Court set aside the directions of this Tribunal with the following judgments:-

"Shri Shyamal Narain, learned counsel appearing for the respondent NO.2 does not want to file the counter affidavit and he agrees that the judgment and order of the Central Administrative Tribunal dated 21/10/2005 may be set aside as the transfer policy does not have any statutory force. However, Shri Narain submits that the respondent NO.2 should be given liberty to make a representation to consider her grievance for posting her at a nearer place in view of the judgment of the Hon'ble Supreme Court in State of Madhya Pradesh Vs. S.S. Kaurav, A.I.R. 1995 SC 1056, as these are the matters to be considered by the employer and not by the Court.

Thus, in view of the above, we allow the writ petition and set aside the judgment and order dated 21/10/2005. In case the respondent NO.2 moves a fresh representation ventilating all her grievances before the employer, we request the employer to consider it sympathetically in accordance with law and pass an appropriate order expeditiously, preferably within a period of three weeks from the date of receiving the representation".

9. Learned counsel for the respondents further stated that this O.A. is not sustainable, for the other reason that the appropriate parties have not been impleaded. The appropriate Joint Commissioner, K.V.S, who is the competent authority, has not been impleaded. Not only the charge of malafide also does not have a leg to stand on as the parties have not been impleaded by name. For this it is required that necessary parties should be impleaded by name and



their motive should be clearly stated so as to sustain the charge of malafide.

10. Learned counsel for the respondents further stated that as per the appropriate C.A.T Rules, this application cannot be allowed as it has been filed before exhausting other channel of redressal i.e. Appeal. The applicant has brought this Tribunal without making an appeal. However, against this point, learned counsel for the applicant stated that as the respondents did not manifest their just and fair attitude towards the applicant it was not expected that she should get a favourable consideration on appeal. With this apprehension this O.A. was filed and this Tribunal after considering all points have decided to admit it, therefore, it is too late in the day to ask such question.

11. Learned counsel for the respondents has cited relevant portion of the Apex Court decision that transfer orders cannot be assailed on the ground of violation of Guidelines. He has further stated that transfer Guidelines of K.V.S has no statutory force and, therefore, departure therefrom cannot be challenged. Although learned counsel for the respondents has made a strong plea as to why Tribunal should not interfere with the transfer order, he has not explained as to why it necessitated the transfer of the applicant while another person junior to him was available. It may be ^{true} ~~tried~~ that Authority may be make departure from the Guidelines but in such cases it should be on the ground of extreme exigency and public interest. After all purpose of Guidelines is ^{to} ~~not~~ ensure that the transfer decisions are grounded on fairness and equal treatment.

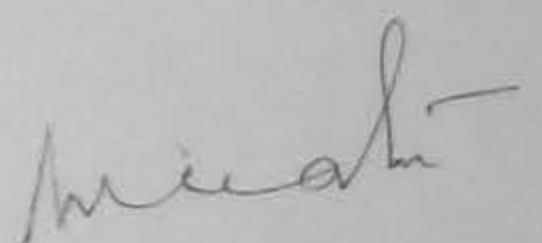
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12. In my view, however, still there is a hope for the applicant as the channel of appeal has not been tried by the applicant. In this context the judgment of the Hon'ble High Court referred to in para 5 is also relevant. On this consideration and with the aforementioned observations, I hereby direct that the Appellate Authority should, upon a representation made by the applicant consider the case sympathetically in view of inconvenience caused by the transfer and issue appropriate orders. The applicant is hereby advised to make a representation before the appropriate Appellate Authority mentioning inter-alia that a vacancy has further arisen by the transfer of the teacher whose request was granted under special circumstances thereby causing her transfer. Upon such representation being received by the Appellate Authority, he will dispose of the same after consideration as per the Guidelines within a period of 2 months from the date of receipt of copy of the representation.

13. With these orders, the O.A. is disposed of.

NO costs.



Member-A

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