

RESERVED

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 25th day of May 2006.

Original Application No. 662 of 2005.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Prem Narayan, S/o late Sri Meghai Ram,
R/o Village and Post Naudiha Tarhar Via Jasra Tahsil
Bara,
Distt: Allahabad.
Local Address: 229.C./1 P Jayantipur,
Preetam Nagar,
ALLAHABAD.

.....Applicant

By Adv: Sri S. Narain & Sri D. Pathak

V E R S U S

1. Union of India through its Secretary,
Ministry of Human Resources Development,
NEW DEHI.
2. Kendriya Vidyalaya Sangathan,
through its Chairman/Hon'ble Minister,
Ministry of Human Resources Development
NEW DELHI.
3. The Commissioner, Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
NEW DELHI.
4. The Asstt. Commissioner,
Kendriya Vidyalay Sangathan, Regional Office,
Sector J, Aliganj,
LUCKNOW.
5. Sri Puspa Raj Singh, S/o Sri T.R. Singh,
Presently, working as transfer as TGT, Hindi
at K.V. A.P.S. Bamrauli,
ALLAHABAD.

.....Respondents

By Adv: Sri D.P. Singh

O R D E R

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By K.B.S. Rajan, JM

The matter has been made simple by an order of the Lucknow Bench of the Tribunal, whereby the certain portions of the earlier guidelines for transfer have been held illegal and consequently those portions were quashed and set aside. Though writ petition has been filed in the Hon'ble High Court at Lucknow, no stay has been granted so far as the quashing of such portions is concerned. One of the portions of the earlier guidelines quashed and set aside is Clause 10(2) of the guidelines dated 19-01-2005 reads as under:-

"10(2) Where transfer is sought by a teacher under clause 8 of the transfer guidelines after a continuous stay of 02 years 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 event 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."

2. The transfer of the applicant as the very first three words would reveal is based exclusively on the provisions of clause 10(2). As such, the transfer as on date is not valid. Assuming that since on the date of issue of the order there ^{was} ~~be~~ no quashing of the order, the transfer order cannot be nullified on that ground, what is to be seen is whether the act of the respondents in transferring the applicant for

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the purpose of accommodating the private respondent is legally tenable.

3. Before going into the same a vignette of the facts of the case with terse sufficiency would be appropriate. Accordingly, the contentions raised by the Applicant, the official respondents and the private respondents are congealed in a nutshell as hereunder:-

a. Contentions as per the OA are that the applicant being TGT Hindi (Teacher) has been transferred from Kendriya Vidyalaya, Bamrauli, Allahabad to Kendriya Vidyalaya Chandametta, Barkuhi (WCL) on his request. The applicant since 17.11.1986 worked in several out doors school of Kendriya Vidyalaya Sangathan and Hard Station and has been transferred to KV. Bamrauli, Allahabad as TGT Hindi in July 2001 on request. The applicant has been arbitrarily and malafidely displaced from K.V. Bamrauli, Allahabad to K.V. Chandametta, Barkuhi, by over looking and discarding the provision of Transfer of Sub Clause-1. Clause 10 of previous guidelines of Transfer dated 30.12.1999.

b. Contention as per the CA of official respondents are that it has been provided that whether 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 & E Islands and other declared hard stations or by a teacher falling under the grounds of medical/death of spouse/less than

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three years to retire or very hard case involving human compassion, in the event 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 Kendriya Vidyalaya Sangathan in the said station of the same category (Post/Subject).

"The employees of the Kendriya Vidyalaya Sangathan will be liable to be transferred anywhere in India."

The Hon'ble Supreme Court in catena of judgments for time and again held that transfer is an incident of service and should not be interfered with by the Court unless it violates the Mandatory/Statutory Rules or on the ground of malafide. In this connection the Tribunal in the matter of Sangathan employee itself in the OA No. 874 of 1999 (Shri Brijesh Bhatt Vs. Union of India and others) has held that "the applicant is having a job which is a transferable as per Rule, 49 of the Education Code according to which employees of Kendriya Vidyalaya Sangathan are liable to be transferred any where in India.

4. Of course, supplementary counter and rejoinder have been furnished, which are in tandem with the respective contentions of the parties.

5. Arguments were heard and the documents perused. Counsel for the applicant submits that even if 10(2) is held legally valid, the situation in the case of the applicant and that of the private respondent is



such that the said clause is incapable of being executed in their case. For, in order to invoke that provision, the place where the private respondent was serving should have been a hard area for a minimum of three years whereas, it has been so declared only in April, 2005 and the transfer order has been passed in June, 2005.

6. Per contra, the counsel for the official respondents would submit that the decision by the Apex Court in the case of *Shilpi Bose and others vs. State of Bihar* wherein the Apex Court has held as under:-

"If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer orders were passed on the request of the employees concerned. Again, in the very same judgment, it has been held, "Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department."

7. The counsel for the respondents has relied upon the following judgments as well:-

- a) 2004 (100) FLR 1015: U.O.I. & Ors Vs. Sri Janardhan Debanath & Ors.
- b) Special Appeal No. 754 of 2002 (Hon'ble Allahabad High Court): Kendriya Vidyalaya Sangathan & Ors Vs. Suresh Kumar.
- c) Civil Misc. Writ Petition No. 6472 of 2006 (Hon'ble Allahabad High Court): The Commissioner, Kendriya Vidyalaya Sangathan & Ors Vs. Central Administrative Tribunal & Ors.

- d) AIR 1991 SC 532: Mrs Shilpi Bose & Ors Vs. State of Bihar & Ors.
- e) AIR 1993 SC 2444: U.I.O. & Ors Vs. S.L. Abbas.
- f) 2004 (102) FLR 1038: State of UP & Ors Vs. Siya Ram & Ors.
- g) Civil Misc. Writ Petition No. 52240 of 2000: Dr. Krishna Chandra Dubey Vs. U.O.I. & Ors.
- h) 2005 (107) FLR 37: Maj Gen J.K. Bansal Vs. U.O.I. & Ors.

8. In this case the very posting of the applicant to Bamrauli is on the basis of the earlier guidelines of 1999 which provided for a request transfer and the tenure posting is for five years. Thus, he was posted in July, 2001 at Bamrauli and the said five years period has not been over. The station where the private respondent was posted was a peace station till recently and it was only as recently as in April 2005 that it was declared as a hard station. The guidelines provide for transfer from a hard station after two years of posting. Hence, in so far as Barkuhi, M.P. where the private respondent was posted is concerned, the same having been declared as hard station only from April, 2005, as per guidelines a tenure of two years in that hard station would commence from April 2005 and not earlier, as earlier it was not a hard station at all. Hence, the declaration as hard station of Barkuhi, M.P. in April, 2005 has been conveniently taken advantage of to accommodate the private respondent at Bamrauli, by displacing the applicant

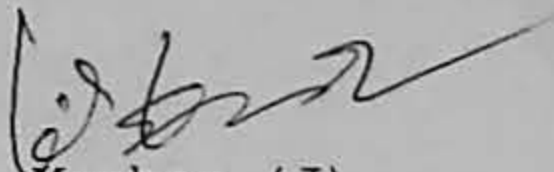
who in fact has been posted here at his request. This is legally impermissible. Again, if the guidelines are followed by the respondents the same are expected to be followed in toto and they cannot be permitted to agitate against the claim of an individual if he relies upon one particular clause of the guidelines, when his transfer order has been effected on the basis of the very same guidelines. It would be appropriate to note here that though earlier the decision of the Apex Court has been that transfer orders cannot be challenged save inter alia on the ground of violation of statutory rules/provision, subsequently, as held in the case of *N.K. Singh v. Union of India*, referred to in, *State of U.P. v. Ashok Kumar Saxena*, (1998) 3 SCC 303 "The parameters of the powers of a court under Article 226 vis-à-vis an order of transfer are well settled. In *N.K. Singh v. Union of India* (1994) 6 SCC 98 this Court held that interference by judicial review is justified only in cases of mala fides or infraction of any professed norms or principles" (underlining supplied).

9. The above would go to show that violation of professed norms (which obviously includes executive guidelines as well) would be a ground for agitation.

10. Considering the fact that the place where the private respondent was serving has been declared as

hard station only in April, 2005 and that clause 10(2) on the basis of which the transfer has been effected has also been quashed by the Lucknow Bench of the Tribunal, in our opinion, the applicant has made out a cast iron case and consequently, the impugned order dated 30-05-2005 cannot but has to be quashed and set aside so far as it relates to the transfer of the applicant. Accordingly it is ordered. It is open to the respondents to accommodate the private respondent in any other post or place.

11. The OA thus, is allowed. Under the circumstances, there shall be no orders as to cost.


Member (J)

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