

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 792 of 2005

....., this the 29 day of August, 2006

C O R A M :

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

Smt. Anitha Kumari,
W/o. Shri Manoj Yadav,
Primary Teacher (P.R.T.),
Kendriya Vidyalaya New Cantt.,
Allahabad. ... Applicant.

(By Advocate Shri Uma Kant)

v e r s u s

1. Union of India through
The Secretary, H.R.D Ministry,
New Delhi.
2. Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shahidjeet Singh Marg, New Delhi -
Through Education Officer.
3. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Lucknow.
4. Principal,
Kendriya Vidyalaya New Cannt.,
Allahabad.
5. Mrs. Madhavi Verma,
Primary Teacher (P.R.T.),
Kendriya Vidyalaya New Cannt.,
Allahabad. ... Respondents.

(By Advocate Shri D.P. Singh)

(X)

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The applicant has assailed the transfer order dated 11-07-2005 whereby she stood transferred from Kendriya Vidyalaya, New Cantt., Allahabad to Kendriya Vidyalaya, Dhana (MP).

2. On 20-07-2005, when the applicant approached the Tribunal challenging the aforesaid order, taking into account the fact that the applicant was posted at Allahabad only in 2003 coupled with the fact that she was in the advanced stage of pregnancy an interim order, staying the operation of the transfer order was passed and the same continues till now.

3. The brief facts of the case are as under:-

- (a) The applicant served the Kendriya Vidyalaya, Mount Abu (Rajasthan) for nearly seven and a half year as a primary teacher.
- (b) She was posted to Allahabad vide order dated 8th April, 2003.
- (c) Transfer guidelines exist for rotational transfer and according to the then existing guidelines, a period of 5 years is the normal tenure in any particular station.
- (d) The applicant was, however, subjected to transfer vide order dated 11th July, 2005 from Allahabad to Dhana (M.P.)



- (e) In fact, in the general transfer list published on 30th June, 2005, the name of the applicant did not figure in and her transfer was with a view to accommodating another teacher from Delhi, who remained there for 20 years and was transferred to Dhana, but whose transfer, at the instance of the H.R.D. Ministry was cancelled and hence, the respondents have posted the applicant to Dhana (M.P.).
- (f) If the authorities wanted to transfer any teacher from KVS New Cantt, Allahabad, then on the basis of the guidelines, the senior most as per station seniority should have been disturbed and not the applicant who had joined KVS, New Cantt., Allahabad only in April, 2003.
- (g) Unscheduled transfers could be resorted to only on grounds of misconduct whereas in the case of the applicant no such grounds exist.

4. The respondents have contested the OA. In their counter, the respondents have stated as under:-

- (a) With effect from 19-01-2005 a new Transfer Guidelines has been provided for as per which, teachers of a particular category having maximum length of service in any Kandriya Vidyalaya would be identified as excess to the requirement based on the staff sanction order and the teacher so identified as excess to the requirement would be transferred out of the station.



- (b) There are certain exempted category of teachers, such as

those who are covered under medical grounds, those who are physically challenged, where the spouse had expired within the last two years, those who have less than 3 years to superannuate and where the spouse is also an employee of the Kendriya Vidyalaya.

(c) Clause 10(2) of the Transfer guidelines provides for accommodating those employees who have rendered minimum of two years of service in a very hard station in any station of choice of the individual and in the event of non availability of accommodation in the desired institution, to accommodate him, the junior most employee in that institution, will be transferred.

(d) The employees of the K.V.S. Would be liable to be transferred anywhere in India. The applicant cannot, therefore, prescribe a particular station where alone she should be posted.

(e) The tenure of 5 years was as per the old guidelines.

(f) In fact, the applicant was transferred from Mount Abu to Allahabad by displacing another teacher from Allahabad, who was posted to Mount Abu. It is only in that fashion that she is being shifted to accommodate yet another teacher. The applicant to whom the earlier transfer suited, cannot be permitted to have a grievance on her transfer now.

(g) The transfer of the applicant was ordered by invoking the provisions of guidelines 18(b) of the guidelines, which provides that the Commissioner will enjoy the power of making departure from the guidelines as he may consider necessary with the prior approval of the Chairman, K.V.S.

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(b) In view of the above facts and circumstances, coupled with the facts that the Apex Court in a catena of decisions has held that transfer being an incidence of service, judicial interference cannot be made save under specific conditions such as malafide and violation of statutory norms and in the instant case, there is no scope of such interference.

5. The applicant has filed her rejoinder in which she had emphasized the alleged illegality in the transfer order and reiterated her contentions raised in the O.A.

6. Arguments were heard and the documents perused. The counsel for the applicant itemized the illegality in the transfer order as (a) Violative of the guidelines regarding the normal tenure in a peace station; (b) transfer of the senior most station seniority employee (c) If a transfer is effected to accommodate another, the transfer is illegal. And (f) Some public purpose should be served in effecting the transfer and the same is conspicuously missing in this case.

7. On the other hand counsel for the respondents submitted that the applicant being governed by the terms of appointment which provides for All India Transfer Liability, she has no case. Again as to the contention of the applicant that the transfer order is vitiated on the ground that no transfer order could be passed with a view to accommodating another, The counsel also submitted that the earlier guidelines have now been replaced by yet another and a copy of the

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same has also been made available. The counsel for respondents relied upon the decisions of the Hon'ble High court of Allahabad (Order dated 01-02-2006 in WP No. 6472/2006 and an interim stay order in WP No. 4957/2006), of the Apex Court in the case of Mrs. Shilpi Bose and others vs State of Bihar and Others, (AIR 1991 SC 532), P.U. Joshi and others vs AG, Ahmedabad and Others, 2003(2) SCC 632, State of Punjab vs Ram Lubhaya Bagga, (1998) 4 SCC 117.

8. Arguments were heard and documents perused. First the authorities cited in support of the respondents. The order of the Hon'ble High Court in WP No. 6472/06 is after the counsel for the respondents conceded. True, it could be discerned from the order that deviation from the guidelines cannot be fatal to the transfer. But here, the case is that the respondents exercised a power vested in a particular clause viz clause 10(2) which has been held to be illegal and consequently set aside ^{by Lucknow Bench,} and there has been no stay in respect of this decision of the Tribunal. In so far as the interim order whereby stay has been ordered, the same has the effect only of staying the operation of that order and the order does continue to exist. In this regard support can be had from the decision of the Apex Court in the case of Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn., (1992) 3 SCC 1. Shilpy Bose case meets the ground that the applicant has been transferred to accommodate another. But here again, the applicant has taken many a ground and this was one of them. The other two cases deal with the power to frame policy, about which there is no

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dispute.

9. As regards the facts of the case, admittedly the applicant's stay at Allahabad is for a very short period of just 2 years plus. Persons with higher station seniority are serving in the very same institution. The provisions in the earlier guidelines that with a view to accommodating those who have done hard station tenure in a particular place of choice as contained in para 10(2) of the guidelines have been quashed and set aside by a Division Bench of the Lucknow Bench of the Tribunal. In any event, the same does not apply to this case since the successor to the applicant has not been posted from a hard station. While it would be the prerogative of the respondents to post the person to a particular Institution, the same shall not result in violation of the guidelines with reference to another employee. No specific purpose or ground has been indicated as to why the applicant was to be shifted within such a short span, that too as an unscheduled transfer. As rightly contended by the applicant, her transfer is not on the basis of any misconduct etc., It is trite law that any power vested with any authority, whatever may be the extent of discretion available with that authority, cannot but be exercised judiciously, keeping in view the institutional interest and cannot be exercised whimsically or discriminately. *It is appropriate to bear in mind the adage 'it is good to have the power of giant, but not good to use it always'*. And, when such power is conferred with and exercised, if the same is questioned before a Court of Law, Judicial review of administrative action is permitted and if the authority comes out with proper

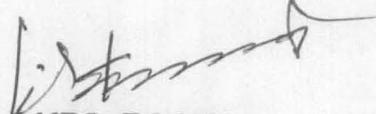
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justification for exercise of the power, the action would be upheld. Viewed from this angle, in the instant case, apart from the fact that clause 10(2) of the Guidelines has now been quashed and set aside by the Lucknow Bench of the Tribunal, no justifiable reason has been put forth by the respondents. And the fact that the transfer was at the time when the applicant was in an advanced stage of pregnancy also gives rise to certain doubt whether the authorities were acting bonafide. The impugned order shall, therefore, have to be quashed.

10. The earlier transfer policy has now been replaced by a new guidelines. If the applicant falls within that category whereby she has to be transferred in the future rotational transfer, it is open to the authorities to effect the same, subject to the condition that the transfer policy is implemented uniformly with respect to all, exemption, if any, granted being duly justified.

11. In view of the above, the OA succeeds. The transfer order passed by the respondent (order dated 11-07-2005) is hereby quashed and set aside. The applicant shall be allowed to continue in KVS, New Cantt, Allahabad.

12. Under the facts and circumstances, there shall be no order as to costs.



KBS RAJAN
JUDICIAL MEMEBR