

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 30th day of May 2001.

Original Application no. 1518 of 1999.

Hon'ble Mr. SKI Naqvi, Member-J.

Gupteshwar Nath (G. Nath), son of Shri T. Prasad,  
r/o Chaturbhuj Pur, House No. 116, Mughalsarai,  
Distt Chandauli, premanent resident of villand  
PostBrahampur, district Buxar (Bihar), at present  
posted Primary Teacher, Kendriya Vidyalaya Mughalsarai  
and is office bearer, Assistant General Secretary,  
of All India Kendriya Vidyalaya Teachers  
Association, New Delhi.

... Applicant

C/A Shri SC Dwevedi

Versus

1. Union of India, through the Secretary,  
Ministry of Human Resource and Development  
(Department of Education), Govt. of India,  
New Delhi.
2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area, Shaheed  
Jeet Singh Marg, New Delhi.
3. The Deputy Commissioner (Academic),  
Dendriya Vidyalaya Sangathan,  
18, Indttitutional Area, Shaheed  
Jeet Singh Marg, New Delhi.

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The ...

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4. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Patna Region, Vijay Nagar, Rukunpura,  
Bailley Road, B.V. College, Patna.
5. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Ahmadabad Region, Ahmadabad.
6. The Principal,  
Kendriya Vidyalaya, Mughalsari,  
Distt. Chandauli.
7. The Principal,  
Kendriya Vidyalaya, Bhuj,  
Gujrat.
8. Chaiman,  
Vidyalaya Management Committee,  
Kendriya Vidyalaya Mughalsari,  
Chandauli.

... Respondents

C/Rs Shri V.K. Singh  
Shri S. Mandhyan

O R D E R (Oral)

Hon'ble Mr. SKI Naqvi, Member-J.

Shri Gupteshwar Nath, the applicant while posted at Mughalsari has been transferred to Kendriya Vidyalaya, Bhuj in Ahmedabad region as primary teacher Teacher (PRT). The applicant has a grievance against this impugned order dated 22.11.1999 mainly on the ground that it suffers from malafide because it has been passed during pendency of the inquiry against

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conduct of the applicant and also to shift the applicant who is office bearer of the teachers association. It has also been pointed out that it is against the guidelines issued from time to time regarding the transfer of PRT <sup>& hence it is</sup> ~~whereas it is~~ it is specifically provided that the Primary teachers <sup>here</sup> ~~was~~ not be transferred to a place beyond the <sup>region</sup> ~~reasons~~ where he was selected and also that office bearer of the Kendriya Vidyalaya <sup>here</sup> ~~was~~ also not be transferred.

2. The respondents have contested the case and filed counter affidavit with the mention that the inquiry which was pending against the applicant <sup>& already</sup> ~~has not~~ been concluded and no inquiry is pending against the applicant at present. Regarding the circular dated 15.1.1999 it has been mentioned that <sup>transfer</sup> ~~person~~ does not come within the scope of victimisation. It has been <sup>also</sup> emphasised that the applicant has been transferred <sup>in the</sup> ~~at~~ public interest.

3. Heard learned counsel for the parties and perused the record.

4. Learned counsel for the applicant has mainly emphasised that as per impugned order the applicant has been transferred in public interest, whereas there is no mention as to what public interest was involved in this transfer and in support of his contention he has referred 1993 Suppl (3) SCC 35,

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Ramadhar Pandey Vs. State of UP and others decided on 30.3.1993. Where<sup>in</sup> their lordship observed that the order impugned ~~there~~<sup>here</sup> ~~has~~<sup>been</sup> passed in public interest, but there was no mention as to what public interest was involved. Perusal of this cited law goes to show that it was in respect of promotion and transfer of Senior most Deputy Transport Commissioner and the observation was in respect of that matter only which was before their lordship in the referred case. Learned counsel for the applicant also relied on decision in OA 484 of 1993 decided on 28.10.93 by Ernakulam Bench of C.A.T. in Y. Kurikesu Vs. The Sr. Supt. of Telegraph Traffic, Trivandrum Div & Ors, wherein it has been observed that ~~there~~<sup>here</sup> must be mention in a particular case as to what public interest was involved. Learned counsel for the applicant has also referred single member decision dated 25.2.2000 in OA 299 of 1999 by Lucknow Bench of the Tribunal where in the public interest has been discussed and its non mention has been deplored.

5. In reply to this contention Shri S. Mandhyan referred AIR 1993 SC 2444 Union of India & Ors Vs. S.L. Abbas, wherein their lordship at apex court held that unless the order of transfer is vitiated by malafide or is made in violation of any statutory provision, the court cannot interfere with it, while ordering the transfer there is no doubt, the authority must keep in mind the guidelines issued by the Govt. on the subject.

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6. Giving <sup>Haughty</sup> ~~hard~~ consideration to the case law referred it is found that the case of Ramadhar Pandey Vs. State of UP (Supra) <sup>related to</sup> ~~relied to~~ post of Additional Transport Commissioner wherein the promotion and seniority was also involved. In Enakulam Bench matter Y. Kurikesu Vs. The Sr. Supt. of Telegraph Traffic, Trivandrum Div & Ors. (supra) in that case inspite of direction and opportunity the respondent <sup>Could</sup> ~~did~~ not justify the impugned order. In the Lucknow bench matter RP Tripathi Vs. Union of India & Ors, the transfer order was not <sup>only</sup> in public interest <sup>but also</sup> on administrative ground and the administrative ground could not be explained.

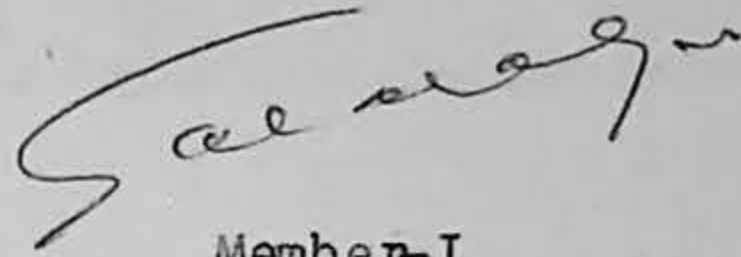
7. The guidelines as per annexure 12 to the OA as approved by board of Governor in its 54th meeting held on 22.08.1990. Item 8 provides that PRTs, TGTs and other ~~category~~ of the teachers in the identical to its case will not normally be posted out side the <sup>region</sup> ~~reason~~ in <sup>which</sup> ~~they~~ <sup>have</sup> are selected to the word 'normally' is significant <sup>which indicates</sup> ~~here indicates~~ that it is not absolute but only suggestive in nature.

8. It has also been mentioned by learned counsel for the respondents, and not disputed by learned counsel for the applicant, that the applicant has already joined in pursuance of impugned order.

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9. For the above it is found that the applicant has failed to substantiate that the transfer order is out come of some malafide or it is in violation of any statutory provision and, therefore, no interference <sup>called for</sup> ~~needed~~. The OA is dismissed accordingly. No order as to costs.



Member-J

/pc/