

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 962 OF 2002

ALLAHABAD, THIS THE 31<sup>st</sup> DAY OF MARCH, 2003

HON. MRS. MEERA CHHIBBER, MEMBER (J)

Smt. Sunita Rani Sharma,  
w/o Shri Ashok Kumar Sharma,  
presently posted as Music  
Teacher at Kendriya Vidyalaya,  
IVRI, Bareilly,  
r/o Kendriya Vidyalaya,  
IVRI Campus,  
Bareilly.

.....     .....     Applicant.

(By Advocate:-Shri K.Ajit)

Versus

1. Union of India through its Secretary,  
Ministry of Human Resources Development,  
New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan,  
18, Institutional Area, Shahid Jeet Singh Marg,  
New Delhi-16.
3. Principal, Kendriya Vidyalaya IVRI Izzat Nagar,  
Bareilly.
4. Shri H.M.Caris, Commissioner, Kendriya Vidyalaya  
Sangathan, 18, Institutional Area, Shahid Jeet  
Singh Marg,  
New Delhi-16.     ..... Respondents.

(By Advocate:-Shri N.P.Singh)

O R D E R

By this O.A applicant has challenged the order  
dated 15-10-2001 and 20-5-2002. She has further sought  
a direction to the respondents to permit the applicant to  
work as Music teacher at Kendriya Vidyalaya IVRI Bareilly  
and to pay her regular salary and arrears w.e.f. 15.10.01.

2. By order dated 15.10.01 applicant was transferred  
from Bareilly to Jeshimath in public interest. Being  
aggrieved she filed an O.A 204/02 which was decided on



8.3.2002 by directing the respondents to pass appropriate orders on applicant's representation within 30 days. Status quo as on that date was ordered to be maintained till the disposal of her representation. They were also directed to deal with her case regarding vacation of government accommodation as per rules (page 32). Pursuant to the directions of Tribunal respondents passed order dated 21.5.2002 rejecting her representation by passing a reasoned order (page 17). It is this order which has been challenged by applicant in this O.A.

3. Applicant's counsel had raised mainly three grounds to challenge the transfer:-

- (1) The transfer is done due to malafide reasons therefore is arbitrary.
- (2) It was a mid term transfer and her children were studying in school thus there was no justification to transfer her in the mid academic session as there was no complaint against her.
- (3) Teachers senior to her in the school were still retain, retained which she was picked up for transfer and transfer is contrary to the guidelines issued by respondents themselves.

It is submitted by applicant's counsel that there was no adverse report against the applicant nor there was any complaint with regard to her performance as a music teacher therefore there was no occasion to transfer her in mid academic session from Bareilly to Joshimath. Her husband had taken leave to pursue his wife's case but the next day he was also transferred to Silchar which itself shows



that Commissioner was passing the orders with malice. Even otherwise after relieving the applicant respondents have adjusted one surplus teacher at Bareilly and one on contract which itself shows that there was no justification to transfer the applicant out from Bareilly to Joshimath when she has had three surgeries and it is not possible for her to climb the Joshimath Hills. In support of his contention he relied on Para '6' of respondent's own policy at page 27 which reads as under:-

"Apart from others, the following would be administrative grounds for transfer:-

- (1) A teacher is liable to be transferred on the recommendation of the Principal and the Chairman of the Vidyalaya Management Committee of the Kendriya Vidyalaya.
- (2) Transfer of spouse of a Principal to a Kendriya Vidyalaya at the station where the Principal is working or nearby, but not the vidyalaya where he is a Principal.

As far as possible, the annual transfers may be made during summer vacations. However, no transfer, except those on the following grounds shall be made after 31st August."

He also relied on 1978(2) SLR Calcutta page 136 to substantiate his argument that when no disciplinary action was taken against the employee and employee was transferred without affording an opportunity of being heard- order of transfer was held as malafide and amounted to punishment. Accordingly transfer order was quashed.

4. Respondents on the other hand have submitted that transfer is an incidence of service and employees of Kendriya Vidyalaya Sangathan are liable to be transferred anywhere in India under Article 54 (12) of Education Code. They have further submitted that as per clause 3 of transfer guidelines as approved by the BOG, the services of Kendriya Vidyalaya Sangathan employees are liable to be transferred to any Kendriya Vidyalaya of the Sangathan

B

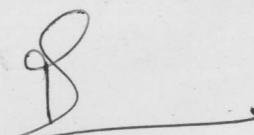
at any time on short notice on organisational reasons and administrative exigencies. Also as held by the Apex Court the individual's personal inconveniences have got little importance over administrative exigencies and public interest particularly in the matter of transfer/posting. The personal problems expressed by the applicant should not come in the way of service conditions and public interest. They have further submitted that applicant has been transferred from Bareilly to Joshimath on administrative grounds in public interest in order to ensure smooth running of the vidyalaya as the transfer of applicant became inevitable. Since there were adverse reports from the vidyalaya and Sangathan authorities involved with the day to day supervision of the vidyalaya. They are further submitted that if the applicant had been not transferred out it would prove to be detrimental to the interest of the school as a whole. Therefore, since the transfer has been ordered in public interest on the basis of adverse reports given by a Controller and Supervisory authority, her transfer cannot be said to be arbitrary or malafide. They have also submitted that Hon'ble Supreme Court has held in number of judgments that individuals inconveniences have got little importance over administrative exigencies and public interest particularly in the matter of transfer/posting. They have submitted that the transfer has been made on organisational reasons, administrative grounds or on the recommendation of a Principal and the Chairman of the VMC and it is very much in accordance with law and guidelines published by the K.V.S in particular. They have relied para '5'(1) of the said guidelines. They have also explained that she has been transferred within the region, therefore, she can have no objection in



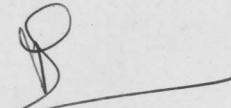
joining at Jeshimath as per as the surplus teacher being posted in Izzatnagar, Bareilly. They have submitted that the said teacher have to be adjusted here due to the closer of K.V. CCI Raj Bhawan as the vacancy was available at IVRI, Izzatnagar, Bareilly. They have, thus, submitted that this O.A is liable to be dismissed with cost.

5. Applicant had reiterated her stand in the rejoinder. The matter was heard on 30-1-2003 at length and respondents were directed to produce the original record within one week as I wanted to satisfy myself whether the transfer is really based on some material before the authorities or it has been passed in an arbitrary manner because from the counter filed by the respondents there were many aspects which were not clarified by the respondents and vague averments were made without any ~~signed~~ <sup>Supporting</sup> documents. On the contrary, applicant's counsel was vehemently stating that there is no adverse reports against the applicant.

6. Respondents have produced the original records for my perusal and he subsequently has also filed an affidavit on behalf of Shri H.M.Caire, Commissioner, K.V.S. as initially no separate affidavit had been filed on his behalf even though he had been made as a party in the O.A and malafides were alleged against him. ~~Perusal~~ of the record shows that there was indeed a requirement to post the applicant out of station as there had been couple of incidents in which either the applicant or her brother in law had indulged with either the security guards or the bus driver and if the authorities had not intervened in

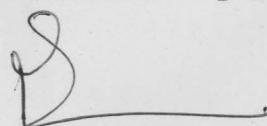


resulted in  
in the matter, probably it would have <sup>been</sup> a very ugly situation. Had there been only complaints against the applicant or her brother in law, I would have taken a different view but I also find that the applicant's brother in law had infact given in writing on 5-1-2002 to the Director of IVRI, Izzatnagar, Bareilly wherein he admitted his mistake <sup>had</sup> ~~had~~ in the incidents which <sup>were</sup> ~~had~~ taken place on 29-12-2001 in the night or on 9-9-2001 with Shri Kamta Prasad and he apologised for his behaviour and assured that in future he would not indulge in any such activities. He had also requested the Director to lift the ban imposed on him for entering the institute. Thus, it is clear that the complaints which were made by the bus driver or the security gaurds <sup>were</sup> ~~had~~ given a complaint not only to the authorities but also in police station with regard to the mis-behaviour and his terrorising activities. They had infact requested the authorities to take action against applicant's brother in law as his behaviour is detrimental to the safety of the institute campus itself. Similarly, it is on record that applicant's brother-in-law shri Raj Kumar Sharma had beaten the bus driver in the presence of applicant and other witnesses <sup>because he</sup> ~~had~~ could not bring bags of wheat from her residence Dehradun to Bareilly in his Bus hired to carry out the children of K.V., IVRI, Bareilly to participate in Regional Social Exhibition at Dehradun, for which applicant was deputed as escort teacher. Things did not end at making allegations and counter allegations either by the staff or the applicant's side but the matter was even reported in the newspapers to the extent that applicant had stated that the security gaurds had torn the applicant's cloth while misbehaving with her. The Security gaurd's version was that applicant's brother



in-law had himself torn the clothes of his sister-in-law i.e., applicant and started accusing the security gaurd. It things had reached that kind of a situation definitely <sup>Rsafely R</sup> it can be said that it would not have been in the <sup>either</sup> interest of ~~neither~~ the IVRI or the school authorities because such kind of incidents are definitely not a healthy sign and in these circumstances the only alternative to defuse the situation was to post the applicant out, it would have been neither in her interest to continu <sup>to R</sup> at the same place as she would have <sup>to</sup> face the same security gaurds everyday nor it would be in the interest of the institute as they would be faced with ~~in~~ ugly situations every now and then.

7. In view of the records which have been placed before me I am satisfied that the transfer of applicant can not be said to be either arbitrary or due to any malafide reasons. When these reports were shown to the applicant's counsel he submitted that these incidents do not relate to the applicant in the discharge of her official duties. Therefore, they can not be used against her for transferring her out of one station to the other and since her transfer is based on these reports this transfer becomes punitive in nature. I am afraid such a contention is to be rejected outright because it was not in order to punish the applicant that she was posted out <sup>from R</sup> Bareilly to Joshimath. <sup>for</sup> Such an ~~action~~ <sup>action</sup> had to be taken in order to defuse the situation which had been created either by applicant herself or by any member of her family namely her brother in law. In the instant case, the school is situated within the boundary of IVRI, Izzatnagar, Bareilly.



*Para 12*  
Therefore, naturally the institute would be concerned, if  
there is some untoward incident with their security  
guards.

*Para 13*  
8. The records <sup>^</sup> shows that applicant's brother in law used to indulge in browbeating the security staff or the other staff. Therefore, it was felt by the security gaurds <sup>that is</sup> as it is not in the interest of security of the institute campus itself to allow such elements to remain in the campus as that would amount to compromising with the security. In these circumstances, the Principal and the Chairman of VMC had both recommended to the Commissioner that activities of Mrs. Sunita Sharma music teacher of Kendriya Vidyalaya are not in the interest of vidyalaya as well as IVRI, campus. Therefore, she may be transferred with immediate effect from the Kendriya Vidyalaya, IVRI, I Izzatnagar, Bareilly, ~~and~~ It was on the basis of these reports that the commissioner had taken the decision to transfer the applicant to some other station. Therefore, it can not be said that the Commissioner had transferred the applicant from Bareilly to Jashimath due to malafide reasons. At this juncture, Applicant's counsel submitted that since applicant has already undergone three surgery and her husband has already been posted to a far off place at Silchar, she could ~~not~~ have been asked to vacate the Government accommodation within the campus and posted to some other school within Bareilly or some other plane area. In this context I would only like to say that applicant should join at the place of her transfer and then give a representation to the authorities stating therein her problems with a request to post her in some other school. If she give such a representation, I am sure

*SP*

the respondents would give ~~the~~ due consideration to her problems and pass appropriate orders thereon. No direction can be given in this regard to the respondents to post the applicant at a particular school because that is for the respondents to decide after looking at the vacancies available with them.

9. Applicant's counsel had also submitted that since in the order it was mentioned in public interest it could not have <sup>been B</sup> substituted to administrative ground in the counter affidavit. He had submitted that there was no public interest in transferring the applicant from Bareilly to Jashimath. I have considered this contention and would like to say that public interest is a larger ~~accommodation~~ <sup>contestation</sup> and would include the administrative ground also. For example, in a situation like this, where the applicant or her family members had been indulging in undesirable activities, it was not necessary for the authorities to give all these reasons in the transfer order. Therefore, keeping in view the administrative ground if they ~~had~~ posted the applicant out <sup>by statute</sup> in public interest, no fault can be found in that expression. As far as his contention that the transfer was done in mid-academic session, respondent's counsel had assured at bar that all her children are in lower classes namely class 6, 4 and class 3 and as soon as she joins at Jashimath they would be given admission in the Kendriya Vidyalaya at Jashimath as the facility of Kendriya Vidyalaya is very much available at Jashimath also. Moreover, the transfer was ordered as back as on 15-10-2001 and now we are in 2003. The representation was decided by the authorities on 21-5-2002. Therefore she could easily have

B

shifted to Jashimath as in May the school session ends and the new session starts only in July. Therefore she had two months to herself to comply with transfer orders. In the instant case it is seen that though the applicant had sought stay of the transfer but her transfer was not stayed and the respondents were directed to allow the applicant to retain the quarter in which she was staying. Therefore, she ought to have been carried out the transfer orders. The respondent's counsel had produced an order passed by Hon'ble Supreme Court in case of Commissioner Kendriya Vidyalaya Sangathan Versus Anusuya Pathak and others wherein the stay was granted by the High Court but the Hon'ble Supreme Court held as under:-

" Merely because the respondent is a lady teacher does not mean that for administrative reasons orders of transfer can not be passed. We would have expected a teacher to show some sense of responsibility. But the fact remains that there is none as far as the respondent is concerned. As we have already mentioned, orders of transfer were passed on 22nd June, 2001 and on 7th May, 2002 the High Court stayed the transfer. This order of the High Court was stayed by this Court on 29th July, 2002. Till today, the respondent has not joined the new station to which she has been transferred. We see no reason to interfere with the order of transfer. It is only a government organisation which can tolerate nonimplementation of its orders.

For the aforesaid reasons, this appeal is allowed and the order of the High Court is set aside.

10. This is only one of the orders passed by the Supreme Court but even otherwise there are catena of Judgments wherein Hon'ble Supreme Court has repeatedly held that courts should not interfere in transfer matters in a light manner unless it is proved that they are passed in an arbitrary manner or passed due to malafide reasons. In the instant case, since I have already recorded my findings that in the given facts of case it could not be

8

termed as an arbitrary or malafide transfer, I do not propose to interfere in the orders passed by the respondents.

Accordingly the D.A is dismissed with no order as to costs.



Member (J)

Madhu/