

Reserved.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

Original application NO.380 of 2003.

Allahabad this the 04.....day of 03..... 2005.

Hon'ble Mr. D.R. Tiwari, Member-A

Vijay Shankar Sah,
Aged about 31 years,
Son of Sri Ram Chander Sah,
Permanent resident of Pilibhit Bye Pass Road,
Post Office- Rohillakhant University,
Bareilly-243006.
Presently working on the post of TGT, Maths, at
Jawahar Navodaya Vidyalaya, Shahjahanpur,
(Now under order of transfer to Shillong)
.....Applicant.

(By Advocate: Sri Shyamal Narain)

Versus.

1. The Navodaya Vidyalaya Samiti,
(An autonomous organization of Ministry of
Human Resource Development, Department of
Education, Government of India) through the
Commissioner.
2. The Deputy Director, Navodaya Vidyalaya Samiti
Lucknow Region, B-10, Sector-C, Aliganj,
Lucknow-226024, Uttar Pradesh.
3. The Principal/Principal Incharge Jawahar
Navodaya Vidyalaya, Hathoura Bujurg,
Shahjahanpur, Uttar Pradesh.
4. The Deputy Director, Navodaya Vidyalaya Samiti,
Regional Office, Shillong.

.....Respondents.

(By Advocate : Sri N.P. Singh)

O R D E R

By this O.A. filed under section 19 of the A.T.
Act, 1985, the applicant has prayed for the following
reliefs:

- "(a) That this Hon'ble Tribunal be pleased to
quash the impugned transfer order dated
4.4.2003, transferring/relieving the
applicant from JNV, Shahjahanpur to Navodaya
Vidyalaya Samiti, Shillong Region (Annexure
NO.1 Compilation NO.1)

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- (b) That this Hon'ble Tribunal be pleased to pass such other orders as the applicant might be found entitled to in the facts of the case.
- (c) That this Hon'ble Tribunal be pleased to award the costs of this application".

2. Filtering out the details, the material factual matrix to decide the controversy is that the applicant was appointed as a Trained Graduate Teacher, Maths (T.G.T. Maths) on 18.11.1997 after being duly selected in accordance with law and he continued there between 18.11.1997 and 10.12.2002. Since his parents were suffering from various ailments, he made a request for transfer from Mirzapur and his request was agreed. He was transferred to Shahjahanpur vide order dated 29th June/5th July 2000 and he finally joined at J.N.V Shahjahanpur on 11.12.2000 which was a newly opened School having a Skelton staff of 6/7 including the applicant and the Principal. The applicant was given total change of Mess, Medicines, Uniforms, furniture and hostel equipment.
3. The applicant has averred that he was faced with rampant corruption going on in J.N.V Shahjahanpur. The officiating Principal wanted commission in every purchase or transaction relating to school and the principal desired the applicant to make purchases against grossly exaggerated bills and quotations and to pass the ill-gotten money to him. The applicant failed to oblige him and made complaint to the Chairman of the Vidyalaya as well as to the Dy. Director N.V.S (R.O.) Lucknow. The Principal was so annoyed with the applicant that he got a few parents to misbehave with him and his father had to lodge a complaint with the Chairman and the Regional Dy. Director, of course, inquiry was ordered but the thing did not improve. The applicant raised the matter of corruption at all levels but to no avail. The

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Principal felt increasingly exposed owing to applicant's refused to compromise on matters of integrity.

4. The applicant has further submitted that the principal wanted to ease out the applicant and he conspired to attach him temporarily to J.N.V. Bahraich (Annexure A-4). The order of temporary attachment to Bahraich and Pilibhit and transfer to Shahjahanpur continued till his final transfer order dated 4.4.2003 to Shillong Region. All his attachment and transfer took place between 6.11.2002 and 4.4.2003.
5. The impugned transfer has been challenged on various grounds mentioned in para 5 of the O.A. It has been submitted that the order is illegal, unjustified and actuated by malafides. After a hectic round of wholly inexplicable and unwarranted temporary attachments and final transfer to Shillong Region betrays the transparent play of strong malafides. It has been pleaded that the impugned order is not in public interest but punitive in nature.
6. The respondents, on the other hand, have contested the O.A. by filing a detailed counter affidavit, it has been argued that the applicant was habitual in making complaint against his superior officers and to pollute the atmosphere of the institution by creating groupism in the Vidyalaya. Since he disrupted the teaching atmosphere of the Vidyalaya, the Principal has taken action against the applicant and requested the Dy. Director, N.V.S., Lucknow Region to attach him to J.N.V Bahraich. The attachment order dated 06.12.2002 has been passed by the Competent Authority i.e. Dy. Director N.V.S Lucknow region and he was provided T.A./D.A as per rules. They have submitted that the representation dated 23.01.2003 was directly sent to the

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Commissioner N.V.S and was not sent through proper channel, hence the same was not considered by the Competent Authority. They have also submitted that the transfer order dated 31.3.2003 was sent to him through peon book which the applicant refused to receive and therefore, it was pasted on the door of the house of the applicant. It has been further pleaded that the applicant was transferred from Shahjahanpur to Shillong Region on administrative grounds and before his transfer to Shillong Region he was attached to J.N.V., Pilibhit and Bahraich purely on need basis by Dy. Director N.V.S who is competent authority for intra-regional transfer/attachment. It has been further pleaded that the applicant has been transferred from Shahjahanpur to Shillong Region by Commissioner, N.V.S, New Delhi and for inter-region transfer he is the competent authority. This has been done on administrative grounds. Since the applicant has an All India transfer liability which can not be avoided as it was done on administrative ground. Hence, it is not punitive in nature. It has been finally pleaded that the impugned transfer order is perfectly legal and has been done on administrative grounds and the Tribunal be pleased to dismiss the O.A.

7. During the course of hearing, the counsel for applicant emphatically argued that the impugned transfer is punitive in nature and suffers from the vice of malafides. He fairly conceded the right of administration to transfer its employee on administrative ground and is exigencies of services. He also accepted the fact that the transfer can be interfered by the Courts and Tribunals on the ground of violation of statutory rules or on the ground of malafides. He drew my attention to para 6, 8 and 9 of short C.A. to show that his temporary

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attachment to Bahraich was not on administrative ground. He could demonstrate that it was because of his fault finding attitude and uncompromising attitude and for these reasons, he was temporarily attached either to Bahraich or Pilibhit. He could demonstrate that his temporary attachment was by way of a punishment and not on administrative ground. Sri Shyamal Narain, learned counsel for applicant also elaborated the points made in the pleading of the applicant to show that the impugned transfer was punitive in nature and was vitiated by malafides.

8. Sri N.P. Singh, learned counsel for the respondents hotly contested the claim made by counsel for the applicant. He started with preliminary objection that the applicant has rushed to the Tribunal without exhausting the remedies available to him. He did not file any representation or appeal hence his O.A. is hit by Section 20 (i) of the A.T. Act 1985. He further submitted that the main transfer order has not been challenged. He also stated that this O.A. suffers from the vice of irregularity as much as the Government of India is always represented by the Secretary and in this case, Secretary, Ministry of H.R.D. has not been arrayed as a party. He also raised the preliminary objection that it is necessary that the officer to whom malafides is alleged, should be impleaded as a party by name. He submitted that his temporary attachment to the schools of Bahraich and Pilibhit were done by the Competent Authority because it is intra-regional attachment. He also submitted that the transfer order was sent to the applicant by Peon Book which he refused to accept hence it was pasted at the door of the applicant. He also argued very forcefully the points raised in the counter affidavit and finally contended

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that the transfer order is perfectly valid, lawful and has been made on administrative ground. He further submitted that in the matter of transfers, the Courts and Tribunals are supposed not to interfere. He stated the scope of judicial review in the case of transfer is very limited and the transfer could be interfered with only when order is malafide or is made in violation of statutory provision. In support of his contention he relied on the following judgments of the Apex Court :

- (i) *Union of India and others Vs. S.L. Abbas-* (1993) 4 SCC 357 &
- (ii) *Union of India and others vs. Janardhan Debanath and others in Civil Appeal No.1010-1011 of 2004.*

These cases are distinguishable in view of peculiar fact situation of the case.

9. I have heard very carefully the rival submissions of the counsel for the parties and perused the records.
10. Before the issues at hand are finally decided, I would like to dispose of the preliminary issues raised by Sri N.P Singh appearing on behalf of respondents. He contended that it was too premature on the part of the applicant to rush to the Tribunal without exhausting other remedies available to him, namely preferring an appeal or making any representation to the appropriate authority putting forth his grievances. Hence his O.A. is hit by the Section 20(i) of the A.T. Act, 1985.

It may be stated that the word used is "Ordinarily" and the Apex Court in the case of *Kailash Chandra Vs. Union of India-A.I.R 1961 S.C 1346* was pleased to observe - 'Ordinarily' means in the larger majority of cases but not "invariably". This eventually means that court and Tribunal may make a departure from the

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general rule in appropriate cases. Legislature has also vested discretion with the Tribunal using the word 'ordinarily' in section 20 of the Act. Legislature has intended that as a general rule every case cannot be thrown out merely on the ground that other remedies have not been exhausted. There might be cases where emergent situation may need immediate interference and, therefore, the parliament in its wisdom has intentionally used the word 'ordinarily' having in its mind that there be cases which an aggrieved person should not wait to exhaust after remedies but should immediately seek for interference and protection of court. Therefore, each case has to be decided according to its own facts and circumstances. In the instant case, it may be noticed that the applicant found his posting even at Mirzapur as inconvenient as his old parents were suffering from ailments and he sought his transfer to Shahjahanpur so that he could attend to his ailing parents. In such a fact situation, his transfer to Shillong would naturally deprive him of his attention to parents and he would not be able to attend to his parents. Under the circumstances, the contention of the counsel for the respondents cannot be sustained and is overruled.

11. In so far as his objection regarding challenge to the main transfer order is concerned, I feel that the impugned relieving-cum transfer order dated 4.4.2003 has been challenged and I do not think it necessary that the main transfer order should have been challenged particularly when the applicant has pleaded that he did not receive the main transfer order. In any case, it is not likely to make any difference as the relieving order contains the date of main transfer order. In so far as the question of non-joinder of Secretary HRD is concerned, it may be stated that Navodaya Vidyalaya Samiti has been arrayed as a party which is an

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autonomous organization of the Ministry of Human Resources Development, Department of Education Government of India. Even if Secretary has not been made as a party, I think the O.A. does not suffer from any serious illegality and the preliminary objection cannot be sustained. Another objection raised by the counsel regarding impleading officer against whom malafides has been alleged, I would like to dispose of this objection by quoting the Hon'ble Supreme Court in the case of State of Punjab Vs. Ramji Lal, A.I.R. 1971 SC 1228 wherein it has been held that it is not necessary that the allegation construing malafide must be made against named official. However, preponderance of judicial decision is that so far as factual malafide is concerned, the same cannot be examined unless the officers against whom the malafide is alleged are impleaded eo-nominee parties to the O.A., however, malice in law as distinguish from malice in fact may be examined even if the concerned authorities are not impleaded eo-nominee. I would also like to mention that the Hon'ble Supreme Court in the case of State of Haryana Vs. Rajendra T.I.R 1972 at page 1016 has held that various allegations, treated separately may not lead to an inference of malafides but when all the allegation taken together are found to be established, then the inference to be drawn from those established facts may lead to conclusion that an order has been passed malafide out of malice. In the fact situation of this case, I have no doubt in my mind that though the officers have not been impleaded by name the allegation of malafides or biased attitude can be gathered in the facts from the pleadings. In view of this, the preliminary objection on this count is negatived.

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12. The basic question which falls for consideration is the validity of the impugned order dated 4.4.2003. The contention of the counsel for the applicant that transfer order is punitive in nature is to be examined first. If one has regard to paras 8, 9, 10, 11 and 12 of the short counter affidavit one finds that many enquiries were conducted and all the reports suggest that the applicant's behaviour is not upto the mark and it has been stated that the applicant is habitual in making complaints and he possess fault finding attitude. Annexure SCA-3 is sufficient to prove this point. It has also been recommended that his transfer to another school would be in the welfare of the institution. Para 11 clearly states that his attachment to J.N.V Bahraich is because of his nefarious attitude S.C.A 5 may be referred to. The para 22 of the C.A has stated that his transfer to Bahraich was done as per the rules of the Samiti and competent authority has ordered the attachment, thus the claim of the respondents that his intra-region transfer are need-based are not corroborated and I find that the transfer is punitive in nature. Next contention of the applicant is his transfer to Sillong Region is equally punitive and is vitiated by malafide intention of the respondents. I am inclined to agree with the contention of the counsel for the applicant. If one has regards to the number of transfers whether it is intra-region or is inter region, one is bound to conclude that the applicant is made to suffer the pain of many transfers in a short spell of within three years. Attending circumstances regarding his transfer to Silong Region which does not even specify the school to which he is posted reflects the malafide intention on the part of the respondents. It is more so when it is viewed in the context of his first transfer from Mirzapur to Shahjahanpur at his own requests on the ground of illness of his parents. In this situation his transfer from

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Shahjahnapur to Silong region in the North East even without mentioning the name of the school clearly betrays the malice in law. I get support for my views from the case in Shearer Vs. Shields, (1914) AC 808 in which Viscount Haldane, has described malice in law as follows:

"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently".


13. The claim of respondent that his transfer to Silong Region has been done in the public and in the exigency of service is not supported by the facts mentioned in the pleading. Thus, I find that the transfer order can be said to suffer from the vices of malafides which can be gathered from attending circumstances. The pith and substance of the decision of the Supreme Court in the case of Arvind Dattatray Dhande Vs. The State of Maharashtra and Ors. 1998 (1) SLJ 162 is to the effect that the transfer orders are liable to be quashed if it is found that the same was passed in malafide exercise of power to demoralize an honest officers and victimize him and that malafides can be inferred. The Supreme Court in the case of State of Punjab Vs. V.K. Khanna and others 2001 (2) S.C.C 330 has held that the existence of malafide intents and biased attitude cannot be put on the strait-jacket formula but depends upon the facts and circumstances of each case. In the case of Shankar Narayan Vs. State of Karnataka and others-1993 (1) S.C.C 54 has held that it may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of malafide from the facts pleaded and established.

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14. In view of the decisions mentioned above and the proposition of law laid down by the Apex Court, I have no doubt that the fact situation of the case in hand would definitely lead to reasonable inference of malafide intention on the part of the respondents. Under the circumstances the O.A. is bound to succeed on merit.

15. In view of the facts and circumstances mentioned above, the O.A. succeed on merit and the impugned order dated 4.4.2003 (Annexure A-1) is quashed. The respondents are directed to take necessary action accordingly within a period of two months from the date of receipt of order.

16. There shall be no order as to costs.


Member-A

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