

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application Number 690 of 2003

ALLAHABAD, THIS THE 20th DAY OF JANUARY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Rakesh Chandra Pandey,  
aged about 45 years son of Late  
Dwarika Nath Pandey,  
Permanent resident of B-3, Kashi Raj Apartment,  
Kamachcha, Varanasi-U.P.  
Presently resident of Jawahar Navodaya Vidyalaya,  
Patehra Kalan, Mirzapur-U.P.  
and teaching on the post of Trained Graduate Teacher  
(TGT), Socially Useful Productive Work (SUPW) at  
Jawahar Navodaya Vidyalaya Patehra Kalan,  
Mirzapur, U.P.

.....Applicant

(By Advocate : Shri Shyamal Narain)

V E R S U S

1. The Navodaya Vidyalaya Samiti,  
Ministry of Human Resource Development  
(Department of Secondary and Higher Education)  
I.G.I. Stadium, Indra Prastha Estate,  
New Delhi-110 002.  
Through, the Commissioner.
2. The Deputy Director,  
Navodaya Vidyalaya Samiti, Regional Office,  
Lucknow Region, B-10, Sector 'C' Aliganj,  
Lucknow-226 024 (U.P.).
3. Dr. P.S. Sararia,  
Deputy Director, Navodaya Vidyalaya Samiti,  
Regional Office, Lucknow Region,  
B-10 Sector 'C', Aliganj, Lucknow-226024 (U.P.).
4. Sr. A.K. Srivastava,  
Principal, Jawahar Navodaya Vidyalaya  
Patehra Kalan, Post Office Kubri Patehra  
Mirzapur-231 309. (U.P.)

.....Respondents

(By Advocate : Shri N.P. Singh )

O R D E R

By this Original Application applicant has challenged the

order dated 17.06.2003 whereby applicant was transferred from Mirzapur in Lucknow Region to Shilong Region on administrative grounds (Pg.37). It is submitted by the applicant that this transfer order has been issued due to malafides alleged against respondent No.3 and 4 i.e. the Deputy Director, Lucknow Region and Principal of J.N.V. Mirzapur. He has narrated certain incidence to whom that the principal as well as deputy director of Lucknow region was biased against him. He has next contended that since applicant was only a TGT, he was not liable to be transferred out side the region as that would have affected his seniority. The seniority of T.G.T. is made region wise and it is only the P.G.Ts who have all India seniority. Counsel for the applicant next contended that he had sought transfer from Rajasthan to Lucknow on request in July 1996 as his wife was sick, therefore, he was posted to Lucknow at his request was put at the bottom of seniority list in Lucknow, therefore, now he could not have been transferred out of the region once again affecting his seniority. Even otherwise he submitted that there are instructions to post husband and wife at the same station and since his wife is at Manihan in Mirzapur, there is no justification to transfer him to a far off place like Shilong Region without specifying the place of posting. He further submitted that in North East the <sup>medium</sup> minimum of education is English while in Mirzapur it is in Hindi. Therefore, if he is forced to go to Shilong Region, his children ~~is also given~~ would be affected adversely as it would take time to learn the English medium which may not be possible at the end of academic session. He further submitted that people senior to applicant have still not been sent to North East, therefore, he has been discriminated against, in as-much-as applicant has been singled out by transferring him to Shilong Region. He has annexed his seniority list to show that applicant is at serial No.20 in the said seniority list. He submitted that if at all



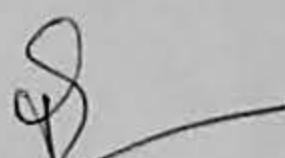
transfer ~~was~~ to be carried out ~~which~~ ought to have been done as per the seniority. He next contended that all other persons who were transferred along with the applicant in the impugned order, have already been adjusted either in some other region or at ~~which~~ some other place according to their requests. For example Shri P.K. Dwivedi has been ~~transferred~~ and he has been adjusted in Pyne Region. Shri Dinesh Prasad has been retained under Lucknow Region itself at Allahabad. Shri L.B. Gangwar has also been adjusted at Rae Bareilly (under Lucknow Region itself). Further while Shri W.N. Khan had obtained a stay order from Lucknow Bench of this Tribunal, Shri R.M. Dwivedi has been adjusted at Gonda again under Lucknow Region. He has thus submitted that when the others in the impugned order have already been adjusted, there is no justification as to why applicant cannot be adjusted in the Lucknow Region itself. Moreover, it belies the respondent's stand that these persons were transferred to North East Region under some policy decision. Last but not the least, he submitted that as per the respondent's reply SUWP is a dying cadre and no fresh appointments are being made in this category. If this position was to be accepted, then it is all the more reason that applicant should not be posted to North East Region because it is not all that important to post such a teacher to the North East. He also submitted that it is only in the Counter Affidavit that respondents have talked about the protection of seniority. In case they had mentioned this fact in the transfer order, probably there was need for the applicant to come to the court. He has thus prayed that the relief as prayed for may be granted and respondents may be directed to adjust him also in Lucknow Region itself as has been done in other cases.

2. Respondents have opposed this O.A. by submitting that the allegation of malafides are absolutely misconceived in this case as transfer order has been passed by the Commissioner of

Navodaya Vidyalaya Samiti, who has not even been arrayed in his own capacity and respondent Nos. 3 and 4 against whom malafides have been alleged have neither any power to pass inter region transfers nor it has been passed by them, therefore, contention of malafides has to be rejected out right. They have further submitted that this O.A. is not maintainable as applicant did not exhaust the remedy available to him as he did not file any representation to the authorities seeking transfer to some other place and approached the court straightaway, therefore, the O.A. is barred by Section 20 of the A.T. Act, 1985.

Counsel for the respondents further submitted that this O.A. is also bad for non joinder of necessary party in as-muc-as Commissioner of Navodaya Vidyalaya Samiti has not been properly impleaded as respondents.

3. On merits respondents have submitted that applicant has All India transfer liability, therefore, he can always be transferred in administrative exigency. Hon'ble Supreme Court has repeatedly held that Tribunals should not interfere in normal transfer cases unless it is vitiated due to the malafide or is passed contrary to the statutory rules or <sup>on the subject - B</sup> instructions. In the instant case, neither malafides are made out nor it can be said that the transfer has been issued contrary to any statutory rules or instructions, therefore, this case calls for no interference. He further submitted that as far as the seniority of the applicant is concerned, it is already made clear by the office order dated 14.02.2003 that the seniority of the employees to be posted in North Eastern Region is to be protected in their parent region both while being posted to, as well as out of North Eastern Region, in other wards such employees would not lose their seniority. He, thus, submitted that the seniority of the applicant would not at all be affected by posting him to North East Region.



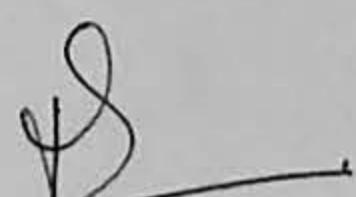
As far as the children's education is concerned, they have submitted that all the Navodaya Vidyalayas running in entire country have same syllabus and the examinations are conducted by CBSE Board, therefore, the contention taken by the applicant that their education would be affected is not at all tenable. They have further explained that Navodaya Vidyalaya Samiti has provided the facility to their children in respect of their education of their wards in all type of cases. They have however ~~earlier~~ not disputed that his son is a student of Class Xth. As far as the applicant's contention that husband and wife both should be posted at same Station. Counsel for the respondents relied on the Judgment given by Hon'ble Supreme Court in the case of UNION OF INDIA AND ORS. VERSUS S.L. ABBAS reported in 1993 (4)SCC 357 wherein it was held as under:-

"Transfer of respondents from Shilong to Pauri on administrative ground was not vitiated merely because his wife was working in Shilong and his children were studying there. Because there can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such

a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places .....No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

It was also held in the said Judgment that courts cannot act as an appellate authority to decide the posting of an employee. Respondents counsel, thus, submitted that there is no force in the O.A., the same may therefore, be dismissed.

4. On the question of adjusting the other employees from the same impugned order, respondents counsel submitted it was open to the applicant to give a representation to the authorities stating therein his difficulties and requesting for transfer to some other place but applicant% never gave such a representation. Therefore, he cannot compare his case with others as other teachers must have given their representations, which would have been considered by the authorities and decision taken in accordance with law.



5. I have heard both the counsel and perused the pleadings as well.

6. It is seen when applicant had approached this Tribunal, this court vide its order dated 02.07.2003 had stayed the operation of the impugned order dated 17.06.2003 in respect of applicant, which interim order has continued till date. Applicant's counsel <sup>referred to R</sup> has raised number of contentions as <sup>above</sup> but it would be relevant to quote at this juncture the view of Hon'ble Supreme Court wherein it is repeatedly held that transfer is an incidence of service and courts should not interfere in day to day functioning of the administration unless transfer is shown to be done due to malafide reasons or is contrary to some statutory rules. Therefore, the role of the Tribunal becomes very limited in the cases of transfer. Applicant's counsel had taken lot of <sup>point R</sup> to explain how <sup>1</sup>, respondent Nos. 3 and 4 were biased against him and carried a prejudice against him <sup>but</sup> I find that is of no relevance because neither respondent Nos. 3 and 4 were empowered to issue inter regional transfer nor transfer has been issued by them. On the contrary, transfer order has been issued by the Commissioner Navodaya Vidyalaya Samiti who is the highest authority and no malafides have been alleged against the commissioner. Therefore, the contentions of malafide has to be rejected. He next contended that applicant could not have been transferred out side the region as it would have effected the seniority. This point also has to be rejected in view of the clarification given by letter dated 14.02.2003 in clause 'L' as has been referred to above, wherein it is clearly mentioned that when a person is transferred to North East, seniority is to be protected. Therefore, this contention is also not sustainable. Applicant's counsel next contended on the question of <sup>equity</sup>, by stating that his son is studying in class Xth and he has to

appear in Boards Examination and if at this stage, he has transfer-red out, education of his children would be affected adversely. Moreover, since his wife is also posted at Manihar in Mirzapur, there is no justification in posting the applicant to north east region <sup>as</sup> that would be contrary to the instructions to post the husband and wife at the same station. He also submitted that as it is, earlier also, applicant had sought transfer from Rajasthan to Lucknow on request in the year 1996 and he had to forgo his seniority while joining at Lucknow. Therefore, it is not in the interest of equity to transfer him once again from Lucknow to North East Region. As far as the instructions to post husband and wife at same station are concerned, <sup>they</sup> have been dealt with by Hon'ble Supreme Court in the case of S.L. ABBAS in extenso and it has been held that these instructions are not mandatory but are only directory in nature, which cannot always be given effect to. However, <sup>if</sup> applicant has any grievance <sup>on this B</sup> count, he can always have given a representation to the authorities concerned stating therein all <sup>the authorities</sup> these facts and requesting to post him to some nearby place so that his family is not disturbed. Applicant's next grievance that all other persons, who were posted to North East Region along with him have <sup>already B</sup> been adjusted either in Lucknow Region or in some nearby station, also <sup>can</sup> be taken up by the applicant by giving a representation to the authorities. simply because some other teacher has been adjusted on request, it does not give right to the applicant to claim the same benefit in his case also without giving representation to the authorities concerned. The law on the subject is well settled by now that who is to be posted where <sup>all</sup> the matters which should be left to the authorities concerned for being decided as they are the best judges in the given circumstances and are aware about the ground <sup>realities B</sup> with regard to the requirement of the organisation viz-a-viz posting

*from the court B*

of the officers concerned. It would therefore, be better for the applicant if he gives a detailed representation to the competent authority stating all these facts therein and requesting the authorities to give him posting in some nearby station. The said representation should be given within a period of 2 weeks from the date of receipt of a copy of this order and in case he gives such a representation, I am sure, the competent authority shall apply his mind to all the facts and then pass a reasoned order thereon within a period of 2 months thereafter by passing a reasoned order under intimation to the applicant.

There is however one aspect which requires little consideration by the court. It is an admitted fact that applicant's son is in 10th class and has to appear in the Board's Examination. It goes without saying that this is a very crucial ~~year~~ <sup>year 8</sup> in the career of a student. <sup>we are already in 8</sup>

February 2004 and the exams over by May 2004. Therefore, I am of the considered view that it would not be proper to ~~remove~~ <sup>uproot</sup> the child at this stage from one school to the other as it would not only affect his studies but would also affect him in the examination which are around the corner. At this juncture, it would be relevant to quote the Judgment of Hon'ble Supreme Court in the case of DIRECTOR OF SCHOOL EDUCATION MADRAS AND OTHERS VS. O.KARUPPA THEVAN AND ANOTHER reported in 1994(28)ATC 99 wherein it has been held as under:-

Transfer of such employees whose children are studying during mid academic session should be avoided unless absolute urgency is shown. Transfer was restrained from being effected till the end of academic session.

I have quoted this judgment keeping in view the fact that respondents have themselves stated that applicant belonged to SUWP, which is a dying cadre and also keeping in view the fact



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that out of 5 persons who were transferred to North East Region 3 have already been adjusted by the respondents themselves either in Lucknow Region or by giving them some other nearby station.

Therefore, that itself shows that there was ~~such~~ <sup>no</sup> ~~such~~ <sup>member B</sup> urgency in transferring these SUWP ~~to the North East Region.~~ Therefore, respondents are directed not to give effect to the impugned order till the end of this mid academic session i.e. the end of May 2004 so that his son may be able to take his exams peacefully and by that time respondents shall also decide the representation to be given by the applicant ~~by passing a reasoned order.~~ B

7. In view of the above discussion, this O.A. is disposed off in terms of directions as given above. No order as to costs.



Member (J)

shukla/-