

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD.**

Original Application No. 1254 of 2007

Tuesday, this the, 21st, day of October, 2008

Hon'ble Mr. K.S. Menon, Member (A)

Malay Pathak, aged about 42 years, Son of, Shri J.K. Pathak, Permanent Resident of, 112, Mahamanapuri Colony, South Extension, Post Office, B.H.U., Varanasi (U.P.).

Was posted as Physical Education Teacher (PET, for short) at Jawahar Navodaya Vidyalaya, Patehra Kalan, Post, Kubri Patehra, District, Mirzapur-U.P.

Applicant

By Advocate: Sri Shyamal Narain

Vs.

1. The Union of India, through The Secretary, Ministry of Human Resources Development (Department of Education), Government of India, New Delhi.
2. The Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi-110048.
3. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Lekhraj Panna, IIIrd Floor, Sector-2, Vikas Nagar, Lucknow-226022 (U.P.).
4. Dr. (Smt.) Sudha Sharma, Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Lekhraj Panna, IIIrd Floor, Sector-2, Vikas Nagar, Lucknow-226022 (U.P.)
5. The Principal, Jawahar Navodaya Vidyalaya, Patehra Kalan, Post Kubri Patehra, District, Mirzapur-U.P.

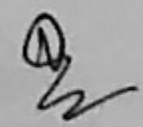
Respondents

By Advocate: Sri N.P. Singh

ORDER

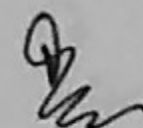
By K.S. Menon, Member (A)

This O.A. has been filed against the Order dated 14/17 December 2007, issued by the Assistant Commissioner (Admn.), Navodaya Vidyalaya Samiti, (N.V.S. in short) Lucknow Region, Lucknow, whereby the applicant's representation dated 28.09.2007, preferred by him before the Commissioner, N.V.S., New Delhi, against



the transfer order dated 03.09.2007 transferring him from Jawahar Navodaya Vidyalaya, Mirzapur to Jawahar Navodaya Vidyalaya (JNV for short), Pithoragarh, has been stated to have been rejected by the Competent Authority. The said representation was moved by the applicant in pursuance of Judgment and Order dated 26th September 2007 passed by the Central Administrative Tribunal, Allahabad in O.A. No. 936 of 2007 Malay Pathak vs. U.O.I. and others. The applicant is also challenging the legality, validity and propriety of the transfer order dated 03.09.2007 issued by, and under the signature of Dr. (Smt.) Sudha Sharma, Deputy Commissioner, NVS, Lucknow Region, Lucknow, whereby the applicant was sought to be transferred from JNV, Mirzapur to JNV, District Pithoragarh on administrative grounds, with immediate effect. The applicant is also challenging the legality and validity of the order/communication dated 20.02.2007, passed by the Commissioner, NVS, New Delhi, on the subject of identifying troublesome teachers of various JNVs for being transferred on administrative grounds, the order dated 07.03.2007 passed by the Deputy Commissioner, NVS, Lucknow Region, Lucknow, directing the Principals to identify teachers for being transferred on the basis of their long stay and activities detrimental to the interest of the JNVs and the order/communication dated 07.08.2007, issued by the Joint Commissioner (Pers.), NVS, New Delhi, directing the Deputy Commissioner, NVS, Lucknow Region, Lucknow to consider the transfer of identified teachers on administrative grounds mentioned above and for taking disciplinary proceedings against such teachers as had been identified for administrative transfers.

2. The facts of the case are that the applicant joined service of NVS as a Physical Education Teacher in July 1990 and was posted at JNV, Tehri Garhwal, which is a hard station. In July 1995, he was transferred to JNV, Bulandshahar where he remained till August 1997, after which he was transferred to JNV, Mirzapur. On 03.09.2007 the applicant was transferred from JNV Mirzapur to JNV Pithoragarh on administrative grounds. Being aggrieved, the applicant filed O.A. No. 936 of 2007, which was disposed of by the Tribunal vide Order dated 26.09.2007 with direction to the respondents to consider his representation and dispose of the same by a reasoned and speaking order within 4 weeks of receipt of



representation. The respondents in compliance of the Tribunal's Order dated 26.09.2007 considered the applicant's representation and rejected the same by order dated 14/17-12-2007. The applicant, therefore, filed the present O.A.

3. The applicant's main grievance is that the letter dated 20.02.2007 issued by the Commissioner, NVS, New Delhi on the subject of identifying troublesome teachers/non teaching staff and the letter dated 07.03.2007 issued by the Deputy Commissioner, NVS, Lucknow Region, Lucknow addressed to all the Principals of JNV under Lucknow Region were what gave rise to the impugned transfer order. In this letter, Principals were asked to identify and sent list of teaching and non teaching staff who by virtue of their long tenure and possibility of having developed vested interests had become troublesome and whose continuance in the Institution was polluting the atmosphere of the Schools. This, the applicant claims, is punitive in nature and virtually legitimizes punishment transfers. This also goes against the respondents own transfer policy of minimizing transfer of teachers except under administrative exigencies besides there is no indication whether these instructions are an amendment of the policy itself, apart from the untenable presumption that length of stay at a station automatically means development of vested interests and hence a challenge to administration. The applicant, therefore, holds the view that Commissioner, NVS, Delhi and Deputy Commissioner, Lucknow Region, Lucknow are not competent to issue such instructions which tantamount to a negation of the transfer policy in force.

4. The applicant came to know through the Counter Affidavit filed by the respondent in another O.A. No. 950 of 2007 that the Joint Commissioner (Pers.) NVS New Delhi had also vide his letter dated 07.08.2007 to the Deputy Commissioner, NVS, Lucknow Region, Lucknow, conveyed the approval of the competent authority to transfer teaching/ non teaching staff on administrative grounds and to initiate disciplinary proceedings against those candidates considered for a transfer on administrative grounds. The impugned orders, as per the applicant, are illegal, flawed, in violation of principles of natural justice and contrary to laid down policy of the Organization. It also gives a handle to the administration to punish

employees and teachers found to be inconvenient for whatever reasons. It is noted that the applicant's name was forwarded to Regional Office alongwith one Sri R.C. Pandey, a S.U.P.W. teacher and Sri B.C. Tiwari, a Group IV employee. In pursuance of this communication, all the three were abruptly transferred to distant JNV. Sri Pandey through O.A. No. 690 of 2003 got his transfer cancelled and Sri Tiwari got his suspension stayed by this Tribunal and the respondents ultimately withdrew the suspension. The applicant's transfer was also stayed by an interim order of this Court dated 03.12.2007.

5. The applicant has also drawn reference to the Order of Commissioner, NVS, New Delhi dated 09.08.2007 by which it was decided that no transfer of Principal/Vice Principal and Teachers would be effected w.e.f. 30.08.2007. He, therefore, holds that the impugned order stood vitiated on this ground alone. Instances have also been cited in the O.A. about other employees who have been in the same station much longer than the applicant, and who have not been touched while the applicant has been transferred, which amounts to discrimination and is violative of Article 14 and 16 of the Constitution of India. Being aggrieved with the action of the respondents, the applicant represented on 28.09.2007, which was rejected vide Order dated 14/17-December, 2007, after 12 weeks by the respondents as against the four weeks stipulated by the Tribunal's order. The applicant further states that impugned rejection order is not a reasoned and speaking order as it fails to address most of the points and grounds taken by the applicant in his representation. In addition to the above points and grounds taken by the applicant, he has also referred to the great hardship faced by him on the domestic front as per which it is not practically possible for him to comply with the transfer order. In view of the facts stated above, applicant has submitted that the impugned orders are illegal, irrational, malafide and contrary to department's own policy on transfer. He has sought quashing of these impugned orders and direction to the respondents to permit the applicant to resume duties on the post of PET at JNV, Mirzapur and treat the period following the issuance of the impugned transfer order dated 03.09.2007 and the consequential relieving order dated 11.09.2007 as period spent

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on duty by the applicant for all purposes, including payment of full salary and other emoluments for the said period.

6. The respondents on notice have filed a very detailed 32 pages Short Counter Affidavit, praying for vacation of the interim stay order dated 31.12.2007. At the outset the respondents counsel has put forth the argument that the interim order of this Tribunal dated 31.12.2007 is an ex parte interim order passed without hearing the respondents' counsel. The applicant in his Rejoinder Affidavit denies this averment of the respondents' counsel and has given a detailed account of events leading to the passing of the interim order. A simple reading of the Order passed by this Tribunal on 31.12.2007 does not give the impression that the order passed is an ex parte interim order hence the averment of the respondents' counsel cannot be accepted.

7. The respondents argue that condition No. 9 of the applicant's appointment letter indicates clearly that the applicant has an all India transfer liability. Besides, sub para No. 1 of the transfer policy dated 12.04.1999 states: -

"The Samiti may transfer an employee on administrative grounds/public interest at any time."

The applicant cannot therefore as a matter of right claim that he cannot be transferred. The respondents submit that the transfer order dated 03.09.2007 and the order dated 14/17.12.2007 rejecting his representation issued by the respondents in compliance of this Tribunal's Order dated 26.09.2007 have been issued with the approval by the competent authority i.e. the Commissioner, NVS, New Delhi, hence there is no illegality in the said orders as alleged by the applicant.

8. Sri N.P. Singh arguing very vehemently against the interim order, submitted that as far as the respondents were concerned the applicant had been relieved of his duties at JNV Mirzapur on 11.09.2007, as such, his name was not on the rolls of JNV Mirzapur as on 11.09.2007. He has neither produced a joining report at JNV, Pithoragarh where he was posted nor has he applied for leave to the Principal JNV Pithoragarh or the NVS Regional Office, Lucknow. The

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respondents have accordingly treated the absence from 11.09.2007 (date of relieve) till 31.12.2007 (date of interim order) as unauthorized absence. Respondents further state that in place of the applicant Sri Sameer Singh has already been posted w.e.f. 27.09.2007 to perform the duties of the applicant, who was relieved on 11.09.2007. This fact was concealed by the applicant while obtaining the interim order.

9. The applicant has not been able to establish any malafide against the competent authority i.e. Commissioner, NVS, New Delhi. Allegations have only been leveled against the Deputy Commissioner, Lucknow Region, Lucknow, who has only communicated the Order as per the decision of the Commissioner, NVS, New Delhi. In the light of the above and the Judgment passed by the Apex Court in *Union of India vs. S.L. Abbas*, this Tribunal cannot interfere with a transfer order passed by a competent authority under the transfer policy dated 12.04.1999 and appointment order issued by the Samiti in favour of the applicant.

10. As regards the impugned letters dated 20.02.2007 and 07.03.2007 issued by the Competent Authority and the Deputy Commissioner, JNV, Regional Office, Lucknow respectively, Principals were directed to identify employees, who were creating hurdles in the day to day functioning of the institution. Based on the identification/ compilation made by the respective Principals and report of the Deputy Commissioner, NVS Lucknow thereon, the applicant's name was listed at serial No. 13 of the list on account of disobedience; non participation in morning assembly; not conducting morning PET to senior students (which is his main duty) and refusing to meet his next superior authority, when called upon to do so. It was held that the conduct of the applicant was not in consonance with the educational atmosphere/discipline of the school. Keeping the above in view, the competent authority i.e. the Commissioner, NVS, New Delhi approved the applicant's transfer as per the transfer policy of 12.04.1999.

11. In support of this argument, the respondents have cited the following Judgments of the Supreme Court:

(i) ***U.O.I. vs. S.L. Abbas 1993 (4) SCC 357;***

- (ii) ***U.O.I. vs. N.P. Thomas, Suppl (1) SCC 704;***
- (iii) ***N.K. Singh vs. U.O.I. 1994 (6) SCC 98;***
- (iv) ***Shilpi Bose vs. State of Bihar & Ors. 1991 Suppl. (2) SCC 659.***

Wherein it has generally been held that Courts should not interfere in transfer matters where no malafide has been made out or any statutory rules/provisions have been violated. In the instant case none of the above conditions are attracted, hence no interference by this Tribunal is called for.

12. In view of the above, in the interest of justice, the respondents state that the applicant is not entitled to any relief and the O.A. should be dismissed.

13. Heard Sri Shyamal Narain, learned counsel for the applicant and Sri N.P. Singh, learned counsel for the respondents and perused the pleadings on record.

14. The basic arguments put forth by the applicant is that the main cause of the present situation giving rise to this O.A. are the impugned orders dated 20.02.2007 and 07.03.2007 which besides contravening their own policy of 1999, premised on illegal presumptions and considerations, is punitive in nature and legitimizes punishment transfers. After hearing the arguments of the counsel for both parties and perusing the pleadings, it is clear that the letter dated 20.02.2007 is not discriminatory in nature as it has universal applicability and is not specific to the applicant. The respondents are well within their rights to issue instructions to ensure discipline in the larger interest of the organization. The instructions and the subsequent actions leading to the impugned transfer order cannot therefore be said to be punitive in nature. Besides the transfer order has not adversely affected the applicant's service condition status and service prospects financially. The Supreme Court in Judgment dated 13.02.2004 in Civil Appeal No. 1010-1011 of 2004 Union of India and others vs. Sri Janardhan Debnath and another has observed thus: -

"Latitude should be left with the department concerned to enforce discipline, decency and decorum in Public Service which are indisputably essential to maintain quality of public

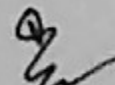
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service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

From the above observation it is clear that the department is at liberty to devise its own methods to ensure its smooth functioning by issuing necessary instructions and if need be culminating in the transfer of an employee (s) as the case may be. Such executive action cannot be construed as violation of the departments own stated policy on transfers which, in any case, has no statutory force. It is well settled in law that policies are mere guidelines for the purposes of posting and the organizational requirement will always have an overriding consideration. In any case such guidelines do not confer any right on the employee to challenge the transfer order on the ground of violation thereof.

15. This brings me to the question of the department's transfer policy. The applicant has relied heavily on the fact that the policy of 1999 based on which the transfer has been effected has been superseded and replaced by the 2005 & 2006 policy. The Transfer Policy dated 12.04.1999 (annexure A-5) shows that the subject matter pertains to the revised transfer policy in respect of the Staff of the Samiti. The letter dated 11.03.2005 and 17.03.2006, annexure-6 and 7 of the O.A. referred to by the applicant's counsel as 2005 & 2006 policy letters are merely instructions regarding the counseling session for request transfer cases of teaching staff. It cannot by any stretch of imagination be construed as a policy letter revising the earlier policy letter of 1999-besides there is also no mention to this effect in the said letters of 2005 and 2006. In view of the above, the claim of the applicant that the transfer order on the basis of the 12.04.1999 transfer policy is untenable in law and lacks validity as the said policy letter has been superseded by the 2005 and 2006 transfer policies, is totally misconceived and without basis and is therefore, rejected.

16. The applicant has also in support of his stand on the impugned transfer order dated 03.09.2007, referred to the complete ban on transfer of teachers w.e.f. 13.08.2007 as per the Commissioner, NVS New Delhi, letter dated 09.08.2007. A bare reading of the aforesaid Order (annexure A-9) clearly indicates that the Order pertains only to request transfers and not to transfers on administrative exigencies.

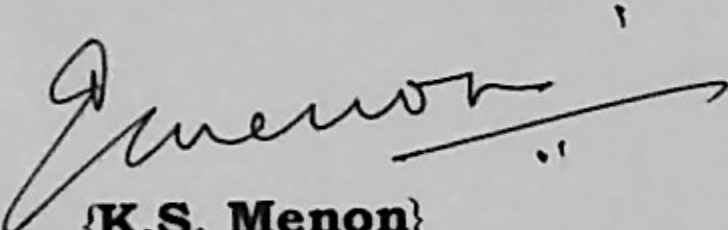


It is clear that the aim of the said letter was to curb own request cases being made well after the academic session was in full swing. The argument of the applicant on this ground is without any basis and cannot therefore be accepted. Before concluding I am constrained to refer to a relevant paragraph in the Judgment of the Hon'ble Supreme Court in S.C. Saxena vs. U.O.I. & Others 2006 SCC (L&S) 1890, which reads as under: -

"A government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

17. Going on the above analysis it is established that all the impugned orders were passed by the competent authorities and the same are duly backed by a plethora of Supreme Court rulings which have been referred to at appropriate places in this Order. The two main conditions i.e. establishment of malafide and violation of statutory provisions have not been clearly established in this O.A., despite the applicant's best efforts. Consequently, no interference by this Court is warranted.

18. The O.A. does not succeed and is accordingly dismissed. The applicant is directed to comply with the transfer order dated 03.09.2007. The unauthorized period of absence shall be regularized by the respondents as per rules. No order as to cost.


{K.S. Menon}
Member 'A'

/M.M/