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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 456 of 2007

____ day, this the 18th day of October 2007

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

Abhimanyu Tiwari, S/o Sri Lalita Tiwari, R/o Village-Kaithi, Post-Gurera, District Chandauli.

Applicant

By Advocate Sri Avnish Tripathi

Versus

1. Union of India, H.R.D. Ministry, through it's Secretary, Shastri Bhawan, New Delhi.
2. Education Officer, Kendry Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. Commissioner, Kendry Vidyalaya Sangathan, 18- Institutional Area Shaheed Jeet Singh Marg, New Delhi.
4. Assistant Commissioner, Kendry Vidyalaya Sangathan, Regional Office, K.V.S. Patna (Bihar).
5. Principal, Kendry Vidyalaya Sangathan, B.H.U. Campus, Varanasi.
6. Saurabh Mishra, Presently Posted at Kendry Vidyalaya Sangathan, Jorhat no.3.

Respondents

By Advocate Sri D.P. Singh

ORDER

By K.S. Menon, Member (A)

The applicant-Abhimanyu Tiwari working as TGT (Hindi) at Kendriya Vidyalaya School, B.H.U. Varanasi is challenging the Order dated 20.04.2007 (annexure A-1) by which he was transferred to Kendriya Vidyalaya School, Rajgarh (Chattishgarh) in public interest, on the grounds that it is violative of paragraph No. 15.1 and 15.2 of the Departmental guidelines dated

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14.03.2006 and settled case laws of the Apex Court and Central Administrative Tribunal.

2. The case in brief as per the Original Applicant and the Rejoinder Affidavit is that applicant is due to retire within three years i.e. on ^{2/}04.2010 hence he comes under the category LTA which is a category whose dislocation will be avoided (CDA). He says that the respondents have not paid heed to the provisions of the guidelines which state that such a category should not be disturbed ^{to} or dislocated ^{to} so as to make room for PCGR category employee like respondent No.6. He submits that even if such a transfer is sought to be effected by deviating from the guidelines, he is to be accommodated in a nearby place where vacancy exists ^{and} as far as possible within the region. This aspect has also been ignored and he has been transferred outside the region, in fact outside the State to Chattisgarh. The applicant has also drawn the attention of this Court to Judgments passed by this Tribunal in O.A. No. 675 of 2005 dated 01.02.2006 in support of his arguments and ^{out of} the Apex Court passed in the case of Priti Katiyar, and Central Administrative Tribunal, Ernakulam Bench's Judgment in Y. Krikishu Vs. Senior Superintendent of Telegraph & Traffic, Trivandrum Division, in which it has been held that when transfers are made in public interest, clear and cogent reasons should be given. The facts in this case are different as the transfer order in the present case has been passed in accordance with detailed guidelines for transfers enunciated by the department. In addition to the above, he has mentioned that his wife is seriously ill and is being treated at B.H.U. Hospital besides he has to finalize his daughter's marriage. Being aggrieved by the said impugned order, he represented to the respondents on 26.04.2007, which is still pending. Hence, he filed the present O.A. This Tribunal stayed the said transfer order in respect of the applicant, pending finalization of the O.A. vide order dated 01.05.2007, which is still operating.

3. The respondents refute the claim of the applicant through their short counter affidavit. They claim that this transfer order

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was made in terms of paragraph No. 15.1 of the Transfer Guidelines, which inter alia states that a vacancy is to be created to accommodate the transfer of Teachers in Priority II. They say that respondent No. 6 Sri Saurabh Mishra was transferred from Kendriya Vidyalaya School, Jorhat (Assam) after completing his tenure of 3 years and to accommodate him, the applicant was displaced and transferred to Kendriya Vidyalaya School, Rajgarh (Chattisgarh) as he had the longest stay at Varanasi hence, transfer is in accordance with the guidelines and there is no illegality in the said transfer order. The respondents countering the applicant's main plea that he falls under the LTA category as he retires within 3 years, state that less than 3 years service is to be reckoned as on 31st March of the year in which the transfer order is issued. They state since the order was issued in 2007, as on 31st March 2007, the applicant has more than 3 years, as per ^{his} the date of retirement ^{having} 30th April 2010, as per the applicant's own averment. The applicant is, therefore, not entitled to any exemption. Counsel for the respondents Shri D.P. Singh has relied on several settled case laws of the Apex Court in support of his contention that transfer is an Administrative function and cannot be interfered with, except on grounds of malafide or on ground of breach of statutory provisions. The respondents say that the applicant was already relieved on 01.05.2007 (and this had to be sent to his known address by Speed Post as he refused to accept the same) before the interim order of this Tribunal passed on the same date ^{which} was served on them by the applicant on 04.05.2007. Besides as the interim order stayed the transfer order in respect of the applicant only and the substitute Shri Saurabh Mishra reported for duty on 04.05.2007, he was allowed to join duty at Varanasi.

4. The applicant has filed a Rejoinder Affidavit in which he has reiterated the grounds mentioned in the O.A. His main emphasis is that the period less than 3 years is to be reckoned from the date of issue of transfer order i.e. 20.04.2007, by this he states he would be short only by 10 days for being covered by the LTA category and the respondents should consider this

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sympathetically. The other point he highlights is that the respondents have deliberately misinterpreted the interim order dated 01.05.2007 and permitted the reliever i.e. respondent No.6 to join at Varanasi. He claims respondents have violated the interim order of this Tribunal.

5. Heard Shri A. Tripathi counsel for the applicant and Shri D.P. Singh for the respondents and have gone through the pleadings on record and citations submitted during arguments. I am aware that this Tribunal is not an Appellate Authority sitting in Judgment over the orders of transfer and it cannot substitute its own Judgment for that of the authority competent to transfer. The judicial pronouncements relied upon in this case also holds that transfer orders are normally not interfered with or should not be interfered with by Courts or Tribunals unless there is a breach of statutory provision or a malafide has been established.

6. I am inclined to agree with the interpretation given by the respondents' counsel Shri D.P. Singh that the 3 years is to be reckoned from 31st March of the year, meaning thereby the year in which the transfer order is issued, by this the 3 years period would end on 31st March 2010, hence the period for retirement in respect of the applicant would technically be beyond 3 years and he would thus, not be covered under the LTA or CDA category. I agree that such situations do not call for any detailed analysis or interpretation of the guidelines, at the same time I have to agree that the respondents being technically correct, their arguments have to be accepted. It seems that the applicant himself had come on a posting to Varanasi from Barrackpore on his own request and displaced one Smt. Geeta Singh, who was posted to Barrackpore vide Order dated 21.06.2001 (annexure A-3).

7. The applicant was disturbed as his stay at Varanasi was the longest. The applicant has not been able to conclusively prove that there were other Teachers whose stay at Varanasi was longer than his. Besides the applicant has been enjoying the benefit of the interim stay since May 2007.

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8. It must be mentioned that the applicant during the pendency of this O.A. has inched closer to his retirement and has about two and a half years to retire. Besides, as submitted by him, his wife is under constant treatment at the B.H.U. Hospital although the nature of the ailment has not been disclosed. These are some of the issues that the respondents need to consider.

9. In view of the above, I do not find that the transfer order dated 20.04.2007 breaches any mandatory statutory rule or is malafide, hence I do not find any good reasons^w to interfere with the impugned transfer order.

10. In view of the above, the O.A. is disposed of with directions to the respondents to consider the representation of the applicant dated 26.04.2007 which is pending with respondent No.3 sympathetically in view of his retirement date and his wife's health condition, as stated by him, and adjust him either at Varanasi itself or any other nearby place within the same region. No order as to costs.

Emerson
Member (A)

/M.M./