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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

ORIGINAL APPLICATION NO.936 OF 2007

ALLAHABAD THIS THE 26 DAY OF SEPTEMBER, 2007

HON'BLE MR. SHAILENDRA PANDEY, MEMBER-A

Malay Pathak, Aged about 42 years, S/o Sri J.K. Pathak, Permanent resident of 112 Mahamanapuri Colony, South Extension, Post Office BHU, Varanasi, U.P., present posted as Physical Education Teacher (P.E.T.) at Jawahar Navodaya Vidyalaya, Patehra Kalan, Post Office Kubri Patehra, District Mirzapur.
.....Applicant

(By Advocate Shri Shyamal Narain)


V E R S U S

1. Union of India through 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.
3. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Lekhraj Panna, IIIrd Floor, Sector-2, Vikas Nagar, Lucknow.
4. Dr (Smt.) Sudha Sharma, Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Lekhraj Panna, IIIrd Floor, Sector-2, Vikas Nagar, Lucknow.
5. The Principal, Jawahar Navodaya Vidyalaya, Patehra Kalan, Post Office Kubri Patehra, District Mirzapur.

.....Respondents

(By Advocate: Sri N.P. Singh)

O R D E R

 The applicant has filed this O.A., under Section 19 of the Administrative Tribunals Act, 1985 challenging the order of the respondent no.4 by

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which he has been transferred from JNV, Mirzapur to JNV, Pithoragarh on administrative grounds.

2. The learned counsel for the applicant assails the transfer order passed by the respondent no.4 on the following grounds:

- (a) The impugned transfer order/relieving order is in violation of the respondent's own General policy of transfers, which general precludes transfer of teachers except on administrative grounds. It is also mentioned that the attempt of NVS is to minimize the incidence of transfer.
- (b) It is also pointed out that in deviation of this general policy, respondent No. 4 annexed letter dated 07.03.2007 to Principal JNV, in Lucknow Region to identify teachers who had remained posted at same station for long and whose continuance at the same station could have an adverse inference on the academic activities. Applicant's counsel also states that the letter was issued without approval of the competent authority, that in the context of this letter, the present transfer is to be construed as a punitive measure resorted to without giving a reasonable opportunity to the respondents.
- (c) The transfer order is malafide and discriminatory as it is alleged that the Dy. Commissioner, NVS, Lucknow has got the transfer order issued to as she is biased against the applicant, who has been transferred while some others who have served longer tenures at one station have not been touched. In this connection it is also stated by the applicant's counsel that the applicant has already served a

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"hard station" viz Tehri Garhwal from July 1990 to July 1995.

(d) The letter dated 7.3.2007 has been issued by the Deputy Commissioner, NVS, Lucknow, without approval of the competent authority.

(e) That the transfer will also cause undue hardship to the applicant as he has an ailing father (85 years) whom he looks after.

3. It is also contended during the course of arguments that the transfer order dated 3.9.2007 issued by the respondent no.4 has not been issued by the competent authority namely Commissioner, NVS, nor has a copy thereof been endorsed to the Commissioner.

4. It is noted that the applicant has already been relieved from the post on which he was working, although he has not joined on the transferred post.

5. The learned counsel for the respondents, on the other hand, submits that the services of the applicant are transferable and that the transfer policy clearly provides for transfer on administrative grounds (NVS letter dated 12.04.1999 was also shown in this connection and is taken on record), and that there is no bias against the applicant as alleged.

6. The respondents' counsel also brought to the notice of this Tribunal the well settled position in legal judgments that orders of transfer issued on

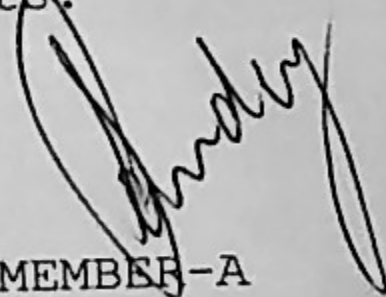
(5)

administrative grounds are not to be interfered with unless they are tainted with "malice" and "ill will". In this connection a copy of Andhra Pradesh High Court's judgment in case of APSRTC, Mushirabad, Hyderabad and others Vs. C. Pentaiah (WA 233 of 1998).

7. Since the said transfer order has been issued on administrative grounds, without going into the other issues, this Court is of the view that in case the applicant feels that the transfer order has been issued without the knowledge of the competent authority, the first course open would be to the applicant to file an appeal before the competent authority against the said transfer order and only if there is no response from him, should he approach this Tribunal.

8. Accordingly, the applicant is directed to press the aforesaid facts by way of filing an appeal before the competent authority, who is directed to pass a reasoned and speaking order within a period of 4 weeks from the date of receipt of such representation/appeal.

9. With these observations, the O.A. stands disposed of with no order as to costs.


MEMBER-A

GIRISH/-