

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

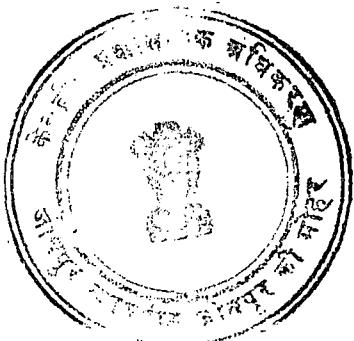
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DATE OF ORDER : 20.9.99.

O.A.NO.174/99

R.L.Basera S/o Shri Birbal Ram aged about 45 years, R/o House No. 17, Type II, BSF Colony, Dabla, Jaisalmer, at present employed on the post of TGT(SST) in the office of Kendriya Vidyalaya (BSF) Dabla, Jaisalmer (Raj).

.....APPLICANT

V E R S U S



1. Union of India through the Secretary, Ministry of Education, Government of India, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, New Delhi.
3. Shri Nagendra Sharma, The Principal, Kendriya Vidyalaya (BSF), Dabla, Jaisalmer, (Raj) Pin 345 002.

.....RESPONDENTS

.....
PRESENT

Mr.J.K.Kaushik

Counsel for the applicant.

Mr.U.S.Bhargava

Counsel for respondents No.2&3

None is present

for the respondent No. 1.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

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BY THE COURT :

The Applicant has moved this Original Application with the prayer that the impugned order dated 24.6.1999 (Annex.A/1) transferring the applicant from Dabla to Car Nicobar and the relieving order dated 30.6.1999 (Annex.A/2) be quashed with all consequential benefits to the applicant.



2. Notice of this Application was given to the respondents.

3. The respondents have filed their reply in which it is stated that the transfer can only be interfered with if the transfer is in violation of statutory rules and has been the result of the mala fide action and colourable exercise of power. Transfer made on administrative exigencies, cannot be interfered with. The O.A. is devoid of these facts, hence, the O.A. deserves to be dismissed.

4. I have heard the learned counsel for the parties and gone through the case file.

5. It is alleged by the applicant that in March 1999, the respondent No. 3 was faced with a criminal case of embezzlement. The case was being investigated by the local police in which the applicant and few others are witnesses. Respondent No. 3 wanted the applicant and other witnesses to give statements in his favour. However, in his

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statements the applicant stated the facts which did not favour the respondent No. 3. Consequently, the transfer order has been manipulated by the respondent No. 3 and resultantly, the applicant has been transferred to a far distant place and has also been un-ceremonially relieved of his charge.

6. The applicant has challenged the impugned transfer order on the ground that the same is punitive in nature and is mala fide. The applicant has been transferred prematurely just within eleven months and no person has been posted vice him. The transfer order has been made to get rid of the applicant so that ~~he may~~ not appear as witness in the criminal case.

7. Both the learned counsels for the parties developed their arguments based on their pleadings.

8. I have considered the rival arguments and the pleadings of the parties. The applicant has not shown that the transfer is violative of statutory rules or guidelines. There is nothing on record to show that the applicant was required to be kept at that station for minimum number of years. The instance of mala fide has been described only as against the respondent No. 3 whereas the transfer order was passed by respondent No. 2. The so called criminal case which is said to be investigated by the police, is in fact a private complaint instituted by one Shri Kesaram against



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the respondent No. 3 which was sent for necessary investigation to the police. The criminal case as per Annex.A/4 is still under investigation and it cannot be said whether the investigation has resulted into a positive report or not. In my opinion, this solitary instance cited by the applicant cannot be interpreted as an instance of mala fide or transferring the applicant because a case of embezzlement is ~~pending~~ which can be proved on the basis of oral as well as documentary evidence. The case of embezzlement of Government money can be proved on the basis of documents because documents generally form part of such transactions. Therefore, it cannot be said that such case can be proved only by oral evidence of the applicant and other who have been removed from the scene by the impugned transfer order.

9. This is a well settled position of law that transfer order can only be quashed if the same is violative of statutory guidelines or is against the statutory rules and has been made in colourable exercise of power or malafidely. In the instant case, nothing as mentioned has been established by the applicant. The instance of mala fide as shown by the applicant is in my opinion, is in-sufficient to arrive at the conclusion that the transfer order is bad in law. No Government servant is indispensable. If the administration had thought it proper not to post anybody vice the applicant. No advantage can be derived by the applicant.

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10. In my opinion, the applicant has not been able to establish that he is entitled to any relief as claimed by him in the O.A. The O.A. deserves to be dismissed.

11. The Original Application, is therefore, dismissed with no orders as to cost.

AM 22/1/49
(A.K.MISRA)

Judl.Member

mehta