

1/7
7/6

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Original Application No.270/2003

Date of Decision : this the 21st day of May, 2004

**Hon'ble Mr. G.R.Patwardhan,
Administrative Member**

M.K. Pathan S/o Late Sh. Baxu Khan aged about 47 years,
R/o Plot No. 177, Kayamkhani Colony, BJS, Jodhpur at
Present employed on the post of PET in Kendriya Vidhyalaay
(project sewak) Dimapur (Nagaland).

.....Applicant

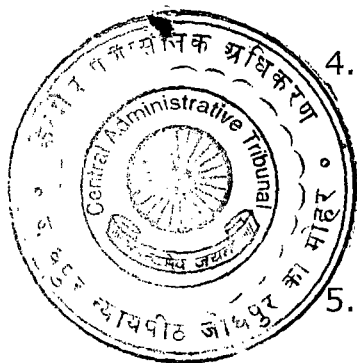
[By Mr. Salil Trivedi, Advocate for applicant]

Versus

1. Union of India through Secretary,
Ministry of Human Resources Development, New Delhi.
2. The Commissioner (Hqrs.)
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Saheed Jeet Singh Marg, New Delhi.
3. Deputy Commissioner (Acad).
Kendriya Vidyalaya Sangathan,
18 Institutional Area,
Saheed Jeet Singh Marg, New Delhi.
4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
5. Sh. N.L. Sharma,
The Principal, Kendriya Vidyalaya Sangathan
District Sirohi.

[By Mr.K.K.Shah, Advocate, for respondents]

.....Respondents.



1/8

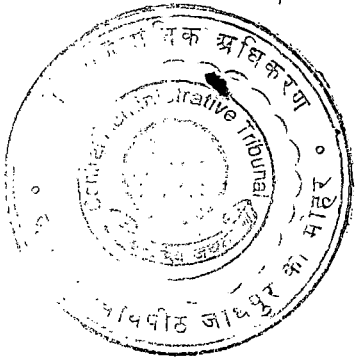
2

Order

[By the Court]

This is an application by M.K. Pathan who at the relevant time was posted as a Physical Education Teacher [PET] in Kendriya Vidhyalaya at Dimapur in Nagaland. There are five respondents led by the Secretary, Ministry of Human Resources Development – the other four are the Commissioner, KVS, Dy. Commissioner, KVS, Assistant Commissioner, KVS and Shri N.L. Sharma, Principal, KVS, Mount Abu. Admittedly, what is under challenge is Annex. A/1 dated 29.11.2001 issued by the Dy. Commissioner, KVS whereby, the applicant M.K. Pathan, has been transferred from KVS, Mount Abu to KVS Dimapur. In the relief clause which is paragraph 8 of the application the applicant requests that this Annexure be declared illegal and so quashed as also the respondents be directed to issue transfer order as per his priority list published by the respondents a copy of which is Annex.A/12.

2. The brief facts of the case are that the applicant got appointed as PET at KVS at Mount Abu in July 1981 and was serving there till his transfer by the impugned order dated 29.11.2001 at Annex.A/1. It is his case that because he has three school going daughters studying at Jodhpur and his wife is suffering from Asthma he wanted to be transferred to Jodhpur from Mount Abu and had applied for the same to the authorities vide Annex.A/2. However, the respondent No. 3 issued the order of said transfer and a relieving order followed but, these were not in public interest particularly when the applicant had applied for transfer to Jodhpur. The applicant thereafter, challenged the transfer order and the relieving order by filing another O.A. No. 345/2001 which got finally decided on 28.1.2002 by the Tribunal where it held that as the applicant was holding a transferable post, he cannot claim his stay at a particular place forever and that the order of transfer should be given effect on or after 1.4.2002. This was followed by an appeal to the Hon'ble High Court at Jodhpur which also disposed of vide its order of



१५२

26.3.2002 by observing that it was unable to interfere in the matter of transfer and also that the ground of mala fide as alleged by the applicant before it, was vague and cannot be sustained against the validity of transfer. The petition was, therefore, rejected. The Court only observed that if the petitioner wanted to make a representation to the authorities concerned for consideration of his representation sympathetically, the same could be moved and shall be viewed by the authorities.

3. The applicant thereafter seems to have submitted a representation to the respondents on 30.3.2002 vide Annex.A/9 but it is his case that nothing has been done by the respondents in this regard.

4. The applicant has raised two more issues – perhaps in order to buttress his allegations of mala fide against the authorities – respondents. In paragraphs 4.4 and 4.5 the applicant mentioned that he had submitted certain medical bills for reimbursement which were not cleared and on his inquiry, he was told to take back the claim. He maintains that this was accompanied with a threat that if the bills were not taken back then the applicant would be transferred outside. In support of that he has filed a copy of representation at Annex.A/5. Nothing more has been said about the same.



The other incident referred to by the applicant is about how his wife made a representation to the National Commission for Minorities regarding cancellation of transfer of her husband and holding up of claims of medical reimbursement some time in April 2002 when the Commission asked the Commissioner, KVS (respondent No.2), to file a reply who ultimately replied vide letter dated 22.10.2002 wherein it was mentioned that transfer of the applicant was due to administrative grounds and some complaints received against him. It is the contention of the applicant that during the hearing of his case by the Tribunal and the Hon'ble High Court, the respondents had not taken this

particular plea (as contained in reply to the National commission) but insisted that the applicant's transfer was due to administrative exigency and in public interest. The applicant, therefore, suggests that this conduct of the respondents is an indicator proof of their mala fides which has necessitated filing of this fresh O.A.

5. Learned advocates for both the parties have been heard at great length.

While the applicant would like the Tribunal to believe that

- (a) his transfer was not in public interest but due to reasons other than the same and
- (b) the authorities are not honest and transparent in his transfer which is clear from the fact that they have taken different stands in different cases filed by the applicant as also in meeting the objection taken by the wife of the applicant.

But, the learned advocate for the respondents has contended that –



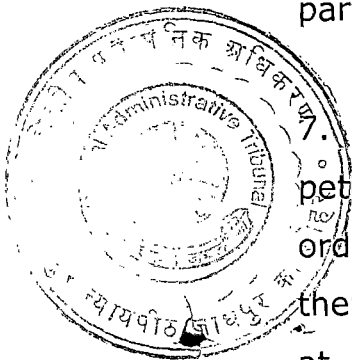
- (a) the orders of the Tribunal passed in OA No. 345/2001 regarding the present transfer should act as res judicata;
- (b) the charge of mala fide was considered by the Hon'ble High Court and has been dis-allowed;
- (c) whatever guidelines regarding allegations/complaints against teachers have been issued do not contemplate that the affected party – in this case the applicant – needs to be given an opportunity of hearing. The guidelines regarding complaints – a fact

gao

which has been taken notice of in the present case - are only to ensure that the authorities have a safeguard in-built in the system so that not each and every complaint is considered sufficient to warrant action;

- (d) the complaint of the appellant that the respondents have taken different stands in different cases should be seen in the context of the stand taken by the appellant himself and the need to reply to his averment and this in no way detracts from the veracity of their submissions.

6. By way of rejoinder, learned advocate for the applicant very strenuously submitted that as the present O.A. has been filed on grounds which are absolutely different from those which were basis of O.A. No. 345/2001, the principle of res judicata has no application and that if at all KVS received a complaint against the applicant and wanted to inquire into it, the guidelines issued on 23.4.2000 by the KVS required that - the affected party should be kept in the picture.



It therefore becomes apparent that the contention of the petitioner is essentially to show to the Tribunal that the transfer orders issued vide Annex. A/1 are mala fide in nature and therefore need to be interfered with. On the other hand, looked at from another angle, transfer is essentially an incident of service. The respondents have tried to show that the issue of transfer has been repeatedly agitated before different forums - in the instant case-before the Tribunal, Hon'ble High Court and the National Commission and has been looked into by these authorities at different times and from different angles with the same stand in each by the respondents that there were adequate reasons to transfer the applicant from Mount Abu and that the grounds adduced by the applicant against the same are not tenable.

8. In the circumstances from the available material produced by the applicant – especially with respect to his claim of reimbursement of certain medical bills, it will be difficult to presume that this incident relating to medical bills shows lack of bonafides on the part of respondents, specially when the applicant has stayed at Mount Abu for twenty years. His plea that his children are studying at Jodhpur or his wife is suffering from Bronchial Asthma can only be one of the factors to be kept in view while considering his posting to a place other than Mount Abu but in no way can this be the factor to retain him there or to post him only at Jodhpur. In an Organization like KVS, which has the responsibility to ensure adequate staffing of suitable persons for teaching different disciplines in different schools in the country, a certain degree of freedom must be left to the authorities concerned. Who should be transferred where, is a matter, therefore, for them to decide. In the instant case, the charge of mala fide cannot be discerned nor any statutory provision appears to have been violated. The Tribunal is also conscious that it is not an appellate authority sitting in judgment over the orders of transfers and it cannot substitute its own judgment for that of the KVS.



9. In the result, there is nothing that warrants acceptance of the prayer in the application, which is accordingly rejected. No orders as to costs.

— G.R. —

[G.R.Patwardhan]

Administrative Member

Jrm

Recd. of Capt. [unclear]
 25/5/14
 26/5/14
 26/5/14

Part II and III destroyed
 in my presence on 24/10/13
 under the supervision of
 section officer [unclear] as per
 order dated 18/10/13.

[Signature]
 Section officer (Records) 24.10.2013