

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Order : 23-5-2003

O.A. No. 12/2003.

V. K. Saxena S/o Shri Gopal Nath Ji Saxena aged about 48 years, resident of 539, 'A' New Colony B.J.S Jodhpur, at present employed on the post of PGT (Physics), Kendriya Vidyalaya No.1 Army, Jodhpur.

... APPLICANT.

versus

1. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi 110016.
2. Asst. Commissioner, Kendriya Vidyalaya sangathan, Regional Office, Jaipur.
3. Shri B.Tiwari, Principal, Kendriya Vidyalaya Army No.1, Jodhpur.

... RESPONDENTS.

Mr. J. K. Mishra counsel for the applicant.
Mr. K. K. Shah counsel for the respondents.

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Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. G. C. Srivastava, Administrative Member.

: O R D E R :
(per Hon'ble Mr. G. C. Srivastava)

The applicant who is working as a P.G. Teacher in the Kendriya Vidyalaya, Border Security Force (KVBSF, for short), Jodhpur, under the respondents is aggrieved on account of his transfer issued vide office order dated 16.01.2003 (Annexure A-1) and the relieving order dated 20.01.2003 (Annexure A-2) and has prayed that the same be quashed and set aside with all consequential benefits.

2. The respondents have contested the OA and have filed detailed reply.
3. We have heard Mr. J. K. Mishra and Mr. K.K. Shah, learned

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counsel for the applicant and the respondents respectively and with their consent we are disposing of the OA at the admission stage itself.

4. The first ground advanced by Mr. Mishra for the applicant is that the transfer order has been passed with a malafide intention on the part of respondent no.3 i.e. the Principal, Kendriya Vidyalaya No.1, Army, Jodhpur. According to him the principal got annoyed with him last year as he refused to teach his son at his residence and following his refusal the Principal threatened him to face the consequences and has been troubling him from all corner. He has contended that it is the Principal who has managed to get his transfer from Jodhpur to Imphal (Manipur) which has been served upon him in a closed envelop only on 20.01.2003. According to him, though the impugned order is said to have been issued in public interest, it does not mention who has been posted in his place. He has further stated that respondent no.3 has malafidely denied the full benefits of Senior scale of pay of Rs. 7500-12000 w.e.f. 23.06.2001 sanctioned vide order dated 30.10.2001 (Annexure A-4) by withholding payments from June 2001 to December 2001. On the other hand, Mr. Shah for the respondents, has strongly denied the allegation of malafides on the part of respondent no.3 and has submitted that respondent no.3 is himself a Science Post Graduate and within 15 days of the academic session, his son changed over to Commerce as he was poor in Mathematics and other allied subjects. As far as Physics is concerned, according to him this was yet to be taught in Class XI and no one could judge whether he was good or bad in that subject. Mr. Shah has argued that the Principal being the father convened his son to change over to commerce which was done in July itself. Mr. Shah has strongly pleaded that there were other administrative

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reasons for the above transfer, such as complaints against him, his past performance and no improvement in his efficiency level despite several opportunities given to him. As regards the higher pay scale he has stated that the payment of Rs.2200 was withheld from all teachers as per instructions of higher authorities and the amount has already been paid vide letter dated 27.01.2003 (Annexure R/1). We have carefully examined the rival contentions. As per the settled position, the onus of proving malafides lies on the person who makes such allegation. We find force in the submission of Mr. Shah that since the son of the Principal had changed over from Science to Commerce in July itself there is no basis for the malafides as alleged by the applicant. The payment of some amount of salary for a certain period had been withheld from all the teachers under instructions from higher authorities and hence this also cannot be a ground for the alleged malafide against the applicant. Under the circumstances, we do not find any basis for malafides against respondent no.3 as alleged and the first ground fails.

5. Another ground taken by Mr. Mishra for the applicant is that the impugned transfer is stigmatic as he has been transferred on account of certain complaints against him and the proper course in such a situation was to issue a charge sheet and take disciplinary action as per rules. He has also argued that whatever complaints have been made against him pertains to the period from 1988 to 1994 and he has never been informed about these complaints. Mr. Shah on the other hand, has submitted that there were several complaints against him from various sections and he has been duly informed from time to time through CRs, Memos, etc. but he did not show any improvement which are borne out by various documents submitted alongwith the reply. According

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to him, he has been transferred on the recommendations of the Principal as well as Chairman, VMC of Kendriya Vidyalaya No.1 (Army) as envisaged in clause 5 (1) of the transfer guidelines. We have examined the rival claims in this regard and have perused the various documents produced by the respondents. We find that the applicant had been given a Memo dated 17.09.1988 asking him to explain why disciplinary action should not be taken against him for his various lapses in performance as a teacher. He was issued another Memo dated 22.12.1989 for explaining his misconduct of unauthorised absence. He was issued a Warning in February 1991 for misrepresentation of facts in preparation of pre Board result of Class XII. He was again asked to explain in June 1991 for his negligence in taking classes and in July 1991, he was issued a warning in regard to performance of his duties. Another Memo was issued in February 1994 for non submission of the Teacher's Diary for 1993-94. The above actions were taken by another Principal and not the present one. He also earned adverse entries in his ACRs for the period ending June 1991 when he was in Rajkot. Even for the year ending June 2000, he again earned adverse entries about his punctuality and teaching abilities. In August 2000 and September 2000, students/guardians complained against him about his way of teaching, his habit of thrashing the students badly, not teaching in the classes and giving preference to those who took private tuitions from him. In February 2002, one guardian complained about the misdeeds of the applicant and though the applicant has produced a copy of a letter of withdrawal in February 2003, the same does not refer specifically to the above complaint of 14th Nov. 2002. The Chairman, KV No.1 (Army) Jodhpur wrote a detailed confidential letter to the KVs Jaipur regarding his conduct, behavior and teaching performance and recommended his transfer. He stated, "it is difficult for the Principal to

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maintain the required discipline and academic atmosphere in the school. It is strongly recommended that Shri V. K. Saxena, PGT (Physics), be posted out from the school at the earliest. He should also not be given a school at Jodhpur as he is a local from Jodhpur and his house is near to KV No.1(Army). His continued presence may be detrimental to the exercise of transferring him". The present Principal complained about his misbehaviour with him on 4.4.2002 and 01.10.2002.

6. It would be more than correct from the above that the record/conduct of the applicant has been far from satisfactory and he has been given several opportunities to improve by the earlier Principal as well as the present one. The recommendation of the Chairman KV No.1(Army) is revealing and candid and the Administration was left with no option but to transfer him. According to the respondents his transfer would not adversely effect the study of students as the School has got one more teacher in Physics (TGT) with MSC (Physics) who is competent enough to take XIIth classes and has already been given charge. Mr. Mishra has not been able to show any rule or provision in support of his claim that a person cannot be transferred in such a situation unless disciplinary action is taken. The transfer is covered under 'transfer on administrative grounds' as mentioned in Clause 5 of the 'Transfer Guidelines'. Hence the above ground also fails.

7. Another ground taken by Mr. Mishra is that the transfer is bad as it is in mid-session and there is no administrative interest served as the study of the students would suffer. According to him, this is also violative of Article 14 and 16 of

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Constitution of India. The respondents have stated that transfer effected after 31 August can be in public interest and covered by Clause 5 (1) and 6 of the guidelines. They have also stated that the study of the students would not suffer as another TGT (Physics) with MSC (Physics) is available and is handling the work. According to him, there is no violation of Article 14 and 16 of the Constitution of India. We have seen the transfer guidelines produced before us and find that Clause 5 provides as under :-

"The following would be administrative grounds for transfers.

A teacher is liable to be transferred on the recommendation of the Principal and the Chairman of the Vidyalaya Management Committee of the Kendriya Vidyalaya. It further provides that no transfer except those on the following grounds shall be made after 31st August - Organisational reasons, administrative grounds and cases covered by para 5.

The impugned transfer order of 16.01.2003 is covered under the above guidelines and hence the same is to be treated as transfer on administrative grounds in public interest. There is no basis for the claim that the said transfer order is violative of Article 14 and 16 of the Constitution of India and hence the same is totally misconceived and untenable.

8. The other ground taken by him is regarding his personal family problems like his old parents, with failing health and School going children. He has further contended that his wife is

serving at the same place and the impugned transfer would disturb their family life and he would not be able to look after his family responsibilities and this also goes against the policy of keeping the wife and husband at one place. The respondents have stated that the applicant has an all India transfer liability and has been serving at Jodhpur since 1992 and, therefore, he should have been prepared for a transfer and in any case his wife is there to discharge the duties towards his family. We have examined the rival claims. we find force in the submission of Mr. Shah that the applicant has straightaway approached this Tribunal without even making a representation against the transfer order and therefore, the administration did not have a chance to examine his personal problems. In fact the applicant has not exhausted the available departmental remedies and therfore, the OA deserves to be thrown out on this ground alone. The respondents cannot, therefore, be blamed for ignoring his personal problems in issuing the impugned order.

9. The only other ground taken by him is that there are three senior PG Teachers in Physics in different K.V. at Jodhpur with longer stay than the applicant but they have not been disturbed. No detaills of these teachers have been produced before us and we cannot take a view if the applicant has been discriminated vis a vis others. Moreover, transfer is an administrative matter and the grounds and the circumstances in each case may not be the same and seniority/juniority of a teacher may not be the sole criteria for deciding such matters. Hence this conclusion also fails.

10. We have also examined the judgements relied upon by Mr. Mishra. The case of Ravindra Sharma vs. KVS & Others OA No. 860/2002 decided on 13.01.2003 before CAT, Jabalpur Bench,

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Jabalpur, pertained to transfer and was disposed of with a direction to decide the representation given by him by a speaking order. In the instant case, no such representation has been given and hence this is not applicable. The case of S. C. Kamble vs. Dy. Eng. Panchayat Samiti, 1998(2) SLR 418 (Bombay High Court), pertains to transfer of Class IV Mill Mazdoor under Panchayat Samiti and pertains to a complaint against him, which he denied and after his explanation was found unsatisfactory, he was transferred and he had approached Industrial Court. Hence the case is distinguishable. The case of G. Ramanathan vs. Acting Zonal Manager, 1980 SLJ (Madras High Court) 94, is also not applicable as the case was decided by taking into account irrelevant considerations in colourable exercise of power with a view to achieve a sinister purpose while in the instant case not even malafides are proved. Similarly the case of N. S. Bhullar & Ors. vs. Punjab Electricity Board, 1991 (1) SLR 378 (P&H) is also not applicable as the transfer was struck down as the same was made for collateral purpose by way of punishment avoiding disciplinary proceedings. The facts in the case of Smt. Kulwant Kaur vs. Ch. Surya Bhan, 1991 (1) SLR 744 (P&H) are also clearly distinguishable & the present case cannot be covered by the judgement.

11. We have also gone through the judgements relied upon by Mr. Shah for the respondents, which are as under :-

"(i) Director of School Education, Madras vs. O. Karuppa Thevan, 1996 (2) SCT 403.

(ii) N. K. Singh vs. Union of India, 1995 (1) SCT 269.

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(iii) Abani Kanta Ray vs. State of Orissa, 1996 (1) SCT 23.

(iv) State of Punjab and Others vs. Joginder Singh Dhatt 1995

(4) SCT 225.

(v) Chief General Manager (Telecom) N.E. Telecom Circle vs.

Rajendra Ch. Bhattacharjee 1995 (2) SCT 869.

(vi) Bank of India vs. Jagjit Singh Mehta 1992 (1) SCT 161.

Keeping in view the ratio laid down in the above cases and also in view of the discussions held earlier we are not inclined to interfere with the impugned transfer order. In the case of State Bank of INdia vs. Anjan Sanyal & Ors AISLJ 2001 (3) 270, it has been held by the Apex Court that an order of transfer of an employee is a part of service conditions and such an order is not required to be interferred with lightly by Court unless it finds that either the same is malafide or it is prohibited by service matters or the authority was not competent to do so. In another case of National Hydrolic Electrical Power Corporation Ltd. vs. Bhagwan and Shiv Prakash (2002) SCC L&S 21, it has been clearly laid down by the Hon'ble Suprme Court that transfer is not only an incident but a condition of service and unless it is shown to be an outcome of malafide exercise of power or violative of any statutory provision, the same is not subject to judicial interference as a matter of routine. In the present case, there is neither any malafides nor it is stigmatic nor it is passed against statutory rules or by an incompetent authority. Therefore, there is no ground for judicial interference.

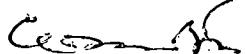
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12. In the light of the foregoing discussions, we are of the considered view that there is no merit in the OA and the same deserves to be dismissed.

12. In the result, the OA is dismissed and the interim relief granted by this Tribunal on 22.01.2003 is hereby vacated.

13. Parties would bear their own costs.


(G. C. SRIVASTAVA)

MEMBER (A)


(G. L. GUPTA)

VICE CHAIRMAN