

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

I/6

O.A. No. 283/2002 & 284/2002

DATE OF DECISION 26.11.2002

(1) A.D. Sharma
(2) Dr. Anand Dixit

Petitioners

Mr. Dron Kaushik

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. K.K. Shah

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

JNK/2002
(J.K. Kaushik)
Judicial Member

I/7

CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

(1) O.A. No. 283/2002

Date of Order 26.11.02

A.D. Sharma S/o Sh. Subhash Ram Sharma aged about 48 years resident of Qtr. No. 3/1 K.V. Colony, Sri Ganganagar Cantt, Sri Ganganagar, at present employed on the post of PGT (Chemistry), Kendriya Vidyalaya, Sadhuwali, Sri Ganganagar

...APPLICANT.

V E R S U S

1. The Commissioner Kendriya Vidyalaya Sangathan (KVS), 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan (KVS), Regional Office, Jaipur.
3. Smt. S Gupta, Principal Kendriya Vidyalaya, Sri Ganganagar.
4. The Chairman VMC, KV Sri Ganganagar, Deputy GOC, 16 Inf. Div. C/O 56 APO.
5. Lieutenant Colonel Prabhat Kumar, Nominee to the Chairman, SO 2 (Edn) 16 Inf Div C/O 56 APO.
6. Education Officer, Kendriya Vidyalaya Sangathan (KVS), 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

...RESPONDENTS.

(2) O.A. No. 284/2002

Dr. Anand Dixit S/o Sh. B.P. Dixit aged about 35 years resident of Qtr. No. 6/1 K.V. Colony, Sri Ganganagar Cantt, Sri Ganganagar, at present employed on the post of TGT (Sanskrit), Kendriya Vidyalaya, Sadhuwali, Sri Ganganagar

...APPLICANT

V E R S U S

1. The Commissioner, Kendriya Vidyalaya Sangathan (KVS), 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. The Assistant Commissioner Kendriya Vidyalaya Sangathan (KVS), Regional Office, Jaipur.

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3. Smt. S Gupta, Principal Kendriya Vidyalaya, Sri Ganganagar.
4. The Chairman VMC, KV Sri Ganganagar, Deputy GOC, 16 Inf. Div. C/O 56 APO.
5. Lieutenant Colonel Prabhat Kumar, Nominee to the Chairman, SO 2 (Edn) 16 Inf Div C/O 56 APO.
6. Education Officer, Kendriya Vidyalaya Sangathan (KVS), 18 Institutional Area, Shaheed Jeet Marg, New Delhi.

... RESPONDENTS .

Mr. Dron Kaushik, counsel for the applicants.

Mr. K.K. Shah, counsel for the respondent No. 1 to 4 & 6.

None present for respondent no. 5.

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

: ORDER :

PER KAUSHIK, JUDICIAL MEMBER:

Original Application No. 283/2002 (A.D. Sharma)

and Original Application No. 284 (Dr. Anand Dixit), have been filed for quashing their transfer orders. Facts and grounds leading to the issuance of the transfer order are similar and common and there being decided by a common order:

O.A. No. 283/2002

The brief facts of the case as narrated by the applicant are that the applicant was initially appointed to the post of PGT (Chemistry) on 21.08.1986 at Kendriya Vidyalaya Sri Ganganagar. He has been discharging his duties efficiently and satisfactorily maintaining clean records. It has also been pleaded that he has enjoyed

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appreciations/rewards from his superiors and never faced any unusualness except the one involved in this application. There has been no adverse remarks against him till date.

2. Further case of the applicant is that Smt. S Gupta Principal, Kendriya Vidyalaya Sri Ganganagar, respondent no. 3 came to be transferred from Bhatinda to Sri Ganganagar on 16.04.2001 on the ground of public interest. The respondent no. 3 is said to have started misusing the school funds as well as the valuable assets of the school. A request was made to the Principal for not to mis-use the school funds by doing financial irregularities. A reference has been given of the specific instance on 17.09.2001 wherein only 3 items were acceptable out of about 13 items and the applicant complained of the same to the higher authorities. The 5th respondent, though came to the conclusion of financial irregularities, gave remarks that the applicant should first communicate with the Principal and also desist from writing directly to the higher authorities. The matter was clarified and was submitted that matter was taken up vide letters dated 17.09.2001 and 20.10.2001 with the Principal. There was no response from the Principal and the nominee of the Chairman alongwith the Principal tried to vanish the matter.

3. The further case of the applicant is that the respondent no. 5 continued to harass and tortured the all members of KV, Sri Ganganagar, mentally, physically and economically. A joint complaint was made to the higher authorities. A complaint was also made against the 3rd respondent to the Commissioner. A news was also published in news paper on 04.05.2002 and a certain

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other incidence have been mentioned. On 21.10.2002 at about 12.30 PM, the applicant was called by the Principal and Principal who handed over a sealed envelope with certain unpleasant and irritating words and told that she has got his transfer order for hard place in Joshimath in Utranchal. The envelope also contained a relieving order dated 21.10.02 (Annexure A/2).

4. The applicant has filed this application assailing the impugned transfer order dated 18.10.2002 (Annexure A/1) and relieving order dated 21.10.2002 (Annexure A/2) by which he has been ordered to be sent from Sri Ganganagar to Josimath in Utranchal on multiple grounds. The prominent ground of attack mentioned in the Original Application is that the applicant has been transferred as a measure of penalty since certain true and correct complaints were made against respondent no. 3 and the true fact would become evident in case the corporate veil is lifted. No proceeding for imposition of the penalty was followed. The another ground is that the transfer order has been got issued by the respondent no. 1 through respondent no. 5 and the same is tainted with the malice of respondent no. 3 & 5.

5. The other ground of assailing the transfer order is that he has three dependent (all girls) going to college and one dependent (son) going to school whose studies are going to be adversely affected in addition to involvement of avoidable expenses since the transfer has been made in mid-term academic session. It has also been submitted that every year options have been submitted by him and

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performa indicating his five options had been submitted.

The another ground of attack is that the impugned order has been issued by incompetent person who does not have power to transfer the applicant.

6. The counter has been filed on behalf of respondent no 1 to 4 and 6 and separate counter has been filed on behalf of respondent no. 3, who have contested the case. The respondent no. 5 has not chosen to file any counter to the Original Application despite the fact that he was tendered with a copy of the notice by Dasti by the applicant which was refused by him and the notice has been taken as served on the respondent no. 5. The contesting respondents have submitted that the communication dated 17.09.2001 and 20.10.2001 were never received by the Principal. The applicant was advised to desist from writing directly as the matter was already discussed amongst, applicant, Principal and the Nominee. The procedure for purchase of the items has been laid down in the code and each was scrutinised and the items purchased were of required specifications and all the items were physically available.

It is denied that applicant apprised the Principal of his non-acceptance of certain items. The respondent no. 5 advised the applicant to follow the procedure. A team came for annual inspection and no negative report was given, on the other hand the action taken by the Principal was appreciated. The entire record relating to misdeeds of the petitioner would be kept ready. Certain facts relating to the non-availability of the Principal at K.V., Sriganganagar have been narrated. It has been submitted that there was lot of improvement made by the respondent no.3. The matter was taken up by the Chairman wherein



certain incidents of indiscipline as well as mis-behaviour of the applicant were reported to the first respondent. It was followed by another letter dated 27/05/2002. Even the nominee of the Chairman also apprised the second respondent vide letter dated 10/05/2002 to take action against the applicant. The second respondent forwarded the comments given by the third respondent vide letter dated 09/08/2002.

7. The further case of the respondents is that the Chairman, V.M.C. after through inquiry found that the news item given by the applicant himself which is not true in it. The denial was published by the Principal of any such action. The second respondent did not receive any complaint. Further no cognizance can be given to a complaint who is alleged to have been illegally elected as a Secretary. There are no grounds to agitate and original application deserves to be dismissed. It is also averred that no provision of transfer guideline has been flouted. The applicant has been transferred on the administrative ground as per guidelines for transfers. There is no allegation of any malafide against the Principal nor the nominee of the Chairman and the records would reveal the legal action of the respondents. The transfer has been effected under para 5 and 6 of the transfer guidelines. It has also been averred in the reply from the respondents side that the applicant could not be transferred to a place of his choice as he could not get more merit than others for those places as per transfer guidelines. Lastly, it has been averred that the transfer

order has been passed by the competent authority and there was some mistakes of the date. The applicant, ~~is~~, therefore, not entitled to any relief and the O.A. deserves to be dismissed. The reply filed on behalf of respondent no.3 gives the details regarding the necessity of transferring of the applicant.

8. I have considered the fairly elaborate arguments advanced by the learned counsel for the parties and have bestowed my earnest consideration to the pleadings and the documents on record. I have also seen the records/file, noting made available, leading to issuance of the transfer order though the record was incomplete, compiled in a haphazard manner for which I shall be making my observation in the later part of this order.

• The primary contention urged by the learned counsel for the applicant is that the applicant made certain genuine complaints against the respondent no.3 who conspired with respondent no.5 and engineered issuance of the impugned transfer order. He has submitted that the applicant has been maintaining a very high degree of efficiency and commanding a clean record throughout his service, he has ~~never~~ been communicated any adverse entries till date. He has also submitted his options for his transfer as per the norms laid down in the transfer guidelines and thus was never scared of his transfer. The further submission of the learned counsel for the applicant is that the applicant is being

transferred as a measure of penalty and due to the malafide of respondent no.3 and 5 for the reason brought out in the O.A. The transfer is made as a penalty and to cut short the disciplinary proceedings if at all the applicant has committed any misconduct. He also laid emphasis that it is a mid term academic transfer and the hardship faced on account of such mid term academic transfer can hardly be over-emphasised. He has placed heavy reliance on the judgement of the Supreme Court in Director of School Education v/s O. Karuppa Thevan, 1996 (1) SLR 225 (SC) wherein their Lordships have held that "although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies ~~xxx~~ of service are not urgent". The applicant has also contended that in the present case there was no such urgency.

10. The other argument of the learned counsel for the applicant was that the case of the applicant was not at all considered for posting him of any place of his option and this position is also clear from the communication of the respondent (Annexure-R/4) that the transfer is to be made out side the region in this way the respondents have taken contradictory pleas. Lastly he concluded by urging that the relevant records and communications leading to the issuance of transfer order may be perused and the same would fortify the contention of the applicant submitted in the pleadings.

11. On the other hand, the learned counsel for the contesting respondents has reiterated the averments made in the reply have travelled through the communications/ letters submitted alongwith the reply. It has been submitted that the respondent no.3 earned lot of appreciation for her efficient working, the 5th respondent issued a letter dated 21/09/2001 (Annexure-R/2) to the Principal for making efforts to make the school as a model school. Another communication dated 26/04/2002 (Annexure-R/3) was made to the Principal that code of conduct as prescribed in the Education Code was not being followed. It ~~is also~~ submitted that vide letter dated 30/04/2002, the transfer of the applicant and one Dr. Anand Dixit were recommended in the organisational ^{by} interest. This followed another communication dated 27/05/2002. Yet another letter dated 10/05/2002 was addressed to second respondent wherein it was strongly recommended that suitable disciplinary proceedings be initiated against the applicant and two other persons and also they must be transferred. There is yet another communication dated 09/08/2002, wherein the second respondent has recommended the transfer of the applicant and one Shri Anand Dixit in public interest on administrative grounds out of the region. This recommendation have been made on the basis of letter dated 19/07/2002 which are the comments^{of the Principal} to the communication dated 09/07/2002 which was issued by the Education Officer, New Dehli.

12. The learned counsel for the respondents strenuously contended that the applicant was in habit of making false complaints and have been continuing at Sri Ganganagar for over 15 years. They are not permitted to have any association but an association has been formed by them in a self style manner without there being any sanction of the law. He has further carried me to the main report/letter containing the comments issued by Smt. S. Gupta i.e. of the respondent no.3, it contains about 17 items. He has emphasised that there was no way out to ~~regard~~ the indiscipline except to take recourse to the transfer of the applicant. He has, therefore, contended that the department ~~has~~ committed no illegality in transferring the applicant under para 5 (i) of the transfer guidelines and their action cannot be faulted since the applicant has been transferred in the interest of administration and no interference is called for and no judicial review is warranted. By now the law position on the transfer order has been settled in catena of judgements of various authorites, it has been held that the transfer is an incident of service and who should be transferred where is a matter for the appropriate authority to decide, unless the transfer is shown to be clearly arbitrary or vitiated by malafidies or infraction of any professed norms or principle governing the transfer. He asserted that there is nothing such in the present case, there is no question of malafide. Transfer order has been issued by higher authorities with due application of mind.

He further submitted that the proceedings leading to issuance of transfer order are contained in the relevant record/file in which may be perused by this Hon'ble Tribunal.

13. To facilitate apprehension of the pleas and counter pleas canvassed on behalf of the parties, it would be useful to reproduce the relevant provisions from the transfer guidelines as amended upto date.

The same are extracted as under:-

***TRANSFER GUIDELINES**

1 & 2 XXXXXXXXXXXX

3. In terms of their all India transfer liability, all the employees of the KVS are liable to be transferred at any time depending upon the administrative exigencies/grounds, organisational reasons or on request, as provided in these guidelines. The dominant consideration in effecting transfers will be administrative exigencies/grounds and organisational reasons including the need to maintain continuity uninterrupted academic schedule and quality of teaching and to that extent the individual interest/request shall be subservient. These are mere guidelines to facilitate the realization of objectives as spelt out earlier. Transfers cannot be claimed as of right by those making requests nor do these guidelines intend to confer any such right.

4. XXXXXXXXXXXX

5. Apart from others the following would be administrative grounds for transfers.

(i) 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.

(ii) Transfer of spouse of a Principal to a Kendriya Vidyalaya at the station where the Principal is working or nearby, but not the Vidyalaya where he is a Principal.

6. As far as possible the annual transfers may be made during summer vacations. However, no transfers, except those on the following grounds

shall be made after 31st August.

- (i) Organisational reasons, administrative grounds and cases covered by para 5;
- (ii) Transfers on account of death of spouse or serious illness when it is not practicable to defer the transfer till next year without causing serious danger to the life of the teacher, his/her spouse and son/daughter.
- (iii) Mutual transfers as provided in para 12.

7. to 17 XXXXXXXXXXXXXXXXXX

18. Notwithstanding anything contained in these guidelines:

- (a) a teacher or an employee is liable to be transferred to any Kendriya Vidyalaya or office of the Sangathan at any time on short notice on grounds mentioned in clause 5 and 6 (i) of these guidelines;
- (b) the Commissioner will be competent to make such departure from the guidelines as he may consider necessary with the prior approval of the Chairman;
- (c) the request of a teacher may be considered for transfer to a station in respect of which no other person has made a claim or request even if such teacher has not submitted the application in the prescribed proforma at the time of annual transfer or within the time limit prescribed for the purpose;
- (d) Following cases will not be considered for transfer:
 - (i) cases of Education Officers/Assistant Commissioners for transfer without completing three years' stay at the place to which they were posted upon promotion.
 - (ii) cases where a teacher, Education Officer or Assistant Commissioner was transferred on grounds mentioned in paras 5(i), 6 and 7 of these guidelines will not be considered for transfer without completing 5 years' stay at the station to which they were so posted.
 - (iii) Principals, Education Officers and Assistant Commissioners will not be transferred back to the same station from where they were transferred earlier on completion of period as

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specified in para 4 above unless a period of three years has elapsed.

(iv) cases of fresh postings whether on direct recruitment or on promotion unless they complete three years of stay at the place of their posting except that, in case of women teachers, the request for posting to a place of choice can be considered after stay of one year. This will not, however, be applicable in cases covered by paras 5, 6 and 7 (i) of these Guidelines."

Further order has been issued vide letter no. F.1-1/99-KVS(Estt. 3) dated 05/04/2000 which read as under (only relevant part):-

Sub.: Transfer of employees on Administrative grounds.

Sir/Madam,

The existing transfer guidelines inter-alia provide for transfer of employees on administrative grounds on the recommendation of the Principal and the Chairman of the Vidyalaya Management Committee of the Kendriya Vidyalaya in terms of para 5(i) of guidelines. In this connection it is informed that the said matter was discussed in the meeting of the Joint Consultative Machinery held on 27/10/99 under the Chairmanship of Vice-Chairman, K.V.S. Based on the above, the following orders are hereby issued:

1. The proposal for transfer of employees on administrative grounds should be forwarded both by the Principal as well as Chairman, VMC and not by the nominee of the Chairman. However in the case of office bearer of a recognised Association, the proposal will require the recommendation of Asstt. Commissioner of the Region also.

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It may be kindly be ensured that the instructions be followed scrupulously.

Yours faithfully,

Sd/-

(S.B. Chaturvedi)
Dy. Commissioner (Acad.)

14. Before advertizing to the merit of the case I consider it appropriate to examine the facts from the office noting and the correspondence thereof leading to issuance of the impugned transfer order. From the office file ~~note~~ dated 4.7.2002 it is transpired that there is some letter indicated as FR which is said to have been received from nominee of the Chairman VMC (known as Vidyalaya Management Committee) KVS Sri Ganganagar regarding administrative ground transfer in respect of applicant and two other persons. ~~In para 2~~ of the noting, the following has been stated:-

"2. The Chairman (nominee) states that:-

- (i) The above named staff members are indulging in activity which not only tarnish the image of the school but also vitiate the atmosphere of the school.
- (ii) The Chairman, nominee recommended to initiate suitable disciplinary proceeding."



There is no date of any such FR. I also did not find any letter with the aforesaid wording alleged to have been received from the nominee Chairman. There is no document which is marked as FR, which could be construed as the basis of originating the file. On page no. 2 of the noting it has been said to be the recommendation of nominee Chairman and also of Chairman in terms of clause 5 (i) of transfer guidelines and it has been further mentioned that recommendations from the Principal may also be called, and thereafter a letter dated 9 July, 2002 at page 19 (6) was issued to the Principal to offer the comments on the complaint made against three officials. A copy of this was sent to the second respondent and to the Chairman, VMC for information. Thereafter a letter

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dated 09.08.2002 came to be issued by the 3rd respondent where in on the basis of the comment of the Principal on letter dated 19.07.2002, the transfer of applicant and also one Shri Anand Dixit was recommended in public interest on administrative ground out of the region. On the basis of the said recommendations, the vacancies were found out for the respective posts in other region i.e. in Chennai and in Jammu. The comments of the Principal have been termed as recommendations for transfer of applicant by the Principal. The other recommendations from Assistant Commissioner, Jaipur have been taken into consideration and a decision was taken to transfer the applicant to Joshimath in Uttranchal region on administrative ground. Thereafter an order dated 18.10.2002 (Annexure A/1) came to be issued it was followed by relieving order dated 21.10.2002 (Annex.A/2).

15. From the perusal of the aforesaid procedure/factum aspects, it is clear that the applicant's transfer on administrative grounds has been made on the recommendation of nominee to the Chairman. As regards the recommendations of the Principal which is required for making transfer under para 5 (i) of transfer guidelines, I did not find at any place that the Principal has ever sent any recommendation of her own. On the other hand, the records goes to show that certain comments were called from her for initiating disciplinary action against the applicant and three others as per the office noting dated 04.07.2002. It seems that for bringing the complaint matter within forecorners of the transfer guideline para 5 (i). The comments have been called with the primary objective of treating them as

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recommendation for transfer of the applicant in administrative ground. This position is also clear from page 2 of the notings wherein it has been specified that recommendation be called from the Principal. However, in the present case the transfer order has been primarily issued on the basis of the recommendations of the second respondent who was never asked to make even comment on the so-called complaint of the nominee to the Chairman: least to say recommendation of any transfer. Now coming to the question as to whether the requirement of section 5 (i) of the transfer guidelines has been complied with or not. As per ^{5 (i)} said para, the transfer can be made on administrative ground on the recommendation of Principal and the Chairman of VMC. In the present case admittedly the transfer has been made on the recommendations of nominee to the Chairman of VMC and on the basis of so-called recommendations (though such recommendations/comments were called from the Principal) of the Principal and the recommendations of the second respondent being irrelevant. The perusal of the complete transfer guidelines reveals that there is no reference to the nominee to the Chairman. As per this scheme no power has been delegated to the nominee to the Chairman and the nominee to the Chairman has no role to play in any of the matter connected to the transfer which fall within the purview of the transfer guidelines. With an abandoned caution I made a specific query to the learned counsel for the respondents to make the position clear as regards the role of the nominee to

the Chairman. The learned counsel for the respondents was fair enough and pointed out to para 36 of the Education Code for the Kendriya Vidyalayas wherein the complete roll of the nominee to the Chairman has been mentioned. The extract of the same is reproduced as under:-

"36 Executive Committee of the Vidyalaya Management Committee

Each Kendriya Vidyalaya will have the Executive Committee of the VMC comprising the following:

- a) Chairman, V.M.C. or his Nominee - Chairman
- b) One Educationist Member of VMC - Member
- c) One Parent Representative Member of VMC - Member
- d) One Teacher Representative Member of VMC - Member
- e) Principal of the Vidyalaya - Member-Secretary

The Executive Committee so constituted will be notified by the Chairman, VMC. In case there is a vacancy in the VMC because of which a representative as above cannot be nominated, the Chairman, VMC will notify the Executive Committee without such representative, who may be included later.

Note: In situations where Chairman of the VMC is otherwise busy and he has nominated an Officer to function as the

Chairman's nominee for the purpose of the Kendriya Vidyalaya, the Chairman's nominee shall perform all functions on behalf of the Chairman including counter signatures of cheques other than in salary cheques and presiding over meetings of the Vidyalaya Management Committee and the Executive Committee in the absence of the Chairman. The only requirement will be that all decisions should be brought to the notice of the Chairman ~~is~~ for his approval. The cheques for salary of staff are signed by the principal and teacher member of VMC."

As per the aforesaid, the nominee to the Chairman is required to function in some situations where the Chairman of the VMC is otherwise busy and the matter mainly relates to the functioning of the Executive Committee of VMC which ~~were~~ also need ~~the~~ approval of the Chairman, where in the ~~in~~ Chairman of the VMC was ~~any~~ not able to function as such, secondly the recommending of the transfer does not fall within the purview of the Executive Committee. Thirdly if at all anything was to be done by the nominee Chairman the final decision was to rest with the Chairman and it was the Chairman alone who could make recommendation for transfer of any staff member to the competent authority. In this situation the recommendation of the nominee Chairman cannot be construed such recommendation of the Chairman.

16. As regards the recommendations of the Principal there was no move from the side of the Principal. There was no complaint against the applicant whatsoever, from the side of third respondent in fact the recommendations were called from

her in the shape of comment on some communication which remains undisclosed, moved by the fifth respondent, thus, it would be safe to conclude that even the Principal did not make any recommendation for the transfer of the applicant as envisaged in para 5 (i) of the transfer guidelines. Thus, the requirement of 5 (i) of the transfer guidelines have not been complied with. In this view of the matter it could not be construed to be a case of transfer on administrative grounds as per para 5 (i) as contended and pleaded on behalf of the respondents.

17. The submissions of the learned counsel for the applicant that the options submitted by the applicant for his normal transfer as per the provisions of the transfer policy have not been taken into account has sufficient force for the reason that the ~~constit~~ stand of the respondents is that the transfer has been made in pursuance with the para 5 (i) of the transfer guidelines and as per the recommendations of various authorities on administrative ground. The respondents cannot approve and either the transfer could be said to be in the normal course or it is in administrative ground. Not only this there has been a positive recommendation from the side of the respondent no. 2 who was neither required nor asked to submit such recommendations, were for transferring the applicant on administrative ground out of the region and such recommendation is the very basis of the transfer. It is not understood how the respondents have stated in the reply that the options submitted by the applicant were duly considered. In this view of the matter the contentions of the respondents stands repelled.

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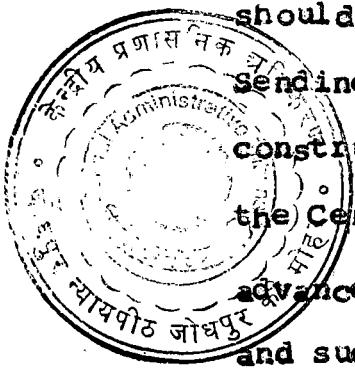
18. Now the another significant question remains to be examined is regarding the ground of attack that the impugned transfer order has been issued due to the malafide of the respondents no. 3 and 5. This Tribunal is aware as regard the strong evidence required for arriving to the conclusion of malafide. In the instant case there are certain events which need consideration. Firstly I shall take up and narrate the various actions of the fifth respondent. The fifth respondent is a nominee of the Chairman. His function have already been explained in the aforesaid paragraphs. In the present case, the nominee of the Chairman has been informing to the Principal regarding the certain inefficiencies indiscipline of the teachers in the school and regarding the code of conduct of the teachers. As a matter of fact regarding teaching and other conduct of the teachers, the matter was required to be projected by the Principal of the school and it was expected that matter will be put before the VMC so that suitable action can be taken specially in regard to the disciplinary proceedings. It is seen from the records that the Principal has never written or made any complaint regarding the working of the applicant. Even it has been admitted in the reply as well as at the bar that applicant has been working efficiently and there is absolutely nothing adverse against him. Nextly the respondent no. 5 has been directly writing to the higher authorities regarding the breach of conduct, recommending transfers etc. Whereas he has no roll to play in the transfer or other matters except to the extent of para 36 of the Education Code. It is also seen that even

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DO letter was written to officer on special duty vide letter dated 31/05/2002 at page 8 of the file for taking action on the various complaints against the applicant. It was not part of his duty in relation to any of such matter but he has used his offices for certain extraneous reasons.

The respondents have talked much that certain false complaints were made by the applicant against the Principal. I find that the applicant has not been informed of any such complaints or any of his dereliction in his working. On the other hand directions were issued to the Principal for working as per the procedure, ~~based~~ on his complaints.

The respondent no. 5 has been complaining that the applicant should desist from sending him advanced copy of his complaints.

 Sending of advance copy of any complaint cannot be per se construed any misconduct or ~~an~~ act of indiscipline. Even the Central Vigilance Commission has issued directions that advance copy of the complaints may be directly sent to them and such act would not attract disciplinary action.

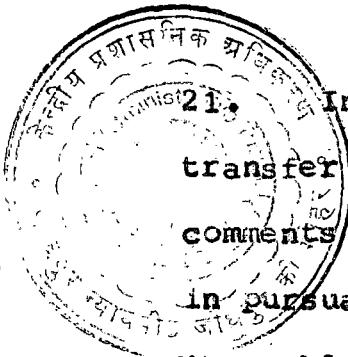
19. I would also like to take the note of subsequent behaviour of the respondent no. 5. Notices Dasti were sent for service on him but he refused to accept the same and this fact is supported by an affidavit. He has not filed any affidavit to refute the ~~allegations~~ made against him in the original application in para 4.5, 4.9, 4.12 and 5 (b) etc. It has been specifically mentioned that the respondent no.5 continued to harass and tortures the staff members of the Kendriya Vidyalayas. The transfer order was got issued

through respondent no. 5. The sequence of these events if read together would go to so that the contention of the learned counsel for the respondents that the impugned transfer order has been made due to the ~~x~~ malafide of respondent no. 5 is well founded. Otherwise also pleadings of mala fide against him remains unrepudiated and thus deemed to be admitted (AIR 1964 SC 72).

20. As regards the action of the 3rd respondent, her comments in pursuance with the letter issued from the head quarters clearly indicate that she having something in her mind against the applicant, listed the allegations/findings of guilt which indicates that the same cover a long period and must have been there in her knowledge but she did not inform the applicant at any time. She has not issued any show cause to the applicant at any time. He was also not never issued with any warning and the comments were coming out as a bolt from the blue and that too when she was asked to submit her comments on certain secret complaint made by the fifth respondent. The complete action seems to have been got done through the fifth respondent. It was the 3rd respondent against whom the applicant had made complaints but everything was being projected through the fifth respondent. The fifth respondent not only give coverage to the 3rd respondent but also to the matter as if he was directly affected by his complaints. It is difficult to understand as to why a person will act for another without there being some common object or the collision. In the circumstances it would be safe to conclude that there was mala fide on the part of 3rd respondent also.

I cannot abstain from pointing out a vital factor in the present case; the action of 2nd respondent is also very

peculiar in as much as he was never asked to submit any comment on the complaints/recommendations made by the nominee to Chairman regarding transfer of the applicant on administrative grounds. The 2nd respondent not only acted without the jurisdiction since he was neither required to make any recommendations nor asked for giving any comment for transfer on administrative ground, he recommended the transfer in public interest and even outside the region which was not even projected by the nominee to the Chairman or even the principal whose recommendations were only for transfer to any place and not outside the region. The question arises as to what should be the presumption in case an authority who is not required to act but has gone out of the way to support the 3rd respondent. The possibility of the collision of the respondent with the 2nd respondent can not be ruled out.



In the last, the issue in regard to whether the impugned transfer order is punitive or not is being examined. If the comments of the Principal submitted vide letter dated 19.7.2002 in pursuance to the letter dated 09.7.2002 are closely scrutinised, it would ex-facie reveal that most of the acts could fall within the purview of mis-conduct and misbehaviour and would have attracted invocation of provisions relating to the imposition of penalties. Even most of them tantamounts to the finding of guilt against the applicant. The similar is position from the letter dated 9.8.2002 (Annex. R/7) originating by the 2nd respondent even the transfer file the very initial noting was originating for taking disciplinary action and perhaps that would have been a right course but the complaint/things subsequently changed and since the transfer was to be used as a short cut to the disciplinary proceedings, the matter was planned to be brought in the purview of para 5 (i) of the transfer guidelines. This was also considered expedient keeping in view the cut off date .. 24 ..

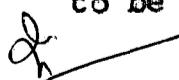
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31.08.2002 which puts embargo on normal transfer after that date. Thus, I am of the considered opinion that the impugned transfer order is punitive in substance. The law on this point is well settled by the Apex Court as well as by other authorities that punitive transfer causes stigma and the same is not legally sustainable.

22. An order of transfer which is used as a cloak for punishment will be a mala fide exercise of power. The reason is obvious. Punishment is imposed on an employee for misconduct. If, there are allegations of misconduct against an employee the proper course is to take steps for initiating disciplinary proceedings. The transfer of such an employee cannot be in interest of good administration for the simple reason that there will be a real likelihood of further misconduct by him at the transferred place and also because he escapes the penal sanction which has been engrafted in-service law in public service. A thoughtful steady of the principle will clarify that the transfer in such circumstances would operate in interest of employee rather than the employer.

There's no power to transfer by way of punishment. Thus the transfer order is not sustainable in law on this count.

23. The contentions of the learned counsel for the applicant that the transfer of the applicant has been made in mid of the academic session has also substantial force since the respondents have not been able to indicate regarding any urgency of the same, however, this ground has lost significance in view of the aforesaid conclusions. The other grounds and counter contentions on behalf of the parties are not required to be further examined since the transfer order is not sus-

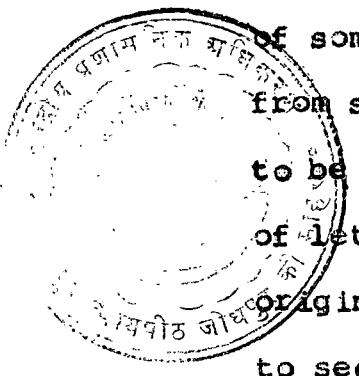


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tainable as indicated above. It may be pertinent to point out here that in view of the peculiar facts and circumstances of this case it became inescapable and a corporate well had to be lifted to meet the ends of justice.

24. Before parting with this case, I am constrained to observe that the required records have not been made available in original. The records/transfer file submitted for perusal of this Tribunal contains letters/correspondence from here and there without any relevance/coherence. Most of them have neither been referred in the note sheet nor shown to have any relevancy to the matter. It was specifically pointed out to the learned counsel for the respondents that the file/records submitted were not arranged properly. He submitted that file was received as such. Even the possibility of some fabrication can not be ruled out which can be smelt from sequence of notings dated 3.10.2002 and next indicated to be of 1.10. 2002. The file does not contain the copy of letter of nominee to Chairman on which the case was originated. I hope the respondent no. 1 shall take steps to see that necessary and needed assistance would forthcoming to the Tribunal to avoid undue burden on the Tribunal for proper adjudication of disputes. The unsavoury situation can be avoided if a particular officer responsible to assist the counsel appearing for them, is equipped with necessary details and instructed properly.



25. In view of the foregoing, I find that respondent no. 3 and 5 felt annoyed and irked against the applicant and got issued the impugned order with the collision of the higher authorities including the 2nd respondent. There is ample

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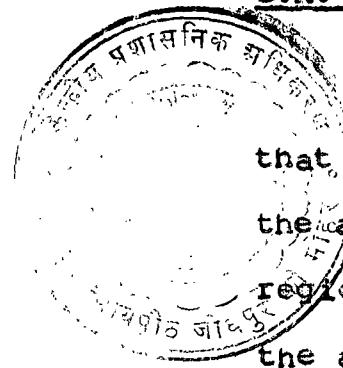
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Justification for holding that the impugned order is tainted with malice & colourable exercise of powers. I am recording this finding with the full awareness that a fairly reliable degree of proof is needed to bring him allegations of bias and malice.

26. Holding is that the impugned order dated 18.10.2002 (Annexure A/1) is tainted with malice and is colourable exercise of power, the same is unsustainable and is hereby quashed with all consequential benefits. Relieving order dated 21.10.2002 (Annexure A/2) also stands quashed. The Original Application stands allowed accordingly. However, in the facts and circumstances of the case I make no order as to costs. Rule issued is made absolute.

O.A. No. 284/2002



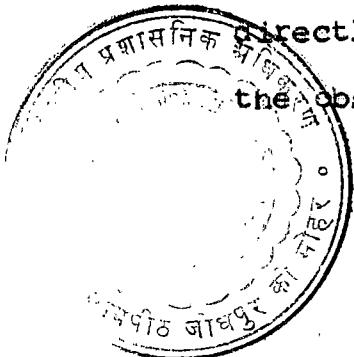
The controversy involved in this case is identical to that of O.A. No. 283/2002 (supra), except that in this case the applicant has been transferred to Rajouri in Jammu region there is no post of TGT (Sanskrit) subject which the applicant holds. On 28.09.2002 the post was filled but as on 1.10.2002 a clear vacancy has been indicated as per note-sheet dated 1.10.2002. There is also a telegram in the file which indicates that the same was received on 19.10.2002 and was available in the office of 3rd respondent on 21.10.2002 but still the applicant was relieved to join on a non-existent post. In any case the impugned order as it is can not stand in such situation. However, it only reflects the negligent/casual functioning of authorities and following the aforesaid decision and for the reasons stated therein, this Original Application is allowed in the terms set out therein. The impugned transfer order

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dated 11.10.2002 (Annexure A/1) and relieving order dated 21.10.2002 (Annexure A/2) are hereby quashed with all consequential benefits. However, in the facts and circumstances of the case, I make no order as to costs. Rule issued is made absolute.

The Registry is directed to send a copy of this order under the seal and signature of the Registrar to the Commissioner, Kendriya Vidyalaya Sangathan (KVS), 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi directly for making him convenient to take action on the observation made in para 24 ibid of the order.



J.K. Kaushik
(J.K. Kaushik)
Judicial Member

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Kumawat