

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR**

Date of Decision : 18- 07- 2003

O.A. No.309/2002.

Nem Singh s/o Shri Pratap Singh PGT (Physics), Kendriya Vidyalaya, Lalgarh Jattan, District Sri Ganganagar (Rajasthan).

... Applicant.

V e r s u s

1. Commissioner, HQ Kendriya Vidyalaya Sangathan 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi - 110 016.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan (RO) 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur- 302 015.
3. Principal Kendriya Vidyalaya No.1, Bikaner.
4. The Chairman, Vidyalaya Management Committee, through the Principal Kendriya Vidyalaya No.1, Bikaner.

... Respondents.

Mr. Sandeep Shah, counsel for the applicant.
Mr. Vivek Shah, counsel for the respondents.

CORAM

Hon'ble Mr. R.K.Upadhyaya, Administrative Member,
Hon'ble Mr. J.K.Kaushik, Judicial Member.

: O R D E R :

(R.K.Upadhyaya, Administrative Member)

By this application under section 19 of the Central Administrative Tribunals Act, 1985, the applicant Post Graduate Teacher (Physics) has sought a direction to quash the order dt. 13.9.2001 (Annexure - A-1) by which he has been transferred from Kendriya Vidyalaya (K.V. for short), R.D.Mines to K.V.,

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Lalgarh Jattan. The applicant has also assailed order dt. 25.10.2001 (Annexure - A-2) by which the applicant has been directed to report at K.V., Lalgarh Jattan in pursuance to the order dt. 13.9.2001.

2. It is stated by the applicant that he was transferred to K.V. No.1 Bikaner from Khetrinagar in the year 1999. The applicant had applied for transfer to the place of his choice in the year 1999, but the same appears to have not been forwarded to the Headquarters Office of the K.V.S. When the applicant applied for transfer to the place of his choice in the year 2000, the same was not acceded to. The applicant was transferred by order dt. 29.8.2001 (Annexure - A-3) from K.V. No.I Bikaner to R.D.Mines. However, the same was modified and the applicant was transferred to K.V. Lalgarh Jattan vide impugned order dt. 13.9.2001 (Annexure - A-1). On oral directions of the Education Officer, the applicant joined at K.V. Lalgarh Jattan on 24.10.2001, though the order dt. 25.10.2001 (Annexure - A-2) was issued subsequently.

3. The claim of the applicant is that he was transferred from K.V. No.1 Bikaner in public interest, but according to his information, the Chairman Vidyalaya Management Committee had given favourable remarks and the applicant could not have been transferred on account of false complaints which were anonymous. According to the learned counsel of the applicant, transfer of employees on administrative grounds as contained in the communication dt. 5.4.2000 (Annexure - A-5) stipulates that the proposal for transfer of employees on administrative grounds should be forwarded both by Principal, as well as, Chairman

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Vidyalaya Management Committee not by any nominee of the Chairman. As per this communication dt. 5.4.2000 enquiry should be conducted within three months of transfer of an employee on administrative grounds. The Learned Counsel stated that the impugned orders of transfer though described as on administrative grounds are really punitive in nature as the applicant had been transferred as a matter of punishment. Therefore, it was urged that this O.A. should be allowed and the respondents be directed to post the applicant back to K.V. No.1 Bikaner or to the place of choice.

4. The Respondents, in their reply have contested the claim of the applicant. According to the respondents, the transfer guidelines, as well as, para 49 (K) of the Education Code envisages All India transfer liability for its employees. Transfer of an employee from one place to another is often necessary for proper management and control of the administrative machinery. According to the Respondents, the transfer of the applicant is on administrative ground from K.V. No.1 Bikaner to K.V. Lalgarh Jattan in public interest vide order dt. 25.10.2001. Therefore, the transfer being in accordance with the transfer guidelines, no interference is called for. The Respondents have also stated that the averment of the applicant that the Chairman Vidyalaya Management Committee has passed favourable remarks is far from truth. The Chairman Vidyalaya Management Committee vide letter dt. 9.3.2001 had addressed to the Principal K.V. No.1 Bikaner where he had stated that he had received complaints of holding tuitions by the applicant and a



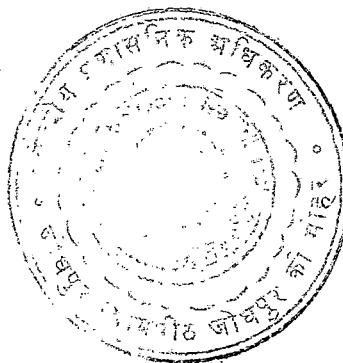
few other teachers of the Vidyalaya. This aspect was further confirmed by the Chairman on telephone on 20.2.2001. The Respondents further state that on an inquiry by the Chairman, the applicant himself had stated that he had started taking tuitions recently against his principles as no action had been taken against other teachers who were involved in taking tuitions for many years. The Respondents have further stated that the applicant was in the habit of threatening students for tuition to come to his house and awarding marks to the students as per his choice. The letter further states that the applicant was not only creating problems at K.V. No.1 Bikaner but at K.V. No.1 Khetri Nagar also. The respondents state that an inquiry was conducted into the affairs by one Shri R.P.Sharma, Education Officer and three teachers including the applicant were recommended for immediate transfer. The respondents have also stated that the applicant was lower in priority for posting to a place of choice. The Learned Counsel of respondents stated that the applicant has not made any grievance regarding any action being malafide. As a matter of fact, nobody has been impleaded as party by name. The transfer order had been issued after ascertaining the facts by making relevant inquiries. Therefore, there was no question of any inquiry immediately after the transfer of the applicant.

5. We have heard the Learned Counsel for the parties and have perused material available on record.

6. There is no dispute that the applicant holds a post which is transferable. The transfer of an employee may involve

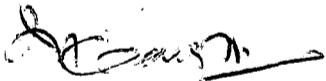
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inconvenience to him. The Hon'ble Supreme Court in the case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhawan & Another. (2002(1) SLJ 86) have held that transfer is an incidence of service and none has right to continue at one place. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting such transfer, the courts or the tribunals can not interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of management as against such orders passed in the interest of administrative exigencies of service concerned. In view of the principles laid down by the Hon'ble Supreme Court in this case, we have no hesitation in coming to the conclusion that it is for the administration to decide as to the place of posting of an employee. From the material made available before us, we have noticed that respondents have not transfer of the applicant as a substitute for punishment. The respondents have also not transferred the applicant merely because there was anonymous complaint against him. As a matter of fact, the respondents have taken care to make inquiries. The Chairman Vidyalaya Management Committee, as well as, the principal had recommended the transfer of the applicant in the interest of administration. On behalf of Respondent No.1, inquiry was also made by the Education Officer who also recommended that the applicant along with two other teachers be transferred from K.V. No.1, Bikaner. We are also not informed that any disciplinary



Ch. Jagdev Singh

proceedings had been initiated against the applicant. It is not necessary that every action of the employee may be followed by a charge sheet and disciplinary proceedings. To run the administration, the deployment of persons from one place to another becomes necessary due to administrative exigency. The respondents have also not violated the provisions contained in the circular letter dt. 5.4.2000 (Annexure - A-5), inasmuch as, the Chairman Vidyalaya Management Committee and the Principal both have recommended the transfer of the applicant. The inquiry was also preceded the transfer. Therefore, there was no need to conduct another inquiry after the transfer order unless it was necessary for taking disciplinary proceedings against the applicant. In view of the facts of this case, we do not find any justification to interfere with the orders of the respondents. Therefore, this O.A. is dismissed without any orders as to costs.


(J.K. KAUSHIK)
JUDICIAL MEMBER


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

B.

13/12/2003
Peter Downing

Part II and III destroyed
in my presence on 24.3.09
under the supervision of
section officer (J) as per
order dated 13.1.09

Section officer (Record)