

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH JODHPUR

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ORIGINAL APPLICATION NO. 164/2005
DATE OF DECISION : THIS THE 5TH DAY OF AUGUST, 2005

CORAM :

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER

.....
Madan Gopal Joshi S/o Shri Banshi Lal Joshi By caste Brahmin, aged about 49 years, Resident of Matra Om Kripa, Plot no. 30, Kailash Puri, Near Taparia Bera, Outside Chandpole, Jodhpur, at present posted and transferred from K.V.(Army)Jodhpur.

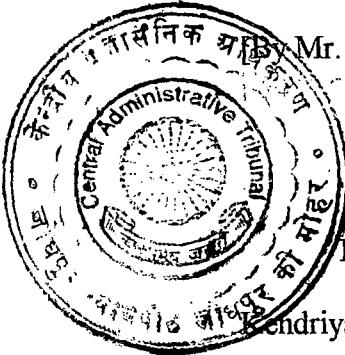
.....Applicant.

[By Mr. Nitin Trivedi, Advoate, for the applicant]

Versus

1. Kendriya Vidyalaya Sangathan Through Commissioner, 18 Industrial Area Shaheed Jit Singh Marg, New Delhi.
2. The Education Officer, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jit Singh Marg, New Delhi.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Jaipur.
4. The Principal, Kendriya Vidyalaya No. 1, Army, Jodhpur.
5. Shri Narendra Kumar Bohra, at present working as Librarian Kendriya Vidyalaya, Air Force, Suratgarh.

.....Respondents.



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

ORDER
(PER G.R.PATWARDHAN, ADMINISTRATIVE MEMBER)

The O.A. has been preferred by Mr. Madan Gopal Joshi who was posted at Kendriya Vidhyalaya (Army), at Jodhpur and admittedly, was transferred from that place to Suratgarh which he calls – a hard station. There are five respondents – first four, all Officers of the Kendriya Vidhyalaya Sangathan (K.V.S.) led by its Commissioner at New Delhi ending with the Principal, K.V.S. No. 1, Army, Jodhpur. The 5th respondent is Mr. Narendra Kumar Bohra described as working Librarian at K.V. Air Force, Suratgarh. Paragraph 1 of the O.A. gives particulars of the orders which are impugned. They are two, one dated 30th May, 2005 at Annex. A/1 through which respondent No. 2 the Education Officer at New Delhi transferred the applicant from Jodhpur to Suratgarh in public interest and respondent No. 5 Mr. Narendra Kumar Bohra was transferred from Suratgarh to Jodhpur on request. The second order dated 7th June, 2005 has been issued by the Principal, K.V. No. 1, Army, Jodhpur relieving the applicant in the afternoon of 7.6.2005

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with a direction to report at K.V.S. (Air Force), Suratgarh. The O.A. has been filed on 14th June, 2005 and its reply under the signature of Mr. R.P. Sharma, Principal , K.V. (Army), Jodhpur on behalf of all the official respondents on 28.6.2005. The private respondent has not filed any reply, although notice was served on him on 21.6.2005, as appeared from a postal A.D. Receipt.

2. With the consent of the parties, the O.A. is being disposed of at the admission stage.

3. Briefly stated the applicant would like us to believe that -

(a) He joined the KVS service as a Librarian on 7.7.1988 and was posted at Gandhidham (Gujarat) where he remained up to 4.7.1995, from July 1995 to August 1997 at Sri Ganganagar, from August 1997 to April 2003 at Ajmer and lastly from April 2003 to 7th June, 2005 i.e. up to the date of passing the order Annex. A/2, at Jodhpur.

(b) The respondent No. 2, the Education Officer, K.V.S., New Delhi passed an order dated 30.5.2005 by which the applicant has been transferred to K.V., Air Force, Suratgarh showing the nature of transfer as 'in the public interest' in terms of the Clause 10 (2) of the transfer Guidelines 2005 only to accommodate the private respondent who has been posted in place of applicant

(c) Clause 10 (2) speaks that where the transfer is sought by the teacher under Clause 8 of the guidelines after a continuous stay of two years at very hard stations and three years at other declared hard stations then in the case of the non availability of the vacancy at choice station, the vacancy shall be created to accommodate such employee by transferring junior most teacher of the same category to the transferred place.

4. Following grounds have been taken to assail the impugned orders :-

(a) Because there was neither any administrative exigency nor any public interest in transferring the applicant and the order has been passed with extraneous reasons and ulterior motives only to accommodate respondent No. 5, which is also clear from perusal of Annex. A/1 showing that respondent No. 5 has been ordered to be transferred at Jodhpur at his own request. Hence, the impugned orders dated 30.5.2005 and 7.6.2005

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are illegal, arbitrary and liable to be quashed and set aside.

(b) Sub Clause (2) of Clause 10 of the transfer guidelines 2005, says that where the transfer is sought under Clause 8 after continuous stay of two years at very hard stations and three years at other declared stations then in the case of non availability of vacancy at his choice station, the vacancy shall be created to accommodate him by transferring junior most teacher on such station and request to this effect was to be submitted before 18.2.2005 and as far as known to the applicant the respondent No. 5 did the needful before the due date.

(c) The wife of applicant is working as Pracheta in the Women & Children Development Department (Govt. of Rajasthan) at Mandore Panchayat Samiti, Jodhpur, so he should not be disturbed from the present posting station i.e. Jodhpur as one of the spouse has been posted here and his case is liable to be considered. One Smt. S.K. Mathur, despite being the junior most employee has been retained at the same place i.e. Jodhpur because of the fact that her husband is posted at Jodhpur.

(d) There is clear-cut discrimination in passing the impugned orders between two similarly situated persons and hence, the orders Annexs. A/1 and A/2 are required to be quashed and set aside.

(e) It is submitted that firstly respondent No. 5 is not at all entitled to be transferred at his choice station in terms of Clause 10 (2) as K.V. (A.F.) Suratgarh has been declared as hard station on 8.4.2005 only as per Annex. A/3 and the private respondent has not fulfilled the condition of remaining there for three years [on a hard station] in terms of aforesaid clause.

(f) The applicant was not the junior most employee as on 31.3.2005 and Mrs. S.K. Mathur is liable to be transferred who is junior most, if respondent No. 5 is to be transferred at choice station in view of Clause 10 (2) of the guidelines.

5. The applicant has prayed for the following relief :-

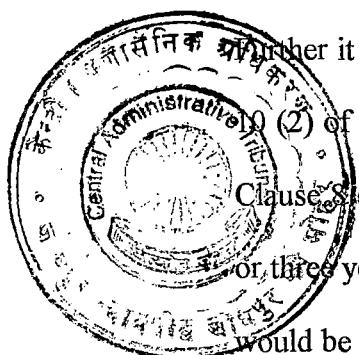
"By an order or direction in the appropriate nature, order dated 30.5.2005 (Annex. A/1) passed by the respondent No. 2 Education Officer, K.V.S., New Delhi and in pursuance of that, the order dated 7.6.2005 (Annex. A/2) passed by the respondent No. 4, the Principal, K.V. Army No.1, Jodhpur, may kindly be quashed and set aside."

6. It may be mentioned here that on 14.6.2005, an order granting an interim stay of operation of orders at Annexs. A -1 and 2 was granted and is still in force – mainly on



the contention of the applicant that he had not handed over charge, that there was no clear cut policy for transfer of non teaching staff and that respondent No. 5 had not put in three years of service at Suratgarh.

7. On the last date, the learned counsel for both the parties have been heard. Essentially the respondents have tried to counter the arguments of the applicant, which his learned counsel maintained on the basis of the O.A. by saying that the applicant has obtained interim orders by playing fraud and by saying that transfer guidelines under which he was transferred are not applicable as they relate only to the teaching staff whereas, these guidelines are applicable *mutatis – mutandis* to other staff also which finds mention in paragraph 18 of the transfer guidelines and to that extent the applicant did not come to the Tribunal with clean hands and so he does not need any consideration.



Further it has been said that transfer of the applicant has been effected under paragraph 10 (2) of the guidelines where it is clearly mentioned that if the transfer is sought under Clause 8 of transfer guidelines after a continuous stay of two years at a very hard station or three years in the North East or other hard stations then in certain situations a vacancy would be created even if it did not exist at the choice station. In continuation it is said that effort of the applicant to show that the private respondent No. 5 has been transferred without completing three years at a hard station (Suratgarh) is erroneous since Clause 10 (2) of the guidelines encompasses even those cases which require human compassion and the case of private respondent was not considered on the ground of completion of any specific period at Suratgarh (subsequently declared as a hard station) but otherwise. It is further said that the object of framing Clause 10 (2) is to ameliorate the hardships caused to those who stayed for more than 2-3 years at hard stations or of those teachers who due to medical grounds or death of spouse require special consideration. A mechanism has been provided through a methodology and *per se* this cannot be challenged as unreasonable.

8. Through the written reply, it has been further submitted that unless it is shown that the transfer is against statutory rules or has been ordered by some one without jurisdiction or is actuated by malice, it should not be interfered with lightly by the Court/Tribunal as for the day to day administration, the authorities are the best judges to manage its affairs

and in doing so they have to take into account many factors like administrative exigency, availability of vacancy, availability of qualified staff and need to keep the institution going. The reply and the arguments end by saying that unless the applicant is able to show specific bias or prejudice, it will be improper to colour the entire transfer as having been born out of such attitudes.

9. The learned counsel for the applicant has strongly contended that as per the transfer guidelines, the junior most person in the category has to be transferred and the list of teachers appended at Annex. A/4 clearly showed that one Mrs. S.K. Mathur, whose date of birth was 21.12.1993 and date of joining at Jodhpur 16.8.2004 was the junior most among six persons including the applicant Mr. Madan Gopal Joshi who was appointed on 7.7.1988 and joined at Jodhpur on 5.4.2003. It was his contention, therefore, that it is Mrs. Mathur who needs to be shifted out of Jodhpur in case the respondents are keen to bring respondent No. 5 Mr. Narendra Kumar Bohra to Jodhpur from Suratgarh. He was specifically asked as to what according to him were the causes that actuated his transfer to permit use of term 'mala fide' against all the respondents who were arrayed in their official capacity without mentioning their names. To this, his reply was that there was adequate material to show that the respondents were prejudiced

against him which could appear from the fact that the junior most Librarian Mrs. Mathur was not transferred and it should be taken as an adequate indication of malice.

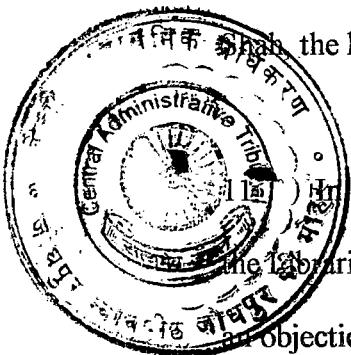
A copy of the guidelines was made available by the learned counsel for the respondents. Specific attention was drawn by him towards the opening sentence of the guidelines where it was mentioned that the transfers in the K.V.S. would be made as far as practicable in accordance with the guidelines. He drew further attention to the provisions contained in item 6 (a) dealing with transfers during summer vacations; item 7 dealing with transfers to be done against the vacancies on the basis of request, sub item 5.1, 5.2, 5.3 and 5.4 of item 7 dealing with preference among different categories like spouse of a Sangathan employee, Central Government employee, autonomous bodies of Public Sector Undertakings under the Central Government or the employees of the State Government or its autonomous bodies or P.S.U., to show that spouse of a Sangathan employee stood on a better footing then the spouse of a State Government employee. He specifically mentioned that Mrs. Mathur to whom the applicant has referred to, as a

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junior most Librarian happened to be spouse of another K.V.S. staff and thus stood on a better footing than the applicant whose wife was a Rajasthan Government employee. Further the learned counsel drew attention to Clause 10 (2) to show that the identification of Suratgarh as a hard station was a very recent phenomenon and that respondent No. 5 Mr. Narendra Kumar Bohra, had applied for transfer much earlier to such categorisation – in February 2005 itself and to that extent, the entire argument of the applicant that the respondent No. 5 was transferred from a hard station without completing the minimum stay has no basis. He also produced in original the applications given by the private respondent for his transfer and a perusal of the same confirm the submissions of Mr. K.K.



the learned counsel for the respondents.

As far as the argument of the applicant relating to the comparative seniority of the Librarian at Jodhpur station is concerned, the learned counsel for the respondents took objection to the submissions by saying that the insistence of the applicant to prove that Mrs. Mathur happened to be the junior most employee, is incorrect as the relative seniority to categorise a person as a junior most, is not what has been demonstrated by the applicant in Annex. A/4. He maintained that there are other factors also to determine their inter se relativity and the submission that by virtue of the date of joining at Jodhpur in 2004, she was the junior most is only one part of the story. He, therefore, submitted that the factors that have weighted with the respondents in shifting the applicant are those that are permissible under the guidelines as well as public interest.

12. The transfer has not been challenged on the ground of lack of jurisdiction. The allegations of mala fide, as we have seen are not borne out by the submissions and pleadings. There is no statutory rule that has been violated. The guidelines themselves make it amply clear that transfers can be made as far as practicable. Per se, therefore, it is difficult to hold that the transfer is vitiated.

13. The learned counsel for the applicant brought to our notice a S.B. judgement of the Hon'ble Rajasthan High Court in Dr. Ajay Kumar Sharma Vs. State of Rajasthan and Others reported in WLC (Raj.) 2003 (1) 438. This was a case where the petitioner who was a Associate Professor in Radio Therapy in Medical College Jodhpur was transferred

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first in 1992 to Bikaner, then in 1998 to Ajmer, again to Bikaner in 1999, again to Ajmer in 2000, whereas another Doctor of Bikaner transferred to Ajmer did not obey the same and was finally adjusted at Bikaner itself. Petitioner there tried to show that while this Doctor was at Bikaner for seventeen years and did not obey transfer order to Ajmer but, was successful in getting it cancelled, he was compelled to move out and that this showed how the State Government had acted without any cogent reasons to accommodate private respondent. After hearing the parties, the Hon'ble Court came to the conclusion that as the orders of the State Government in accommodating the second Doctor resulted in transfer of the petitioner, it could not be said that it was an administrative exigency and so the petition was allowed and the orders transferring him from Bikaner to Ajmer was quashed. The Court further directed the State Government to formulate a transfer policy for Doctors. The learned counsel wanted us to believe that the instant case is nearly similar to the one discussed in the judgement of the Hon'ble Rajasthan High Court. We do not agree. In the Doctor's case, individuals were repeatedly subjected to transfers and there was no mention of any policy or guidelines to have been adheared to in doing so. In the instant case, both the sides referred to guidelines and the applicant attempted to show that the guidelines do not allow him to be transferred and private respondent brought in his place. He further alleges that one Mrs. Mathur, who incidentally has not been made a party, should have been transferred and he should have been accommodated at Jodhpur. Obviously, therefore, the case cited by him does not have any relevance to the issues before us. Also Mrs. Mathur is not a party in the O.A.



14. Applicant has not been able to show violation of any of his rights. Hon'ble the Supreme Court has repeatedly held the view that transfer of an employee is not only an incident but a condition of service and it is not subject to judicial interference as a matter of routine. In National Hydroelectric Power Corporation Limited Vs. Shri Bhagwan and Another reported in 2002 SCC (L&S) 21, their Lordships of the Supreme Court have observed that :-

“5. It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service,



necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

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15. That being the case, we do not propose to proceed any further in the matter. The O.A. lacks merit and is, therefore, dismissed with no order as to costs. Interim Relief stands vacated.

(G.R.Patwardhan)
Adv. Member

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

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Part II and 1/3 copies of
Safety presentation 17-6-14
under the supervision of
Section Officer (17-6-14)
order dated 18/12/03

W.C.
Section Officer (Report)

12/11/04

*Copy for
R. K. A.*

11/8/05

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W.H.
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