

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**ORIGINAL APPLICATION NO. 191/2009
&
MISC. APPLICATION NO. 147/2009**

Date of order: 17-2-2010

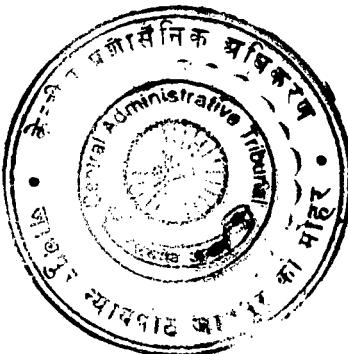
CORAM:

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

Smt. Manju Garg W/o Shri S.K. Garg, aged about 49 years, by caste Garg, r/o 410, Gandhi Basti, Ward No. 14, Sriganganagar, presently working on the post of TGT English in Kendriya Vidyalaya, Sriganganagar Cantonment.

...Applicant.

Mr. Manoj Bhandari, counsel for applicant.



VERSUS

1. The Union of India through the Secretary, Ministry of Human Resource, New Delhi
- (Deleted vide order in MA No. 147/2009)
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheedjeet Singh Marg, New Delhi – 110 016.
3. The Assistant Commissioner, Kendriya Vidyalaya Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
4. The Principal, Kendriya Vidyalaya, Sriganganagar Cantonment.

... Respondents.

Mr. V.S. Gurjar, counsel for respondent Nos. 2 to 4.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The applicant is working as Trained Graduate Teacher (TGT) English in Kendriya Vidyalaya, Sriganganagar Cantonment. On 22nd June, 2009, a show cause notice was

issued to her under Rule 16 of CCS (CCA) Rule, 1965. The statement of imputation of misconduct reads as follows:

"That the said **SMT. MANJU GARG** while working as **TGT (ENGLISH)** in Kendriya Vidyalaya **SRI GANGANAGAR CANTT** during the academic year 2008-09 has failed to achieve the best standard and optimum quality of education. She has produced the pass percent **81.82** result with **P.I.29.55** of class X – SECTION 'B' (Tenth-B) for CBSE Examination 2008-09, which was very much below to the Jaipur region result pass % i.e. 96.82 & P.I.42.95.

Such a low percentage has adversely affected the result of this vidyalaya as well as KVS. Thus, the performance of said **SMT. MANJU GARG, TGT (English)** amounts to lack of devotion / dedication and dereliction to duties as subject teachers of Kendriya Vidyalaya. Thus, he/she has violated Rules 3(i), (ii) & (iii) of CCS Conduct Rules, 1964 as extended to the employee of KVS."



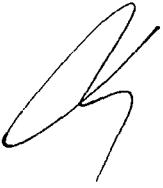
2. The applicant replied to the charge-sheet vide her letter dated 6th July, 2009 explaining the reasons why six students failed to pass in the 10th standard examination. It is stated in her explanation that these six students were not only slow learners but very careless, irregular and indiscipline and that she tried her best to improve the performance of the students. It is also explained by her that the failure of these students was not on account of her lack of dedication or dereliction of duties. After considering her explanation, the Principal of the Kendriya Vidyalaya, Sri Ganganagar Cantt. imposed the penalty of reduction of one increment for a period of one year without cumulative effect and not adversely affecting her pension vide order dated 30th July, 2009. Thereafter, by order dated 07.08.2009 (Annex. A/1) issued by the Assistant Commissioner, K.V.S., Regional Office, Jaipur, the applicant was transferred



from K.V. Sri Ganganagar to K.V. Dungarpur on administrative ground by invoking the provision of para no. 8 (iv) of the transfer guidelines. The applicant has challenged the aforesaid transfer in this Original Application. It is contended by the applicant that a slight reduction in the performance of the students in examination cannot be a ground for transferring the teacher. In the previous years of 2004-05, 2005-06, 2006-07 and 2007-08, the pass percentage was 97%, 98%, 93% and 100%, respectively. In 2008-09, the pass percentage in the class was 81.8%. The Kendriya Vidyalay has not fixed any specific criteria about the performance to be achieved. Merely because in one year, the performance is slightly less, it cannot be said by any stretch of imagination that the applicant is guilty of non-performance. The applicant not only teaches the students of 10th standards but also other standards from 6th to 9th standards and result in those classes were absolutely perfect. The applicant has taken extra classes in autumn and winter breaks. While the applicant was planning to file an appeal against the penalty, the transfer order has been issued which has caused tremendous anguish. The applicant's daughter is studying in the 10th standard of the same school and the presence of the applicant is essential to help her daughter's education. There is no Kendriya Vidyalaya in Dungarpur having 10th standard. Even on this ground also, the transfer is punitive and unreasonable. It has been done by way of punishment and therefore it amounts to double punishment for the same charge. The Principal of the school was annoyed with the applicant

because the son of the Principal failed in English during the year 2005-06. The applicant was asked by the Principal to teach his child at his residence but this could not be accepted by the applicant. The transfer is also unreasonable as it has been done during midst of academic session. There is a limit upto which the teacher can contribute in the success of the students. The transfer is violative of Articles 14, 16, 20 as well as 311 of the Constitution of India. The transfer guideline in para 8(iv) is ultra vires of the Constitution since it gives the power to the authorities to inflict double punishment and is also against the disciplinary rules.

3. The respondents have filed a reply to the Original Application. It is stated in the reply that the employees of Kendriya Vidyalaya are liable for transfer anywhere in the country. The new transfer guidelines have been approved by the Board of Governors in its 74th meeting on 28th June, 2006. The respondents have relied on a number of judgments of the Hon'ble Supreme Court in support of their contention that unless the transfer is against any rules or is actuated with malafide, it should not be interfered with in a judicial review. In Union of India vs. Janardhan Debanath, (2004) 4 SCC 245, at page 251, it has been held by the Hon'ble Apex Court that utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth



functioning of the administration. The transfer of the applicant was made in public interest by the competent authority. There is no malafide. On earlier occasions also in the year 2002-03, minor penalties were imposed on the applicant for poor performance by the students (Annex. R/1, R/2, R/3, R/4, R/5 and R/6). The students of class 10th made a complaint against the applicant stating that the applicant was not teaching properly. After considering the request of the applicant regarding adverse effect on her daughter's education, the transfer order has been modified to Kendriya Vidyalaya, Bhilwara vide order dated 04.09.2009. In the case of **H.H. Lall vs. K.V.S. & Ors.** (OA No. 256/2008), this Tribunal upheld the transfer of a teacher who was issued a charge-sheet. The said transfer was also effected as per transfer guideline under para 8 (iv). The Hon'ble High Court of Rajasthan at Jodhpur has upheld the order of this Tribunal in the said O.A.

4. I have heard the learned counsel for the applicant Shri Manoj Bhandari and learned counsel for the respondent Nos. 2 to 4, Shri V.S. Gurjar at length. I have also perused all the documents on record carefully.

The learned counsel for the applicant referred to the following citations:


"(1). **2002 (1) WLC (Raj.) 189** - (State of Rajasthan & others vs. Lala Ram).

(2) **AIR 1988 SC 2005** - (The Governing Body, St. Anthony's College, Shillong and others vs. Rev. Fr. Paul Petta of Shillong East Khasi Hills.

- (3) **(1997) 6 SCC 169** – (Arvind Dattatraya Dhande vs. State of Maharashtra and others).
- (4) **1992 (2) WLC (Raj.) 669** – (Richhpal Singh vs. State of Rajasthan and another).
- (5) **1994 Suppl (2) SCC 666** – (Director of School Education, Madras and others vs. O. Karuppa Thevan and another).
- (6) **WLR 1991 (S) Raj 136** – (Narpat Singh Rajpurohit vs. State of Rajasthan).
- (7) **AIR 1986 SC 1571** – (Central Inland Water Transport Corporation Ltd. and another vs. Brojo Nath Ganguly and another : and Central Inland Water Transport Corporation Ltd. and another vs. Tarun Kanti Sengupta and another).
- (8) **AIR 2002 SC 1124** – (Baldev Singh Gandhi vs. State of Punjab and others).
- (9) **(1979) 3 SCC 489** – (Ramana Dayaram Shetty vs. International Airport Authority of India and others).

The learned counsel for the respondents referred to the recent order of this Tribunal in H.H. Lall vs. K.V.S. & Ors. (OA No. 256/2008) which was upheld by the Hon'ble High Court of Rajasthan, besides several judgments of the Hon'ble Apex Court which are mentioned in the reply filed.

5. The scope of judicial review of transfer orders has been the subject matter of several judicial pronouncements. The central theme running through most of the judgments of the Hon'ble Supreme Court on the issue of transfer of employees is that Courts/Tribunals should not interfere unless there is malafides or violation of rules or guidelines. The respondents have also relied on judgments which underline the same principles. In particular



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they have relied on the judgment of the Hon'ble Apex Court in the case of **Union of India v. Janardhan Debanath** (2004) 4 SCC 245 which dealt with the issue of transfer as punishment. I have considered the facts of the present case keeping in mind the aforesaid judgments of the Hon'ble Supreme Court. It is now well settled that the scope of judicial review is restricted to examining whether there is malafides or violation of rules. The applicant has been transferred because of the minor penalty imposed on her. The charge for which minor penalty was imposed relates to lower pass percentage of the X Class in the year 2008-09 compared to the average for the Jaipur region. The said transfer has been done by invoking the transfer guideline No.8 (iv) which reads as follows:

"8. ADMINISTRATIVE TRANSFERS ON OTHER GROUNDS

Besides transfers to eliminate surplus, as indicated in Para 7 above, other administrative grounds on which staff may be transferred are as follows: -

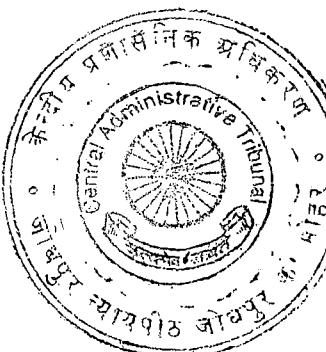
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(iv) On grounds of misconduct or unsatisfactory performance, as evidenced by issue of charge-sheet under Rule 14 of the CCS (CC&A) Rules, 1965 or imposition of a minor penalty under Rule 16 of the CCS (CC&A) Rules, 1965."

6. The question that needs to be examined is whether the said guideline 8 (iv) can be invoked in each and every case of misconduct for which minor penalty is imposed or for which charge sheet is issued. **There is a distinction between the existence of a power and its exercise.** The exercise of the power to transfer an employee on administrative grounds, vested by a rule or a guideline should be based on the existence



of nexus between the objective of the transfer and the administrative problem that is sought to be addressed. In the present case it is important to see what is the nexus between the nature of the misconduct of the employee and the administrative exigency. The alleged misconduct in this case is the lower pass percentage in a particular year by a particular class of students taught by the applicant. If the misconduct alleged in the minor penalty or charge sheet is such that the continuation of the employee in the same station is going to adversely affect the investigation or the harmonious functioning of the school, there could be an administrative justification for effecting a change in the location of the employee. **In the present case the respondents have not produced any evidence to show that shifting of the employee is the administrative solution to the problem of lower pass percentage.** No evidence based on any scientific study has been produced to prove that the teacher alone is responsible for the lower pass percentage of a particular group of students in a particular year or alternatively to show that shifting of the teacher would ipso facto result in improving the pass percentage. The pass percentage of a Class of students in a particular year depends not only on the contribution and efforts made by the teacher but also several other factors such as the caliber and efforts made by the students themselves, personal and family problems as well as health related problems faced by some students during the year. The respondents have not been able to establish any nexus between the objective to be achieved

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by transferring the employee with the nature of the misconduct. It does not appear therefore that the transfer was made for real administrative exigency. When there is no evidence to prove that there was an administrative exigency, it amounts to malafide exercise of power. In **State of Punjab and Anr. vs. Gurdial Singh and Ors.** (AIR 1980 SC 319, at page 321), the Hon'ble Supreme Court explains the meaning of malafides in relation to exercise of power as follows:

(KRISHNA IYER, J.)

.....

"9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vide. Pithily put, bad faith which invalidates the exercise of power – sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions – is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: " I repeat that all power is a trust – that we are accountable for its exercise – that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act."

7. The respondents have relied on the decision of this Tribunal in H.H. Lall (OA-256/2008) wherein the transfer of a teacher of Kendriya Vidyalaya invoking the powers of guideline 8 (iv) was upheld and the Tribunal's order was also upheld by the Hon'ble High Court. I have carefully gone through the facts of that case. It is seen that the alleged misconduct in that matter did not relate to lower pass percentage of a group of students. Therefore I am unable to accept the contention of the respondents that it can be applied to the present case. The alleged complaint made by the students in this matter is anonymous and therefore should not have been accepted as a valid administrative ground for action. Even the date of receipt of complaint is not seen on the photocopy (Annex. R/10).

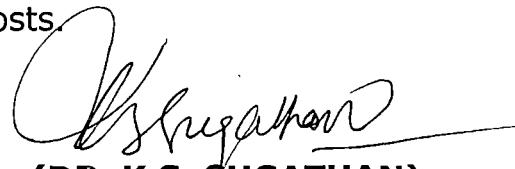
8. The respondents have filed an M.A. (No.147/2009) seeking deletion of the respondents No.1 and 2 (i.e. Union of India and Commissioner Kendriya Vidyalaya) on the ground that the Kendriya Vidyalaya Sangathan is an autonomous organisation and all suits must be made against the Joint Commissioner of the KVS. I have considered the reasons given by the respondents in their M.A. It is true that the Kendriya Vidyalaya Sangathan is an autonomous organisation with its own set of rules and regulations and in individual transfer matters it does not need to seek orders from Union of India. Therefore, there is a case for deleting respondent No.1. However the same cannot be said about deleting respondent No.2, because the applicant

has also challenged the validity of transfer guideline 8 (iv), which is issued by the Commissioner, Kendriya Vidyalaya. Therefore the M.A. is partly allowed. Respondent No.1 is ordered to be deleted from the list.

9. In view of the above discussion, I am of the considered view that the applicant has made out a strong case for quashing of the transfer order, but not for declaring transfer guideline 8 (iv) as illegal and ultra vires.

10. For the reasons stated above, the Original Application is partly allowed. The transfer order dated 07.08.2009 (Annex.A/1), the relieving order dated 07.08.2009 (Annex.A/2) as well as the subsequent transfer order dated 04.09.2009 are all quashed and set aside. The interim order is made absolute.

There shall be no order as to costs.



(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

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