

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 567 of 2011

Dated this the 12th day of April, 2012

CORAM

Hon'ble Mr. B K Sinha, Administrative Member

Narendra Singh Chauhan S/o Shri Bharat Singh Chauhan,
Resident of Village and Post Thakarda, Tehsil Sagwada
Dist. Dungarpur (Raj). (Vehicle Driver C/o Jawahar Navodaya
Vidyalaya, Thakarda, District Dungarpur (Rajasthan).Applicant

(By Advocate Mr. R.S.Saluja)

Vs.

1. The Commissioner, Navodaya Vidyalaya Samiti,

A39, Kailash Colony, New Delhi.

2. The Dy.Commissioner in-charge,

Navodaya Vidyalaya Samiti,

Rajasthan Region, 18 Sangram Colony,

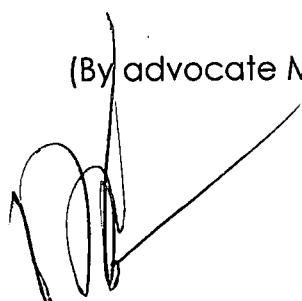
Mahaveer Marg, C.Scheme, Jaipur.

3. The Principal, Jawahar Navodaya Vidyalaya,

Hurda, Tehsil Bhilwara, District Bhilwara (Raj).

.. Respondents

(By advocate Mr. V.S.Gurjar)



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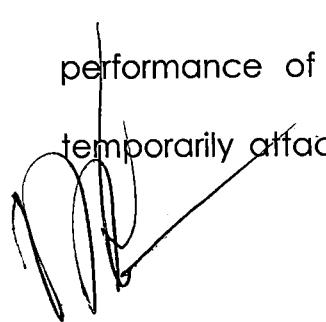
O R D E R (Oral)

The instant OA has been filed against the order of the Principal, Jawahar Navodaya Vidyalaya, Hurda, Tahsil Bilwara, Dist. Bilwara, relieving the applicant Narendra Singh Chauhan, Driver from his duties with effect from 26.11.2011 in view of his anti-school activities with immediate effect. The applicant is directed vide this order to mark his attendance in the Regional Office, Jaipur.

2. The applicant has prayed for the following reliefs against this order.
 - (i) ***The order dated 26th July, 2011 (Annexure.A/1)may kindly be quashed.***
 - (ii) ***That pursuant to aforesaid, the respondents may kindly be directed to permit the applicant to peacefully perform his job as Vehicle Driver at a place he is permanently posted.***
 - (iii) ***Any other favourable order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.***
 - (iv) ***Original Application filed by the applicant may kindly be allowed with costs.***

Case of the applicant in brief:

3. The applicant is a permanent employee of the Jawahar Navodaya Vidyalaya, Thakarda, Tahsil Thakarda, Dist. Dungarpur and has been attached to various centres of the Jawahar Navodaya Vidyalaya but has never been permanently transferred to any of these places. The applicant had become permanently disabled by 40% while he was on leave at his native village. **[A3]**. Though the applicant is the seniormost amongst the Drivers he has not been given any promotion nor selection grades on completion of 9 & 15 years of service. **[A4]**. The applicant submits that he was transferred from Dungarpur to Purani Chavani, Dholpur. As the applicant was feeling handicapped in performance of his duty at Dholpur on account of his disability, he was temporarily attached at Jawahar Navodaya Vidyalaya, Thakarda **[A5]**. The

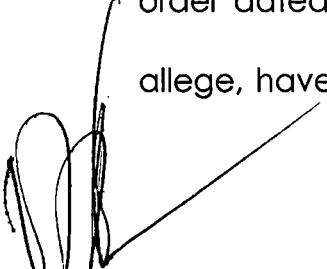


applicant filed a writ application which appears to have been decided on 21.1.2011 against him. He subsequently joined Jawahar Navodaya Vidyalaya, Hurda where he was being paid his salary intermittently. After a stay of 6 months there, the impugned order [A1] has been passed transferring him to Regional Office, Jaipur. The applicant further submits that studies of his children have been suffered on account of his frequent transfer. He has been harassed by filing of false complaint against him at Thakarda by the Principal. His facilities, to which, he is otherwise entitled under the Physical Disabilities Act, 1995 are also been gradually withdrawn. Therefore, the applicant has sought the aforementioned reliefs.

4. In his Rejoinder Application the applicant reiterates that "**applicant was originally appointed as a permanent employee in Jawahar Navodaya Vidyalaya, Thakarda, and it is on this ground the applicant is submitting that he is not to be treated an employee of Jawahar Navodaya Vidyalaya, Hurda and then subjected to frequent transfers.**"[page 1 of the RA]. In this very document the applicant has emphasized his harassment and has requested for release of his salary and that he be permitted to work peacefully at a place. The applicant also denies that he had ever tried to commit suicide.

Case of the respondents

5. The respondents informed that after having joined at the Regional Office, Jaipur on 26.7.2011 the applicant has been directed to join at Navodaya Vidyalaya, Hurda, District Bilwara, where he submitted his joining on 14.9.2011. Thus the order dated 26.7.2011 has already been superseded by the subsequent order dated 13.9.2011 and has been complied. These facts, the respondents allege, have been concealed from the Tribunal. The applicant had drawn an



advance of Rs. 17000/- which indicates that his charges are not been paid are not true. The transfer of the applicant to Hurda had been made at his own request so that he could work according to his liking. The respondents have also raised the issue of jurisdiction of the Tribunal in interfering with the orders of transfer and have relied upon the decided cases of **State of UP Vs. Gobardhan Lal (2004)11 SCC 402, Airports Authority of India V. Rajeev Ratan Pandey, (2009) 8 SCC 337, National Hydro Electric Power Corporation Ltd. Vs. Shri bhagwan, (2001) 8 SCC 574, and Union of India Vs. Modiluft Ltd. (2003) 6 SCC 65.**

6. The respondents have further made serious allegations against the personal conduct and indiscipline of the applicant. The matter became so serious that it had to be reported to the police and the applicant was arrested. **[R6 to 8].** He has also been accused of drunken and disorderly behavior. It has been alleged that he even did not spare the Principal and was frequently abusing him. The respondents submit that the transfers of the applicant have either been made at his own request or on account of his unruly behaviour. The respondents have vehemently argued that the OA has no merit and is fit to be discharged.

***Facts -in- issue**

7. Having perused the pleadings of rival parties, the documents adduced by them and having heard the argument of the learned advocates on their behalf, the following facts-in-issue emerged:-

(i) To what extent can this Tribunal legitimately intervene in the transfer matters?

(ii) Whether any relief is due in the instant case to the applicant?

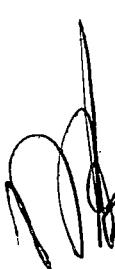
To what extent can this Tribunal legitimately intervene in the transfer matters?

(Signature)

8. It must be clarified that in so far as the first question is concerned that the powers of the Tribunal to intervene in cases of transfer of Government employees are indeed limited. Transfer is a necessary incident inherent of service and are carried out by the Departments/Ministries/Organisations. According to the requirement of the services that these institutions are required to perform or deliver. Transfer to a desired place or continuation of an employee at a particular place of posting indefinitely for long periods is not to be construed as a right of the individual employee. In any form of contestation between the interest of the individual employees and the larger public interest it is later that will take precedence. The scope of intervention only arises when there is sufficient evidence forthcoming that there has been a breach of rules of natural justice or malafide has been established beyond reasonable doubt.

In the case of **State of UP Vs. Gobardhan Lal (2004) 11 SCC 402** the Apex Court held as under:

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfer or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any statutory provision.

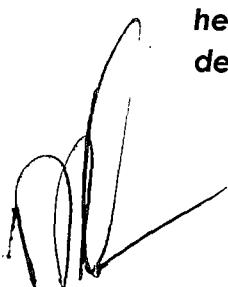


8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are appellate authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of malafides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

9. The Departments normally have their transfer policies and guidelines. It is normal for the employees to approach the court s/tribunals wherever they feel that the transfers are taken place in violation of these principles/guidelines. However, the Hon'ble Apex Court has clearly held in **Airports Authority of India V. Rajeev Ratan Pandey, (2009) 8 SCC 337:**

"2.Respondent 1 challenged the order of transfer by filing a writ petition before the High Court on the grounds viz that the order of transfer has been issued against the transfer policy inasmuch as it provides that the inter-regional transfers shall not be made before the incumbent completes at least five-year tenure in that region, that the official shall not normally be transferred within region second time unless all others in that cadre have done one turn of out of region transfer; that except in cases where operational/administrative reasons warrant, transfers shall normally be avoided and transfer when made shall be in accordance with the seniority at the station in the region.

10. In the writ petition, the transfer order has been assailed by the present Respondent 1 on the sole ground that it was violative of transfer policy framed by the appellant. The High Court, did not even find any contravention of transfer policy in transferring Respondent 1 from Lucknow to Calicut. In a matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.



11. In the present case, the High Court fell into a grave error in staying the transfer order which, if allowed to stand, may cause prejudice to the administrative functioning of the appellant."

10. The rest of the judgments cited by the respondents are not strictly relevant to the facts of the instant OA. However, from the two aforesaid judgments it is more than clear that transfers as incidents of service lie principally within the domain of the organizations Ministries./Departments/Governments themselves. Any intervention from the Tribunals/Courts has to come only as a matter of exception rather than the rule. In order to justify/earn an intervention the applicant has to show a violation of the rules of natural justice or of some statute or the fundamental rights of the applicant. In the instant case there is nothing on record to indicate such violation which may call for the intervention of the Tribunal.

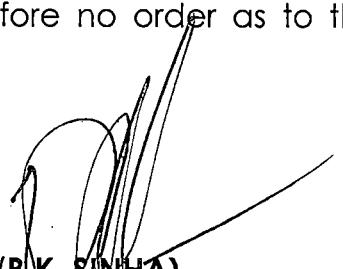
Whether any relief is due in the instant case to the applicant?

11. The fundamental rule of equity is that those who come to the Court must do so with clean hands. In the instant case there have been serious allegations of misconduct arising from drunken and disorderly behaviour, flouting of authority and serious breach of discipline. On one occasion the applicant and his wife entered the office of the Principal Smt. Vandana Kulshreshth and abused her and other members of the staff over the issue of allotment of quarters. They also threatened to put them to bodily harm and commit suicide. They further broke open the lock of quarter No.07 and forcibly occupied the same. In this regard the report of the SP, Dungarpur is relevant. [A12]. The Additional District Collector and the Member Secretary of the Public Grievances and Vigilance Committee recommended departmental action against the applicant.[A13] The applicant was arrested and was enlarged on bail[A6 to A8]. These incidents find the applicant *prima facie* guilty of gross

indiscipline and breach of peace. It is also apparent that some of the transfers which the applicant has undergone have been on account of his own behaviour and in the interest of maintenance of peace and order in the school.

12. It is also to be noted that the applicant had claimed 40% disability whereas the respondents have adduced evidence to show that he only suffers with 10% physical disability. The respondents have produced a medical certificate [A3] in support of their statement. The respondents have also resisted the allegation that he has not been granted a scale promotion due on completion of 9, 15 years of service in Navodaya Vidyalaya Samithi as the grant of these scales are not relevant to the facts of the case.

13. In view of the aforesaid discussions I find that the applicant has failed totally to indicate any ground of violation of laws of natural justice or instances leading to conclusion of malafide against the respondents. On the other hand there has been sufficient evidence forthcoming from the respondents to establish gross indiscipline and misconduct on part of the applicant. The process of court cannot be hijacked or abused to serve and justify failings and indiscipline of individual employees. The applicant is further responsible for ~~making~~ perjurious statements in his OA. I would have been inclined to award costs to the applicant on account of this vexatious litigation but would resist from the same considering the fact that he is a low paid employee and any such order would also impinge upon his family. Therefore no order as to the costs.


(B.K. SINHA)
Administrative Member