

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.423/2014
with
Misc. Application No.290/00051/2015

Jodhpur this the 09th day of April, 2015

 CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Geeta Choudhary W/o Shri Anil Choudhary, aged about 37 years, R/o 55-56, Baldev Nagar, Makadwali Road, Ajmer, Rajasthan and at present posted at Jawahar Navodaya Vidhyalaya, Rajsamand.

.....Applicant
By Advocate: Shri Sanjay Nahar.

Versus



1. The Commissioner Navodaya Vidhyalay Samiti, A-28 Kailash Colony, New Delhi-110048.
2. The Deputy Commissioner, Navodaya Vidhyalay Samiti Jaipur Region (Rajasthan, Haryana & Delhi States) having its Regional Office at 18, Sangram Colony, Mahaveer Marg, C-Scheme, Jaipur.
3. The Deputy Commissioner, Navodaya Vidhyalay Samiti, B-15 Institutional Area, Sector 62 Noida 201307 UP.
4. Mr. Manish Kumar Joshi, PGT (Chemistry), presented posted at Boudh, Orissa.

.....Respondents

ORDER (Oral)Per Justice K.C. Joshi, Member (J)

In the present OA, the applicant is aggrieved of the order No.1502 dated 12.11.2014 and order No.1503 dated 12.11.2014 by which respondent No.4 has been transferred at the place of the applicant and applicant has been transferred from Rajsamand to Boudh, Orissa.

Therefore, the applicant has prayed for the following reliefs:-

- I. The impugned order No. 1502 dated 12.11.2014 qua the respondent No.1 (Annex.A/1) and order No.1503 dated 12.11.2014 qua the applicant (Anex.A/1A) may kindly be quashed and set aside.
- II. Any other order or direction which this Hon'ble tribunal deems just and proper may also be passed in favour of the applicant.
- III. Cost of original application may also be awarded in favour of the applicant."

2. Brief facts of the case, as stated by the applicant, are that the applicant was posted as PGT (Chemistry) in Navodaya Vidyalaya, Rajsamand on 19.8.2009 and since then he has been working at Rajsamand and completed five years. Husband of the applicant is also a Government servant working in JLN, Hospital, Ajmer. Under the transfer policy dated 4.4.2012, the Navodayalay Vidyalaya Samiti (NVS) issued an order in February, 2014 by which applications were sought for transfer in

regional offices issued letters calling/inviting applications for transfer in the prescribed performa. As per the guidelines it is provided that if the spouse of the employee is also working in other organization, then efforts may be made to post the NVS employee against the available vacancy without displacement of an NVS employee at the desired station where spouse is posted. The respondents No.4 is a fresh appointed of 4.2.2013 who was posted at Jawahar Navodaya Vidyalaya, Boudh. Under these facts and circumstances, when the applicant was posted at JNV, Rajsamand and her tenure of ten years was also not completed so she was not liable to be transferred on administrative ground/displacement and further owing to posting of her husband in Rajsamand in the State services, such transfer could not be made. The respondent No.4 was also not entitled to have request transfer to Rajsamand because he has not completed five years at JNV, Boudh, as he is fresh appointee of the year 2013, but transfer of respondent No.4 has wrongly been made by displacing the applicant. The applicant has further stated that in the guidelines for transfer the competent authority has been prescribed under item No.12, according to which, the transfer of PGT can be made only by the Joint Commissioner and the present transfer order has been passed by the Deputy Commissioner, who is not the competent authority. In the order of February, 2014 the applications are invited to the regional offices

to the headquarter and individual details in respect of each staff is to be verified by the regional office and since respondent No.4 was not having entitlement for his transfer, so the details in the prescribed format was not verified by the regional office. The applicant has further stated that she is suffering from disease of Deep Vein Thrombosis for the last about 11 years and is continuously under treatment and long journeys are to be avoided. Her daughters are studying in class VI and III, therefore, mid-session transfer is contrary to the requirement. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for quashing the impugned orders.

3. By way of reply, the stand of the official respondents is that the applicant has been transferred to JNV, Boudh in relaxation of provisions of Transfer Policy 2012 under the approval of the Competent Authority i.e. Chairman, NVS who may relax any or all the provisions of the policy for transferring a particular employee depending upon the need of the organization. The transfer of the applicant is not in violation of transfer guidelines but is in consonance to the same. The transfer order has been issued under the signature of the Dy. Commissioner who has merely conveyed the approval of the competent authority for the transfer in question. The applicant has been rightly ordered to be transferred to JNV, Boudh in relaxation of the transfer policy wherein there is no requirement

by the competent authority. The respondents have further submitted that administrative transfer is done when retention of employee at a particular station is not conducive for the functioning of vidyalaya and in that situation the employee concerned is charge sheeted for misconduct. Moreover, an employee having all India transfer liability is liable to be transferred to any place in the interest of the organization and transfer to a desired location cannot be claimed as a matter of right. While affecting transfers, organizational interest shall be given uppermost consideration and problems and constraints of employee shall remain subservient. Therefore, the respondents prayed that the OA filed by the applicant is liable to be dismissed.

4. Respondent No.4 has filed a separate reply submitting that he has been transferred for administrative reasons notwithstanding on account of grave difficulty, ill health and poor financial position of his family. The transfer policy is a comprehensive policy wherein point wise calculation is mentioned about transfer. This policy also contains power to relax the requirements and the applicant is required to confine challenge to her transfer order passed in her name rather challenging legality and validity of transfer order passed against respondent No.4. Thus, the transfer order cannot be faulted on any ground. It has been further submitted that a transfer can be made even prior to expiry of ten years and no transfer

service is posted at the same place. Such rules and practices if any even if contained any guidelines do not have any statutory force and the same do not confer any right upon the applicant. Transfer of the applicant was not made to adjust or accommodate respondent No.4. Both the transfers were made as per requirement for smooth administration of respondents.

Therefore, respondent No.4 prayed that the applicant is not entitled to any relief.

5. Heard both the parties. Counsel for the respondent No.4 Mr. Manish Sisodia submits that the respondent No.4 has been transferred from Boudh (Orissa) to Rajsamand and now he has filed a detailed representation on 21st March, 2015 before the competent authority to adjust him at JNV Ataru, Baran (Rajasthan) because he belongs to Rajasthan and that post is lying vacant. He further contended that if the applicant remains at Rajsamand, he has no objection.

6. Counsel for the applicant Mr. Sanjay Nahar contended that the applicant is working at Rajsamand since last 5 years and her husband is working in the State services at Jodhpur and now she has been transferred to a very long distance place i.e. Orissa. Therefore, her transfer order may be quashed.

7. Counsel for the respondents No.1 to 3 contended that the applicant's transfer has been made as per the transfer policy as annexed at page No.31 of the OA.

8. Considered the rival contentions of the parties and perused the record. It is established position of law that the Courts or Tribunals should not ordinarily interfere with the transfer matters unless and until there is proven malafide on the part of the transferring authority or where the order has been passed by an incompetent authority. In view of the legal position, we intend to dispose of this OA with certain directions:

- (i) The respondent No.4 had already filed a representation dated 21st March, 2015 and further if he wants to file an additional representation then he may file the same within 10 days from the date of receipt of a copy of this order by averring all the facts which has been averred in his reply, before the competent authority and the competent authority shall consider the same within next 20 days from the date of receipt of such representation in a sympathetic manner as he is resident of Bhilwara (Rajasthan) and he is working at Boudh (Orissa) which is a faraway place from his residence.
- (ii) The applicant may also file a representation within 10 days from the date of receipt of a copy of this order before the

available in her favour and the competent authority shall decide the same within 20 days from the date of receipt of such a representation.

(iii) It is hereby further ordered that till the disposal of the representation filed by the applicant status quo shall be maintained qua the applicant.

9. Thus, the OA is disposed of as stated above and accordingly the MA No.51/2015 is also disposed of with no order as to costs.



[Meenakshi Hooja]
Administrative Member



[Justice K.C.Joshi]
Judicial Member

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~~To~~
Surya Nehru
A.

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Ministry of HRD