

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 425/2007Friday, this the 7th day of March, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

P. Prasannakumar,
U.D.C., Jawahar Navodaya Vidyalaya,
Hondarabali Post,
Chamarajanagar District,
Karnataka.Applicant

(By Advocate Mr G Sasidharan Chempazhanthiyil)

v.

1. The Principal,
Jawahar Navodaya Vidyalaya,
Chettachal P.O., Vithura,
Thiruvananthapuram District.
2. The Principal,
Jawahar Navodaya Vidyalaya,
Hondarabali Post,
Chamarajanagar District,
Karnataka.
3. The Deputy Commissioner (Pers)
Navodaya Vidyalaya Samiti,
(Hyderabad Region),
Ministry of Human Resource & Development,
1-1-10/3, Sardar Patel Road,
Secunderabad.
4. The Commissioner,
Navodaya Vidyalaya Samiti,
A-28, Kailash Colony,
New Delhi.
5. Union of India represented by
its Secretary,
Ministry of Human Resource Department,
Department of Secondary & Higher Education,
New Delhi.Respondents

(By Advocate M/s. M.K. Damodaran & Associates for R.1 to 4)

(By Advocate Mr TPM Ibrahimkhan, SCGSC for R.5)

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This application having been finally heard on 31.1.2008, the Tribunal on 13.3.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

This is the third in the series of O.As filed by the applicant. He was a UDC in Jawahar Navodaya Vidyalaya, (JNV for short) Trivandrum. Consequent to his arrest and registering a criminal case against him in Crime No.349/2005 in relation to large scale felling of protected trees inside the campus of JNV, Trivandrum, he was placed under suspension on 27.10.2005. He filed O.A.701/2006 before this Tribunal against his prolonged suspension on the ground that the respondents failed to conduct the mandatory review of the suspension before the expiry of 90 days of initial period of suspension as provided under the rules. During the pendency of the O.A, the respondents revoked his suspension vide order dated 11.1.2007 without prejudice to the criminal case and the disciplinary proceedings pending against him and posted him in JNV, District Chamarajanagar which was the nearest JNV, where a vacancy of UDC was available at that time. He made Annexure A-2 and A-4 representations on 15.1.2007 and 17.2.2007 for a posting to any JNV located in the nearby district of Trivandrum viz, JNV Pathanamthitta, JNV Alleppey and JNV Kottayam. However, he joined JNV, Chamarajanagar on 24.1.2007. Meanwhile, the O.A.701/2006 (supra) was disposed of vide orders dated 5.3.2007 (Annexure A-3) holding that his suspension order has deemed to have been revoked with effect from 25.1.2006. Since the respondents did not take any action on his representations dated 15.1.2007 and 17.2.2007, he filed the 2nd O.A.253/2007 before this Tribunal and it was disposed of by order dated 18.4.2007, directing the respondents to dispose of those representations.

2. Thereafter, as per the existing procedure, the Applicant attended the counselling held by the Joint Commissioner (Personnel), Navodaya Vidyalaya

Samiti, Secunderabad on 5.5.2007 and pointed out the existence of a vacancy of UDC at JNV, Pathanamthitta and requested for a transfer to that school. The said request was accepted by the counsellors and included his name in the display list accepting his transfer to Pathanamthitta. However, when the actual transfer order was issued on 17.5.2007, his name did not figure in the list. Thereafter, in purported compliance of the aforesaid order of this Tribunal dated 18.4.2007, the respondents have passed the impugned Annexure A-12 dated 30.5.2007. They have stated that in view of pendency of the criminal case against the applicant and his subsequent suspension from service and revocation of suspension, the authorities have decided to post him in a different JNV which is near to Kerala. Accordingly, he was posted in JNV, District Chamarajanagar which was the nearest school where the vacancies of UDCs were available at the relevant time. The applicant was also advised to attend the centralised counselling, as per the existing policy, so that their recommendations are considered by the Competent Authority of Navodaya Vidyalaya Samiti (NVS for short), New Delhi to take decision on his request for transfer and posting. The present O.A has been filed against the aforesaid Annexure A-12 order.

3. The applicant's submission was that the respondents were bound to consider his request for transfer against the vacant posts of UDC in JNV, Pathanamthitta, Kollam, Kasaragod or Trivandrum on revocation of his suspension, if he could not be accommodated in JNV, Trivandrum itself where he was at the time of his suspension. He has also submitted that he had attended the conselling on 5.5.2007 and the Committee of Counsellors headed by Joint Commissioner (Personnel) had recommended his transfer to JNV, Pathanamthitta and the respondents were very well aware of it but in an irresponsible manner advised him by the Annexure A-12 letter dated 30.5.2007 to attend the counselling. He has also invited attention to the respondents own



contention that the criminal case pending before the Judicial I Class Magistrate, Nedumangad is in progress and his presence before the Court is very necessary. Moreover, the two children of the applicant are studying in Malayalam medium in Trivandrum and are in the Plus One standard and another in the 5th Standard and it is practically impossible to uproot them in the midst of academic session. He has also pointed out that there was no reason to keep him out of Kerala as there was no prospect of his tampering with any evidence or anything of that kind.

4. The respondents in the reply submitted that the request of the applicant for transfer him to JNV, Pathanamthitta was considered and recommended by the counsellors but the same was not approved by the Competent Authority in view of the fact that the Applicant was transferred to JNV, District Chamarajanagar only with effect from 24.1.2007 after revocation of his suspension on 11.1.2007. Therefore, his name was deleted from the list of staff selected for transfer at the counselling. In Annexure R1(a) Notes produced by the respondents it was noted as under :

“..RO, Bhopal, RO, Hyderabad has requested over telephone that Shri P Prasanna Kumar, UDC may not be considered for transfer from JNV, Chamarajanagar (Karnataka) to JNV, Pathanamthitta (Kerala) since he has recently been posted at Chamarajanagar (Karnataka) after revocation of suspension due to his involvement in a criminal case at JNV, Trivandrum. RO, Hyderabad has requested that he may not be considered for transfer back to Kerala. Therefore, his name has been deleted.”

The third respondent, viz, Deputy Commissioner, NVS, Hyderabad Region has also in his Annexure R 1(b) letter dated 11.5.2007 requested the Joint Commissioner(Personnel) to keep the applicant out of Kerala for some time on the ground that he was recently transferred from JNV, Trivandrum to JNV, District Chamarajanagar; while working at Calicut, he misbehaved with the Principal and as a result of it; he was imposed with a minor penalty; he is



involved in the pending the case of tree cutting at JNV, Trivandrum and complaints have been received against him that he has taken loan from several people and not return the amount. Another reason cited by the respondents is that the applicant was imposed with the penalty of censure for his dereliction of duty in not maintaining the cash book as per the requirement of the Samiti and tried to mislead the visiting officer of Sub Regional Office, NVS, Mangalore during his visit on 13.2.2003(Annexure R 1(c)). He was also proceeded under Rule 14 of CCS(CCA) Rules 1965 for showing indifferent attitude and arrogant behaviour with the higher authority which is an act of grave misconduct and he was awarded punishment of withholding of one increment for a period of six months vide Annexure R1(d) dated 24.5.2007. The Special Deputy Tahsildar, Revenue Recovery, Kerala State Financial Enterprises Ltd. Regional Office, Trivandrum has forwarded 3 prohibitory orders against the applicant for arrears due to the Kottayam Evening Branch of the KSFE in respect of Chitty No.10/2002/47 and Loan Account No.RCL 14. According to the respondents, it is for the aforesaid reasons that the applicant was retained out of Kerala for some time which was in the best interest of the Vidyalaya.

5. They have also relied upon the following judgments and argued that a transfer order is a part of service conditions of an employee which should not be interfered by a Court of law in exercise of its discretionary jurisdiction. They have also contended that no government servant or employee of a public undertaking has any legal right to be posted forever at any one of the particular place of his choice as laid down in the following judgments:

- i) **Sashikumar v. State of Kerala** [1998 (2) KLT 330]
- ii) **Union of India and others v. The Central Administrative Tribunal and another** [2004 (2) ILR 241]
- iii) **State of U.P. And another v. Siya Ram and another** [(2004) 7



SCC 405]

iv) **Mohd. Masood Ahmad v. State of U.P.** [2007(4) KLT 457 (SC)]

v) **D Mohankumar v. The Dy. G.M., State Bank of India** [2006(1)

KLJ 105]

6. In the rejoinder, the applicant has submitted that the Deputy Commissioner has taken a very vindictive attitude against him and the Annexure R 1(b) order is an example of the same. He has also alleged that the Deputy Commissioner was responsible for keeping him in prolonged suspension without undertaking the statutory review and he had been impleaded as respondent in O.A.243/2003 and he is taking revenge against him by not allowing him to be posted in JNV, Trivandrum where he was last working or at a nearby JNV.

7. We have heard Mr Vishnu S Chempazhanthiyil for applicant, Mr Nishil PS for Mr MK Damodaran for respondents 1 to 4 and Mr TPM Ibrahim Khan, SCGSC for 5th respondent. No doubt, transfer of an employee is a part of his service conditions and Courts shall not ordinarily interfere in such orders passed by the employer in the interest of efficiency of public administration and in public interest. One exception to this general principle is malafide in such transfer orders. It is manifestly clear from the pleadings in this case that the applicant's transfer to JNV, District Chamarajnagar itself was a malafide action on the part of respondent 3, viz, the Deputy Commssisioner, Navodaya Vidyalaya Samiti, Hyderabad Region. The only reason given by the said respondent for his posting to JNV, District Chamarajnagar in the impugned Annexure A-11 Office Order dated 10.1.2007 was that it was the "*nearest possible JNV having the vacancy of UDC*" at that time. So far so good. Applicant immediately made Annexure A-2 representation dated 15.1.2007. It was followed by the Annexure A-4 representation dated 17.2.2007. The respondents did not respond to them. He

was, therefore, forced to approach this Tribunal vide O.A.253/2007. It is on the direction of this Tribunal in the said O.A dated 18.4.2007 that the respondents passed Annexure A-12 impugned order dated 30.5.2007 in which the respondents took a very contradictory stand and submitted that the decision of the authority concerned was "*to post him in a different JNV, in view of the situation, however, to a JNV which is near to Kerala*" (emphasis given by the Tribunal) and the JNV, District Chamrajanagar was found to be the nearest one. In the same order, the respondents have stated that the applicant's request for his posting at JNV, Thiruvananthapuram or any one of the JNVs located nearby Thiruvananthapuram viz., JNV, Pathanamthitta/Alleppey/Kollam and Kottayam instead of JNV Chamrajanagar, made vide his letter dated 15.1.2007 was considered by the Competent Authority but the same was not acceded to, due to non-availability of vacancy at any of the JNVs mentioned above at that time and he was informed over phone to get himself relieved from JNV, Trivandrum and join at the new place of posting. Accordingly, applicant reported to duty at JNV, Chamrajanagar on 24.1.2007. In the reply affidavit the respondents' stand towards the applicant was very aggressive and offensive. They made a series of allegations against him to justify his transfer to JNV, District Chamrajanagar and to keep him out of Kerala. It is clear from the shifting the stands of the respondents that it was not a transfer simplicitor in any public interest or on any administrative exigency but it was a purely a punitive action. At the time of his suspension on 27.1.2005, the applicant was working in JNV, Trivandrum. The respondents prolonged his suspension without undertaking the mandatory periodical review and kept him out of job for two years. It was on the intervention of this Tribunal that the respondents have revoked the suspension. Ordinarily, when the suspension was revoked, he should have been reinstated in the very same School. This was not only done but he was transferred to JNV, Chamrajanagar in Karnataka State. The applicant represented against that



pointing out vacancies in a number of nearby schools but obeyed the advice and joined the new place of posting. He himself has undergone the counselling on 5.5.2007 and the Counsellors recommended for his transfer to JNV, Pathanamthitta. As if, the respondent No.3 was not aware of it, he advised the applicant to attend the centralised counselling vide the impugned order dated 30.5.2007. The fact was that the respondent No.3 himself had interfered with the recommendation of the counsellors through telephone followed by fax message and got his name deleted from the list of officials to be transferred submitted to the competent authority. The Assistant Commissioner (Estt) in his note dated 11.5.2007 did not recommend the name of the applicant to the Competent Authority because of the interventions of the 3rd respondent. His telephonic request followed by the Fax and Post (Annexure R1(b) reads as under:

"It is understood that based on the mutual willingness some of the non-teaching staff of Hyderabad Region are being transferred shortly to their choice places. Among them there is a case of Sri P Prasanna Kumar, UDC, presently working at JNV, Chamarajnagar. He was recently transferred from JNV, Trivandrum to JNV, Chamarajnagar. While working at JNV, Calicut, he had misbehaved with the Principal and as a result the award of one minor penalty is being awarded. He is also reportedly involved in the case of tree cutting at JNV, Trivandrum for which the final outcome is still pending. Some complaints on him taking loan from several people and not returning have been received at JNV. In the light of the above it is suggested that he may be retained out of Kerala for some time."

It is seen that the none of the above reasons were the basis of his transfer to JNV, Dist. Chamarajnagar. The only reason made known to the applicant was that there was no other nearby JNV where the vacancy of UDC was available. All subsequent allegation made by the respondent 3 staying his transfer to JNV, Pathanamthitta were made behind his back depicting him in bad colours. It is unfortunate that the Deputy Commissioner, Hyderabad Region has not been fair in his dealing with the applicant. It is one thing to reject a request of an

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employee after due consideration but it is altogether a different thing that a senior supervisory official has been clandestine in dealing with the request of the lower staff. An efficient and competent administration has to be built on the edifice of confidence of the staff in the administration also. There shall not be situations where the employees loose confidence in the assurances of the superior authorities. Looking from another point of view, by the respondents own admission, the criminal case and disciplinary case for the alleged involvement of the applicant for large scale felling protected trees inside the campus of JNV, Trivandrum is still pending against him. As far as possible, the applicant should have been retained in Trivandrum or nearby places so that he could attend the trial/proceedings in the criminal/departmental cases pending against him. Instead, when the applicant approached the authorities through proper channel for his transfer back to Kerala State and it was recommended by the authorised authority, the respondent No.3 frantically intervened in the matter by telephonic/fax/post communications to stop his transfer. It shows nothing but his vindictiveness of the respondent No.3 towards the applicant. The tenor of his communication to keep him "out of Kerala for some time" also shows his malice towards him and his colourable exercise of power and arbitrariness. The reasons given by the respondents for not transferring the applicant to JNV, Pathanamthitta as recommended by the authorities during the councelling held on 5.5.2007 are absolutely untenable. Rather the pendency of the criminal case in the Court in Trivandrum should have been added reason for his transfer back to JNV, Trivandrum or any nearby JNVs so that he could easily defend his case by regularly attending the concerned court. The Administration also has a positive and an enabling role to play in the career of its employees so that they have minimum difficulties in their service. Transfer is not a solution for maintaining discipline in the Department. As held by the Apex Court in *Varadha Rao v. State of Karnataka* [(1986) 4 SCC 131] as under:



“..It was no doubt true that the Government has power to transfer its employees employed in a transferable post but this power has to be exercised bonafide to meet the exigencies of the administration. If the power is exercised mala fide, then obviously the order of transfer is liable to be struck down.”

In the above facts and circumstances of the case, I consider the involvement of the respondent No.3 in stopping the transfer of the applicant to JNV, Pathanamthitta was out of malice and vindictiveness. Accordingly the Annexure A-12 order dated 30.5.2007 is quashed and set aside. The respondents are directed to give effect the transfer of the applicant as recommended by the Councillor of the Samiti held on 5.5.2007 and post him at JNV, Pthanamthitta immediately. If the vacancy of UDC is not available in the said School, he may be posted in a JNV in any of the nearby Districts as requested by the applicant subject to availability of vacancy. If no vacancies are available in any of the nearby JNVs at present, he may be posted against the first available vacancy in those JNVs. There shall be no order as to costs.

Dated, the 7th March, 2008.



GEORGE PARACKEN
JUDICIAL MEMBER

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