

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. No. 397/2007

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This, the th day of February, 2008.

Hon'ble Shri M. Kanthaiah, Member (J)

Rajani Kant, aged about 33 years son of Sri Vindhya Chal Pandey, resident of Bhaluni Dham, District Rohtas, State of Bihar.

Applicant.

By Advocate: Ms. P. Bisht

Versus

1. Union of India through the Secretary, Ministry of Human Resources Development, Department of Education, Govt. of India, New Delhi.
2. The Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi-110048.
3. Assistant Commissioner (Establishment), Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi-110048.
4. Deputy Commissioner, Navodaya Vidyalaya Samiti, Lekhraj Panna III Floor, Sector 2, Vikas Nagar, Lucknow.
5. Principal, Jawahar Navodaya Vidyalaya, District Shahjahanpur.
6. Dr. Smt. Sudha Sharma, Dy. Commissioner, Navodaya Vidyalaya Samiti, Lekhraj Panna III Floor, Sector 2, Vikas Nagar, Lucknow.
7. Ms. Jyothi Lekshmi A, Librarian, Jawahar Navodaya Vidyalaya, District- Shahjahanpur.

Respondents.

By Advocate: Shri Anil Kumar for Official respondents
Sri A. Moin for private respondents

ORDER

By Hon'ble Shri M. Kanthaiah, Member (J)

The applicant has filed Original Application to quash the impugned transfer order dated 3.9.2007 (Annexure 1) issued by respondent No.4/6 stating that it is bad, illegal and by way of colorable exercise of power. He also alleged that with malafide intention, respondents No. 4/6 effected such transfer of the applicant to harass him and also stated

that the same is against the transfer policy. He also stated that the impugned transfer order has been passed in the mid session which also causes inconvenience to him because of his children education.

2. The respondents No. 2 to 5 have filed their detailed counter reply opposing the claim of the applicant, stating that the applicant was transferred in the administrative exigency of service and in the public interest and the services of the applicant are transferable in nature. They also denied the allegations of malafides attributed to the respondents and stated that when the transfer was effected in administrative exigency, the ground of mid academic session is of no ground to assail the transfer order.

3. Respondents No. 6 filed separate counter with the same pleas as taken by the respondents No. 2 to 5 and also denied the allegations made against her attributing malafides for effecting the transfer of the applicant.

4. Respondent No. 7 filed counter affidavit stating that serious allegations have been leveled against the applicant pertaining to sexual harassment of girl students and as such there is no irregularity in transferring the applicant, which was made in administrative exigency.

5. Applicant has filed separate rejoinders for the counters filed by the respondents, denying the stand taken by the respondents and further reiterated his stand taken

in the O.A. and also stated that no transfer should be effected after 30.8.2007 and in spite of such ban, he has been transferred by the respondents no. 4 /6 with malafide intent.

6. The respondents have also filed Supplementary Counter Affidavit stating that the applicant had been relieved by means of order dated 17.9.2007 and thereafter respondent No. 7 was posted vide order dated 21.9.2007 in place of the applicant.

7. Heard both sides.

8. The point for consideration whether the applicant is entitled for the relief as prayed for.

9. The admitted facts of the case are that the applicant who joined the respondents Vidyalaya Samiti on the post of Librarian on 12.12. 1997 at his first posting was in the Shillong Region and worked there till 30th April, 2003. and thereafter he was transferred to Jawahar Navodaya Vidyalaya , Shahjahanpur and while he was working there , the respondent authorities have transferred him to Jawahar Navodaya Vidyalaya, Lakhimpur Khiri vide impugned transfer order covered under Annexure A-1 dated 3.9.2007, thereafter , he has filed this O.A. on 17.9.2007 , questioning the impugned order. Subsequently, Respondent No. 7 joined in the place of applicant at Shahjahanpur.

10. While he was working at Jawahar Navodaya Vidyalaya, Shahjahanpur, some disputes arose between him and other teachers and subsequently, the applicant went to the extent of approaching the police by making complaints against his colleague teachers on the ground of life threat to him. When the applicant made such complaint on 22.2.2006, the same was forwarded to the Superintendent of Police, Shahjahanpur by the then Principal, Jawahar Navodaya Vidyalaya, Shahjahanpur. Annexure -2 is the copy of police complaint dated 22.2.2006. At the same time, the teachers, who are inimical towards the applicant made complaint to the respondent No. 2 with charges relating to character assassination of the applicant and his wife by marking copy to the Regional Office, Lucknow on which the respondent no. 4/6 took cognizance of the said complaint and appointed P.Chandrashekhar Reddy, Assistant Commissioner (Estt.), Navodaya Vidyalaya Samiti, Vikas Nagar, Lucknow to conduct enquiry. Annexure -3 is the copy of said order dated 28.2.2006. Thereafter, the Enquiry Officer Sri P. Chandrashekhar Reddy conducted the enquiry and also called for the explanation of the applicant and subsequently after completion of enquiry, he submitted his report. Annexure 5 is the copy of the reply of the applicant dated 4.3.2006. On the same day, he also submitted another letter covered under Annexure -4 stating that because of

threat, he was forced to file police complaint for his protection. Annexure C-1 is the report submitted by the Enquiry Officer Sri P. Chandrashekhar Reedy.

11. On the complaint of the teachers, respondent No. 4 also asked the applicant to submit his reply. Annexure -6 is the copy of said memorandum dated Nil March, 2006, for which he submitted his reply dated 18.3.2006, stating that for his protection and safety, he made complaint to the police but no FIR has been registered. When respondent No. 4/6 passed an order dated 20th March, 2006 attaching him to Jawahar Navodaya Vidyalaya, Banda for which he also submitted his reply. Annexures 7 and 8 are the copies of said letters. The applicant made allegation against respondent No. 4/6 that she intentionally attached him to JNU, Banda and thereafter joining the incumbent there, she delayed his shift to Shahjahanpur and also further delayed in handing over his charge there and thus attributed motives.

12. It is also not in dispute that wife of the applicant also submitted a complaint dated 15.7.2006 before the State Human Rights Commission, Lucknow against some of the colleagues of her husband stating that they are harassing them and also sought action against those teachers. Annexure 18 is the copy of such complaint dated 15.7.2006. The said complaint was also referred by the State



Human Rights Commission to District Inspector of School, Shahjahanpur to examine to the allegations made in the complaint and when the District Inspector of School did not file his report, the Commission also issued another letter dated 26.4.2007 for filing his report. Annexure 19 and Annexure 20 reveals the same. Respondent No.2, Commissioner also asked the Chairman, Vidyalaya Management Committee (JNV) , Shahjahanpur (The District Magistrate, Shahjahanpur) to enquire on the matter in respect of the applicant and four other teachers, upon which, the Chairman, Vidyalaya Management Committee recommended the transfer of aforesaid teachers is also not in dispute.

13. The applicant has challenged the impugned transfer order dated 3.9.2007 (Annexure 1) on the ground that it is bad , illegal and by way of colorable exercise of power. He also attributed malafides against respondent No. 4/6, in effecting the transfer of the applicant stating that at the instance of other staff members, it has been effected only to harass the applicant but the respondents have denied the same.

14. Admittedly, the post of the applicant is a transferable post and he can be posted at any place where vidyalayas of respondent No.1 are situated. The main ground for questioning the impugned order is that the respondent

No.4/6 at the instance of other staff members of the Vidyalaya, effected the transfer of the applicant intentionally and with malafide intention and also to harass him. The material available on record clearly shows that there are 2 groups in the Vidyalaya among the staff members and they went to the extent of complaining against each other and the applicant also expressed un-safety in the hands of other group of staff members. Further they also went to the extent of making complaints to the higher authorities of Vidyalaya and also to the police. Without satisfying with the police complaint, when there was apprehension, the applicant's wife also made complaint to the State Human Rights Commission alleging threats to their family from some of the staff members of the Vidyalaya and also sought action against them.

15. Further the nature of the complaints and allegations not only confined to their duties and functioning of staff of Vidyalaya but they also dragged some of the family members of their staff members and went to the extent of approaching police for necessary action and protection, which itself goes to show that there was such insecurity in their mind to stay at such place because of threat from other side. Some staff members also went to the extent of making complaint against their colleague staff members making allegations of character assassination and also

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involving girl students and also making allegations against such girls. In view of such circumstances, the respondent No. 4 appointed a fact finding enquiry by appointing Sri P.Chandrashekhar Reddy, Assistant Commissioner (Estt.) , who submitted his report covered under Annexure C-1. He did not find any truth in the allegations made against the applicant in respect of girl students and some other allegations but he recommended for shift of the applicant to other Vidyalaya to create congenial atmosphere in the campus. Though, the respondents did not file the report submitted by the Chairman, Vidyalaya Management Committee, JNV (D.M., Shahjahanpur), they neither denied nor disputed such enquiry conducted by the D.M. and also submitting of his report , in which he recommended the transfer of other four teachers, which the applicant specifically pleaded in his O.A.

16. All the above circumstances in respect of complaints made against the applicant , his family members and the then Principal and counter complaints made against the staff members of Vidyalaya and also some of the staff members went to the extent of making allegations against the wife of the applicant and innocent girl students making imputations against them to blame the applicant and in other hand, the applicant and his wife making complaint to the police and State Human Rights Commission to take



action against some of the staff members alleging that they are threatening them and also apprehension of danger in their hands and all these circumstances clearly goes to show, how the image of the Vidyalaya has been effected and administration of the respondents and their control over the staff member of such Vidyalaya. In such circumstances, to protect the image of such Vidyalaya, without precipitating the matter effecting transfer of all the concerned staff members and also initiating disciplinary action against them as per rules are only the available method, not to resort for such unethical activities in the institution in future. Misbehaving against girl students by a teacher that too in the Vidyalaya naturally requires deterrent punishment and at the same time, making false allegations and propaganda against teacher-girl student relationship from any corner also equally dangerous and requires punishment.

17. The scope of the review by this Tribunal is very limited i.e. only in respect of transfer of the applicant covered under Annexure 1 dated 3.9.2007 and as such it is not fair on the part of the Tribunal to go beyond scope of Annexure 1 and its surrounding circumstances. Admittedly the fact finding enquiry conducted by Sri P.Chandrashekhar Reddy, Assistant Commissioner (Est.) submitted his report, recommending transfer of the applicant, taking note of the circumstances prevailing in

Vidyalaya. In those circumstances, respondent No. 4, who is the competent authority has effected the transfer of the applicant, transferring him from Shahjanahpur to Lakhimpur Khiri on the ground of public interest and in administrative exigency.

18. The complaint made by the applicant and also complaints sent by his wife and also complaints made against the applicant and the then Principal and also involving the family members of the applicant and girl students by other staff members and the report submitted by Sri P.Chandra Shekhar Reddy, Assistant Commissioner (Est.) and also other enquiries made by Chairman, Vidyalaya Management Committee (D.M.,Shahjanahpur) and his recommendations etc. clearly shows that the respondent No. 4 has effected the transfer of the applicant on administrative grounds and in the interest of Vidyalaya, for which finding fault on the part of respondent No. 4 is not justified.

19. The said circumstances no doubt requires transfer of concerned staff members to safe-guard the image and prestige of Vidyalaya. Whether mere transferring the applicant alone without effecting the other staff members, who involved in tarnishing the image of Vidyalaya is upto the respondent No. 4 and also other respondent authorities for their self realization and by which what message they

want to send to the students, other innocent staff members is left open to them but the same is not a ground to the applicant to attribute any malafides against the respondent No.4, who acted basing on the report of enquiry officer Sri P.C. Reddy, Asst. Commissioner (Est.).

20. In respect of other allegations made against the respondents No. 4/6 that she passed an order on 20<sup>th</sup> March, 2006 , attaching the applicant to JNV, Banda and also delay in relieving him after joining Mr. P.C. Mishra there, and also delay in handing over charge to the applicant are all not at all justified grounds to make any malafides.

21. The applicant has taken another ground that there exists a complete ban that no transfer should be effected after 30.8.2007 and relied on Annexure RA-3 dated 9.8.2007 issued by respondent authorities but the respondent No.4/6 effected his transfer which is against such transfer guidelines. The ban in respect of the transfers covered under Annexure RA-3 is with regard to the request transfers but not the transfer on administrative grounds and in the interest of public. As such, the said transfer guidelines or norms cover under Annexure RA-3 is not at all helpful to the applicant to say that there exists ban of transfers, on the ground of public interest or in administrative

grounds. Thus, there are no merits in such arguments of the applicant.

22. It is also the case of the applicant that his children are studying and because of mid session transfer, their education will be effected and in support of such contention, he relied on the decision of the Hon'ble Supreme Court in the case of A.M. Vadi Vs. India Trade Promotion Organisaiton and another reported in 1994 Supp. (2) Supreme Court Cases 667. There is no such relaxation in transfer policy, not to effect the transfer of the staff members or teachers of respondents' Vidyalaya in mid academic session. In the instant case, when the transfer of the applicant was effected on administrative ground and in the interest of Vidyalaya, it is not open to the applicant to agitate of his transfer on such ground of children education, except making any representation to the higher authorities for their consideration.

23. In view of the above discussion, there are no justified ground to quash the impugned transfer order covered under Annexure -1 dated 3.9.2007, under which the applicant has been transferred from Jawahar Navodaya Vidyalaya, Shahjahanpur to Jawahar Navodaya Vidyalaya, Lakhimpur Khiri and the thus the Original Application is liable for dismissal.

24. In the result, Original Application is dismissed but in the circumstances, no order as to costs.

  
(M. KANTHAIAH)  
MEMBER (J)

HLS/-

13.02.2008