

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

O.A.No.379/2006

This the 22nd day of December 2006

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

Rati Ram Maurya, aged about 45 years, son of Late Shri Chhotey Lal Maurya, resident of MM-1/1155 K, Vishal Khand, Gomti Nagar, Lucknow [posted as P.G.T. (Physics) in Kendriya Vidyalaya, Lucknow Cantt., District Lucknow].

... Applicant.

By Advocate:-Shri R.C. Singh.

Versus.

1. Kendriya Vidyalaya Sangathan, New Delhi , through its Commissioner.
2. Commissioner, Kendriya Vidyalaya Sangathan, New Delhi.
3. Joint Commissioner (Admn.), Kendriya Vidyalaya Sangathan, New Delhi.
4. Education Officer, Kendriya Vidyalaya Sangathan , New Delhi.
5. Principal, Kendriya Vidyalaya, Lucknow Cantt., Lucknow.
6. Shri Jai Prakash Yadav, Principal , Kendriya Vidyalaya, Lucknow Cantt., Lucknow.

... Respondents.

By Advocate:-Shri Rajendra Singh.

ORDER

BY M. KANTHAIAH, MEMBER (J)

The applicant has filed the O.A. to set aside the impugned transfer order (Annexure-1) dated 10.8.2006 issued by Respondent-4, transferring him for Kendriya Vidyalaya, Lucknow Cantt. Lucknow to Kendriya Vidyalaya , Agartala and also consequential relieving order (Annexure-2) dated 11.8.2006 issued by Respondent-5, on the ground that such transfer order has been issued against guidelines of transfer policy , without jurisdiction and by way of punishment and also on the

ground of bias~~ed~~.

2. The respondents have denied the allegation of the applicant and opposed the claim of the applicant by filing separate counter affidavits by Respondent No.1 to Respondent No.4 and counter by Respondent No.5 and Respondent No.6.

3. The applicant has filed Rejoinder Affidavit reiterating his averements made in the O.A.

4. Heard both sides.

5. The Point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant has been working in the post of PGT(Physics) at Kendriya Vidyalaya, Lucknow Cantt. Lucknow since 04.08.2002, after his transfer from Kendriya Vidyalaya No.3 Air Force -2, Jamnagar, Gujarat on his request . The respondents Kendriya Vidyalaya Sangathan (KVS) has framed new transfer guidelines of their employees w.e.f. 14.03.2006 and Annexure-CA-1 is the copy of said guidelines. While the applicant has been working at Kendriya Vidyalaya, Lucknow Cantt. Lucknow, the respondent No.4 has issued transfer order transferring him from Lucknow to Agartala covered under Annexure-1 dated 10.8.2006 and on the next day R-5 has issued the relieving order covered under (Annexure-2) dated 11.8.2006. It is also not in dispute that no one has been posted in the place of the applicant . The copy of impugned transfer order has been served on the applicant by Respondent No.5 on 21.8.2006 and immediately the applicant filed this O.A. to quash the impugned transfer order and also alleged relieving order. Annexure-2-A is the covering letter of Annexure-1 sent by Respondent No.5 .

7. It also an undisputed fact that on the complaints against the applicant from some of the students and their relatives, an inquiry

was initiated against the applicant in which he was imposed a minor penalty of withholding the annual increments for two years. Against the said orders of Respondent No.5, the applicant filed an Appeal before the Assistant Commissioner , KVS, Lucknow Region for consideration. Annexure-9 is the copy of the appeal dated 12.6.2006. It is also an admitted fact that the relationship between the applicant and Respondent No.5 was not good and it is the apprehension of the applicant that ~~against the~~ Respondent No.5 was responsible for filing complaints against him by some of students their relatives and also for holding of inquiry.

8. The applicant has challenged the impugned transfer order on the ground that the same has been issued against the guidelines of transfer policy of KVS and also contends that such orders have been issued without jurisdiction by the authority. He has also taken other grounds that such impugned transfer has been issued by way of punishment and also outcome of malafide intention.

9. Coming to the ground that the impugned transfer has been issued by way of punishment , it is the contention of the respondents that as per Para-8.4 of Annexure CR-1 transfer policy, an employee of KVS can be transferred on the ground of misconduct or unsatisfactory performance as evidence by issuing of a charge sheet under Section-14 of the CCS (CC&A) Rules, 1965. Admittedly there was an inquiry initiated against the applicant on the ground of misconduct with the students and after calling explanation from the applicant, respondent No.5 imposed a penalty of withholding the next increment for 2 years. When there was such penalty imposed against the applicant for misconduct, the respondents are justified to effect the transfer of the applicant . When there was such authority provided for the respondents authorities , it is not open to the applicant to say that his transfer

has been effected by way of punishment. As such there is no justification in questioning the impugned transfer order on the ground that it has been issued by way of punishment.

10. It is the arguments of the learned counsel for the applicant that the orders of the transfer covered under Ex. A-1 is the out come of malafide intention from the respondents. But he has not placed any material against the respondents no. 1 to 4 that they have acted against him with any malice. He has placed his grievance against the Respondent No.6 who is the Principal of the Kendriya Vidyalaya, Lucknow Cantt., Lucknow and who has been arrayed as Respondent NO.5 that because of his behavior and attitude there are differences between both of them and also further argued that on the instance of Respondent No.5 and 6 by way of manipulation of complaints against him, the other officers have taken action against him by issuing transfer orders covered under Ex. A-1 dated 10.8.2006 transferring him from Lucknow to Agartala. From the documents filed by the respondents and also inquiry initiated against the applicant basing on the complaints of IX the class student and her brother that he misbehaved with them and other complaint given by Shri Brij Lal, IPS, U.P. who is the parent of Xth Class Student and also a complaint given by Brigadier Sandeep Kumar relates that many of the complaints have been made against the applicant against his attitude towards the students. Further when the findings of Inquiry Officer have also reveals misconduct on the part of the applicant. it is not at all possible to say that the authorities acted against him with any malafide intentions⁷ or with any bias and thus there are no merits in making allegations against Respondents No. 1 to 4 that they have acted against him with malafide intentions or with bias in transferring him from Lucknow to Agartala.

11. It is also one of the contention of the applicant that he has



been transferred because of manipulations of complaints at the instance of Respondent No.6 and thus attributed motives against him. It is also the arguments of the learned counsel for the applicant that several allegations were made against Respondent No.6, who is working as Principal by giving number of instances, while discharging his duties but none of said allegations have been specifically denied by him which it-self shows that he himself admitted such allegations. Respondent No.5 and 6 have filed common Counter Affidavits, simply denying the allegations made in the O.A. stating that they are false, frivolous and misleading but not specifically denied each of such allegations. They further stated that he has no personal interest and simply followed the instruction of higher authority's during the course of his official duties and thus denied the allegations.

12. Respondent No.1 to 4 who have filed their common Counter Affidavit denied the allegations of the applicant that at the instant of the principal(Respondent No.5), they have transferred him with malafide intension and stated that because of behavior and unwanted attitude of the applicant with the students and parents, he has been transferred and also stated it has been effected on administrative ground in public interest. When the respondent have denied the allegations against the Principal and also malice, it is not open to the applicant to canvas collusions between Respondent No.1 to 4 and Respondent No.5. Further, the Respondent No.5 is only a subordinate officer of Respondent No.1 to 4 and when the Respondent No.1 to 4 states that they have effected the transfer of the applicant on administrative ground in the interest public and because of the behavior of the applicant with the student and parents, it is not at all convincing to believe that there was collusion between the respondents or the allegation that at the

instance of Respondent No.5 and 6, the transfer order has been issued against the applicant. Thus, there is no merits in the said stand taken by the applicant attributing either motives of bias or collusion against Respondent No.4.

13. It is the main arguments of the learned counsel for the applicant that the officer who has issued impugned transfer order Ex.A-1 is not the competent authority and thus argued lack of competence of transferring authority. From the reading of Transfer Policy covered under Annexure CR-1 in which para-3 relates to the authority competent to effect transfers to the KVS employees which is as follows:-

3. AUTHORITIES COMPETENT OF EFFECT TRANSFERS:

1. Subject to the General powers to the Commissioner to effect all manner of transfers of persons up to the level of Education officers, transfers of the kind shown in Col. 1 below will be effected by the authorities shown against them in Col.2:-

	Type of Transfers	Authority which will transfer
	(1)	(2)
1.	(i). Inter-regional Transfers (ii). Intra-regional Transfers of Principals and Vice-Principals	<u>Commissioner</u>
2.	Intra-regional Transfers of employees up to the level of PGTs, except:- (i). Mutual Transfers, and (ii). Admn. Transfers on grounds of misconduct or unsatisfactory performance {vide para 8 (iv), below}	<u>Assistant Commissioner, on the recommendation of the Regional Transfer Committee (RTC)</u>
3.	Intra-regional transfers of the following kinds up to the level of PGTs:- (i). Mutual Transfers, and (ii). Admn. Transfers on grounds of misconduct or unsatisfactory performance {vide para 8 (iv), below}	<u>Assistant Commissioner</u>

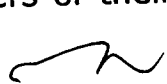
14. Admittedly, the applicant who is in the cadre of PGT at KVS, Lucknow has been transferred from Lucknow to Agartala which is inter regional transfer but not intra-regional transfer. Annexure-1

dated 10.8.2006 is the copy of transfer order and the learned counsel for the respondents also filed Annexure R-1 notes relating to the transfer of the applicant prepared in the Head Office before communicating Annexure-A-1. From the recital of the said note,, it is clear that the transfer of the applicant has been effected by the recommendations of DC and thereafter JC (Admn.), on the ground of imposing of the penalty on the applicant for withholding the increments for 2 years and also on the ground that the applicant and the respondent No.5 are indulging in allegations and counter allegations and thus, spoiling the academic environment of the school.

15. From the reading of the said note, it is clear that only J.C. ^{has} taken the decision of transferring the applicant from Lucknow to Agartala on administrative grounds. But as per Para-3 of transfer guidelines in respect of inter-regional transfers, the Commissioner is the competent authority but not the Joint Commissioner or Assistant Commissioner.

16. It is the contention of the respondents that the commissioner had delegated powers of transfer to the Joint Commissioner and relied on notes sheet of the department Dt. 16.9.2004 covered under Annexure CR---. The notes Sheet is in respect of individual transfer claims of Smt Kiran Jit Kaur TGT (Sr. ST) and Smt Preeti Roy, PGT (English) in which commissioner made endorsement that the transfer orders of the employees up to Grade-B shall be finalized by the Joint Commissioner (Admn.). Such authorization was given by the commissioner in September 2004, where as the new transfer policy of the institution had came into existence w.e.f 14th March 2006 (Annexure CA-1)

17. When specific powers are entrusted to the Commissioner, for inter-regional transfers of their employees by way of new transfer



policy w.e.f. 14.3.2006, relying on earlier proceedings of their office for the year ~~1~~2004 (Annexure-1) is not at all maintainable and such proceedings are not at all helpful for any purposes of delegation of power of the Commissioner, to substantiate the act of Joint Commissioner (Admn.), who effected the transfer order. Thus there are no merits in the arguments of the respondents to justify the competence of Joint Commissioner (Admn.) and thus the impugned transfer order Annexure - issued by Respondent No.3 is without jurisdiction, as he is not competent to issue such transfer orders of the applicant.

18. In view of the above circumstances, the Respondent No.3, who passed the impugned transfer order (Annexure-1) transferring the applicant from one region to another, is lacking competence as per their new transfer policy and as such the same is liable for set-aside.

19. In the result, original application is allowed, setting aside the impugned transfer order (Annexure-1) wherein the applicant has been transferred from Kendriya Vidyalaya, Lucknow Cantt., Lucknow to Kendriya Vidyalaya, Agartala. No costs.


(M. KANTHAIAH)

MEMBER (J)

22.12.02

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