

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.471/2011

Reserved on 25.7.2011

Date of Pronouncement: 27.7.2012

Hon'ble Dr. K.B.S. Rajan, Member (J).

Hon'ble Mr. S.P. Singh, Member (A)

Sanjiva Kumar, aged about 55 years son of Late Shri Ram Krishna Visharad, presently working as Principal, Kendriya Vidyalaya Sanjay Gandhi PGI Campus, Rae Bareli Road, Lucknow-226014.

...Applicant.

By Advocate: Sri R.C. Saxena.

Versus.

1. Kendriya Vidyalaya Sangathan, through its Commissioner, 18, Industrial Area, Shaheed Jeet Singh Marg, New Delhi-110602.
2. Commissioner, 18, Industrial Area, Shaheed Jeet Singh Marg, New Delhi-110602.
3. Deputy Commissioner, KVS, Lucknow Region, Lucknow.

.... Respondents.

By Advocate: Sri Surendran P.

ORDER

By Dr. K.B.S. Rajan, Member (J).

Challenge in this OA is the transfer of the applicant from Lucknow to Dhanpuri, vide Annexure I. The applicant is functioning as principal of Kendriya Vidyalaya, SGPGI, Lucknow since July, 2006. There is yet another K.V. at Lucknow, in which a Principal has been functioning since April, 2006. The tenure transfer of principal is five years for normal stations and three years in case of hard stations/NER stations. Paragraph 2 of transfer guidelines contained at page 96 of the paper book refers. The transfer guidelines also provide for transfer not to be effected during the middle of the academic session of children. In so far as persons within the same

station, tenure transfer shall be effected on the basis of station seniority. Normally, no transfer is effected to accommodate any persons, deviating from the normal norms. The contention of the applicant in this case is as under:

- (a) The move, contemplated by the respondents is only to accommodate one Mr. PK Singh, principal, KV Kargil (J & K) whose normal tenure of three years in the hard station was not complete at the time when the posting order has been made.
- (b) The applicant's daughters are studying and as such move of the applicants during the middle of academic session is against the guidelines.
- (c) Respondents themselves have stated in their letter dated 14th/16 September 2011 that as per the existing transfer guidelines effective from 1 April 2011, the transfer of teaching and the non-teaching staff is over. As such transferring the applicant after the aforesaid date is not logical. No administrative reasons have been given in the impugned transfer order.
- (d) Assuming without accepting that the other individual Mr PK Singh has to be accommodated Lucknow, in that event, the respondents ought to have followed the normal guidelines of station seniority and it is the other principal in the other school at Lucknow who should have been considered for transfer as he is station senior to the applicant.

2. Respondents are contested the OA. They have relied upon a decision of the apex court in the case of state of Madhya Pradesh versus SS Kourav which states that the courts/tribunal or not appellate forum to decide on transfers made on administrative grounds. They have justified the transfer of Sri PK Singh who has been suffering from advanced stage of cancer.

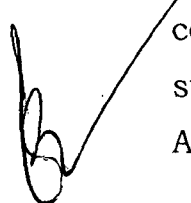
3. Arguments were advanced by the respective parties on the above lines. Counsel for the applicant further added that unfortunately Mr PK Singh is no more now and thus the

necessity to shift the applicant does not arise.

4. Counsel for the respondents has stated that he has no information or instruction about the sad demise of Sri PK Singh as informed by the counsel for the applicant.

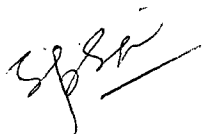
5. Arguments were heard and documents perused. The Tribunal is fully aware of the limited scope for judicial interference in respect of transfer matters as transfer is only an incidence of service and it is for the respondents to decide as to who is to be posted where. Also judicial interference is justified only when there is an allegation of mala fide which is proved or when the transfer order is by an authority not competent to pass such an order or where professed norms or guidelines on transfer have been violated. Here, the guidelines stipulate that transfers are normally before the commencement of academic session. In the instant case the transfer has been effected during the middle of the academic session. According to the applicant his daughters are in the middle of their academic session. Again, station seniority is one which is to be reckoned for the purpose of consideration of persons for transfer. In the instant case in yet another school at Lucknow the present incumbent has higher stations seniority than the applicant. The respondents have not considered the same. Of course, the reason is obvious. Sri PK Singh has been suffering from advanced stage of cancer and he desires to have his posting nearer to the hospital the the place where the applicant is at present serving suits his case. Yet, the action on the part of the respondents happens to be deviating from the guidelines.

6. It is not that there cannot be any posting after the transfer for a particular year is over. Administrative exigencies may compel the authorities to order some transfer. This power cannot be questioned. What is to be seen however, is whether there is any justification for ordering transfer after the annual transfer for the year is already over. In the instant case except that Shri PK Singh has been suffering from a serious ailment no other reason is available. Since a number of general norms or prescribed in the guidelines have been violated, the applicant, certainly has crystallised the case in his favour. This can be so stated if the reason for transfer is not taken into account. According to the respondents the transfer has to be effected on

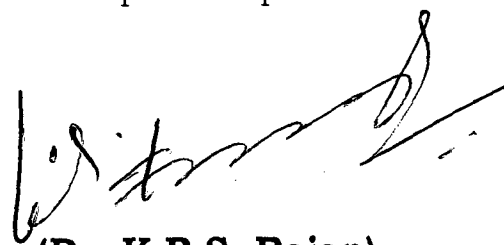


account of the serious illness of Mr PPK Singh. Compared to the same, a slight deviation from the procedure or norm could be ignored, as the action of the respondents in shifting the said ailing Mr PK Singh is for a better cause and on humanitarian grounds. However, if the information furnished by the counsel for the applicant happens to be true (that unfortunately Mr PK Singh is no more), the respondents could well review their own order of transfer of the applicant since the applicant's transfer does suffer from certain deviation from the norms and the main cause for shifting him, to accommodate Shri P.K. Singh does not subsist now. Counsel for the applicant was fair enough to state that assuming without accepting that the transfer of the applicant is inevitable then he could have been posted somewhere near, and the applicant is in fact ready to be posted to Kanpur.

7. Taking into account the overall conspectus of the case, interests of justice would be met if the OA is disposed of with a direction to the respondents to review the transfer order of the applicant keeping in view the subsequent development (i.e. the state of affair in respect of Mr PK Singh) and arrive at a judicious decision. Till such time the decision is taken the applicant shall not be disturbed from the present place of posting. Ordered accordingly. No costs.



(S.P. Singh)
Member(A)



(Dr. K.B.S. Rajan)
Member (J)

Girish/-