

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. No. 354 of 2006

Date of order: 14.7.06

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)

Hon'ble Shri S.N.P.N. Sinha, Member (A)

Dr. Awadhesh Prasad Thakur, S/o Shri Raghunath Prasad Thakur, resident of village , Ratanpura, P.S. Saraiya, District Muzaffarpur, Principal Jawahar Navodaya Vidyalaya Birauli, Samastipur, P.S. Pusa, District Samastipur.

....Applicant

By Advocate : Shri Rajendra Pd. Singh assisted by Shri N. Kumar.

Vs.

1. The Union of India through the Secretary, Human Resources Development Department.
2. The Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi, 110048.
3. The Joint Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi, 110048.
4. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Patna, Opposite A.N. College, Patna- 13.
5. The Assistant Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Patna, Opposite A.N. College, Patna- 13.
6. Shri Dhirendra Kumar Jha, newly appointed Principal at J.N.V., Samastipur.

....Respondents

By Advocate : Shri G.K. Agarwal.



O R D E RBy Sadhna Srivastava, M (J):-

The applicant, namely, Awadhesh Prasad thakur has assailed the (a) orders dated 24.4.2006 (Annexure A/3 whereby he has been transferred from Jawahar Navodaya Vidyalaya (JNV in short) Samastipur to JNV, Jahanabad, and (b) order dated 7.6.2006 (Annexure A/12) passed by Commissioner, Navodaya Vidyalaya Samiti, New Delhi, rejecting the representation of the applicant against the transfer and he has prayed for setting aside the same with all consequential benefits.

2. With the consent of the learned counsel for both the parties the case was taken up for final disposal at the stage of hearing on interim matter. Accordingly, we have heard the learned counsel for the parties. We have also perused the pleadings and record of this case.

3. The relevant material facts of this case are that the applicant was promoted as Principal on 3.1.2002 and was posted at JNV, Siwan. He was transferred to JNV,



Samastipur on request basis on 4.7.2003 on spouse ground.

He has been at Samastipur for a period of about three years.

The further facts as averred in the OA are that the respondent No. 3 , vide order dated 19.4.2006 has transferred 20 Principals on administrative/public interest grounds. On the same date again another order was issued by respondent No. 3 whereby 35 Principals have been transferred in different schools (Annexure A/2 and A/2 A). In both the orders the applicant's name was not there. Subsequently, the respondent No. 3 issued another order dated 24.4.2006 transferring the applicant (as well as two other Principals) from Samastipur to Jahanabad.

4. The applicant has challenged the impugned order mainly on two grounds. Firstly, undue hardship has been caused on account of this transfer from Samastipur to Jahanabad as his wife has been presently on a foreign assignment with Alemaya University, Ethiopia and his one daughter has been studying at Class XII at Samastipur and there is no other family member to look after his children.



Secondly, no administrative ground has been shown in the impugned order for transferring him to Jahanabad, therefore, the impugned transfer order is arbitrary, mala fide and contrary to law.

5. The issue of transfer and posting has been considered time and again by the Apex Court, and the entire case law has been settled by a catena of decisions. It is entirely upon the employer to decide when, where and at what point of time a public servant is to be transferred. Whether the transfer order is in public interest or on administrative ground requires factual adjudication. It is not permissible for the Tribunal to adjudicate the same. Transfer is not merely an incident of service but a condition of service and is to be passed in public interest and for efficiency in administration. No employee can claim a right to remain posted at a particular place unless his appointment is made specially on non-transferable post. Admittedly, the applicant is holding a transferable post, hence he cannot claim his posting at Samastipur. The personal inconvenience has got



no role to play in transfer matter. This Tribunal cannot interfere with the transfer order unless shown as an outcome of mala fide exercise of power or in violation of any statutory provisions. In absence of these two elements, the transfer order cannot be the subject matter of judicial scrutiny. In the pleadings of the applicant, these two elements are absent. It is not necessary that the transfer order must contain the reasons.

6. Instead of burdening this judgment by referring catena of decisions on the subject matter in details, it will be fruitful to refer to citations only.

(a) AIR 1974 SC page 555, E.P. Royappa vs. State of Tamil Naidu.

(b) 1986 (4) SCC page 131. B. Bardha Rao vs. State of Karnataka.

(c) AIR 1989 SC 1774 , U.O.I vs. H.N. Kyartania.

(d) AIR 1991 SC page 532 ; Silpi Bose vs. State of Bihar.

(e)AIR 1991 SC page 1605 , U.O.I vs. M.P. Thomas.

(f)1994 (6) SCC page 98 , N.K. Singh vs. U.O.I.



2001 (8) SCC 574 , National Hydro electric Power Corporation vs. Shri Bhagwan and another.

(g) AIR 2002 SC 77, Jagamath Rao Vs. State of Andhra Pradesh.

(h) 2003 (7) SCC 403 , State of Rajasthan vs. A.P. Solanki.

(i) AIR 2004 SC 4121 , State of U.P. vs. Gobardhan Lal.

(j) AIR 2004 SC 4165 , State of U.P. vs. Siyaram.

(k) 2004 (4) SCC 245, U.O.I vs. Janardan Deo Nath.

7. In the case of State of U.P vs. Gobardhan Lal, the Apex Court has as follows;

“ It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for



any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

8. Recently, the Apex Court reiterated a law on transfer in the case of Major General, J.K. Bansal vs. U.O.I, 2005 (107) FLR page 37, where it has ruled about the scope of interference by the court/Tribunal in the matter of transfer. The applicant has placed reliance on a judgment of Kerala High Court, reported in 1993 (1) SLJ page 151 as well as the decision of Andhra Pradesh High Court, reported in 1993 (3) SLR, J. Ramachandra Rao vs. A.P. State Cooperative Union Ltd. And others. The facts of those cases are quite



different from the facts of the present case, because in the present case the respondents have transferred 58 Principals from one Institution to another within five days, which are in the nature of routine transfers and routine transfer order^{is} are always issued in administrative exigencies. Such transfer order cannot be termed as mala fide. As such the above cited cases are not applicable to the present case.

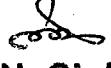
9. So far as the ground taken by the applicant regarding education of his daughter is concerned, it is his personal problem, and it is well settled law that the personal inconvenience of the government employee cannot come in the way of administration in transferring the employees in administrative exigencies. The Apex Court in the case of S.S. Kaur^v vs. State of M.P, 1995 SCC (L&S) 666, has held that hardship caused to the employee from the transfer order is not a ground for judicial review of transfer order.

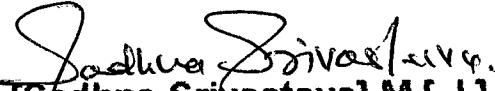
10. Thus, the applicant should comply with the transfer order, and he should join at his new place of assignment as the academic session where the applicant



has been posted has already started, and his non joining may not only affect the administration of the Vidyalaya but also may affect the studies of innocent students.

11. The up-shot of the aforesaid analysis leads to inescapable conclusion that this OA is sans merit and substance. It fails and stands dismissed, accordingly, without any order as to the costs.


[S.N.P.N. Sinha] M [A]


[Sadhna Srivastava] M [J]

/cbs/