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CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

OA No.403 of 2005

Date of order : 10th August, 2005

C O R A M

Hon'ble Mr. Justice P.K.Sinha, Vice-Chairman

Punit Kumar Mishra, S/o Late Madhav Mishra, resident of Village –
Sahabajpur, P.O.- Bathnaha, District – Araria.

..... Applicant

Vrs.

1. The Union of India, through the Secretary, Ministry of Human Resources Development [Education Department], Govt. of India, New Delhi.
2. The Chairman, Ministry of Human Resources Development [Education Department], Govt. of India, Shastri Bhawan, New Delhi.
3. The Commissioner, Kendriya Vidyalaya Sangathan, Headquarters, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
4. The Education Officer, Kendriya Vidyalaya Sangathan, 18 , Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
5. The Asstt. Commissioner, Kendriya Vidyalaya Sangathan, Rseional Office, Kankarbagh, P.O.- Lohia Nagar, District – Patna.
6. The Principal, Kendriya Vidyalaya No.1, Kankarbagh, Patna.



7. Sri Pramkod Kumar Mishra, Trained Graduate Teacher, Tengavalley, through the Principal, Kendriya Vidyalaya Sangathan, Tengavalley, Guahati [Assam].

8. Dr. S.Kumar Trained Graduate Teacher, Kendriya Vidyalaya, Khagaul, Patna.

..... Respondents.

Counsel for the applicant : Shri J.K.Karn.

Counsel for the pvt. Respondent No.8 : Shri Sidheshwari Prasad Singh with Shri S.K.Sharma.

Counsel for the respondents : Shri G.K.Agarwal, ASC.

ORDER


By P.K.Sinha, V.C. :-

The applicant has come up for quashing of Annexure-A/5 dated 27.6.2005 by which the applicant working as Trained Graduate Teacher [Sanskrit] at Kendriya Vidyalaya [K.V., in short] No.1, Patna was transferred to K.V.,Tengavalley in public interest.

2. Following facts are not disputed in this case :-

[i] On 15.9.1995, the applicant was appointed as Trained Graduate Teacher, Sanskrit and was posted at Jorhat, Assam listed as 'hard station' where he continued for about six years and then requested for posting in Bihar.

[ii] Request having been conceded, the applicant was posted at K.V.,



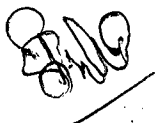
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Kankarbagh, Patna vide order dated 21.6.2001 where he joined in July, 2001.

[iii] Vide Annexure-A/2, a general transfer order was issued by the Respondent No.4 and in terms of Clause 10[2] of the latest transfer guidelines [Annexure-A/3], [referred to hereinafter as "the guidelines"].

The Respondent No.7, Pramod Kumar Mishra was accommodated at Patna from Tengavalley replacing the junior most Teacher at Patna to make room for him, i.e., Respondent no.8, who in the same list was transferred to Tengavalley. Thereafter, Respondent No.8 filed a representation before the Commissioner of Kendriya Vidyalaya Sangathan against that transfer order in April, 2003 on the ground of her wife working in Bihar [then at Chapra in Navodaya Vidyalaya and now at Hazipur], as also that he and his 70 years old father were suffering from various diseases, being treated at Patna. This representation may be seen at Annexure-R-1 of the written statement of Respondent No.8. Thereafter, by order dated 27.6.2005, the competent authority issued order cancelling transfer of Respondent No.8. Thereafter, vide Annexure- A/5, an order dated 27.6.2005, the applicant was transferred to K.V., Tengavalley, as already seen.

3. Now coming to other facts of the case, the contention of the applicant is two fold, namely, that the transfer of the applicant was malafide so much



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so that it was done in order to accommodate Respondent No.8 and, secondly, that Clause 10[2] of the Guidelines which came into effect from 19.1.2005 was given a go by and not implemented by the respondents.

4. In so far as the guidelines are concerned, Clause 10[2] of the guidelines, which is at Annexure-A/3, may be reproduced :-

“Where transfer is sought by a teacher under clause 8 of the transfer guidelines after continuous stay of 02 years in the VERY HARD STATION or 3 years in the North East, A & N Islands and other declared hard stations or by a teacher falling under the grounds of medical/death of spouse/less than three years to retire or very hard case involving human compassion, in the event of non-availability of vacancy at his choice station, the vacancy shall be created to accommodate him by transferring the junior most teacher in the service of KVS in the said station of the same category [Post/Subject].”

5. The contention of the learned counsel for the applicant is that the Respondent No.8 was the junior most teacher in the subject concerned at the station and, under the aforesaid provision, it was mandatory to transfer him to accommodate Pramod Kumar Mishra, Respondent No.7, who was coming from a hard station. It was submitted that at the station there were two teachers, including Respondent No.8, who were junior to the applicant. However, it was admitted that the teacher who was in between the applicant



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and Respondent No.8 in seniority, had since been transferred, therefore, the position is that at the station in the given subject, Respondent No.8 was the junior most teacher and, after him, the applicant was junior most. The learned counsel for the applicant also pointed out that these guidelines had to be followed and the respondents could not have thrown the guidelines out of window just to accommodate the Respondent No.8. He also pointed out that not only the guidelines in column 10[2] was violated, but also the guidelines in Clause 10[3] which provided that while displacing teachers under clause 10[2], efforts would be made to accommodate them in the nearest K.V. against clear vacancy. It was pointed out that instead of doing that the applicant was transferred to another hard, and far flung, station in Arunachal Pradesh.

6. The ld. ASC Shri G.K. Agarwal appearing for the Respondents No.1 to 6 submitted two points, namely, that the applicant was at this station since July, 2001 and had completed more than three years of stay here and secondly that the applicant was relieved from his post at Patna on 30.6.2005 whereas he had filed the case on 1.7.2005, therefore, the application itself had become infructuous.

7. Shri Sidheshwari Prasad singh, learned counsel arguing for Respondent No.8 submitted, pointing out averments in the written statement



of Respondent no.8, that it was only in the year 2003 that this applicant was transferred from Kalingpong to K.V. at Patna on the ground of his spouse working in Bihar. Shri Singh submitted that while transferring Respondent No.8 to Tengavalley, this point was overlooked that he was transferred on his own request on the ground of working place at his wife. It was submitted that the applicant had not even completed three years term, hence when he filed a representation bringing to the notice of the respondents the facts stated above, the respondents allowed his prayer.

8. The ld. counsels for the official and un-official respondents argued that it was settled principle that transfers were a natural feature of service and the Courts/Tribunals should not intervene in such orders. It is true that Courts/Tribunals are reluctant to interfere in the matter of transfer but in exceptional cases it is done, when it is made to appear that the transfer order was malafide, or not in accordance with rules, or that the order was passed by an authority not competent to pass that order.

9. The guidelines, as the title itself denotes are guidelines to be generally followed in the case of a transfer but it cannot take place of statutory rules following which would be mandatory. Obviously, under Clause 10[2] when Pramod Kumar Mishra was allowed transfer from a hard station to a station of his choice, i.e., Patna, the junior most teacher had to be displaced which



was done under Annexure-A/2. Obviously, the authorities found merit in the representation filed by Respondent No.8 and cancelled his transfer whereafter the next junior most teacher, the applicant, was transferred. At this stage, when all the transfers have been implemented and the applicant stands relieved from his post, Pramod Kumar Mishra having joined in the vacant place, the relief as sought by the applicant, if granted, would cause unnecessary disturbance not only to the un-official respondents but also to the K.V.Sangathan.

10. Therefore, for the reason that the guidelines, which were generally to be followed, did not legally tie the hands of the respondents to take a decision about transfer in administrative exigencies, and because the applicant stood relieved and transfer orders have been implemented, I am not inclined to grant relief to the applicant in its present form.

11. Having said that, it also has to be taken into account that the guidelines are definitely to be followed except in exceptional circumstances.

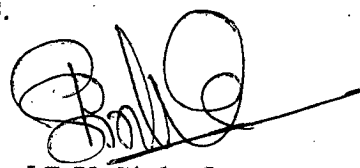
When asked as to whether the respondents had considered accommodating the applicant, the displaced teacher, in the nearest K.V. against clear vacancy as per clause 10[3] of the Guidelines, Shri G.K.Agarwal, Id.ASC for the official respondents submitted that to avail of this part of guidelines, the applicant had to file a representation. However, language of clause 10



[3] makes it clear that the effort to accommodate the displaced teacher in the nearest K.V. was to be made by the authorities concerned ^{themselves} otherwise this part of the guidelines would loose meaning. Since some time has elapsed, at this stage it will be for consideration of the applicant as to whether he would want posting to the nearest K.V., if vacancy exists.

12. In view of the aforesaid, while rejecting the prayer for the relief as sought by the applicant, it is directed that if within a week of this order, the concluding part of which have been declared in the court itself, the applicant seeks a nearby posting, that will be considered by the respondents who may consider to accommodate the applicant at the nearest K.V. where clear vacancy exists in the subject, in accordance with clause 10[3] of the guidelines. This decision will be taken within fifteen days of the receipt of this order and representation. If such representation is filed then period during which the applicant was not on any posting, would be considered by the respondents for regularisation as per extant rules, if the applicant obeys the direction of the authorities given on his representation.

13. This O.A. is disposed of. No costs.


[P.K. Sinha]
Vice-Chairman

mps.