

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 786 OF 2005

[Patna, this Thursday, the 9th Day of March, 2006].

C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

Shri Shashi Mohan Singh [Shri S.M.Singh], son of Late Baleswar Singh, resident of quarter no. D-2/52 Barauni Refinery Township, District – Begusarai, PIN – 85117 and permanent resident of Akashpur, [Ramdiri], P.O.: Kamaruddinpur, P.S.: Begusarai, District : Begusarai.APPLICANT.
By Advocate :- Shri Gautam Bose.
 Shri Vikash Jha.

Vs.

1. The Union of India through the Commissioner, Kendriya Vidyalaya Sangathan, 18 Industrial Area, Saheed Jeet Singh Marg, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18 Industrial Area, Saheed Jeet Singh Marg, New Delhi.
3. The Joint Commissioner [Admn.], Kendriya Vidyalaya Sangathan, 18 Industrial Area, Saheed Jeet Singh Marg, New Delhi.
4. The Asstt. Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Kankarbagh, Patna.
5. The Principal, Kendriya Vidyalaya, IOC Barauni, Distt.: Begusarai, Bihar.
6. The Education Officer, Kendriya Vidyalaya Sangathan.
7. Mrs. Shanti Tigga, W/o Mr. Niranjana Tigga, the then Principal, KV, IOC, at present posted at KV, HFC, Barauni.RESPONDENTS.
By Advocate :- Shri G.K. Agarwal, ASC.

O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- Learned counsel for both the sides have been heard.



2. The applicant while posted as Librarian, Kendriya Vidyalaya [KV, in short], IOC, Barauni was transferred in the same capacity to KV at Khagaria by the impugned order dated 07.10.2005 against which he had filed a representation and also had come up before this Tribunal in OA 689 of 2005 which was disposed of by order dated 27.10.2005. This Tribunal noted that the applicant had come up before the Tribunal on the ground of malafide and bias on the part of the official ^{concerned,} and also had levelled some charges against the Principal of the KV at Barauni, as also that against the transfer order the applicant had filed a representation to the Joint Commissioner [Admn.], KVS, New Delhi which also contained an alternative prayer to transfer him to KV at Mokama as his wife was working at KV, HFC, Barauni. Since the representation against the order was pending, this Tribunal directed the Joint Commissioner aforesaid to dispose of the representation within 15 days of receipt of a copy of the order. That was done by the concerned official vice order dated 23.11.2005 at Annexure-A/1 in which following points have been highlighted :-

[i] The applicant while choosing a career in KVS had to keep in mind that the post carried all India transfer liability which may result in hardship, but if done in view of administrative exigencies, he had to put up with the hardship, if any.

[ii] Para 5[1] of KVS transfer guidelines [old & new] provided that a Teacher was liable to be transferred on the recommendation of the Principal and Chairman of VMC of the

KV.

[iii] As per Clause 17[2] of the aforesaid guidelines, a Teacher so transferred as per clause 5[1] would not be considered for transfer without completion of five years of stay at the station where he was so posted.

[iv] The applicant was transferred on administrative ground in public interest on the basis of the recommendation of his controlling authority at the school level.

[v] The applicant was found involved in supplying information about the activities of the administration and few employees of his vidyalaya which was beyond load of his duties.

3. The learned counsel for the applicant has submitted that the transfer was bad on two grounds, namely :-

[a] It was outcome of malafide intention of local official including that of the Principal of KV at Barauni who was biased against him as he had exposed her acts of omissions and commissions, hence the transfer was punitive in nature.

[b] The order obviously discriminated against the applicant so-much-so that the Principal was also transferred from the School, but was accommodated back after two months which was against the guidelines as referred to in the speaking order at Annexure-A/1.

However, in so far as this second ground is concerned the



learned counsel for the respondents, Shri G. K. Agarwal, pointed out that the new transfer guidelines was effective from 19.01.2005. Clause 2[viii] defines a "Teacher" which means all categories of teachers in the employment of Sangathan but does not include Vice-Principals, Principals, Education Officers and above, for the purpose of transfer. It was also submitted that even supposing, for argument's sake, that a wrong has been committed in one case, that cannot be cited as precedence for committing another wrong.

4. In so far as the first ground taken up by the learned counsel for the applicant, Shri Gautam Bose, is concerned, certain documents were pointed out. Annexure-A/3, dated 25/27.07.2005 is the first memorandum of charges issued against the applicant with a view to take disciplinary action against him. Charges were as follows :-

[i] Applicant was not willing to make available the library hall of vidyalaya on 08.04.2005 for the farewell function of the then Chairman, VMC, and that the Principal had to arrange function there with much difficulty.

[ii] The applicant had charged Somit Srivastava, Education Officer on 15.04.2005 in extremely loud, offensive and derogatory way blaming him to have visited the vidyalaya with malice for ruining his career.

5. A show cause reply dated 09.08.2005 was submitted by the applicant at Annexure-A/4 in which certain allegations were also made against the Principal of the School, also relating to certain alleged misconduct on her part. It was also claimed that the Principal had provoked the Education Officer



who had scolded him, however denying the charge no.2 also. Annexure-A/6 is the second memorandum of charges, dated 12.09.2005 containing almost the same charges. Learned counsel for the applicant submitted that neither any action was taken on the first memorandum of charges including upon the show cause reply submitted by him, nor any action has been taken on the second memorandum of charges at Annexure-A/6, rather by the impugned order dated 07.10.2005 at Annexure-A-1/1 he was handed over the transfer order to KV, Khagaria with immediate effect. Learned counsel for the applicant also pointed out Annexure-A/5, dated 18.08.2004 by which Smt. Shanti Tigga, the Principal of KV at Barauni was also transferred.

6. Therefore, article of charges was served upon the applicant, thereby initiating a departmental proceeding. In show cause reply, counter allegations have been made by the applicant. At this stage neither it can be held, or an opinion ventured, as to whether the charges as contained in the memorandums were genuine or whether the facts mentioned in the show cause reply were true. Though it has been claimed that further action has not commenced in the departmental proceeding, but it also has not been claimed that the departmental proceeding has been dropped either accepting his show cause reply or on any ground whatsoever. Learned counsel for the respondents however, pointed out that the show cause submitted to the first article of charges was obviously not accepted as the second memorandum was subsequently issued.

7. Learned counsel for the applicant has relied upon certain decisions in this regard. Help was sought from a decision of the Apex Court in



the applicant also has relied upon two decisions of the Patna High Court, namely, in the case of Baldeo Chowdhury Vs. State of Bihar; 2000 [1] PLJR 914 and in the case of Surendra Mohan Keteryar Vs. State of Bihar; 2000[3] PLJR 132. Those were the cases in which the transfer orders were set-aside finding those not to be fair.

9. So far hardship is concerned, the Delhi High Court in the case of Dr. Sunita Gupta Vs. Secretary, Ministry of HRD & Ors; 2005[1] SLJ 162 observed that transfer was incidental to every employment and every transfer did cause some hardship, that dislocated the family, but that could not be helped. In the case of Shanti Kumari Vs. Regional Deputy Director, Health Services, Patna Division & Ors; AIR 1981 SC 1577 their Lordships refused to interfere with the transfer of Auxiliary Nurse Mid-wife holding that the transfer of the Government servant due to exigencies of service or due to administrative reasons should not be interfered with while judicially reviewing the matter. In the case of Shilpi Bose [Mrs.] & Ors. Vs. State of Bihar & Ors; 1991 Supp. [2] SCC 659 their Lordships of the Apex Court held that the Courts should not interfere with transfer order which was made in public interest and for administrative reasons unless the transfer orders were made in violation of any mandatory, statutory rule or were the outcome of malafide. It was also observed that a Government servant holding a transferable post has no vested right to remain posted at one place or the other.

In the case of State of Uttar Pradesh Vs. Siya Ram; 2004 SCC [L&S] 1009 their Lordships had discussed the power of the High Courts while exercising jurisdiction under Articles 226 & 227 of the Constitution



while considering a transfer matter. In that case it was held that the High Court had gone into the question as to whether the transfer was in the interest of public service which would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. It was held that in such transferable posts, transfer from one place to another was not only an incident but a condition of service, necessary too in public interest and efficiency in public administration. Their Lordships held that unless an order of transfer was shown to be an outcome of malafide exercise of power or was stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally should not interfere with such orders as a matter of routine as if they were appellate authorities substituting their own decision for that of the employer/management.


10. From the speaking order at Annexure-A/1 it appears that the controlling officer of the applicant had recommended for his transfer in the interest of administration. There is a memorandum of charges and counter allegations. Simply because some allegations have been made by the applicant against the Principal of the KV, that would not mean that the recommendation of the Principal was indeed accentuated with malice or was malafide. What actually was the truth could come out in the departmental proceeding or by an inquiry held by superior officials, if considered necessary. But simply because some allegations have been made I am not in a position to hold that the recommendation for transfer was made and the transfer so ordered, on account of any malafide intention or any bias on the part of the concerned



authority/authorities.

11. The alternative prayer made in his representation by the applicant would show that the applicant was not averse to his transfer as such but was willing to go on transfer if accommodated at the KV, Mokama. Such a request can be made by him particularly on the ground of spouse but to accept that or not would be under discretion of the concerned higher authority. Such a discretion should not be interfered with by a Court/Tribunal so long the decision is not shown to be otherwise malafide or against the rules.

12. In view of the aforesaid, I am not inclined to interfere with the stand taken by the competent authority while transferring him, or while disposing of his representation. This application, therefore, is dismissed. No costs.



[P. K. Sinha]/VC

skj.