

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 858/99

25
26.11.99
Date of Decision:

Mrs. S. H. Deshpande

Applicant.

Shri S. P. Saxena

Advocate for
Applicant.

Versus

The Commissioner, KVS, N. Delhi & Ors.

Respondent(s)

Shri V. G. Rege

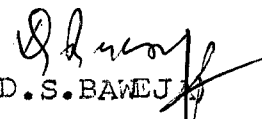
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D. S. Baweja, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓


(D. S. BAWEJA)
MEMBER (A)

~~SECRET~~ ~~THE CENTRAL ADMINISTRATIVE TRIBUNAL~~

MUMBAI BENCH, MUMBAI

OA.NO. 858/99

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Dated this the 20th day of November 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Mrs.Shubhada Hemant Deshpande,
Music Teacher,
Kendriya Vidyalaya No.1,
Air Force Station,
Lohegaon, Pune-32.

...Applicant

By Advocate Shri S.P.Saxena

V/S.

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
Sahaheed Jeetsing Marg,
New Delhi.
2. Assistant Commissioner
Mumbai Region,
K.V.Sangathan,
I.I.T. Campus,
Powai, Bombay.
3. The Principal,
Kendriya Vidyalaya No.1,
Air Force Station,
Lohegaon,
Pune- 411 032.

...Respondents

By Advocate Shri V.G.Rege

..2/-

O R D E R

(Per: Shri D.S.Baweja, Member (A))

The applicant was appointed after due process of selection as Music Teacher against a regular vacancy in Kendriya Vidyalaya at Ahmednagar on 20.3.1985. Subsequently, she was transferred to Pune and joined at Pune on 2.12.1987 as Music Teacher in Kendriya Vidyalaya No. 1, Air Force, Lohegaon, Pune. However, as per order dated 10.8.1999, the applicant has been transferred to Mumbai on account of being declared as surplus. The applicant represented against this transfer on 21.8.1999. Thereafter, she filed OA.NO.716/99 challenging the transfer order. This OA. was disposed of at the admission stage as per order dated 24.8.1999 with the direction to the respondents to dispose of the representation of the applicant dated 21.8.1999 through a speaking order. In compliance with this order, the respondents have considered the representation of the applicant and have rejected the same as per order dated 2.9.1999. The present OA. has been filed by the applicant on 29.9.1999 challenging the order dated 2.9.1999 and seeking the relief of setting aside the order dated 2.9.1999 and the transfer order dated 10.8.1999 and to direct the respondents to continue the applicant on the post of Music Teacher at Pune.

2. The applicant has based her case on the following grounds :- (a) The respondents have not considered the representation of the applicant dated 21.8.1999 in the order dated 2.9.1999 properly as the points raised in her representation had not been dealt with

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particularly with regard to the personal problems being experienced by the applicant. In view of this, the order dated 2.9.1999 is not a speaking order as per the directions in the order of the Tribunal dated 24.8.1999. (b) The transfer of the applicant has been done to Mumbai declaring her as surplus. This action of the respondents is arbitrary as in the event of being declared surplus, the junior-most as per the seniority has to move out. It is the claim of the applicant that she is not the junior-most as per the seniority both in the Air Force Station Kendriya Vidyalaya or at Pune and therefore she could not be transferred out of Pune. (c) The work load of Music Teachers has not reduced and there is a still requirement of two Music Teachers. In fact, the strength of the children was increased in comparison to what was in 1996. (d) The transfer has caused serious personal problems to the applicant particularly in looking after her son who has been injured seriously recently. Further, the transfer has been also ordered in the middle of the academic session which is against the law laid down by the Hon'ble Supreme Court.

3. The respondents have opposed the application through the written statement. The respondents submit that the representation of the applicant has been carefully considered by the competent authority after due application of mind and keeping in view the extant rules and policy guidelines. The respondents



submit that the requirement of Music Teachers in the Kendriya Vidyalaya No.1 Air Force Station, Lohegaon had been reviewed by the competent authority and it was decided to reduced the strength to one. As a result, one Music Teacher had become surplus and was required to be transferred out of the Vidyalaya. For dealing with such surplus Teachers, the Kendriya Vidyalaya Sangathan has laid down the policy guidelines as per the letter dated 23/24.7.1996. As per these guidelines, a Teacher who has a longest stay at Vidyalaya is required to move out of Vidyalaya under the category of 'automatic surplus' and accordingly the applicant being with the longest stay has been transferred out of Pune to Mumbai. In view of this position, the respondents plead that the action to transfer the applicant is as per the extant rules/guidelines and not arbitrary and based on pick and choose policy as alleged by the applicant. As regards the hardships and family problems, the respondents contend that as per the settled law, the personal problems cannot be a ground to challenge the transfer order. Transfer is an excigency of service and since the applicant is holding a transferable post, she is liable to be posted in any of the Kendriya Vidyalayas throughout India.

4. The applicant has not filed any rejoinder reply for the written statement of the respondents.

5. We have heard the arguments of Shri S.P.Saxena and Shri V.G.Rege, learned counsel for the applicant and respondents respectively.

..5/-



6. The law with regard to judicial interference in the matter of transfer is well settled through catina of judgements of the Hon'ble Supreme Court. The transfer which is a normal consequence in case of a transferable post is not to be interfered with by the Court/Tribunal until and unless a case is made out that transfer is ordered with malafide intention or in violation of service rules or guidelines for transfer without any proper justification. In this connection, reference is made to one of such judgements in the case of Rajendra Roy vs. Union of India & Anr., AIR 1993 SC 1236. An extract from Para 7 which sums up the views of Hon'ble Supreme Court in the matter of transfer is reproduced below :-

"It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department....."

7. Keeping in view the law laid down by the Hon'ble Supreme Court, I will look into the various contentions raised by the applicant. The first contention of the applicant is that the work-load of Music ^{Teachers} has not come down and there is still a need of two Music Teachers in the Air Force Station Kendriya Vidyalaya where the applicant was working. Whether two or only one Music Teacher is required is a policy matter which has to be decided by the competent authority. It is not a matter for judicial

interference just on the statement being made by the applicant that there is a need for two teachers. The respondents during the hearing produced a copy of the order dated 11.5.1999 as per which the Kendriya Vidyalaya Sangathan has reviewed the strength of the teachers for various subjects and has laid down the strength for the year 1999-2000. It is noted that against the existing strength of two Music teachers, only one teacher has been approved for the Kendriya Vidyalaya under reference. I do not consider that it is the scope of judicial review to scrutinise this decision of the competent authority which is a policy matter until and unless it is brought out that this decision has been taken ^{with} ~~as~~ a mala fide intention. There is no such allegation made by the applicant. I am, therefore, unable to find any merit in this submission of the applicant.

8. The second ground taken by the applicant is that if the transfer of the applicant has been ordered on account of being rendered surplus, then the action of the respondents is arbitrary in transferring the applicant out since she is not the junior-most both in the Kendriya Vidyalaya, Air Force Station, Lohegaon as well as in the other Kendriya Vidyalayas at Pune. She has further submitted that the other Music Teacher at Kendriya Vidyalaya, Air Force Station, Mrs. Abhya Deshpande is junior to the applicant as she has been not only appointed in 1987 as compared with the applicant in 1985 but has joined the Vidyalaya at Pune only in 1990 when the applicant was working there since



1987. Similarly, there are number of other Music teachers junior to the applicant who are working in the other Kendriya Vidyalayas at Pune. The respondents, however, have contested this claim of the applicant submitting that the transfer of the service teacher is to be done as per the guidelines laid down by the Kendriya Vidyalaya Sangathan as per letter dated 23.7.1996. I find that this letter has been referred to in the order dated 2.9.1999 and a copy of this was also made available during the hearing. The respondents contend that the applicant on being rendered surplus due to operation of only one post of Music Teacher for the year 1999-2000 comes under the category of 'automatic surplus' and as per the policy guidelines dated 23.9.1996, the teacher with the longest stay in the Vidyalaya is required to be transferred out and accordingly the applicant who has a longest stay has been transferred. With these submissions made by the respondents, the counsel for the applicant during the hearing pleaded that the policy guidelines laid down as per the order dated 23/24.7.1996 are arbitrary as a normal rule is that on being rendered surplus, the junior-most should be transferred out first. I am not inclined to go into the legality of the guidelines under reference. I find that the respondents have disclosed the guidelines under which she has been transferred in reply to her representation dated 2.9.1999. The applicant has neither challenged these guidelines as being arbitrary nor she has made

any averment to this effect in the OA. Even when the respondents had disclosed this fact in the written statement, the applicant has not filed any rejoinder reply and made an amendment to challenge these guidelines. The validity of these policy guidelines cannot be gone into ^{merely} on the plea being made during the hearing. Since the respondents have transferred the applicant as per the guidelines on being rendered surplus under the 'automatic surplus' category, I do not find any infirmity in the transfer order as alleged by the applicant.

9. The third ground made by the applicant is that the transfer of the applicant out of Pune will cause hardship and family problems particularly in view of injury to her son for which the treatment from a Specialist is being taken. The applicant had brought out the family problems arising out of transfer out of Pune in her earlier representation dated 21.8.1999 and the same had not been found favour with the competent authority. As held by the Hon'ble Supreme Court, the order of transfer may cause difficulties and dislocation of family set up but that cannot be a ground for striking down the transfer order. The issue of family problems arising out of the transfer has to be gone into by the administrative authority who has issued the transfer order and it is not for the Court/Tribunal to pass any judgement or order for the same. In the present case, as already directed in the earlier OA. filed by the applicant the matter has been considered by the competent authority and therefore I do not find

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any reason to give any further direction to the competent authority to reconsider the matter keeping in view the family problems.

10. The fourth ground taken is that the transfer has been done during the middle of academic session and is against the law laid down by the Hon'ble Supreme Court. The applicant has cited the judgement of the Apex Court in the case of Director of School Education Madras vs. O.Karup Thevan & another (1994) 28 ATC 99. I have carefully gone through this judgement. I am of the opinion that on facts and circumstances of the present case, the ratio of this judgement does not apply. In this case, Hon'ble Supreme Court has observed that the appellant was unable to point out that there was such an urgency that the employees could not have been accommodated till the end of the current academic session. Keeping this fact in view, Hon'ble Supreme Court held that the transfer order is not to be given effect till the end of the academic session. In the present case, the situation is entirely different. Firstly the transfer is necessitated because there ^{was} no post of the Music Teacher and therefore the transfer was not a routine affair which could wait till the end of the academic year. Secondly the applicant has challenged the transfer on merits and has not made any prayer that the same should be stayed till the academic session. Thirdly the transfer

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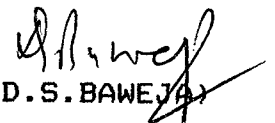
is in the month of August after the vacation period is over and was in the beginning of the academic session. With this fact situation, what is held in the cited judgement is not helpful to the applicant.

11. The last ground taken by the applicant is that the representation dated 21.8.1999 has not been disposed of by a speaking order as directed by the Bench in the earlier order dated 24.8.1999 as all the issues raised particularly ^{the} personal problems have not been covered in the reply dated 2.9.1999. I am not impressed by this submission of the applicant. The letter dated 2.9.1999 clearly brings out the basis on which the transfer has been ordered in terms of the policy instructions and in such a situation the personal problems would not come into picture until and unless there is a vacancy at Pune and applicant could be accommodated in the same. Transfer of any other teacher would be in violation of the guidelines.

12. The learned counsel for the respondents brought to my notice the recent orders of this Bench dated 2.11.1999 in TA.NO.1/99 stating that a similar issue has been gone into in this OA. I have carefully gone through this order and note that the applicant had been transferred ~~treating transfer~~ out of the place of posting ^{or} ~~her~~ being rendered surplus under the category of 'automatic surplus' and in terms of the policy guidelines issued as per letter dated 23.7.1996.  The Bench has held after

considering the facts of the case that the applicant has been rendered surplus under the category of 'atomic surplus' and therefore the action taken by the respondents in terms of the policy guidelines dated 23.7.1996 is valid. In view of the deliberations above, I am in respectful agreement in what is held in this order.

13. In the result of the above deliberations, there is no merit in the OA. and the same is dismissed accordingly. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)

mrj.