

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 487 of 2001.

Dated this Tuesday, the 14th day of August, 2001.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

Bajarang Bapu Mali,
Teacher,
Navodaya Vidyalaya,
Canacaona, South Goa,
Goa State,
Residing at -
At & Po : Canaona,
South Goa, Goa State. Applicant.

(By Advocate Shri D. V. Ganga1
alongwith Shri S. V. Marne)

VERSUS

1. The Director,
Jawahar Navodaya Vidyalaya
Samiti, an Autonomous
Organisation of Ministry of
Human Resource Development
of Education,
A-39, Kailash Colony,
New Delhi - 110 048.
2. The Dy. Director of Navodaya
Vidyalaya Samiti (Pune Region),
Ministry of Human Resources
Development, 78, Mayur Colony,
Kothrud, Pune - 411 029.
3. The Asstt. Director (Estt),
Jawahar Navodaya Vidyalaya
Samiti, A-39, Kailash Colony,
New Delhi - 110 048. Respondents.

(By Advocate Shri V. S. Masurkar)

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O R D E R (ORAL)

PER : Shri Justice B. Dikshit, Vice-Chairman.

This application is directed against a transfer order whereby the applicant, who is a trained graduate Teacher of Marathi posted at Jawahar Navodaya Vidyalaya (in short JNV) at Canacaona, South Goa, stands transferred to JNV, Jind, Haryana. The transfer has been ordered by office order dated 27.06.2001.

2. Facts relevant for the purpose of determining this application are that the applicant is working at Canacaona while his wife is serving at New English School, Angapur Taluka, Dist. Satara, the latter's institution being run by Rayat Education Society. Although it is not stated in the application but the counsel for the applicant has pointed out that New English School is a State aided institution. The applicant's case is that he has two children, one studying in 5th standard at New English School at Angapur and the other is student of Class-III of Zilla Parishad Primary School at Angapur, beside an ailing mother, who is about 55 years of old, and therefore he feels that much inconvenience will be caused to him in case he is transferred to Haryana, which is more than 2000 Kms. from Angapur.

3. Learned Counsel for applicant during argument has challenged the order of transfer on two grounds. Firstly, that the possibility of husband and wife living together should have

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been examined before ordering transfer of applicant to such a far off place from Angapur. He contends that Canacaona is hardly 300 miles from Angapur and therefore the applicant is able to look after his family from Canacaona by going to Angapur at weekends which will not be possible from Jind and, therefore, even if the husband is not being posted at a place where wife is working, he be not allowed to be transferred to such a distant place situated in Haryana State. The second contention of counsel for applicant is that it is a transfer in mid-academic session due to which the children of applicant cannot go with applicant to Jind as the admission in mid-session at Jind will not be possible and therefore their studies will be disturbed.

4. The argument has been opposed by the Learned Counsel for respondents who contended that the direction and the instructions issued by the Navodaya Vidyalaya Samiti, the employer of applicant, are only directives and applicant does not have any right under said directives. The counsel for parties relied upon the case law in support of their contention, which shall be referred at appropriate places.

5. So far first ground of challenge is concerned, we make it clear that Learned Counsel for applicant has conceded that he is not challenging the transfer policy and is confining his argument to the posting at a far off place from his wife, children and mother. The argument is that there is directive of Navodaya Vidyalaya Samiti, Pune Region, in its letter dated 24.12.1999

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wherein the policy lays down that teaching staff, whose spouse working in JNVs as well as in PSU/State Government may submit information in the form provided so as to explore possibilities to adjust their cases in one of the JNV or in a nearby district to the place where the spouse is working in PSU/State Government or Government Undertaking. According to the Learned Counsel for applicant, the letter has been duly circulated to all the Principals of Navodaya Vidyalaya Samiti, Pune Region, for giving effect to said policy. We find that the applicant's wife is a Librarian in a School, which is being run by a Society. The Counsel for applicant has also admitted that it is an institution aided by the Zilla Parishad, the aid being 100% by Zilla Parishad. An institution run by a Society, which is getting 100% aid from Zilla Parishad, does not become an institution of Government or of a Government Body or Undertaking. Merely getting grant-in-aid from a Corporate Body of the Government does not change its juristic personality. It continues to exist with a separate legal entity with control under its own management. Thus, it being not a body of the Government, the condition laid down in letter dated 24.12.1999 is not attracted for giving the benefit.

6. So far the argument of the Learned Counsel for Applicant that in view of letter dated 24.12.1999, it was obligatory for JNV to explore the possibility to adjust the applicant in one of the JNV Institutions in a nearby district where spouse is working is

concerned, no averment has been made in application that such a possibility was not explored by Jawahar Navodaya Vidyalaya Samiti. Although ground has been taken but in the absence of necessary averments of facts in application to that effect, we cannot examine this on merit. However, even if we assume that the conditions laid down in letter are attracted to the facts of this case, it does not confer an absolute right on the spouse, the applicant, to be posted to a nearby district. It was not obligatory to the respondents to follow it even when they required Marathi teachers for teaching Marathi in a State of Northern Indian. They are simply guidelines which are to be given effect keeping in view facts of each case. This finds support from view expressed by the Supreme Court of India in the case of Union of India & Others V/s. S.L. Abbas [1992 (2) LLJ 626] wherein it has been held that "who should be transferred where, is a matter for the appropriate authority to decide." We consider it necessary to observe that in the case of Union of India V/s. S. L. Abbas (*supra*) the Apex Court referred to the case of Bank of India V/s. Jagjit Singh Mehta [1992-I-LLJ-329] wherein it has been observed that the judgement also "does not support the Respondent's contention that if such an order is questioned in a Court or the Tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not say that a Court or Tribunal can quash the order of transfer if any of the administrative instructions/guidelines are not followed." The decision of Apex Court relied by Learned Counsel for applicant of Bank of India V/s. Jagjit Singh Mehta ^(supra) has been well

explained in the above quoted part of judgement of Union of India & Others V/s. S. L. Abbas (supra). We may make it clear that applicant has not pleaded any malafide against the authorities. For said reasons, the argument of Learned Counsel for applicant that applicant cannot be transferred far away from place where his spouse is working fails.

7. So far the second ground argued by the Learned Counsel for Applicant that it is a transfer in middle of an academic session of his children is concerned, we are not impressed by the said argument for two reasons. The first reason is that the applicant is already living 300 miles away from his family for last three years since his posting at Cancacaona in Goa in the year 1998. As he is already living away from his children, who are living with his wife, the argument is untenable under the facts of the case.

8. Another reason is that his transfer is under three language formula, which is as follows :

"A provision of rotational transfer for IIIrd language teachers has been made in the revised transfer policy in order to accomodate the transfer of such of the IIIrd language teachers working in the Hindi-speaking States to their native states on completion of the fixed tenure of five years so as to provide an opportunity for transfer of these teachers and also to ensure that studies of students of Hindi speaking States in the IIIrd language subject(s) as well as the migrated students of corresponding states in Hindi speaking states may not suffer. Thereby, Regional Language teachers are liable for rotational transfer between the states where their language is taught and Hindi speaking States."

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9. The Learned Counsel for the applicant had relied upon the judgement in the case of Director of School Education, Madras & others V/s. O. Karuppa Thevan & Another [1994 (28) ATC 99] wherein it is held that transfer during mid-academic term in the absence of urgency is not proper. The case certainly lays down that such a transfer, except in case of emergency, be not effected till the end of academic year. So far as the present case is concerned, the applicant was transferred on 27.06.2001, at the beginning of academic year. Otherwise also, since his children are studying at Angapur, the applicant will not derive any benefit from this case.

10. For the aforesaid reasons, the O.A. is dismissed. Interim order already granted is hereby vacated. No costs.

B. N. Bahadur

(B. N. BAHADUR)
MEMBER (A)

B. Dikshit

(B. DIKSHIT)
VICE-CHAIRMAN.

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