

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 13.01.2004

OA No.07/2004

K.K.Yadav s/o Shri Sukhram Yadav r/o E-33, Prem Nagar, Jhotwara, Jaipur - at present working on the post of Assistant Superintendent, R.O., Gauhati.

.. Applicant

VERSUS

1. Union of India through the Secretary, Human Resource Development, Government of India, Central Secretariat, New Delhi.
2. Commissioner, Kendriya Vidyalaya Sangathan (HQs), New Delhi.
3. Assistant Commissioner (Administration), Kendriya Vidyalaya Sangathan, R.O.Jaipur.
4. Education Officer, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi.

.. Respondents

Ms Ashish Joshi - counsel for the applicant

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

ORDER (ORAL)

The present application has been filed against the order dated 30.9.2003 (Ann.A1) passed by respondent No.4 whereby the applicant has been transferred from Regional Office (RO), Jaipur to R.O. Guwahati and also against the order dated 28.10.2003 (Ann.A2) whereby the representation submitted by the applicant has been rejected. In relief, he has prayed that the impugned order dated 30.9.2003 (Ann.A1) as well as the order dated

28.10.2003 (Ann.A2) may be quashed and set-aside and directions may be given to the respondents to continue the applicant at Jaipur or in the alternative, the impugned order dated 30.9.2003 be suitably modified by placing the applicant in the nearby region of Jaipur.

2. Facts, which are relevant for the purpose of deciding the matter in issue, are that the applicant joined in Kendriya Vidyalaya Sangathan (KVS, for short) on 20.5.85 as Assistant Auditor and was initially posted at KVS, R.O., Patna. He was transferred on his own request from KVS, R.O., Patna to KVS, RO, Jaipur where he joined on 4.8.88. Since then the applicant is working at KVS, R.O., Jaipur. He was transferred from R.O., Jaipur to R.O. Guwahati vide the impugned order dated 30.9.2003 and also relieved vide order dated 16.10.03 (Ann.A5). Against the impugned order, he has made representation dated 3.10.2003 (Ann.A2) thereby stating that wife of the applicant is working as PRT in KV No.2, Jaipur Cantt. and she is patient of Blood Pressure for last two years. It was further stated in that representation that being the eldest son, the applicant has to lookafter the widow ailing mother and also that elder daughter of the applicant is student of Class XIth (Commerce stream) and at present studying in KV No.2 Jaipur Cantt. Her application form for CBSE Examination has already been filled up and submitted to CBSE, Ajmer. At the stage, it is difficult to change her examinations centre. It is further stated in the representation that he has requested for transfer in the year 2003-2004 in the prescribed proforma giving the choice of station as Alwar, Ajmer, Kota and Bikaner. The vacancies of Assistant

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Superintendent are still lying vacant at KV No.1 and No.1 Kota. In these circumstances, the applicant has requested that the change of station may be considered at the earliest convenience either at KV, Ajmer or at KV, Kota where the vacancies are still lying vacant. The said request of the applicant was rejected vide order dated 28.10.03 (Ann.A2). It is these orders, which are under challenge in this OA.

3. I have heard the learned counsel for the applicant.

3.1 The learned counsel for the applicant has drawn my attention to the subsequent representation dated 10.11.03 (Ann.A6) whereby the applicant has requested that change of station may kindly be considered to any of the following places namely (1) KVS (HQrs.), New Delhi (2) Delhi Region (3) Ahmedabad Region (4) Jaipur Region. The said representation was also forwarded by the officiating Assistant Commissioner to the Deputy Commissioner (Admn.), KVS (Hqrs.), New Delhi vide order dated 10.11.2003 (Ann.A7) for consideration and necessary action. The learned counsel for the applicant argued that atleast the authorities may be directed to consider his case afresh in the light of the representation dated 10.11.03 (Ann.A6). The learned counsel further argued that vide order dated 6.10.03 (Ann.A4), the impugned order dated 30.9.2003 was modified in the case of Shri Furhan Chand whereas such request was not acceded so far as the applicant is concerned and the action of the respondents is arbitrary.

3.2 I have considered the submissions made by the learned counsel for the applicant. Who should be transferred where is a matter for the appropriate

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authority to decide. Unless the matter is vitiated by mala fides is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines, however, does not confer upon the Government employee a legally enforceable right. This is a view which has been allowed by the Apex Court in the case of Union of India vs. S.L.Abbas, AIR 1993 SC 2444. Further, the Apex Court in the case of State of M.P. vs. S.S.Kourav, AIR 1995 SC 1056 has held that the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In that case the Apex Court further observed that the transfer order has been issued on administrative grounds and, therefore, the Court cannot go into the expediency of posting an officer at a particular place. Further, the Apex Court in the case of Rajendra Roy vs. Union of India, AIR 1993 SC 1236 has held that it is true that the order of transfer often causes a lot of

difficulties and dislocation in the family set-up of the concerned employee 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 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 transferrable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department.

3.3 Viewing the matter from the ratio as laid down by the Apex Court in the aforesaid cases, the applicant has not pleaded that the order was passed mala fide or in violation of rules of service and guidelines of transfer and without any proper justification. The applicant has made out a case of personal difficulties and dislocation of the family set-up which according to the law laid down by the Apex Court in the case of Rajendra Roy (supra) is not a ground to interfere with the order of transfer. The applicant has made a representation against his transfer which was also considered by the appropriate authority and such representation came to be rejected having regard to the exigencies of administration. It is not permissible for this Tribunal to go into the expediency of posting of an officer at a particular place, in view of the law laid down by the Apex Court in the case of S.S.Kourav (supra). Admittedly, the applicant has served at Jaipur for more than 5 years. Simply because the transfer order of one Shri Puram Chand was modified, does not afford a cause of action in respect of the applicant as it is for the appropriate authority to decide who should be transferred

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where in view of the law laid down by the Apex Court in the case of S.L. Abbas (Supra). As such the present OA deserves to be dismissed at admission stage with no order as to costs. Ordered accordingly.

3.4 It is made clear that in case the competent authority wishes to consider the request of the applicant afresh for his transfer to the stations mentioned in his representation dated 10.11.03 (Ann.A6), which has been forwarded by the Officiating Assistant Commission vide order dated 10.11.2003 (Ann.A7), dismissal of this OA will not come in the way of passing such appropriate orders.

  
(M.L.CHAUHAN)

Member (J)