

Date of Order : 15/12/2001.

O.A.NO. 8/2001

M.B.Agarwal S/o Shri Devi Prasad Agarwal, aged about 35 years, R/o Plot No. 42-B, Mitra Nagar, Ramnagar, Sodala, Jaipur, working as a SUPW Teacher in K.V.No.4, Jaipur Khatipura Road, Jaipur.

.....Applicant.

VERSUS

1. The Union of India through Secretary to the Government, Government of India, Human Resource Development, Shastri Bhawan, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi -16.
3. Brig. P.R.Batra, Chairman, VMC, Kendriya Vidyalaya No. 4, Jaipur, 61 (I), Sub Area, Jaipur Cantt., Jhotwara, Jaipur.
4. Shri S.K.Jain, Assistant Commissioner, Kendriya Vidyalaya Sangathan, Jaipur Region, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
5. Shri H.C.Agarwal, Principal, Kendriya Vidyalaya, Hamirpur, Himachal Pradesh and Ex. Principal, Kendriya Vidyalaya No. 4, Jaipur Cantt. Jaipur.

.....Respondents.

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CORAM :

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. A.P.Nagrath, Administrative Member

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Mr. Manish Bhandari, Counsel for the applicant.Rs
Mr. V.S.Gurjar, Counsel for the respondents.

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CORAM

PER HON'BLE MR.A.P.NAGRATH :

The applicant was working as Socially Useful & Productive Work Teacher ~~xxxxxx~~ in the Kendriya



Vidyalaya, No. 4, Jaipur Cantt., Jaipur, when he was ordered to be transferred vide letter dated 16.10.2000 to the Kendriya Vidyalaya Leh (J. & K.). He was relieved to carry-out the order of transfer vide letter dated 20.10.2000 (Annex.A/1). The applicant has challenged the transfer order and the relieving order on many grounds but the main ground being mala fide on the part of respondents No. 3, 4 and 5, who have been impleaded as party-respondents by name. By filing this O.A., he has prayed for appropriate order or direction for quashing and setting aside the transfer order dated 16.10.2000 (Annex.A/2) and the relieving order dated 20.10.2000 (Annex.A/1) with further directions that the intervening period of the applicant i.e. from the date of relieving till the applicant is allowed to join at Kendriya Vidyalaya No.4 Jaipur, may be treated as period spent on duty.

2. The applicant submits that the very manner in which the transfer order has been served upon him, is indicative of the mala fide intention of the respondents. The impugned relieving order dated 20.10.2000 was served on him even before the order of transfer dated 16.10.2000 was received by him. Further, the fact that he has been transferred to a remote place like Leh (J. & K.), is indicative of the intention behind this transfer. The applicant had stated that his wife is working as Senior Teacher in the Government Senior Secondary School, Bagru, District Jaipur and his transfer to Leh is violative of the policy guidelines which mandate that husband and wife should be kept at the same place. The applicant is an office bearer of the All India Kendriya Vidyalaya Teachers Association since 12.8.1999 and is also holding the post of O.S.D. and is a member of the Chief Executive Committee. In that capacity, he has been taking-up



the causes of the employees and teaching fraternity which the respondents do not like, as while functioning on behalf of the association sometimes arbitrary action of the senior functionaries are brought to the notice of the higher authorities. The contention of the applicant is that the impugned orders have ^{not} been passed in public interest but only to harass him. He is neither the senior most nor the junior most employee and also does neither have the longest stay or the shortest stay at Jaipur. It is the plea of the applicant that the impugned orders have been made only at the instance of respondent No. 5 Shri H.C. Agarwal, the then Principal of the Kendriya Vidyalaya No. 4, Jaipur, as the respondent No. 5 was annoyed with him on account of the fact that some of the news-papers had mentioned in an unsavoury manner about the irregularities allegedly committed by the then Principal. The applicant claims that he had no hand in such reports being published and this fact was also verified by the respondent No. 5 but still respondent No. 5 continued to suspect the applicant for these events. The General Secretary of the Union had also made some complaints about some illegalities against the respondent No. 5. The applicant also attributes dis-pleasure of respondent No. 5 against him by alleging that respondent No. 5 wanted certain irregularities committed in purchases which the applicant declined to do. He has further stated that the departmental internal audit had also pointed-out certain irregularities committed by the respondent No. 5. He accepts that as an office bearer of the Union he has reported irregularities which came to his notice, to the higher authorities of the Sangathan as also to the Union authorities but, instead of commending him for his action he has been penalised by the impugned transfer order. He also



alleges that the impugned order is a colourable exercise of power inasmuch as the respondents are providing a room to accommodate a man of their choice. He is also aggrieved by the timing of this transfer saying that this is a mid-term transfer and his children are studying in Jaipur and they are likely to be adversely affected by the transfer order. He contends that in case, respondents felt that his style of working amounted to indiscipline or misconduct, he could have been taken-up under the disciplinary rules and not by transferring him to such a far place. He submits that neither he has been found to be indisciplined nor any inquiry is initiated against him.

3. The respondents have stated in their reply that the transfer of the applicant has been ordered in public interest. The services of the applicant are transferable ^{anywhere} in India in terms of his offer of appointment and also under the provisions of Article 49 (K) of the Education Code. Transfer is an incidence of service and it is left to the competent authority to decide as to how and where an employee is required to be posted. While taking a decision in public interest, individual's personal inconveniences have no relevance over the administrative exigencies. Personal problems of an employee cannot come in the way of normal service conditions and public interest. The guidelines in this respect are merely the guidelines for the competent authority to consider and they do not create any statutory right in favour of the employee which could be considered enforceable through the Courts or the Tribunals. While there is no doubt that ordinarily, as far as possible husband and the wife should be posted at the same station but this does not



mean that their place of posting invariably be one of their choice. It would be unavoidable, at times to post them at one station specially, when they belong to different services and one of them cannot be transferred to the place of other. On the point of mala fide against the immediate superior, i.e. the then Principal of Kendriya Vidyalaya No.4, Jaipur, the respondents stated that he (respondent No.5), had nothing to do with the transfer of the applicant. It has further been stated by the respondents that the activities of certain individuals were not conducive to proper functioning of the Kendriya Vidyalaya (No. 4), therefore, a brief inquiry was conducted in the matter by the Chairman of the Vidyalaya Management Committee and the Assistant Commissioner in January/ February, 2000. Accordingly, the facts were communicated to the Commissioner, Kendriya Vidyalaya Sangathan and on the basis of the report, the Chairman recommended transfer of not only the applicant but some other teachers and also of the then Principal Shri H.C.Agarwal. The respondents asserted that transfer of the applicant has been made by the competent authority in public interest on administrative grounds. It does not suffer from any violation of statutory rules. They have also refuted the contention of the applicant that it is a colourable exercise of power by mentioning that after issuing the order of transfer of the applicant, the post against which he was working, has actually been surrendered and no question of accommodating a person of somebody's choice arises. Thus, the respondents contend that this allegation of the applicant is without foundation.

4. There is no doubt that any transfer order which is not on the request of an employee, does result into inconveniences



but the transfer is a necessary incidence of service. The Courts/Tribunals have limited scope for interference in such matters, as has been held repeatedly by various Courts and the Apex Court of the land and such interference is occasioned only when the transfer order is against any statutory provisions or the order is passed by an authority not competent to do so or it suffers from malice of malafides or colourable exercise of power. The learned counsel for the applicant vehemently argued on the ground of malafide on the part of the then Principal, Kendriya Vidyalaya No. 4, Shri H.C.Agarwal. To contend that the transfer order was issued only at the instance and at the behest of the then Principal, the learned counsel referred to various documents attached to the O.A. pointing out irregularities allegedly committed by the respondent No. 5 and the said respondent No. 5 sought to blame the applicant for such reports appearing in the newspapers and for the complaints being carried to the higher authorities. He also questioned the manner in which the relieving order was served on the applicant even before he received the order of transfer. He stated that this was a clear pointer towards the malafide intention of the respondents. He submitted that in such an event when the order emanates out of the mala fide on the part of the authorities, the same is liable to be quashed and set aside. For this, the learned counsel placed reliance on the following judgements :-

- (i) R.S.Patel and Others Vs. Assistant Commissioner, Kendriya Vidyalaya Sangathan, K.V. G.C.Fy. Jabalpur and Others, in Writ Petition No. 3515 of 1995 decided on 8.11.1995 by the M.P.High Court.



- (ii) R.P.Tripathi Vs. UOI and Others, decided on 25.2.2000 in O.A.No. 299/1999 by the Lucknow Bench of C.A.T.
- (iii) Smt. Sudha Joshi Vs. UOI & Ors. decided on 11.8.2000 in O.A.No.43/2000 by the Jodhpur Bench of C.A.T.
- (iv) Mohd. Iqbal Sindhi Vs. UOI & Ors., decided on 11.1.2001 in O.A.No. 542/2000 by Jaipur Bench of C.A.T.
- (v) Smt. Omvati Yadav Vs. UOI & Ors. decided on 4.5.2001 in O.A.No. 15/2001 by Jaipur Bench of C.A.T.
- (vi) K.P.Dubey Vs. Assistant Commissioner (Adm), K.V. H.Q. New Delhi and Ors. decided on 1.7.99 in O.A.No. 454/1999 by the Principal Bench of C.A.T.

5. Refuting the arguments advanced for the applicant the learned counsel for the respondents asserted that there was absolutely no ground to support the allegation of mala fide. The learned counsel placed before us the original letters exchanged between respondents No. 3 and 4 with the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi. A reading of these letters leads us to a definite conclusion that the style of functioning of the then Principal, who is respondent No. 5 in the O.A. and conduct of some of the teachers, were found pre-judicial to the healthy functioning of Kendriya Vidyalaya No. 4. The Management Committee in the larger interest of the children studying in the school and to instil proper discipline amongst the staff, considered it necessary that those who were working against the interest of the school would need to be shifted. In fact, the first proposition was made in March 2000 and was followed-up further



by communication in April, July and Sept., 2000. Obviously, during this period, the things did not improve in the school and ultimately, it appears that the Commissioner, Kendriya Vidyalaya Sangathan considered it appropriate to transfer the then Principal, Shri H.C. Agarwal, as also the applicant. It is obvious from the sequence of things and the report, that this transfer order has definitely been passed in the public interest. It is not necessary that any reason is required to be communicated in the order of transfer. But, if the records give some indication that the facts have proved to the objective satisfaction of the competent authority that it is in the public interest to transfer an employee, no fault can be found with such an order. In all his averments, we find that the applicant has alleged malafides only against respondent No. 5 and no material has been brought on record by him which could provide even a little substance of any mala fide on the part of the respondents No. 3 and 4. All the averments are against respondent No. 5 and we find that the said respondent himself has been transferred away from Kendriya Vidyalaya No. 4 on the same report on which the applicant has been transferred. The grounds of mala fide alleged against the respondent No. 5 are not material to the present transfer and need to be given no cognizance whatsoever in so far as the impugned orders are concerned. The applicant attempted to prove mala fide by the manner in which the relieving order was served on him. This relieving order was served by the present Principal Smt. Meera Agarwal, and there is no allegation of any mala fide against her. The relieving order itself mentioned the date of transfer order and for the reason that transfer order was received only on 25th i.e. four days after receipt of the relieving order, cannot by itself

mean that the transfer order is vitiated. The ground that the transfer order is a colourable exercise of power stands refuted when the respondents have stated that no other person has been accommodated against the vacancy caused by the impugned order and the post itself was withdrawn from the Kendriya Vidyalaya No.4. In such a situation, the impugned order cannot be said to be suffering from malice of colourable exercise of power.

6. Having said so, we are of the opinion that by transferring the applicant to a place far away from his family, cannot be considered to be serving any special public interest. What was required in the instant case was, only to move the applicant out of Kendriya Vidyalaya No. 4 because of the very valid reasons but that purpose could have been served by posting him to some nearby area in the region and not by posting him to a place where his contact with his family i.e. wife and children, would become rather infrequent or difficult. For this view, we would like to refer to the observations of the Principal Bench in O.A. No. 454/99 in the case of K.P.Dubey Vs. Assistant Commissioner (Admn) K.V. H.Q., New Delhi and Others decided on 1.7.1999 wherein it was observed as under :-

"..... I think there is something terribly unimaginative on the part of respondent No. 3 to transfer the applicant from one corner of the country to another. Till he joined the KVJC, Sidhi, he cannot be accused of any misdemeanour because the High Court had cleared him completely while setting aside an earlier removal order. This shows a certain degree of vindictiveness and vendetta. It is not a clean and clear judgment by the authorities arising out of objective facts. The respondents may not post him in any of the KABAL (Kanpur, Agra, Allahabad and



Lucknow) towns but they can consider him in a place in any other Central Schools in Western U.P. In the circumstances, I direct respondent No. 3 to take the representation in the O.A. as representation before him and consider modifying the transfer order to Nicobar Island by substituting it to any Central School in Uttar Pradesh. Orders of interim stay shall continue till this decision by Government."

7. In our view, while deciding the place of posting, it has to be kept in mind that the same does not ultimately result into totally demotivating the employee i.e. in this case, the teacher. This would certainly not be conducive to the requirements of the job in the school in which he will be posted or transferred. It ultimately affects adversely the interests of the children in the school. In case, the applicant makes a written request for posting in a nearby area in the region, the same request needs to be considered sympathetically.

8. In the result, while we dismiss this O.A., we consider it appropriate to direct the respondent No. 1 that in case, he receives a representation from the applicant within one month of the date of communication of this order for posting him at a nearby place in the region, the respondent No. 1 shall review the order of transfer dated 16.10.2000 (Annex.A/2) suitably to accommodate the applicant at a place which is more easily accessible to his family. The revised order shall be issued within a period of two months from the date of receipt of the representation from the applicant. We also consider it appropriate at this stage to direct that the entire period from the date the applicant was relieved from the Kendriya Vidyalaya No. 4 Jaipur to the date of resumption of his duties at the new place, shall be adjusted against the kind of leave due to the applicant, for which the applicant shall submit a written application. No order as to costs.

(A.P.Nagrath)
Adm.Member

(S.K.Agarwal)
Judl.Member