

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 4/5/2001

OA 15/2001

Smt. Omvati Yadav, Physical Education Teacher, Kendriya Vidyalaya No.4, Jaipur Cantt.

... Applicant

Versus

1. Union of India through Secretary, Human Resources Development, Shastri Bhawan, New Delhi.
2. Commissioner, KVS, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. Asstt. Commissioner, KVS (Regional Office) , 92, Gandhi Marg, Bajaj Nagar, Jaipur.
4. Shri H.C. Agrawal, Principal, Kendriya Vidyalaya, Hamirpur, Himachal Pradesh.
5. Brig. P.R. Batra, Vidyalaya Management Committee Chairman of K.V. No.4 and Sub Area Commander, 61(I) sub Area, Jaipur.
6. Principal, Kendriya Vidyalaya No.4, Jaipur Cantt, Jaipur.

... Respondents

CORAM:

HON'BLE MR. S.K. AGARWAL, JUDICIAL MEMBER

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr. Anupam Agarwal, proxy counsel
for Mr. Manish Bhandari

For the Respondents ... Mr. Hawa Singh, proxy counsel for
Mr. V.S. Gurjar

O R D E R

PER HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER

The applicant while working on the post of Physical Education Teacher (PET) in Kendriya Vidyalaya (KV) No.4, Jaipur, has been transferred vide letter dated 16.10.2000 (Ann.A/1) to Ponda (in Goa). The applicant has made a prayer that the impugned order (Ann.A/1) as well as the relieving order dated 20.10.2000 (Ann.A/2) may be quashed and set aside, with all consequential benefits.

2. The respondents have raised preliminary objections against this OA mainly on the ground that in case of transfer of an employee, the employee has no right to insist on being posted at a particular place and that it is for the competent administrative authority to post an employee



as per requirement in the association and in the administrative interest. A large number of cases have been cited like Union of India v. S.L. Abbas, AIR 1993 SC 2444, Shilpi Bose v. State of Bihar, AIR 1991 SC 532, Union of India v. N.P.Thomas, AIR 1991 SC 1605, Chief Manager (Tel.) N.E.Telecom Circle v. Rajendra Ch.Bhattacharjee, AIR 1995 SC 813, State of U.P. v. Dr.R.N.Prasad, 1995 Supp (2) SCC 151, Union of India and Ors. v. Ganesh Dan Singh, 1995 Supp.(3) SCC 214, N.K.Singh v. Union of India & Ors, 1994 (6) SCC 98, and Abani Kante Ray v. State of Orrisa, 1995 Supp.(4) SCC 169. The principle established because of the decisions in these cases and in a catena of cases decided by various courts including Hon'ble the Apex Court is that it is for the competent departmental authority to decide whether and how the services of an employee are to be utilised. An order of transfer is an incidence of service and is not a condition of service. Courts/Tribunals cannot decide the postings or transfers of the employees and the scope of the judicial intervention ^{will} merely be where the transfer order is suffering from mala fides on the part of the authority making the order or the order is in violation of statutory rules or if the order of transfer appears to be as a colourable exercise of authority. In most of the departments the guidelines for transfers of the employees are available but these are mere guidelines and they do not confer any legal right on the employees. An authority, ordering transfer of an employee, is expected to consider these guidelines alongwith the exigencies of administration. Even the question of posting husband and wife at the same station has come up for consideration by Hon'ble the Supreme Court in the case of Bank of India v. Jagjit Singh Mehta, AIR 1992 SC 519, wherein it was held that while desirability of such a course is obvious, it does not mean their place of posting should invariably be one of their choice. In All India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of other's posting. It was further held, as under :-

"No doubt the guidelines require the two spouses to be posted at one place as far as practicable but




that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect alongwith the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and claim of other employees."

3. In the instant case, the applicant has challenged the transfer order and some of the grounds taken are that her husband belongs to Rajasthan Cadre of IFS and her children are prosecuting their studies in Jaipur. Because of this transfer, the family will have to maintain separate establishments and study of children is likely to suffer. Apart from such grounds, the applicant has alleged mala fides against respondent No.5, Brig.P.R.Batra, the then Chairman of Vidyalaya Management Committee (VMC), and respondent No.4, Shri H.C.Agrawal, the then Principal, Kendriya Vidyalaya, Jaipur, presently Principal, KV, Hamirpur, Himachal Pradesh.


4. In view of the clear legal position established that courts should not interfere in the orders of transfer unless there is an allegation of mala fide or of colourable exercise of authority, we do not think it necessary to consider other grounds taken by the applicant. We confine ourselves to the ground of mala fide to see whether any such ground has been established successfully by the applicant.

5. From the facts adduced by the applicant it appear that the applicant alongwith few others went to Vadodara to escort the girls students who were required to participate in the Zonal Meets of Sports and Games. At that time, Shri H.C. Agrawal was Principal of the Vadodara School. The applicant made complaint to the higher authorities as the arrangements made for the girls were poor and caused difficulties to the girls. This complaint was made to Shri Bhimanna, Joint Commissioner of the Sangathan, who had come for inspection. It is stated that on that complaint some




action was initiated by the administration against Shri H.C. Agrawal. In course of time Shri H.C. Agrawal came to be posted as Principal of KV No.4, Jaipur, and he joined there in April, 1998. Applicant's contention is that her transfer to Ponda has been ordered at the instance of Shri Agrawal who, it ^{is} alleged, wanted to teach her a lesson. She contends that because of her performance there was no possibility for the Principal to take any action against her for any wrong doing hence this method of transfer has been adopted. According to the applicant, the style of management adopted by Shri Agrawal caused dis-satisfaction among the teachers and adverse comments against his working also appeared in the Press. Some documents have been annexed by the applicant with the OA and also with the rejoinder viz. copies of various complaints and audit objection report. We do not consider these as relevant for deciding the issue under adjudication. However, the applicant has also stated that in the VMC, chaired by respondent No.5, she and some others had the occasion to give their views on the functioning of the school and she claims that the views expressed by her caused annoyance to respondent No.4. She contends that the transfer order has been issued only because of vengeance and not in the interest of administration. It is a measure of punishment. It has been stated that there was no justification for passing the order of transfer and the transfer order suffers from the malice of mala fide. She has been transferred more than 3000 kms. away from Jaipur and the haste shown in relieving her on 20.10.2000 is indicative of the fact that the respondents wanted to teach her a lesson.

6. The respondents in reply have stated that a bare perusal of the impugned order would reveal that this is an order issued in public interest and that there are no allegations of mala fide against the authority who has ordered this transfer. It has been stated that the applicant has attributed the allegation of mala fide against her immediate superior who had nothing to do with her transfer. The transfer has been ordered by the competent authority and it is not in violation of any provisions. The



respondents submit that the transfer order of the applicant was issued by KVS Headquarters, New Delhi, on complaint(s) directly reported by the Chairman VMC of the Vidyalaya concerned and as per existing transfer guidelines a teacher is liable to be transferred on the recommendation of the Principal and the Chairman VMC of the KV. It is claimed that the complaint against the applicant was verified at the KVS Headquarters and then only the Commissioner KVS approved the transfer in question. The Chairman VMC and the Assistant Commissioner KVS (RO) Jaipur during their respective visits to the Vidyalaya are stated to have observed that the applicant was amongst those who are problem creators and was indulged in creating unhealthy atmosphere in the Vidyalaya, so this transfer is in public interest. On the point of hasty releasing of the applicant, it has been stated that it was clearly mentioned in the transfer order that the employee concerned was to be relieved immediately for the new place of posting. The authority competent to order can decide as to where the services of an employee are required to be utilised and the employees of KVS are liable to be transferred anywhere in India in terms of the offer of appointment and also as envisaged in Article 49 (K) of the Education Code. Reliance has been placed on the case of Kamlesh Trivedi v. Indian Council of Agricultural Research & Anr., decided by the Full Bench of the Tribunal, sitting in Principal Bench, New Delhi. After taking into consideration the entire law on transfers it was held that; (1) any order of transfer must be in public interest and in the exigency of service on administrative grounds. (2) It must not be in colourable or mala fide exercise of power. (3) It should not be arbitrary. (4) It must be made by a competent authority in accordance with the rules and the instruction, if any, governing the transfer policy. But how far a transfer policy is mandatory, we express no opinion in this case. That must depend on the wording and intent of the instructions embodying the transfer policy. (5) The transfer itself must be ordered by a competent authority in bonafide exercise of the power. (6) It should not be a "fixed" transfer or for setting scores. (7) However, merely because transfer is ordered on complaints or after an inquiry into the guilt of the employee, it cannot be said to be by way of punishment. "(emphasis supplied)". Based on this, the respondents



contend that transfer could be ordered on administrative grounds and one of the grounds could very well be the allegations themselves. The instant transfer is stated to have made on administrative grounds and on complaint basis, thus, it is a transfer in public interest.

7. In so far as the allegation of mala-fides against respondents No.4 and 5 are concerned, both the respondents, Shri H.C.Agrawal and Brig.P.R.Batra respectively, have filed affidavits denying the allegation of mala fides stating that the allegations are totally false, baseless and without any factual foundation. It has been further stated by both the respondents that the applicant has failed to place on record any material in order to sustain the allegation of mala fides against the authority who made the transfer. These two respondents have also submitted that case of mala fide must be based on factual matrix and cannot be based on surmises and conjectures. According to them, the applicant has not been able to place any material from which reasonable inference of mala fides can be drawn. Respondent No.4, Shri H.C. Agrawal, has stated that as Principal of the School at the relevant time he was fully responsible for general administration and smooth functioning and any action taken by him was in the interest of the establishment and without any illwill towards the applicant.

It has been stated by him that the applicant has not placed on record even an iota of evidence to show as to how and in what manner he influenced the competent authority for transferring the applicant. Similar submissions have been made by respondent No.5 in his affidavit that no evidence has been place on record by the applicant to make out a case of malice against him. He claims that action taken by him was in his official capacity without any illwill towards the applicant or anybody else.


8. In M.Sankaranarayanan, IAS v. State of Karnataka & Ors., 1993 SCC (L&S) 122, Hon'ble the Supreme Court has held that; "It may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and



established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture." What is required to be seen in the present case, whether from the material available on record a reasonable inference of malice in fact for passing the impugned order of transfer can be drawn.


9. Learned counsel for the respondents, in addition to a large number of cases cited, also drew our attention to a judgement of Hon'ble the Supreme Court, delivered on 12.4.2001, in Civil Appeal No.226 of 1997, State Bank of India v. Anjayn Sanyal, in it has been held by Hon'ble the Supreme Court that; "An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities who issued the order, had not the competence to pass the order." The learned counsel also stressed that no mala fides have been alleged by the applicant against respondent No.2 who in fact has actually passed the order of transfer. In such a situation it cannot be said to be an order suffering with the malice of mala fide. As we have stated earlier, in this case we are not going into such aspects of the matter whether the authority issuing the order was competent or whether the order was in contravention of statutory rules. We are confining our screening to the limited question of mala fide or colourable exercise of authority.

10. Learned counsel for the applicant took up the case from the time when the applicant alongwith some girls students visited Vadodara and not being satisfied with the arrangements made by Shri H.C.Agrawal, respondent no.4, who was then posted at Vadodara, made a complaint against him to the Joint Commissioner of the Sangathan and on which complaint some action was initiated against Shri Agrawal. Learned counsel further submitted that the case of mala fide




is clearly made out from the reply filed by the respondents themselves. In para 4.5 of the reply it has been stated; "Moreover, the transfer of the applicant was issued by the KVS (Headquarters) New Delhi on complaints directly reported by the Chairman, VMC of the Vidyalaya concerned and as per existing transfer guidelines, as mentioned at para 5(i), a teacher is liable to be transferred on the recommendation of the Principal and the Chairman, VMC of the KV. The complaint of the said applicant was verified at KVS (HQs) and then only the Commissioner KVS approved the transfer in question." Further, in para 5.8 it has been stated that; "the Chairman, VMC of the Vidyalaya and the Assistant Commissioner, KVS (RO), Jaipur, during their respective visits to the Vidyalaya observed that the applicant is amongst one who was a problem creator and was indulged in creating unhealthy atmosphere in the Vidyalaya. Transfer is an incidence of service and the same has been made in public interest by the competent authority."

11. The learned counsel stated that the above clearly reveals that the action has been taken at the instance of respondent No.4, Shri H.C.Agrawal, who was biased against the applicant and wanted to settle scores with the applicant because of her having made a complaint against him when he was at Vadodara. According to him, not even an iota of evidence has been produced by the department to prove that the applicant was creating trouble and indiscipline in the school and at no stage any written or verbal communication was made with her on this account. Nothing adverse was ever brought to her notice in so far as her conduct is concerned. The transfer order, as has been admitted by the respondents, to have been issued on the recommendation of respondent No.4, whose recommendation was further accepted and duly endorsed by respondent No.5 in his capacity as Chairman of VMC of this school. The learned counsel place reliance on the orders passed by this Tribunal in OA 542/2000, Mohammed Iqbal Sindhi v. Union of India & Ors., decided on 11.1.2001. In that case it was held by the Tribunal that transfer of the applicant out of Beawar was with mala fide intention of the then Principal of KV Beawar, whose recommendation had been accepted by the Commissioner.




12. We have given our anxious consideration to the rival contentions and have perused the whole record. We have gone through the affidavits filed by respondent No.4, Shri H.C. Agrawal, and respondent No.5, Brig.P.R.Batra. We find there is no comment by Shri H.C. Agrawal in so far as the incident alleged to have took place at Vadodara is concerned. It has not been denied by the respondents generally in their reply nor it has been denied by respondent No.4 himself in his affidavit. He has denied in general term that he had any ill motive against the applicant and his contention is that he made the recommendation for her transfer in the best interest of the school. Similarly, respondent No.5 has also denied any mala fide and has claimed that the action taken by him was in the capacity of Chairman, VMC, and was in his official capacity without any illwill towards the applicant.

13. What is required to be seen is whether in view of these denials can any case of mala fide be made out against these two respondents. In para 4.5 of the reply by the respondents, to which a reference was made by the learned counsel for the applicant, we find a statement that the applicant has attributed the allegations of mala fide to her immediate superior who had nothing to do with her transfer. (emphasis supplied). In the same para it has been stated that transfer of the applicant was issued by KVS (HQs), New Delhi, on complaints directly reported by the Chairman, VMC. In para 3 of the affidavit filed by Shri H.C.Agrawal, it has been stated that; "keeping in view the entire facts, circumstances and material present on record the matter was communicated to the competent authority of KVS with my recommendation as well as recommendation of the Chairman, VMC (Respondent No.5) in reference to the transfer of the applicant." The contradiction in the stand taken by the respondents is obvious. Respondent No.4 admits that he made the recommendation for transferring the applicant, which recommendation was endorsed by the Chairman, VMC i.e. respondent No.5. It is not brought on record as to what was the need for initiating transfer of the applicant. The




apparent reason seems to be either some annoyance caused to the then Principal i.e. respondent No.4 by the applicant or some act of indiscipline or misconduct on the part of the applicant herself. in so far as the alleged misconduct is concerned, nothing has been brought on record to prove such a misconduct. It has also not been stated by the respondents that they ever brought any instance of her conduct to the notice of the applicant. At the time of hearing, we specifically questioned the learned counsel for the respondents to state as to what were the instances of misconduct and what action was taken by the superior authorities to bring such instances to the notice of the applicant for any corrective action. He was not in a position to bring out any such instance and instead he only repeated that it is for the competent authority to post an employee anywhere and in this particular case ~~where~~ there is no allegation of mala fide against that competent authority which ^{is} Commissioner (HQs). We are not persuaded to agree with this stand of the learned counsel for the respondents, as held in M.Sankaranarayanan v. State of Karnataka (cited supra), it may not be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix. In Ved Bajaj v. Union of India & Ors, OA 395 of 1995, decided on 2.8.96 by the Jodhpur Bench of this Tribunal, it was held that, "though an element of mala fide or colourable exercise of power is not ostensible in an order of transfer, a Tribunal may tear the veil of deceptive innocuousness and see what actually motivated the transfer." In the instant case the incident which occurred in Vadodara has not been denied by the respondents. The respondents themselves have come forward to say that the transfer was initiated because of the misconduct on the part of the applicant. In so far as the allegation of misconduct is concerned, it will be useful to refer to the observations made in Ved Bajaj's case by the Jodhpur Bench of the Tribunal that if a finding of misconduct is arrived at without observing principles of natural justice and that is



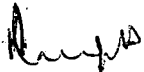
the operative reason for transfer, it is liable to be quashed. As we have observed earlier that in the instant case at no occasion the respondents communicated any instance of misconduct on the part of the applicant, to her. The specific instances of misconduct were not even brought to our notice. It is obvious that in the name of the alleged misconduct and behind the back of the applicant a case of the misconduct was made out by respondent No.4 who admittedly had initiated the proposal for her transfer. We have reasons to believe, based on the facts and circumstances brought before us, that respondent No.4 was unhappy with the applicant. We find that respondent No.5 and respondent No.2 have acted only mechanically in accepting the recommendations of the Principal, respondent No.4. They did not take any step to ascertain for themselves whether the principles of natural justice had been followed in the case and whether any incidents of misconduct were brought to the notice of the applicant earlier. Though respondents have stated in para 4.8 of the reply that the Chairman, VMC, and the Assistant Commissioner during their respective visits observed that the applicant is amongst one who was a problem creator. If that was the case, it was necessary and incumbent upon them to have taken steps to bring to the notice of the applicant the instances of misconduct and to call for her explanation and take suitable action. It is obvious that everything has been done behind her back and apparently initiating the order of transfer was with some motives on the part of respondent No.4.

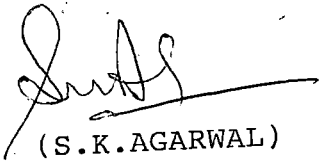
14. We also find the action of the authority transferring the applicant to such a far off place, intriguing. There is no doubt that this is an All India Service and members of such a service can be transferred anywhere but the administrative action must appear reasonable even if it is in public interest. We are not able to appreciate what public interest could be served by transferring the applicant to such a distant place and not in the same region. All this make us to come to a conclusion that the transfer of the applicant was motivated and it was influenced by respondent No.4 who was not positively disposed towards the applicant. In view of the facts and



circumstances of this case, we find this order of transfer is colourable exercise of authority. We agree that no mala fide has been alleged against the authority ordering the transfer but this competent authority who have issued the order on the basis of a complaint of misconduct, it was only fit and proper for him that he should have satisfied himself that requisite departmental action had been taken to apprise the applicant about such alleged misconduct. This was not done and the transfer order got issued. Such a transfer order is vitiated as it is as a result of colourable exercise of authority vested in the Commissioner. Such an order is liable to be quashed and set aside.

15. We, therefore, allow this OA and quash and set aside the impugned transfer order dated 16.10.2000 (Ann.A/1) and the relieving order dated 20.10.2000 (Ann.A/2). The respondents are directed to take the applicant back on duty within two weeks from the date of this order. The period from the date the applicant was relieved to the date she joins duty may be regularised as leave due to the applicant on her submitting an application for the purpose. Parties are left to bear their own costs.


(A.P.NAGRATH)
MEMBER (A)


(S.K.AGARWAL)
MEMBER (J)