

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**Original Application No. OA/291/00021/2016
Order Reserved on : 23.02.2016**

Date of Order: 15th March 2016

Coram

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Dr.Tapan Yadav S/o Shri Dhoom Singh, aged 53 years, Master Gazetted- Rashtriya Military School, Ajmer & resident of Quarter No. 39/1, Rashtria Military School- Campus, Ajmer.

.....Applicant

(By Advocate Mr. Virendra Lodha assisted by Mr. Ashish Saksena and Mr. Tanuj Gupta)

VERSUS

1. Union of India through its Secretary to the Government Department of Ministry of Defence, New Delhi.
2. The Deputy Director General of Military Training (Civil), Government of India, Integrated Head Quarter of Ministry of Defence (Army) General Staff Branch, DHQ, PO New Delhi 110011
3. The Principal, Rashtriya Military School, Ajmer
4. Col. V.K. Sharma, at present working as Education Officer (GSO-1), 40 Arty Division, C/o 56 APO (Ambala Cantonment).

.....Respondents

(By Advocate Mr. Rajendra Vaish)

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 against the transfer order dated 08th December, 2015 (Annexure- A/1) and 15th December, 2015 (Annexure- A/1A) passed by DDG MT (Civil) Respondent No. 2, and movement order dated 21st December,

[Signature]

2015 (Annexure- A/1B) passed by the Principal, Rashtriya Military School, Ajmer, Respondent No. 3 seeking the following reliefs:

- (i) An appropriate order or direction to the respondents quashing the impugned transfer order dated 08.12.2015 (Annexure-1), 15.12.2015 (Annexure-1A) and movement order dated 21.12.2015 (Annexure 1-B) and allow the applicant to continue on the post of Master Gazetted at Rashtriya Military School, Ajmer with other consequential relief.
- (ii) An appropriate order or direction to the respondents as an alternative prayer, to post the applicant at Dholpur in place of Belgaum enabling him to pursue the pending enquiry as well as family requirements.
- (iii) An appropriate order or direction to the respondents to restrain the respondent of holding de-novo enquiry at the behest of complainant despite founding the allegations against the applicant to be false and fabricated and consequential relief of quashing the said enquiry along with proceedings with an alternative prayer, to conclude be same within a time bound period.
- (iv) An appropriate order or direction to quash any order passed during the pendency of this application adversely affecting the purpose of this application.
- (v) An appropriate order or direction to the respondents, which this Hon'ble court deems just and proper in the circumstances of the case.
- (vi) Cost of the application.

2. When the matter came up for consideration and hearing on 23.02.2016, Mr. Virendra Lodha, Sr. Advocate assisted by Mr. Ashish Saksena and Mr. Tanuj Gupta, Ld. Counsels for the applicant, inter alia, submitted that the applicant, who is a Master Gazetted at Rashtriya Military School (RMS in short), Ajmer was transferred to Rashtriya Military School, Belgaum, Karnataka vide order dated 08.12.2015 (Annexure- A/1) and para 2 & 3 of the said order were later amended by order dated 15th December, 2015 (Annexure- A/1A) modifying the relieving and joining dates and

further movement order was issued on 21st December, 2015 (Annexure -A/1B).

3. Counsel for the applicant further submitted that applicant had earlier been posted at RMS, Dholpur and also Chail (Shimla Hills) which are hard stations and, on compassionate grounds, he was transferred to RMS, Ajmer from RMS Chail vide order dated 08.03.2013 (Annexure - A/2). Thereafter, in just about 02 years and 07 months, he has been transferred to far away Belgaum vide order date 08th December, 2015 (Annexure-A/1) though the transfer policy dated 14th December, 2005 (Annexure - A/3) at para 1(a) provides for tenure of stay of five years at the request station. Thus the transfer of the applicant has been made against the policy. The Ld. Counsel for applicant further contended that the transfer order has also been issued not only against the transfer policy but also out of prejudice and in a malafide manner. In this context he submitted that the applicant received experience and appreciation certificates while working at RMS Dholpur and Chail (reference Annexures- 4, 5 & 6) and at RMS, Ajmer, he was performing the duties of HoD Political Science, House Master of Ashoka House, in-charge discipline, in-charge prize & Sports Officer. Believing in maintenance of discipline, especially in a prestigious school like RMS, the applicant made a representation dated 29.11.2013 (Annexure- A/8) to the then Principal, RMS, Ajmer (Col. V.K. Sharma also impleaded as Respondent no. 4) regarding certain irregularities, indiscipline and lawlessness in the school but no action was taken on the said complaint.



4. Later on, the applicant filed a separate complaint on 01.09.2014 (Annexure - 10) to the Principal, RMS, Ajmer regarding visit of a cadet during odd hours at the residence of Mrs. Pragya Murjwani, Asst. Master English, who was also a Tutor in respect of Ashoka House in order to assist the House Master i.e. the applicant, (reference duties as at Annexure-7) and also regarding intimidation and threat to kill by Mr. Vijay Murjwani, husband of Mrs. Pragya Murjwani. Counsel for applicant submitted that Mrs. Pragya Murjwani also made a complaint on the same day i.e. 01.09.2014 (Annexure-A/9) to the Principal, Rashtriya Military School, Ajmer against the harassment and mental torture since 09.08.2014 by the applicant and requested for safety and security. An FIR was also lodged by her in the Police Station on the same date (01.09.2014) regarding harassment and mental torture at work place by the applicant. Counsel for applicant contended that the complaint was filed by Mrs. Pragya Murjwani, at the instance of the then Principal Col. V.K. Sharma, who had became prejudiced because the applicant had filed a representation (Annexure A/8) dated 29.11.2013 against the prevailing lawlessness and lack of discipline in the school. In this regard, the counsel for applicant submitted that on the basis of judgment of Hon'ble Apex Court in Vishaka and Others Vs State of Rajasthan & Others AIR 1997 SC 3011, a Committee was formed to look into the matter, but the applicant has not even been provided with a copy of the same, or of the findings of the committee. However, from a perusal of Annexure-A/12, which is the copy of FR dated 11.12.2014 filed by

the Police before the Competent Court, it is clearly evident that the Committee, which was constituted to look into the said complaint regarding harassment of women at work place did not find the allegations substantiated. Further the FR (Annexure A/12) has been filed by the Police before the competent court after making its own investigation also. Counsel for the applicant contended that as such thereafter the matter has already been closed in December, 2014 as nothing has been proved against the applicant. However, after about 10 months, another complaint dated 09.07.2015 (Annexure A/16) was filed by Mrs. Pragya Murjwani before the Principal RMS, Ajmer regarding sexual harassment at work place in which she referred to the dates of 14th , 15th, 27th, 28th and 29th August, 2014 on which the applicant has been alleged to have harassed her. Counsel for applicant vehemently contended that all these dates are prior to 1st September, 2014 which is the date of the first complaint (Annexure -A/9) filed by Mrs. Pragya Murjwani. As such, there was no new incident that took place after the said dates. There were no adverse findings of the Inquiry Committee and the FR was also filed and thus the second complaint (Annexure A/16 dated 09.07.2015) on the same issue, but with somewhat more enlarged details filed after 10 months appears to be motivated and perhaps filed at the behalf of the Principal, just to harass the applicant. Counsel for applicant further submitted that despite this, when another Inquiry Committee was set up to inquire into the matter, reply to the second complaint dated 09.07.2015 (Annexure -A/16) was also given by the applicant to the Presiding Officer (Preliminary Inquiry) vide letter dated 31st July, 2015

(Annexure -A/18) and the applicant also gave due response to the notices dated 13th November, 2015 (Annex. 19) and 9th December, 2015 (Annexure A/20) given by the Internal Complaint Committee Meeting vide his letter dated 14th December 2015 (Annexure 21) as the applicant believes in abiding by discipline and as such he has fully co-operated with the Committee. However, the applicant has been suddenly transferred to RMS, Belgaum (in Karnataka) vide transfer order dated 08th December, 2015 (Annexure-A/1) & further order dated 15th December, 2015, (Annexure A/1A) amending para 2 & 3 of Annexure -1 even before the conclusion of the said inquiry which was pending. Counsel for applicant alleged that this was due to certain issues raised by him, especially in his representation dated 14.12.2015 (Annexure A/21) regarding the conduct of the inquiry. Counsel for applicant thus contended that the applicant has been transferred in mala fide manner because of his uprightness and questioning certain decisions of the Principal of the school and some of his responses to the inquiry Annexure A/21 dated 14th December, 2015 initiated against him, even when the inquiry was pending and he was fully co-operating in the same.

5. Counsel for applicant further submitted that even the order dated 8th December, 2015 (Annexure-A/1) is apparently back dated and shows malafide because it has been faxed only on 15.12.2015 to the Principal, RMS Ajmer as evident from the fax report and the dates of relieving and joining in para 2 and 3 were changed from 15th December, 2015 to 23rd December, 2015 (relieving) and joining from 25th December, 2015 to 15th January, 2016 vide

Annexure -A/1A (dated 15th December, 2015) because the order was faxed on 15.12.2015 only. Counsel for applicant implied that actually the order (Annexure-A/1) was issued on 15.12.2015, but was back dated as 08.12.2015.

6. Counsel for applicant further contended that the order Annexure -A/1 and A/1A are not only against policy, mala fide and without any justification but have even exceeded the jurisdiction and provisions of Section 12(1)(a) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act, 2013, (in short Harassment Act of 2013) under which the orders are said to be issued, because under the said provision, action for transfer, during the pendency of the inquiry, may be taken only as under :

12. Action during pendency of inquiry:

- (1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to –
 - (a) transfer the aggrieved woman or the respondent to any other workplace; or
 - (b) Grant leave to the aggrieved woman up to a period of three months; or
 - (c) Grant such other relief to the aggrieved woman as may be prescribed.
- (2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.
- (3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub- section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

7. It was emphasized by the counsel for the applicant that no request has been made by the complainant Mr. Pragya Murjwani i.e. the aggrieved person for transfer of the applicant and no recommendation has been made by the Internal Committee regarding the transfer of the applicant as there is nothing on the record in this regard, and no documents to support this position have been filed by the respondents. Therefore, he contended that as the transfer order is neither in accordance with the statutory provisions of Section 12(1)(a) of the Act of 2013 nor as per policy of transfer (Annexure A/3) dated 14th December, 2005 and appears to be out of prejudice and malafide, therefore Annexure-A/1 & A/A1 are required to be set aside and prayed for the OA being allowed.

8. Per contra, counsel for respondents contended that order dated 08th December, 2015 (Annexure -A/1) has been issued under the provisions of Section 12 (1) (a) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 as mentioned in the order itself, and the applicant's transfer is permissible during the pendency of the inquiry. The order of the transfer is also duly approved by the competent authority.

9. He further submitted that there is no force in the contention of the counsel for applicant that as per transfer policy dated 14th December, 2005 (Annexure-A/3) the period of stay at a request station will not be less than five years, and referring to the

provisions, he submitted that it is only the maximum period of tenure at a request station which shall not be more than 5 years and there is no provision of any minimum tenure of 5 years i.e. 5 years is only the upper maximum limit, not a compulsory period or a mandated tenure of stay.

10. Counsel for respondents further submitted that the applicant is involved in allegations and inquiry pertaining to harassment of women at work place. In this context, he submitted that Mrs. Pragya Murjwani a lady teacher in the same school i.e. RMS, Ajmer made a complaint to Principal RMS Ajmer on 01.09.2014 (Annexure A/9) regarding the misbehavior of the applicant towards her and also filed the FIR (Annexure- A/11) on the same date. Though the applicant also has filed a complaint (Annexure- A/10) showing the same date, it may be seen from the perusal of Annexure- A/10 that the complaint was actually received in the office on 02.09.2014 at 11.45 AM and putting the date of 01.09.2014 appears to be the afterthought of the applicant to suggest and claim that he filed the complaint on the same day on which Mrs. Pragya Murjwani filed the complaint and lodged the FIR. Counsel for respondents further submitted though the counsel for the applicant stated that the FIR was closed by FR dated 11.12.2014 (Annexure-A/12) but as may be seen from Annexure R/1 order of Additional Chief Judicial Magistrate (ACJM) dated 23.09.2015, annexed with the reply, Court had rejected the FR and had directed the Police to thoroughly investigate into the matter and cognizance had been taken by the Judicial Magistrate.

The applicant even challenged the said order of the ACJM dated 23.09.2015 in Criminal Revision Petition No. 1338/2015 and the same was dismissed by the order of the Hon'ble High Court Rajasthan, Jaipur vide order dated 09.12.2015 and the matter is pending in the court of ACJM. He also submitted that as may be seen from Annexure- R/4, on another occasion the Court of ADM, Ajmer also vide order dated 10.11.2015 in matter relating to breach of peace regarding the applicant observed that the Court is satisfied that the offence falls under Section 107/116 of the CRPC against the applicant. Counsel for applicant also referred to the documents annexed as Annexure- R/1 and R/3, which are warning letters issued to the applicant when he was working at RMS Dholpur and Chail. Regarding the inquiries into complaints of harassment against the applicant, counsel for respondents submitted that the first Committee which was constituted under the Chairperson, Geetanjali Sharma was not in accordance with the provisions of Harassment Act of 2013 and therefore 2nd Committee was formed which was in accordance with the said Act to look into the totality of complaints made against the applicant and the Internal Complaint Committee is now conducting the inquiry as evident from Annexure- A/19, A/20, A/21 filed by the applicant himself. It was also reiterated by the counsel for the respondents that in view of the inquiry being made under Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013, and the order having been passed under Section 12(1)(a) of the Act, the transfer is fully Justified and there is no mala fide in

the transfer order and the said being in accordance with law, he prayed for dismissal of the OA.

11. Considered the aforesaid contentions and perused the record. It is noted that the applicant, holding the post of Master Gazetted was transferred from RMS Chail to Rashtriya Military School, Ajmer on request basis on compassionate grounds vide order dated 08th March, 2013 (Annexure- A/2). The applicant was assigned the duties inter alia of HoD Political Science, House Master Ashoka House, In-charge discipline. Thereafter vide order dated 8th December, 2015 (Annexure-A/1) he was transferred to RSM Belgaum, under the provisions contained in Section 12 (1) (a) of the Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 with the approval of the competent authority. Para 2 and 3 of the aforesaid order were partly modified vide order dated 15th December, 2015 (Annexure-A/1A).

12. It has been one of the contention of the counsel for applicant that the applicant was transferred from RMS Ajmer to RMS Belgaum in just about 02 years 07 months which is against the policy of the respondents themselves, at Annexure- A/3 dated 14th December, 2005, as he had not completed 05 years at the request station as provided for in the policy. However, a perusal of Annexure- A/3 reveals, and as also pointed out by the counsel for respondents that the maximum period of transfer to a request station will not be more than 05 years and there is nothing in the policy to say that a period of 05 years is the mandated tenure and

no one can be transferred before that. Thus the contention of the counsel for applicant that the transfer vide Annexure- A/1 dated 08th December, 2015 and Annexure- A/1A dated 15th December, 2015 has been made against the policy guidelines does not carry any force.

13. As far as the question of the transfer being out of prejudice, malice and mala fide is concerned, it is noted that the applicant filed a complaint on 29.11.2013 (Annexure- A/8) before the then Principal RMS, Ajmer against certain shortcomings and lapses in the running of the school but no action was taken, to the satisfaction of the applicant, as stated by the applicant in the Original Application. Further a complaint dated 01.09.2014 (Annexure A/9) was made by Mrs. Pragya Murjwani, who was also working as Tutor in respect of Ashoka House to assist the House Master (refer Annexure- A/7) against the applicant before the Principal RMS Ajmer stating that from 9th August, 2014, the applicant was torturing her and also trying to enter into unnecessary conversation via phone calls at odd hours and she prayed for her safety and security. She also lodged an FIR with the Police on 01.09.2014 (Annexure-A/11) regarding work place harassment by the applicant and seeking her safety. The applicant also filed a complaint dated 01.09.2014 (Annexure-A/10) which was received in the office on 02.09.2014, as evident from the receipt stamp, regarding visits of cadets at odd hours at the residence of Mrs. Pragya Murjwani and threat received by him from her husband. While it cannot be said that the applicant deliberately

backdated the complaint, but it is a fact that it was received only on 02.09.2014 in the office. It is further noted that though the police authorities filed an FR dated 11.12.2014 (Annexure -A/12) but the case was not closed as argued by the counsel for applicant, but as pointed out by the counsel for respondent, the FR was rejected by the court and vide order of ACJM dated 23.09.2015 (Annexure - R/1) and cognizance was taken by the ACJM and the Police was directed to thoroughly investigate the matter. As brought out in the reply even the Criminal Revision Petition No. 1338/2015 filed by the applicant against the said order was dismissed by the Hon'ble High Court and the matter is now pending before the ACJM. It is also seen that on the complaint Annexure-9 dated 01.09.2014 made by Mrs. Pragya Murjwani, a Committee was constituted in which Ms. Geetanjali Sharma was made Chairperson, but the inquiry report was not given to the applicant as is seen from letter dated 27.09.2014 (Annexure-A/15) where in it has been mentioned that the report has been submitted to the authorities concerned but such information cannot be given to the applicant because of it being a confidential Departmental Inquiry. Thus it appears that while further action on the FIR dated 01.09.2014 was directed to be taken as per order of ACJM dated 23.09.2015 (Annexure - R/1) what further action was taken on the inquiry report of the Complaint Committee set up under Chairmanship of Ms. Geetanjali Sharma is not clear.

14. As far as the second and subsequent complaint dated July 09, 2015 (Annexure-A/16) filed by Mrs. Pragya Murjwani is concerned

a perusal of the same reveals (as highlighted by the counsel for applicant) that the dates referred in the complaint i.e. 14th, 15th, 27th, 28th and 29th August, are all prior to 01.09.2014, that is date of the initial complaint (Annexure A/9) which was filed on 01.09.2014. However, just because the dates on the complaint are all prior to 01.09.2014 it cannot be accepted, as argued by counsel for applicant that this complaint has been filed just to harass the applicant or that it shows mala fide of the then Principal of RMS Col. V.K. Sharma (Respondent No. 4) and it has been enlarged and filed after 10 months on his instigation to further harass the applicant. It is also noted that on the basis of the second and subsequent complaint dated 09.07.2015 (Annexure A/16) a preliminary inquiry was instituted and Annexure - A/17 and A/18 are the communications sent by the applicant to the Presiding Officer of the Preliminary Inquiry. However, it is seen from Annexure A/19, A/20 (dated 13th November, 2015 and 09th December, 2015) that Internal Complaint Committee has also been constituted, which has issued notices for its meeting and Annexure- A/21 dated 14th December, 2015 is the response of the applicant to the Presiding Officer of the Internal Complaint Committee. As mentioned in the reply of the respondents that this committee has been constituted as per provisions of the Harassment Act of 2013. Though it is a fact that the applicant was transferred during the pendency of the inquiry from Rashtriya Military School, Ajmer to Rashtriya Military School, Belgaum, Karnataka vide order dated 08.12.2015 (Annexure- A/1) and para 2 & 3 of the said order were later amended by order dated 15th December, 2015 (Annexure -

A/1A) modifying the relieving and joining dates, and further movement order was issued on 21st December, 2015 (Annexure - A/1B), but it cannot be said merely on this basis, that the transfer order is malafide because of the applicants' representation made during the inquiry (especially Annexure A/21) or at the instance of then Principal or that even that the second complaint dated 09.07.2015 (Annexure A/16) was made at his behest. This is more so because even the ACJM vide Annexure- R/1 dated 23.09.2015 decided to reject the FR filed by the Police authorities and accepted the Protest Petition and directed for registration of a case against the applicant under Section 354(D) of the IPC after being convinced that a prime facie is made out against the applicant. The Criminal Revision Petition No. 1338/2015 filed by the applicant challenging this order was also dismissed by the Hon'ble High Court of Rajasthan, Jaipur. Further the transfer order has been issued with the approval of the competent authority and though the order Annexure A/1 dated 08.12.2015 was faxed on 15.12.2015 to Principal RMS, Ajmer and partly amended vide Annexure- A/1A dated 15.12.2015 that does not prove any mala fide. Thus after due consideration of the arguments and the record, proven case of mala fide not established.

15. As far as the question that whether the transfer order (Annexure A/1) dated 15th December, 2015 has exceeded the jurisdiction and provisions of Section 12(1)(a) of the Harassment Act of 2013 is concerned, it is evident that the order has been issued under the provisions, which read as under :

12. Action during pendency of inquiry :

(1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to –

(a) transfer the aggrieved woman or the respondent to any other workplace; or

16. Though the order has been made during the pendency of the inquiry however, it is not evident from the records that the transfer has been made on a written request made by Mr. Pragya Murjwani, aggrieved lady and as per the recommendations of the Internal Complaint Committee. As there appears to be no written request or recommendation for transfer available on record, the order cannot be said to be have been made fully in accordance with the said aforesaid Statutory provisions.

17. On the basis of the above analysis, while the transfer order dated 08th December, 2016 (Annexure- A/1) modified vide order 15th December, 2015 (Annexure- A/1A) order cannot be said to have been made on malafide basis, or against the policy guidelines, but it does not appear to be fully in accordance with the Statutory provisions of Section 12(1)(a) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Hon'ble Apex Court has held in a catena of judgments' that Courts and Tribunals should not ordinarily interfere in transfer and postings, transfer being incidence and condition of service, unless it is a case of proven malafide or order not being issued by a competent authority or is in violation of the Statutory provisions. Though the transfer order of the applicant dated 08.12.2015

(Annexure -A/1) and order dated 15.12.2015 (Annexure- A/1A) are not fully in accordance with the Statutory provisions of the Harassment Act of 2013 but keeping in view the fact that the inquiry is still pending under the said Act, and taking into account the entire facts and circumstances of the case, instead of quashing the said orders, I deem it more just and appropriate to keep them under abeyance. Accordingly, transfer order dated 08th December, 2015 (Annexure- A/1) and order dated 15th December, 2016 (Annexure A/1A) and consequential movement order dated 21st December, 2015 (Annexure- A/1B) are directed to be kept in abeyance for a period of three months from the date of this order. This will however, not preclude the respondents from completing the inquiry or taking any steps and action as per law during this period under the aforesaid Act of 2013 or under any other Act or Rules in force with regard to the applicant. The applicant would also be at liberty to file fresh OA, as per law, if any grievance arises/remains. Further, the applicant, who is a Master Gazetted in the prestigious RMS School, is also expected to conduct himself with decorum and dignity towards all the authorities, colleagues, staff and students of the school, especially women.

Accordingly the Original Application is disposed as above, with no order as to costs.



(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER