

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. OA/ 291/00160/2016

(Order Reserved on 08.04.2016)

DATE OF ORDER: 22.04.2016

CORAM

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Radha Kishan Choudhary S/o Shri Ganesh Ram, aged about 57 years, by cast Jat R/o F. 253/B, RIICO Industrial Area, Jhunjhunu (Raj) presently working on the post of UDC in Kendriya Vidyalaya Churu (Rajasthan).

...Applicant

(Mr. Chain Singh Rathore)

VERSUS

1. Union of India, -- through, Assistant Commissioner (Establishment), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaaheed Jeet Singh Marg, New Delhi 110016. ,
2. Principal, Kendriya Vidyalaya , Bhaleri Road, Churu (Raj)

...Respondents

(Mr. Hawa Singh)

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, against the transfer order dated 2/3.03.2016 (Annexure A/1) and relieving order dated 03.03.2016 (Annexure A/2), seeking the following reliefs:

- (i) the transfer order dated 2/3.03.2016 (Annexure A/1) and relieving order dated 03.03.2016 (Annexure A/2) may be declared malafide, unreasonable, capricious, arbitrary, bad in law and be quashed and set aside.
- (ii) the respondents may kindly be directed to allow continue to the applicant at his present place of posting i.e. K.V. Churu.

- (iii) any other directions and orders, which are, deem proper in the facts and circumstances of the case may kindly be allowed to the applicant.

2. When the matter came up for hearing on 08.04.2016, Ld. Counsel for the applicant, while referring to the points raised in the OA , inter alia, submitted that the applicant, working on the post of UDC, has been transferred from Kendriya Vidyalaya (KV) Churu to Kendriya Vidyalaya, No. 1 Kasaragod (CPCRI) on administrative grounds vide order dated 02/03-03-2016 (Annexure A/1) and further he was relieved by Respondent No. 2 on the same day vide relieving order dated 03.03.2016 (Annexure A/2). Counsel for applicant submitted that the applicant has been transferred to faraway place more than 2500 Kms from Churu on wrong premise of Para 7(e) of the transfer guidelines and the orders have been issued in a malafide manner only to harass and victimize the applicant who has been rendering satisfactory services with utmost dedication. In this regard he submitted that earlier vide order dated 22.06.2015 (Annexure A/3) the applicant was deputed from KV Churu (where he was posted) to KV No. 3, Jaipur and vide order dated 21.07.2015 (Annexure A/4) he was deputed to Kendriya Vidyalaya, BSF Anupgarh for a period of 179 days or till regular incumbent joins or till further orders, whichever is earlier. However, vide order dated 24.11.2015 (Annexure A/5) the temporary deputation of the applicant for Kendriya Vidyalaya, BSF Anupgarh was cancelled and the applicant joined his duties back at Churu. However, suddenly just after three months the applicant has been transferred again from Kendriya Vidyalaya Churu to Kendriya Vidyalaya, No. 1 Kasaragod (CPCRI) a place more than 2500 Km away in a malafide manner only to harass and humiliate the applicant. Counsel for applicant while further referring to

Annexure R/14 filed with the reply submitted that the applicant had made a representation dated 15.10.2015 (Annexure R/14) against his deputation to Kendriya Vidyalaya, BSF Anupgarh and on that basis though the deputation was cancelled vide order dated 24.11.2015 (Annexure A/5), but the authorities got annoyed and prejudiced to such an extent that he has now been transferred in a malafide manner from Kendriya Vidyalaya Churu to Kendriya Vidyalaya, No. 1 Kasaragod (CPCRI) in Kerala State, which is 2500 Kms away, on administrative grounds under the garb of Para 7(e) of Transfer Guidelines of KVS and therefore prayed that the said transfer order Annexure A/1 and relieving order Annexure A/2 may be quashed and set aside and the OA be allowed.

3. Per contra, counsel for respondents, with reference to the points brought out in the reply, submitted that in the first place, as upheld by the Hon'ble Apex Court in a catena of judgments (many referred to in the reply itself), Courts and Tribunals should not ordinarily interfere in matters of transfer and posting which are an incident and condition of Govt. service, unless there is a violation of statutory provisions, the order has not been issued by the competent authority or there is proven mala fide. In this context counsel for Respondents submitted that the order dated 2/3-03.2016 (Annexure A/1) has been issued by the competent authority and the question of mala fide does not arise. In fact the transfer order dated 2/3-03.2016 (Annexure A/1) has been made under Para 7(e) of the Transfer Guidelines of KVS which is regarding Method for Administrative Transfer and Para 7(e) provides that *"an employee can be transferred from a location if the employee's stay has become prejudicial to the interest of the*

organization." Counsel for Respondents submitted that the applicant did not even make any representation to the Respondent authorities regarding any grievances with the transfer order (Annexure A/1) and without making such a representation and without joining at the transferred place he filed the present OA. In this context counsel for Respondents specially referred to Judgement of the Hon'ble Apex Court in case of S.C. Saxena V/s Union of India (2006) 9 SCC 583, wherein it has been held that "in the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and makes a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

4. Counsel for Respondent then submitted that the applicant joined in KVS services in the year 1985 and soon thereafter he became habitual of making false and baseless complaints against the Principals and other officers of the KVS without any evidence. For his misbehavior/misconduct several Memos, Show Cause Notices were issued by the concerned Principals as well as Regional Office, Jaipur in the years 1986, 1987, 1989, 1990, 1991, 1993, 1996, 1997 and 2015 which have been collectively filed as Annexure R/1. Other complaints/ correspondence made by the Principals of various schools in the year 1990, 1991, 1996, 1997 and 2001 may be seen at Annexure R/2 and the complaints against the applicant have been filed as Annexure R/3. Counsel for Respondent further submitted that as brought out in the reply, the applicant was charge sheeted thrice under Rule 14 of Central Civil

Services (Classification, Control and Appeal) Rules 1965 for not performing his duties of preparing the budget estimates for the year 1987-88 and non preparation of salary bill (Annexure R/4), unauthorizely drawing the grade pay of Rs. 4200/- per month, unauthorizely drawing the cash handling allowance (Annexure R/5), and cutting and tempering in the entries of his own Service Book (Annexure R/6). Counsel for Respondent further submitted that the applicant is also habitual of making his grievances directly to the higher authorities/other Departments and even to office of Prime Minister in gross violation of CCS (Conduct) Rules, 1964 and Article 59 (27) of the Education Code for KVS for which he has been issued Advisory Notes/Warnings from time to time as may be seen from documents at Annexure R/7 and R/8. However, applicant paid no heed and again wrote to the Hon'ble Prime Minister on 15.06.2015 (Annexure R/9) though disposal of his grievances had already been made earlier vide letters dated 27.05.2014 and 30.04.2015 (as may be seen from Annexure R/10).

5. Counsel for respondent also drew attention to the facts that when the applicant was working at KV Sikar , Principal KV Sikar made a complaint dated 24.01.2013 (Annexure R/11) to Dy. Commissioner, KVS Regional Office, Jaipur Region, against the misconduct and non co-operative attitude of the applicant on the basis of which he was transferred on administrative grounds to BSF Dabla (Jaisalmer). The applicant made a representation dated 25.02.2013 (Annexure R/12) to Dy. Commissioner, KVS, Jaipur Region for modification of his transfer from KV BSF Dabla to KV, Churu on account of personal problems and his family circumstances and apologized for his misconduct and promised

that he will give no occasion for any complaint in future, and thereafter his transfer order was modified from KV BSF Dabla to KV Churu vide order dated 26.02.2013 (Annexure R/13). The applicant however, persisted in his misconduct and again wrote a letter dated 15.06.2015 (Annexure R/9) directly to the Prime Minister despite being warned earlier and again vide a more recent letter dated 30.04.2015 (filed with Annexure R/10) by the KV Regional Office, Jaipur.

6. Counsel for respondents submitted that in view of the gravity of the matter and the continuing misconduct/behaviour of the applicant, and his refusal to improve his behavior and conduct despite warnings, advisories, penalties, the matter was referred to the competent authority KVS (Hqrs), New Delhi and the competent authority after careful consideration of the case and taking into account the facts and circumstances has directed to shift the applicant from KV Churu and accordingly the applicant has been transferred to KV No. 1 Kasargod (CPCRI) on administrative grounds under Para 7(e) of the transfer guidelines with the approval of competent authority. The applicant has All India transfer liability as per Article 71 of the Education Code of the KVS and in this case, it is to be noted that the transfer has been specifically made as per Para 7(e) of the transfer guidelines.

7. Counsel for Respondents also contended that no case of malafide is made out whatsoever, because the behavior and conduct of the applicant has been against the norms and code of conduct from the time of his joining of service and different Principals of the different KV schools have made complaints against him at different point of time as brought out in detail in the reply

and also during the arguments and it cannot be said that all are prejudiced. Rather with his conduct and misbehavior it is the applicant who has made it difficult for the Principals and other officers to get the work done properly from him. Moreover, it was contended that there is no force in the contention of the counsel for applicant that just because the applicant filed a representation (Annexure R/14) against his temporary deputation to KVS BSF Anupgarh (which was anyway cancelled vide order dated 24.11.2015 Annexure A/5) that could have annoyed the authorities to transfer him. Rather the applicant has been transferred on genuine administrative grounds as per Para 7(e) of the Transfer Guidelines by the competent authority after considering all aspects of the case. Counsel for Respondents thus prayed for the OA to be dismissed and also submitted the followings judgements in support of his contention:

- (1) The Commissioner, Kendriya Vidyalaya Sangathan, New Delhi & two others vs. V. Satya Narayan Murty (W.P. (C) No. 5280/2013), Date of Order 22.04.2013 – Orissa High Court, Cuttack,
- (2) Vipin Kumar Maurya vs. Kendriya Vidyalaya Sangathan & Ors. (OA No. 468/2013) Date of Order 21st November, 2013 – Central Administrative Tribunal, Lucknow Bench, Lucknow,
- (3) Marshal Franki vs. Union of India and Ors., Date of Order 29th September, 1999 – Central Administrative Tribunal, Lucknow Bench, Lucknow,
- (4) Mohd. Masood Ahmad vs. State of U.P. & Ors., Appeal (Civil) No. 4360/2007, Date of Judgment- 18.09.2007 – Hon'ble Supreme Court of India, and
- (5) Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey And Ors. 2004 (4) AWC 3385 SC, JT 2004 (9) SC 185 Date of Order – 20th September, 2004 – Hon'le Supreme Court of India.
- (6) Ajay Kaushal Vs vs. Kendriya Vidyalaya Sangathan & Ors. (OA No. 291/00093/2016) Date of Order 29th March,

2016 – Central Administrative Tribunal, Jaipur Bench,
Jaipur.

8. Considered the aforesaid contentions and perused the records and the relevant judgments cited and relied upon by the counsel for Respondents. It is evident and not disputed that the order of transfer of the applicant dated 02/03.03.2016 (Annexure A/1) has been issued by the competent authority. It is further noted, as brought out in the reply and argued emphatically by the counsel for Respondents, that there are several complaints against the applicant, almost from the time of his joining the service in 1985. A bare perusal of Annexure R/1 to R/10 filed with the reply reveals that different Principals of different schools at different point of time from 1986 onwards have not found the work and conduct of the applicant satisfactory on several occasions, he has been charge sheeted many times and has also been warned and advised to conduct himself properly including to desist from writing directly to higher authorities by violating norms of the KVS laid down in Article 59(27) of the Education Code. Moreover, it is seen even after tendering apology (vide letter dated 25.02.2013 Annexure R/12) and warnings dated 30.04.2015 (Annexure R/10), the behavior of the applicant does not seem to have improved as evident from letter dated 15.06.2015 (Annexure R/9) written to Hon'ble Prime Minister. This also belies the claim made by the applicant in the OA, that he has been rendering satisfactory services in the Deptt. with utmost dedication and there being no any kind of complaints against him. Thus the applicant has failed to make out any case whatsoever to show that his transfer (Annexure A/1 dated 2/3.03.2016) made on administrative grounds under Para 7(e) of the Transfer Guidelines by the

competent authority, is in any way out of malafide or against any statutory provisions.

9. Thus there are no grounds to set aside the transfer order dated 2/3-03.2016 (Annexure A/1) and relieving order dated 03.03.2016 (Annexure A/2) or to grant any other relief as prayed for by the applicant.

10. Accordingly, the Original Application is dismissed with no order as to costs.

11. However, it is always open to the applicant to approach the Respondent Department for redressal of any of his genuine difficulties.



(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

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