

Date of Order : 12.5.2000

OA 564/99

Gopal Lal Dhakar son of Shri Ram Dev Dhakar aged about 43 years resident of Thanwala, Tehsil Deoli District Tonk, at present working as T.G.T. (S.St.) at Kendriya Vidyalaya, Deoli District Tonk.

.... Applicant.

VERSUS

1. Union of India through the Secretary, Department of Human Resources, New Delhi.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. The Principal, Kendriya Vidyalaya Deoli, District Tonk.
4. Shri T.C. Jain, Teacher, Kendriya Vidyalaya Deoli, District Tonk.

.... Respondents.

Mr. Satyaratha Sharma, Counsel for the applicant.
Mr. V.S. Gurjar, Counsel for respondents nos. 1 to 3.
Mr. S.K. Jain, Counsel for respondent no. 4.

EDRAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)
Hon'ble Mr. N.P. Nawani, Member (Administrative)

ORDER

(PER HON'BLE MR. N.P. NAWANI, MEMBER (ADMINISTRATIVE))

In this OA, the applicant prays for quashing impugned order dated 30.10.99 (Annexure A-1) and also that applicant be permitted to work at Deoli where he is presently posted.

2. The facts of the case are that the applicant is physically handicapped person which is evident from the certificate dated 21.7.87 issued by the competent authority (Annexure A-2). He is having Post Polio Paralysis on both lower limbs. In fact, the applicant was appointed on the post of trained graduate teacher (T.G.T., for short) against handicapped quota in

the subject of Social studies in October, 1986 and posted at Suratgarh. In course of time, he was posted at Deoli on 4.5.92. When the applicant joined at Deoli, there was only one post sanctioned for Social Studies subject. The applicant was posted vice a lady teacher who was transferred out. Subsequently one additional post for Social Studies was sanctioned and on this post, one Shri T.C. Jain joined in November, 1992. In the year 1998, the additional sanctioned post on which Shri Jain was working was withdrawn but instead of Shri Jain, the applicant was declared surplus and was transferred to Eklingarh at Udaipur vide order dated 20.7.98. Feeling aggrieved, the applicant filed a Writ Petition in the High Court and an interim order maintaining status quo was issued in favour of the applicant on 27.8.98 (Annexure A-3). After this, the Assistant Commissioner (AC, for short) cancelled the transfer order dated 27.8.98 vide Annexure A-4 with the Writ Petition was dismissed as having become infructuous.

The applicant came to know from reliable sources that he is again being declared surplus and, therefore, made a representation dated 29.6.99 (Annexure A-5) enclosing therewith all necessary and essential documents and requested that he may not be declared surplus, ^{and} considering his physical disability, he be kept absorbed at Deoli itself. The representation of the applicant was forwarded by Chairman, Vidyalaya Management Committee to the Commissioner on 5.7.99 (Annexure A-6) with recommendation that applicant may be retained at Deoli itself. In spite of this, on 6.7.99 (Annexure A-7), the Principal declared the applicant surplus, as can be seen from the vacancy position (Annexure A-7). Because of this, the respondent no. 2 issued the impugned order dated 30.10.99 (Annexure A-1) declaring the applicant surplus and transferring him to Devlali School. The applicant made a representation against this order on 5.11.99 (Annexure A-8) and having got no relief, filed the present OA.

3. The respondents have filed preliminary objection and detailed reply opposing the contention of the applicant. Their case essentially is that the transfer of the applicant was done in a routine manner and in administrative exigency on account of fluctuating requirement of subject teachers in different schools based on the strength of the students and number of ^{of} classes ^{at} schools. They also referred to large number of judgements which hold that the transfer is an incident of service and cannot be interfered with by the Tribunal unless it is vitiated

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by malafide or is violative of the statutory provisions.

4. We have heard the learned counsel for the parties and have carefully examined the material on record.

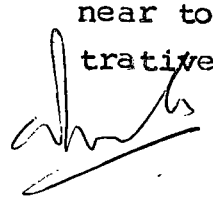
5. The contention of the applicant is that his transfer order is in violation of the transfer guidelines as approved by the Chairman, Kendriya Vidyalaya Sangathan and as per Clause 7, annual transfers are to be made during summer vacations. As per Clause 8(b)(v), a transfer on request can be made of blind or orthopaedically handicapped teachers provided that the orthopaedically handicapped teacher has a minimum of 40% permanent partial disability of either upper or lower limb. Even in Swamy's Handbook 1999, it has been provided that those who are recruited to Group 'C' and 'D' posts on regional basis and who are physically handicapped may be given posting as far as possible, subject to administrative constraints, near to their native places within the region. It has also been argued on behalf of the applicant that Shri T.C. Jain was not only junior to applicant in service but had joined Deoli against an additional post and it was he who should have been declared surplus and, therefore, transferred out of Deoli. It has, therefore, been argued that the applicant has ^{been chg.} singled out and transferred in an arbitrary, capricious and malafide manner in violation of instructions and policy which is violative of Article 14 & 16 of the Constitution of India. The learned counsel for the respondents has opposed the contentions made on behalf of the applicant and has stated that the averment to the effect that the applicant was serving on the main sanctioned post is mis-conceived because there is no classification under the rules in reference to 'Main Sanctioned Post' and 'Sanctioned Post'. The posts are adjusted on account of increase in demand or decrease in demand of teachers depending on the strength of teachers and Sections in various schools. Shri T.C. Jain had joined against the additional post created. When there was no requirement of the additional post any longer, the Senior-most T.G.T., who happened to be the applicant, was transferred as per the rules. The transfer was made by the competent authority in accordance with rules without any malafides or violation of statutory rules and an official who joined on post with all India transfer liability cannot insist for a place of posting even though he/she ^{may} be having ~~personal~~ ^{ch.} problems and physical disability. The applicant joined Sangathan as T.G.T. at ^a far of place like Suratgarh and after having enjoyed a tenure near his native place at Deoli, he should have no difficulty in proceeding to Devlali.

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6. It will be useful, at this stage to consider the role of the Tribunal while adjudicating on the validity of transfer orders. The legal position now stands crystallized with a catena of judgements from the Supreme Court and High Courts. As long back as 1989, Hon'ble the Supreme Court in the case of H.N. Kirtania reported in 1989 (3) SCC 131 had laid the law by holding that transfer orders will not be interfered with unless there are strong and pressing grounds rendering the order illegal on grounds of violation of statutory rules or grounds of malafide. In the case of S.L. Abbas, JT (1993) 3 SC 678, the Apex Court had held that who should be transferred where is a matter for appropriate authority to decide. Unless the order or transfer is vitiated by malafide or is made in violation of the statutory provision, Court cannot interfere with it. In S.S. Kourav, AIR 1995 SC 666, the Apex Court had held that Courts or Tribunal are not appellate forums to decide on transfers made on administrative grounds and cannot go into the expediency of posting an officer at a particular place. In the case of Shilpi Bose v. State of Bihar, 1992 SCC (L&S) 127, the Apex Court held that if transfer orders are issued in violation of executive instructions, the Courts ordinarily should not interfere. In the case of Jagdish Chandra Ozha (supra), the Hon'ble High Court of Rajasthan ruled that 'vague and mellow allegations without material to substantive do not warrant any interference and also that it is not necessary to consider the relative hardship of employee. In the case of H.R. Choudhury v. K.C. Mathur RLW 1999 (1) 514, the Rajasthan High Court held that whenever a public servant is transferred he must comply with the order.

7. In the present case, the applicant has not been able to establish that the impugned ^{transfer} order suffers either from vice of malafide or was violative of any statutory provision. In view of the legal position described in the preceeding paragraph, we cannot persuade us to interfere with the said transfer order. However, we feel that the respondents should not ignore altogether the fact that the applicant is orthopaedically handicapped and a post which will require him to travel long distances whenever he is required to take leave etc. will result in serious difficulties for the applicant. No doubt, the applicant is orthopaedically handicapped claims that under Clause 8(b)(v) of the transfer guidelines, he was entitled to be given a posting near to his native place as far as possible subject to administrative constraints. There is not doubt in our mind that the

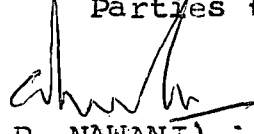


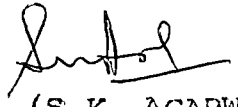
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respondents must have taken into consideration his physical handicap while deciding to transfer him to a far of place like Devlali. However, it does appear to us that the respondents could again explore the possibility of changing his place of posting to a place as near as his native place or at least within Rajasthan. In view of the frequent changes in the strength of teachers in various schools, the availability of teachers may have undergone a change since 30.10.99, ^{since} ~~when~~ the transfer order was issued and it might be possible now for the respondents to adjust the applicant as near to his native place as possible.

8. We, therefore, dispose of this Original Application with a direction to respondents no. 2 to explore the possibility of posting the applicant to a Vidyalaya as near to his native place as possible, keeping in view the present availability of posts. This direction may be carried out within two months of the receipt of a copy of this order.

9. Parties to bear their own costs.


(N.P. NAWANI)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)