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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Order: 04.09.2000

OA 374/2000

Ashok Kumar Man son of Shri Jagjeer Singh aged about 50 years, Yoga Teacher, Central School No. 1, Bajaj Nagar, Jaipur resident of 10/506, Mansarowar, Housing Board, Jaipur.

.... Applicant.

Versus

1. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. Assistant Commissioner, Central School Organisation, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur (Rajasthan).
3. Principal, Central School No. 1, Bajaj Nagar, Jaipur.

.... Respondents

Mr. S.M. Nasir, Counsel for the applicant.  
Mr. V.S. Gurjar, Counsel for the respondents.

CORAM

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

ORDER

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

In this Original Application applicant makes a prayer to quash and set aside the impugned order of transfer dated 8.8.2000 issued by respondent no. 2. Further directions are also sought to allow the applicant to work as Yoga Teacher at Kendriya Vidyalaya no. 1 or in any other Kendriya Vidyalayas at Jaipur.

2. In brief, the facts of the case, as stated by the applicant, are that applicant was initially appointed as Yoga Teacher on 5.11.81 and he was confirmed on the post w.e.f. 5.11.83 vide order dated 8.10.98. It is stated that vide order dated 1.6.2000,

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it was decided that one male and one female PET and SUPW teacher would be retained in the school and in the light of the decision taken as above, it was requested to work out the number of surplus PETs, Yoga Teachers and WETs. It is stated that at Kendriya Vidyalaya no. 1, Jaipur, Petitioner is only the Yoga Teacher and Smt. Saroj Yadav is a temporary teacher in the school who is for the PET. It is also stated that applicant does not fall within the category of surplus Yoga Teacher and applicant has also submitted five options to adjust him at different places where vacancies are in existence <sup>he</sup> But ~~was~~ not adjusted against one of the places given by the applicant in option and he was transferred from Kendriya Vidyalaya no. 1, Jaipur to Kendriya Vidyalaya no. 1, Army School, Jodhpur. It is stated that order dated 8.8.2000, transferring the applicant from Kendriya Vidyalaya no. 1, Jaipur to Kendriya Vidyalaya no. 1, Jodhpur is illegal, unjustified and without jurisdiction. It is also stated that respondents have not fairly and bonafidely determined the strength of surplus teachers including Yoga teachers as per decision taken in 17th Meeting of the Advisory Committee and no consideration was given to the option given by the applicant. Therefore, impugned order of transfer is arbitrary, illegal and unjustified. Therefore, applicant filed this OA for the reliefs, as above.

3. Reply was filed. In the reply preliminary objections were taken as no cause of action has arisen and this OA is not maintainable as transfer policy is mere guideline without any statutory rules.

4. In the reply, it has also been stated that applicant was transferred by the competent authority and impugned order of transfer is the out-come of fixation of staff strength of Kendriya Vidyalayas for the year 2000-2001 and applicant alongwith others have been transferred on administrative grounds. Therefore,

Signature

impugned order of transfer is legal, valid and in consonance with the service law jurisprudence. In the reply, it has been made clear that there is no irregularity in determination of the applicant as surplus teacher and applicant has no vested right to insist the respondents for retention at a particular station. Therefore, applicant has no case for interference and the CA is devoid of any merit and the same is liable to be quashed.

5. Heard the learned counsel for the parties at the stage of admission and also perused the whole record.

6. The learned counsel for the applicant vehemently argued that the impugned order is in violation of transfer policy issued by the Department, which is referred at Annexure A-2. In this letter at Annexure A-2, issued by the Kendriya Vidyalaya Sangathan, New Delhi, it has been mentioned "in the staff position, it has been decided that to the extent possible, one male and one female PET and SUPW teacher would be retained in the school." Further it has been mentioned in the letter that "it may be noted that the surplus teacher would be determined after taking into account the decision of having one male and one female PET and WET." These instructions, according to the learned counsel for the respondents, are merely guidelines and not having any statutory force. In the reply filed by the respondents, it has been made categorically very clear that there is no infirmity, irregularity in determining the strength of surplus Yoga Teacher and nothing has been explained/shown before me by the learned counsel for the applicant that staff strength for Yoga Teachers has been determined not properly. As according to the reply filed by the respondents, the competent authority duly declared the applicant as surplus being the senior most in particular Kendriya Vidyalaya. Therefore, his name was sent onward to Kendriya Vidyalaya Sangathan, New Delhi alongwith other surplus teachers of the region for according

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permission for redeployment of the applicant. Thereafter, transfer order in respect of the applicant, Yoga Teacher, was made by the competent authority in compliance to the instructions issued by the Headquarter. Therefore, I am not inclined to accept the contention made by the learned counsel for the applicant that applicant was declared surplus illegally and arbitrarily.

7. Impugned order of transfer is also stated to be against the transfer policy. In the letter dated 1.6.2000, it has been mentioned that to the extent possible one male and one female PET and SUPW teacher would be retained in the school which does not mean that one male and one female PET and SUPW teacher could be retained in the school in each and every circumstances, but it does mean that if it is not possible, the situation can be changed. In the reply, it has been made specific that applicant has been transferred on administrative grounds and the reasons of transfer are specifically mentioned in the order of transfer policy.

8. I do not find any violation of the policy of transfer as mentioned in the letter dated 1.6.2000. Even if for the sake of arguments, it is said that impugned order of transfer is in violation of the instructions issue in letter dated 1.6.2000, these instructions are merely guidelines and does not give any right to the applicant for making these instructions as enforceable. In Union of India vs. S.L. Abbas, 1994 SCC (L&S), it was held by Hon'ble Supreme Court of India that guidelines issued by the Govt. do not confer upon employee legally enforceable right. In Bank of India Vs. J.S. Mehta (1992) 1 SCC 306, Hon'ble Supreme Court of India held that guidelines issued by the Govt. for posting of husband and wife at one station do not give legal right to claim posting at one station if authorities considers

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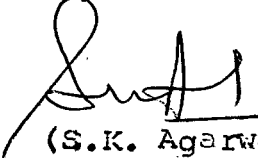
such posting as not feasible. In Abanikant Ray Vs. State of Orissa (1996) 32 ATC 10, it was held by the Hon'ble Supreme Court of India that it is settled law that a transfer which is a incident of service is not to be interfered by the courts unless it is shown to be clearly arbitrary or vitiated by malafides or infraction of any professed norms or principles governing a transfer.

9. On the basis of above settled legal position, I am of the considered view that the letter at Annexure A-2 is merely a guideline. Even if the impugned order of transfer was made in violation of these guidelines, these do not confer any legal enforceable right in favour of the applicant. Therefore, applicant has no case in his favour; on this ground also, as no malafide and are imputed against anybody by the applicant, I do not find any violation of statutory norms in issuing the impugned order of transfer. Therefore, in the facts and circumstances and settled legal position, I am of the opinion that there is no basis to interfere in the impugned order of transfer.

10. The learned counsel for the applicant has also argued that applicant has given five options but those options have not been <sup>weightage</sup> given any/by the respondents in favour of the applicant although the vacancies existed. In support of his contention, he has drawn my attention at Annexure A-3, letter written by the applicant to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Jaipur. In view of the submissions made before me, I direct the respondent Department to take note of the options given by the applicant vide letter at Annexure A-3 and if possible he may be considered for any of the places as mentioned in his letter at Annexure A-3 in future.

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11. With the above observations/directions, this OA is disposed of at the stage of admission with no order as to costs.

  
(S.K. Agarwal)  
Member (J)