

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,  
JAIPUR

•••

Date of order: 4.05.2001.

O.A. No. 89/2001

M.K.Meena S/o Shri Mahadev RamMeena aged about 28 years at present working on the post of Trained Graduate Teacher (Hindi), Kendriya Vidyalaya, Baran, Jaipur Region, R/o C/o Shri Girish Kumar Goyal, Gokul Ice Cream, Old Civil lines, Baran, Rajasthan.

..... Applicant.

versus

1. The Union of India through the Secretary (Education), to the Govt. Ministry of Human Resources Development, Shastri Bhawan, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Bajaj Nagar, Jaipur.
4. The Principal, Kendriya Vidyalaya, Baran (Raj).
5. Dr. C.P. Acharya, Ex. Principal, Kendriya Vidyalaya, Baran, presently posted at Kendriya Vidyalaya No. 6, Pratap Nagar, Sanganer, Jaipur.

..... Respondents.

.....

Mr. P.V. Calla, Counsel for the applicant.

Mr. V.S. Gurjar, Counsel for the respondents.

.....

CORAM :

HON'BLE MR A.K. MISRA, JUDICIAL MEMBER

HON'BLE MR B.K. AGRAWAL, ADMINISTRATIVE MEMBER

.....

fmw

Per Hon'ble Mr. A.K.Misra, Judicial Member :

The applicant had filed this OA with the prayer that the impugned transfer order dated 20.11.2000, Annex .A/1 and the relieving order Annex . A/2 dated 1.12.2000, be quashed & with appropriate suitable relief to the applicant. The applicant had also prayed for staying the operation of the impugned transfer order.

2. After hearing the learned counsel for applicant the operation of the impugned orders dated 20.11.2000, Annex .A/1 and dated 1.12.2000, Annex .A/2, was stayed till the next date. It was further ordered that <sup>status quo</sup> ante as on 20.11.2000 is ordered to be restored till the next date.

3. Notice of the OA was given to the respondents who have filed their reply to which no rejbinder was filed by the applicant.

4. We have heard the learned counsel for the parties and have gone through the case file.

5. The applicant has challenged the impugned transfer order on the ground that the applicant has been transferred due to mala fide action of the Principal who had prevailed over the concerned transferring authority for transferring him because the applicant had not obliged the Principal by showing certain items in the stores stock register as having been purchased. The applicant has been transferred on the so called recommendation of the Chairman of the management committee, ~~but~~ The transfer order of the applicant has been ordered on a complaint therefore an inquiry was

2/11/

.3.

required to be conducted first. By the impugned transfer order one Shri A.K.Meena, was transferred and applicant was relieved in pursuance thereof. The applicant was neither delivered the transfer order nor any transfer order was received for the applicant and he was wrongly relieved of his charge. Therefore, the transfer of the applicant from Baran to Kimin is bad in law. It was argued by the learned counsel for the applicant that the applicant had come to Rajasthan at his own request. He wanted his adjustment to Sikar, instead of adjusting him at Sikar he has been transferred to Kimin.

6. On the other hand, it was argued by the learned counsel for the respondents that transfer order cannot be interfered with unless it is shown to be a result of mala fide action and colourable exercise of power. No mala fide has been shown against the transferring authority by the applicant and it cannot be concluded that the respondent No. 4 prevailed over the transferring authority for transferring the applicant. Respondent No. 5 who was holding the post as Principal himself is now transferred. Had he been in that influential he could have saved himself from being transferred by the concerned authorities. Transfer is a necessary event in service carrier of a Government servant and it is for the Government to decide as to who should be posted at what place, therefore, the O.A. deserves to be dismissed.

7. We have considered the rival arguments. The law relating to interference in matters of transfer is more than settled. Transfer order is a necessary event of service. A person can be transferred in exigencies.

mm

5.

No other instance of ~~intention~~<sup>Prejudice</sup> of the Principal has been shown by the applicant. The allegations of mala fide are easy to level against a particular officer but are difficult to prove. Even if the Principal for one reason or the other was annoyed with the applicant it is un-believable that he would prevail-over the transferring authorities to transfer the applicant. We cannot believe that the present transfer order is as a result of influence of respondent No. 5 on the transferring authority, therefore, the contentions of the learned counsel for the applicant in this regard are un-sustainable.

8. In a recent case of State Bank of India Versus Anjayn Sanyal, decided on 12.4.2001 in Civil Appeal No. 226/1997 <sup>Led</sup> it has been by the Hon'ble Supreme Court as under :-

"4. 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."

9. As stated earlier the law relating to interference in the transfer matters is more than settled and ordinarily transfer order made in exigencies of service is not required to be interfered with. It is for the employer to see as to at what place a particular person is required to serve. It is not for the applicant to chose the place of his posting. No doubt, applicant had been praying for adjustment at Sikar or at a nearby place <sup>not</sup> but it is always possible for the authorities to adjust

2/11

a particular person to the place of his choice. Therefore, the applicant shall have to make representation for his posting at the place of his choice. From the record, we do not find that as against the impugned transfer order the applicant had preferred any representation to the competent authority for his adjustment. The applicant can still make a representation to the concerned authority for his adjustment to the place of his choice.

10. Mr. Calla has cited certain ~~rules~~ <sup>rulings</sup> existing relying thereon - he submits that the transfer order has been interfered with in such cases and consequently, the present transfer order which has the result of sending the applicant many thousand kms. away from his town, deserves to be quashed. We have considered the rulings. Needless to say that transfer order in each individual case depends on the facts and circumstances of each case and the transfer order in hand cannot be quashed simply because in few other cases transfer order has been quashed by the courts. In such cases, the applicant has to prove mala fide and colourable exercise of power. In the instant case the applicant has been un-successful in establishing malafides of transferring authority against the applicant. In view of the fact that the transfer is a necessary event of service carrier it cannot be viewed that it has been made with colourable exercise of power. Therefore, the contentions of the learned advocate for the applicant deserve to be rejected.

11. The learned counsel for the applicant also

bjm

required to be conducted first. By the impugned transfer order one Shri A.K.Meena, was transferred and applicant was relieved in pursuance thereof. The applicant was neither delivered the transfer order nor any transfer order was received for the applicant and he was wrongly relieved of his charge. Therefore, the transfer of the applicant from Baran to Kimin is bad in law. It was argued by the learned counsel for the applicant that the applicant had come to Rajasthan at his own request. He wanted his adjustment to Sikar, instead of adjusting him at Sikar he has been transferred to Kimin.

6. On the other hand, it was argued by the learned counsel for the respondents that transfer order cannot be interfered with unless it is shown to be a result of mala fide action and colourable exercise of power. No mala fide has been shown against the transferring authority by the applicant and it cannot be concluded that the respondent No. 4 prevailed over the transferring authority for transferring the applicant. Respondent No. 5 who was holding the post as Principal himself is now transferred. Had he been in that influential he could have saved himself from being transferred by the concerned authorities. Transfer is a necessary event in service carrier of a Government servant and it is for the Government to decide as to who should be posted at what place, therefore, the O.A. deserves to be dismissed.

7. We have considered the rival arguments. The law relating to interference in matters of transfer is more than settled. Transfer order is a necessary event of service. A person can be transferred in exigencies.

*2/2*

of administration as well as in public interest. No doubt transfer puts a man to an in-convenient position and, therefore, transferred officer always views his transfer as a mala fide action of the superiors and categorises it as colourable exercise of power. But it is rarely so. The incidents of pressurising the applicant to enter inthe stock register certain items as per the purchase bills is related to the respondent No.5 in the official capacity as Principal but that itself is not sufficient to come to the conclusion that the respondent No. 5 had mala fide against the applicant. The purchase bills Annexs. A/3 and A/4 are of two different dates, therefore, it cannot be argued by the learned counsel for the applicant that the Principal in order to manipulate the purchases, purchased store items in two different dates so as to limit each purchase within five thousand -which was malafide action of the Principal and on applicant's objection the Principal became angry with him. ~~Even~~ In our opinion, the contention of the applicant is difficult to agree. When on two different dates purchases were made it was un-reasonable on thepart of the applicant to have refused to enter such items in the stock register on the ground that the purchases have been made twice bye-passing the limit of purchase to the extent of five thousand rupees. The applicant was only store incharge for sports goods. He had nothing to do in respect of the purchases on two different dates by the Principal. Therefore, it appears that the contention of the applicant that his refusal to enter the purchased items ofthe bills (Annexs. A/3 and A/4) on the ground of split purchases annoyed the principal is imaginary.

8/11/2022

.5.

NO other instance of ~~malice~~ <sup>Prejudice</sup> of the Principal has been shown by the applicant. The allegations of mala fide are easy to level against a particular officer but are difficult to prove. Even if the Principal for one reason or the other was annoyed with the applicant it is un-believable that he would prevail-over the transferring authorities to transfer the applicant. We cannot believe that the present transfer order is as a result of influence of respondent No. 5 on the transferring authority, therefore, the contentions of the learned counsel for the applicant in this regard are un-sustainable.

8. In a recent case of State Bank of India Versus Anjayn Sanyal, decided on 12.4.2001 in Civil Appeal No. 226/1997 <sup>held</sup> it has been by the Hon'ble Supreme Court as under :-

"4. 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."

9. As stated earlier the law relating to interference in the transfer matters is more than settled and ordinarily transfer order made in exigencies of service is not required to be interfered with. It is for the employer to see as to at what place a particular person is required to serve. It is not for the applicant to chose the place of his posting. No doubt, applicant had been praying for adjustment at Sikar or at a nearby place <sup>not</sup> but it is/always possible for the authorities to adjust

2/NN

a particular person to the place of his choice. Therefore, the applicant shall have to make representation for his posting at the place of his choice. From the record, we do not find that as against the impugned transfer order the applicant had preferred any representation to the competent authority for his adjustment. The applicant can still make a representation to the concerned authority for his adjustment to the place of his choice.

10. Mr. Calla has cited certain ~~rules~~ <sup>rules</sup> ~~existing~~ relying thereon, he submits that the transfer order has been interfered with in such cases and consequently, the present transfer order which has the result of sending the applicant many thousand kms. away from his town, deserves to be quashed. We have considered the rulings. Needless to say that transfer order in each individual case ~~is~~ depends on the facts and circumstances of each case and the transfer order in hand cannot be quashed simply because in few other cases transfer order has been quashed by the courts. In such cases, the applicant has to prove mala fide and colourable exercise of power. In the instant case the applicant has been un-successful in establishing malafides of transferring authority against the applicant. In view of the fact that the transfer is a necessary event of service carrier it cannot be viewed that it has been made with colourable exercise of power. Therefore, the contentions of the learned advocate for the applicant deserve to be rejected.

11. The learned counsel for the applicant also

11/11

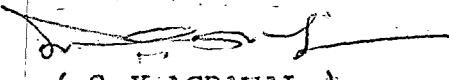
argued that by the impugned order applicant was not transferred and if as per the contention of the respondents the impugned transfer order was corrected by issuing a corrigendum then such corrigendum has not been made available to the applicant and consequently it cannot be taken that applicant has been transferred. We have considered this argument. In our opinion, this argument is difficult to sustain. The applicant has come to challenge his transfer and has prayed for quashing the same, therefore, it is presumed that it is the applicant who has been transferred and no one else and actual delivery of transfer order for challenging the same is not at all necessary. Consequently, the arguments are rejected.

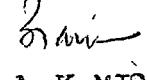
12. In the last, the learned counsel for the applicant argued that there are many posts of P.G.T. (Hindi) lying vacant in Rajasthan in the respondent-institutions therefore, the applicant can be directed to be adjusted. We have considered this aspect of the case. In our opinion no such direction can be given to the authorities to adjust the applicant on the vacant posts. In our opinion, the authorities have to run the administration and not the Court. It is for them to consider which post is to be filled-in and which post is kept vacant. In any case, if the applicant wants his adjustment on such alleged vacant posts then he should prefer a representation to the concerned authorities. No blanket direction can be given in favour of the applicant for his adjustment against the alleged vacant posts.

J.M.

13. In view of the above discussions, we are of  
been able to  
the opinion that the applicant has not make-out any case  
for interference in the alleged transfer. Therefore, the  
O.A. deserves to be dismissed and is hereby dismissed.  
The interim order issued on 26.2.2001 by this Tribunal  
stands vacated.

14. The parties are left to bear their own cost.

  
( S.K.AGRAWAL )  
Adm.Member

  
( A.K.MISRA )  
Judl.Member

mehta