

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.442/2001

Date of order: 25/10/2001

Mrs Sudesh Singh, W/o Dr.Raj Singh) PGT Biology,
Kendriya Vidyalaya, 131 Farmgi Chauk, Raj
Diagnostic Centre, Near Govt Hospital, Nasirabad.

...Applicant.

Vs.

1. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. Joint Commissioner (Admn) Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. Dy.Commissioner (Admn) Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
4. Union of India through Secretary, Education Deptt, Ministry of Human Resource Development, Delhi.

...Respondents.

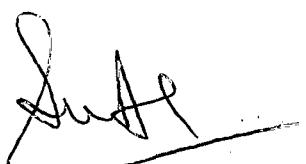
Miss Shalini Sheoran : Counsel for applicant
Mr.V.S.Gurjar : for respondents No 1 to 3.
3. Mr.D.K.Swamy, Proxy of Mr.Bhanwar Bagri for Resp.No.4

CORAM:

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

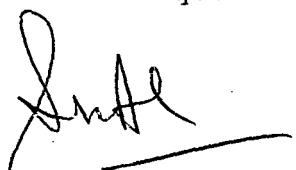
PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to quash and set aside the impugned order of transfer dated 22.6.2001 and relieving order dated 25.6.2001 and to direct the respondents to consider the request of the applicant sympathetically on compassionate grounds to transfer the applicant near to



Nasirabad.

2. Facts of the case as stated by the applicant are that the applicant is a Post Graduate Teacher (Biology) since 1986 in KVS. She always maintained good results and inspired the students to uphold the integrity and dignity of the School. It is stated that appreciation letters were also given to the applicant at various occasions by the authorities. It is also stated that the applicant's husband is running a private Clinic at Nasirabad and the applicant is under continuous treatment of Dr.Bagria, Neuro Surgen, SMS Medical College, Jaipur. It is stated that her elder son Nishant is an Asthematic patient and taking treatment from Dr.Virendra Singh. It is also stated that the applicant had a major accident on 28.1.99 with Rajasthan Roadways Bus, due to which she is taking continuous treatment of Dr.Bagria, Neuro Surgen, SMS Medical College, Jaipur. It is stated that Mrs.V.L.Nagar, Principal, KVS Nasirabad who joined only 11 months back at KVS Nasirabad is having prejudicial and bias attitude against the applicant without any basis and with a view to harass the applicant, started issuing Memos and within a short span of 17 days, she issued 7 memos (Annex.A10 to A16) which reveals her malafide and prejudicial attitude towards the applicant. The applicant replied to the memos (Annex.A17 to A23) and also made representation to the higher authorities (Annex.A24 & A25). It is stated that the transfer of the applicant is done on the complaint made by the Principal, KVS Nasirabad, which is malafide and illegal and under the pretext of public interest and is also colourable exercise of powers and punitive which is liable to be quashed. Therefore, the applicant filed this O.A for the

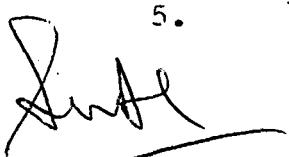


relief as above.

3. The applicant filed O.A No.382/01 challenging the impugned order of transfer dated 22.6.01 and this Tribunal disposed of the O.A by giving directions to the respondents to decide the representation of the applicant, considering the grievances of the applicant sympathetically. Thereafter, the applicant filed representation dated 30.8.01 which was considered and rejected vide order dated 8.10.01.

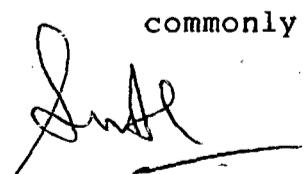
4. Reply was filed. It is stated in the reply that the applicant was transferred in public interest, therefore, the transfer of the applicant is perfectly legal and valid and calls for no interference by this Tribunal. It is denied that there was any malafide on the part of the respondents. The applicant was transferred on complaints made by the Principal, KVS Nasirabad, in public interest from KVS Nasirabad to KVS Nagar (Bhur) Distt. Gurudaspur, Punjab and the transfer of the applicant is in no way illegal, colourable exercise and punitive. It is stated that the transfer is an incident of service and the competent authority is having the powers to transfer the applicant, therefore, unless the transfer is vitiated by malafide and in violation of statutory provisions, the same should not be interfered by this Tribunal. It is also stated that the applicant has already been relieved in compliance of the order of transfer dated 22.6.01, therefore, there is no ground to interfere in the impugned order of transfer. It is stated that the applicant filed representation and her representation was objectively considered and rejected. Hence the applicant has no case.

5. Heard the learned counsel for the parties and also



perused the whole record.

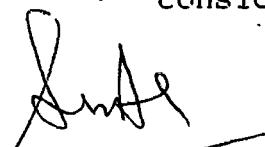
6. The learned counsel for the applicant has argued that the impugned order of transfer is nothing but a colourable exercise of powers used by the respondents malafidely on the baseless complaint of the Principal, KVS, Nasirabad, who has become prejudice with the applicant without any reason or rythem. The counsel for the applicant also argued that the applicant met with an accident in 1999 and she is taking continous treatment with SMS Medical College Hospital, the only hospital near to Nasirabad and her husband is a private Medical Practitioner at Nasirabad, her mother-in-law requires care as she met with heart attack twice. Her son aged 12 years is a chronic patient of Asthema and taking treatment from Dr. Virendra Singh, SMS Medical College, Jaipur. Therefore, looking to the personal difficulties of the applicant, the transfer order should be modified and she may be posted at any place near to Nasirabad, preferably at Ajmer or Jaipur. In support of her contentions, the counsel for the applicant has cited number of rulings which need not be referred in detail as these rulings are commonly referred in transfer matters. On the other hand, the learned counsel for the respondents has refuted these arguments and argued that the applicant was transferred in public interest and no malafide could be established by the applicant against the respondents. Therefore, there is no scope to interfere with the impugned order of transfer. In support of his contention, the learned counsel for the respondents has ^{also} cited number of rulings which ~~are~~ need not be referred in detail as these are commonly referred in such matters.



7. I have given anxious consideration to the rival contentions of both the parties and also perused the whole record and the legal citations as referred by the learned counsel for the parties.

8. On the basis of legal citations as referred by the learned counsel for the parties, it emerges that transfer is an incident of service and Court/Tribunal has only limited scope to interfere in such matters i.e. if the transfer order is actuated with malafide and against any statutory norms the Tribunal can interfere. No malafide could be established by the applicant in the instant case.

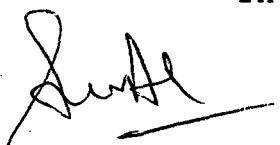
9. Admittedly, transfer order in the instant case was issued at the behest of the complaint of the Principal, KVS Nasirabad and respondent No.1, considered it appropriate to transfer the applicant vide impugned order dated 22.6.01 in public interest. If the competent authority after subjective satisfaction considered it appropriate to transfer the applicant in public interest no fault can be found with such order. But in the instant case, I found from the averments of the respondents that the foundation for the impugned order of transfer is the complaint made by the Principal, KVS Nasirabad, which appears to be motivated by her personal prejudices and views about the conduct and behaviour of the applicant. If there has been any act of misconduct on the part of the applicant, what prevented the Principal, KVS Nasirabad to proceed against the applicant to initiate departmental proceedings. No preliminary enquiry appears to have been made by the competent authority for the allegations made by the Principal, KVS Nasirabad against the applicant. The competent authority did not feel it proper to consider the compassionate ground as alleged by the



order of applicant in her representation. The disposal of the representation makes it very clear that the competent authority did not consider ~~the same in~~ every aspect of the personal difficulties of the applicant and rejected the representation without properly appreciating the grievance of the applicant. Therefore, looking to the facts and circumstances of this case, the transfer of the applicant to a place far away from her family cannot be considered to be in public interest. The only interest of the administration in the instant case was to remove/transfer the applicant from KVS Nasirabad and this purpose could be served by posting the applicant to a place near-by area in the region and not by posting to a place where her contact with the family would become rather infrequent or difficult. In such situation, in my opinion, the transfer becomes punitive.

10. In K.P.Dubey Vs. Asstt.Commissioner(Admn) KV H.Q, New Delhi & Ors, decided on 1.7.99, it was held by the Principal Bench of the Tribunal that:

"... I think there is something terribly unimaginative on the part of respondent No.3 to transfer the applicant from one corner of the country to another. Till he joined the KVJC, Sidhi, he cannot be accused of any misdemeanour because the High Court had cleared him completely while setting aside an earlier removal order. This shows a certain degree of vindictiveness and vendetta. It is not a clean and clear judgment by the authorities arising out of objective facts. The respondents may not post him in any of the KABAL (Kanpur, Agra, Allahabad, Lucknow) towns but they can consider him in a place in any other Central Schools in Western UP. In the



circumstances, I direct respondent No.3 to take the representation in the O.A as representation before him and consider modifying the transfer order to Nicobar Island by substituting it to any Central School in Uttar Pradesh. Orders of interim stay shall continue till this decision by Government.

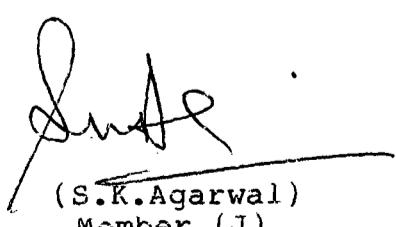
11. In D.K.Gupta Vs. Union of India & Ors, 2001(3) ATJ 49, it was held by Principal Bench New Delhi that Transfer ordered on account of complaint-No enquiry made-Even on facts compassionate ground urged by the applicant not considered by the authorities-Transfer order held punitive in nature and vitiated by malafides and illegalities-Order quashed.

12. On the basis of above legal position as cited above, I am of the opinion that while deciding the place of posting, the competent authority is required to keep in mind that the same does not ultimately result into harassment to the applicant.

13. In the result, while dismissing this O.A, I consider it proper to direct the respondents to review the impugned order of transfer dated 22.6.2001 suitably to accommodate the applicant at a nearby place in the region which is more accessible to her family.

14. The O.A is, therefore, dismissed with the direction to the respondents to review the impugned order of transfer dated 22.6.01 suitably to accommodate the applicant at a nearby place in the region which is more accessible to the her family, within a period of two months from the date of receipt of a copy of this order.

15. No order as to costs.



(S.K. Agarwal)
Member (J).