

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 28.02.2003

OA No.78/2003

Avtar Singh s/o Shri Ramjeet, Primary Teacher, Kendriya Vidyalaya Sangathan, Bharatpur r/o Q.No.5, KVS Campus, Bharatpur.

.. Applicant

VERSUS

1. The Union of India (Kendriya Vidyalaya Sangathan), through the Dy. Commissioner and Principal Secretary, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Bajaj Nagar, Jaipur.
4. The Principal, Kendriya Vidyalaya Sangathan, Bharatpur.
5. Shri M.K.Chakraborty, Principal, Kendriya Vidyalaya Sangathan, Bharatpur.

.. Respondents.

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

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

CORAM:

HON'BLE MR. JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicant is aggrieved of the office order dated 4.2.03 (Ann.A1) read with the order dated 6.2.03 (Ann.A2) whereby the applicant is transferred to Kendriya Vidyalaya (KV), Tezu (Arunachal Pradesh) and is relieved in absentia. In relief, he has

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prayed for quashing the said orders and for treating the intervening period i.e. from the date of relieving till he is allowed to join at Kendriya Vidyalaya, as on duty. In interim relief, he has prayed for directions to allow him to work at KV, Bharatpur.

2. The case of the applicant as made out, in brief, is that:-

2.1 Having been selected for the post of Primary Teacher, he was posted at KV, Dariba Mines, Udaipur and joined his duty on 27.10.94. He holds Post Graduation qualifications in Economics and Hindi. He also passed B.Ed examination in the year 1993 from Utter Pradesh. He belongs to Scheduled Caste community.

2.2 While working at KV, Dariba Mines, his 3 months' old son became serious. On examination, he was found suffering from severe cardiac disease, as would be evident from the prescription and report of the Cardiology Department of the Medical College, Udaipur (Ann.A3 and A4). It is also categorically advised in the prescription given by the Doctor that his son should be protected from cold. In view of the health of his son, he moved an application for his transfer on 16.12.97 (Ann.A5). Keeping in view his problem, he was transferred from KV, Dariba Mines, Udaipur to KV, Bharatpur and relieved from KV, Dariba Mines, Udaipur on 23.10.98 (Ann.A6).

2.3 On 6.2.03, his son all of sudden became serious. He went to the hospital for the check-up of his son. On 6.2.03, he submitted an application alongwith outdoor prescription for grant of 2 days' Casual Leave for 6th and 7th February, 03. Vide letter dated 7.2.03 (Ann.A9), he was informed that since he was relieved on 6.2.03 pursuant to the transfer order to report KV, Tezu (Arunachal Pradesh), no permission can be granted for Casual

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Leave.

2.4 From the perusal of the impugned order dated 6.2.03 (Ann.A2) it will be evident that he was relieved in absentia and that the impugned order was also sent by Speed Post by the Principal (respondent No.5) deliberately. Since he joined at Bharatpur only on 24.10.98, there is no reason to transfer him from Bharatpur to Tezu. Shri M.K.Chakraborty, Principal (respondent No.5) was annoyed with him as he had refused to donate money for Havan ceremony managed by the Principal in the school premises on 20.10.01.

2.5 Near his house, one Shri V.P.Singh, Primary Teacher and Smt. Kamlesh Sharma, LDC are also residing. Shri V.P.Singh always raised objection about the relationship of Shri Chakraborty with Smt. Kamlesh. At 9.00 PM on a day when Shri V.P.Singh was going for evening walk, he saw Mrs. Kamlesh Sharma, LDC coming out from the house of Shri Chakraborty, the Principal. Mrs. Kamlesh spoke very bad language against Shri V.P.Singh. Both Mrs. Kamlesh Sharma and Shri V.P.Singh reached near the house of the applicant loudly exchanging bad language and the applicant and his wife witnessed the same. Mrs. Kamlesh Sharma poisoned the ears of Shri M.K.Chakraborty and they decided to take revenge against Shri V.P.Singh and the applicant. Since the applicant was the best friend of Shri V.P.Singh, a complaint was prepared in this respect and the same was referred to Shri Chakraborty. In the complaint, it was alleged that Shri V.P.Singh alongwith his friend i.e. the applicant sexually harassed Mrs. Kamlesh Sharma. It was decided to conduct an enquiry against the applicant and Shri V.P.Singh and accordingly the office order dated 21.3.2002 was issued and both the applicant and Shri V.P.Singh were asked to report to the office of the Education Officer and Convenor, Complaint Redressal Committee for Women against sexual harassment. On 3rd April,

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statement of Mrs. Kamlesh Sharma and Shri V.P.Singh were recorded and on 5th April the statement of the applicant and Shri M.K.Chakraborty were recorded. No further steps have been taken in this matter till now and the matter is pending.

2.6 As a matter of fact, the applicant has been transferred on a complaint filed by Mrs. Kamlesh Sharma and if that is so the transfer order is liable to be declared illegal as the enquiry authority has not reached to any conclusion as to whether the applicant is at fault or not. The office order dated 21.3.02 issued in respect of the applicant and Shri V.P.Singh directing them to report for enquiry at Jaipur are filed at Ann.A10 and A11. A copy of the complaint dated 19.12.2001 lodged by Shri V.P.Singh against the Principal, KV, Bharatpur to the President, School Management Committee, KVS, Bharatpur is also annexed at Ann.A12.

2.7 While submitting application form for transfer from Dariba Mines, Udaipur, the applicant has given 3 choice stations i.e. Mathura, Agra and Bharatpur and based on his choice, he was transferred from Dariba Mines, Udaipur to Bharatpur. In case of any administrative exigency, the applicant could be transferred to the other stations mentioned in the application form for transfer submitted by the applicant i.e. at Mathura or Agra. However, the transfer of the applicant from Bharatpur to Tezu (Arunachal Pradesh) is totally contrary to the medical advice as has been given by the Doctor to protect his son. It is known that Arunachal Pradesh is coldest area and is near to the China border.

3. The main grounds taken by the applicant are that:

3.1 The transfer and relieving orders are wholly illegal being malafide act of the respondents. He was on leave and was relieved in absence. The respondent No.5 maintained bias attitude against the applicant and the impugned action is the outcome of

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bias attitude of Shri M.K.Chakraborty since as per the transfer policy, it is the Principal who initiates/recommends for transfer.

3.2 The applicant's elder son who is studying in Class-IV is preparing for the examinations which are approaching very fast. As per the policy, the transfer is to be made during the summer vacations.

3.3 The applicant was transferred from Dariba Mines to Bharatpur on request basis on medical grounds. The Doctor has already warned that his son should be protected from cold. In this view of the matter, the transfer of the applicant from Bharatpur to Tezu (Arunachal Pradesh) which is cold area is liable to be declared illegal.

4. All the respondents have contested this application. Common reply has been filed on behalf of all the respondents. Briefly stated, they have submitted that:

4.1 The transfer order of the applicant from KV, Bharatpur to KV, Tezu has been ordered in public interest by the competent authority without any malice or infraction of any statutory right of the applicant. The competent authority accommodated the applicant while transferring him from Udaipur to Bharatpur based on his representation on that point of time. However, the applicant has no right to insist for being posted at a particular place in case of a transferable service.

4.2 The applicant in Sub-para 13 of Para 4 with regard to the annoyance of respondent No.5 on the ground of refusal of the applicant to donate money for Havan ceremony are factually incorrect. The applicant has concocted an imaginary story to create some grounds. Similarly, the contents of Sub-para 14 of Para 4 which relates to allegation against Shri Chakraborty are also emphatically denied being false, baseless and without any

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factual foundation. He has concocted an imaginary story to create some grounds to assail the legality of the correctness.

4.3 The contents of Ann.A12 clearly reflect that it was an after thought to make a complaint against the Principal to create some documentary evidence for the purpose of defence in the enquiry against Shri V.P.Singh and the applicant on the charge of gender harassment of Smt. Kamlesh Sharma, a lady employee of KV, Bharatpur. Gender equality includes protection from sexual harassment and right to work with dignity. The Hon'ble Apex Court in the case of Vishaka v. State of Rajasthan (1997) 6 SCC 241 has formulated guidelines for protection of women employees from sexual harassment.

4.4 It is pertinent to mention that Shri V.P.Singh and the applicant were found to be involved in sexual harassment with Smt. Kamlesh Sharma, LDC and a specific complaint against Shri V.P.Singh and the applicant was made by Smt. Kamlesh Sharma for gender harassment on 9.12.01 (Ann.R1) addressed to the Principal, KV, Bharatpur. Therefore, the alleged complaint (Ann.A12) made by Shri V.P.Singh was made with due deliberation after 10 days of the complaint of gender harassment made by Smt. Kamlesh Sharma. The facts and material on record leaves no room for any doubt that Shri V.P.Singh and the applicant were framing grounds of defence for the enquiry.

4.5 The enquiry report dated 28.12.01 submitted by the Asstt. Collector, Bharatpur after making full enquiry into the complaint dated 9.12.01.(Ann.R1) concluded that the applicant and Shri V.P.Singh were involved in the gender harassment and the applicant used to threaten the Principal, KV, Bharatpur to initiate proceedings under Section 3 of SC/ST Act. It was also concluded by the Asstt. Collector that Shri Vishnu Pal Singh, Netra Pal Singh alongwith the applicant made baseless complaint

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against the Principal to bring the school administration under pressure. The enquiry report of the Asstt. Collector dated 28.12.01 may be perused from Ann.R2.

4.6 The District Collector, Bharatpur who is also the Chairman of the KV Management Committee recommended transfer of Shri Vishnu Pal Singh and the applicant vide his communication dated 6.1.02 followed by reminder dated 4.2.02. and also advised Smt. Kamlesh Sharma to lodge an FIR against Shri Vishnu Pal Singh and the applicant with reference to her gender harassment. The District Collector, vide communication dated 8.7.02 (Ann.R3), again requested the Commissioner, KVS, New Delhi, detailing out the misbehaviour and gender harassment of Smt. Kamlesh Sharma at the hands of the applicant and Shri V.P.Singh.

4.7 Keeping in view the peculiar facts and circumstances of the present case, the transfer order has been made by the competent authority without any malafide. The grounds such as parents of advance age, education/sickness of children are the personal inconvenience which must give way to public convenience and public interest. Since the services of the applicant are liable to be transferred to any part of the country, the applicant cannot insist for being posted at a particular place of his choice. The allegation of malafide against respondent No.5 are totally false, baseless and without any factual foundation. It will not be out of place to mention that the applicant did not desist from his activities involving gender harassment in reference to Smt. Kamlesh Sharma, who again made a complaint on 31.01.03 (Ann.R4).

4.8 The respondents have quoted number of judgments in support of their contention.

5. This OA was filed on 14.2.03. It was listed for consideration on 20.2.03. As seen from the ordersheet dated

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20.2.03, the notice on behalf of all the respondents were accepted by Shri V.S.Gurjar, who appeared on behalf of the respondents as Caveator. It was submitted by Shri Gurjar that the respondents have filed the reply in the registry during the course of the day. On the prayer of the learned counsel for the applicant seeking early hearing on the ground that the applicant stands relieved, the case was listed for admission/hearing on 26.2.03 and the applicant was granted 3 days time to file the rejoinder.

5.1 The applicant has not filed rejoinder. On 26.2.03, the learned counsel for the applicant submitted that he does not want to file rejoinder. Based on the prayers of the parties, the case was heard at the admission stage.

6. During the course of arguments, the learned counsel for the applicant submitted that the applicant has been transferred to a far distance place of Tezu (Arunachal Pradesh). This is a very cold place near to China border. The ailment of his son, who is about 4 years' old, and is a heart patient, will be aggravated being against the advice of expert Doctors. He also submitted that there is no public interest served by transferring the applicant to the distance place in Arunachal Pradesh. The transfer is a punitive transfer. He further submitted that the applicant himself is prepared to move to any nearby place, and that he has already given his option in this regard.

6.1 He further submitted that the applicant belongs to SC community. He is a low paid Primary Teacher. As per Govt. of India instructions, low paid employees are not to be transferred to a distance place and that the SC community employees are to be transferred out only on promotion. The applicant, who belongs to SC category, is being transferred out on the same post. He also submitted that no one has yet been posted in the place of the applicant, although the applicant was relieved while he was on

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leave. Finally, he submitted that notwithstanding the merit of the case, the applicant would be satisfied if the place of his posting is changed to Agra or Mathura or nearby place wherever the vacancy exist so that he can adhere to the advise of Doctors and seek proper treatment of his son suffering from heart ailment, a fact not denied by the respondents being matter of record.

7. The applicant has approached this Tribunal without availing the departmental remedies. The case of the applicant should first be considered by the respondents. Accordingly, without commenting on the merit of the case, this OA is disposed of with a direction to the applicant to file a representation to respondent No.2 alongwith a copy of this order, with a copy to respondent No.3 for information, within 10 days from today and by Speed Post to avoid delay; in that event, the respondent No.2 shall consider the case of the applicant and dispose of his representation by a speaking order within four weeks from the date of receipt of his representation. It is further ordered that in case the applicant complies with this order, he may not be forced to join the new place of posting till disposal of his representation. No order as to costs.



(H.O.GUPTA)

Member (Administrative)



(G.L.GUPTA)

Vice Chairman