

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 2.01.2004

OA No.502/2003

Yatendra Kumar Nagori s/o Shri Roodmal ji, Primary Teacher, Kendriya Vidyalaya Nashirabad, Ajmer r/o C/o J.K.Garments, Panch Batti Circle, Nashirabad, Distt. Ajmer.

.. Applicant

VERSUS

1. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
3. The Principal, Kendriya Vidyalaya Nashirabad, Distt. Ajmer.

.. Respondents

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

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

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

ORDER

Per Hon'ble Mr. M.L.Chauhan.

The applicant who is posted as Primary Teacher in Kendriya Vidyalaya Sangathan is aggrieved by his transfer from Kendriya Vidyalaya, Nashirabad to Kendriya Vidyalaya, Jhalawar. He has impugned in this OA the concerned transfer order dated 14.10.03 (Ann.A1) and the relieving order dated 17.10.03 (Ann.A2). In relief, he has sought quashing and setting aside the said impugned orders and

61

: 2 :

directions to the respondents not to take any action for not joining at Jhalawar as the transfer order is under challenge in this Tribunal.

2. The facts of the case are that the applicant was transferred as Primary Teacher on his own request from Avika Nagar to Nashirabad vide order dated 31.3.2002 (Ann.A3). Pursuant to such transfer, the applicant joined at Nashirabad on 10.4.2003 as Primary Teacher. At this stage, it may be relevant to mention that the applicant possess B.Com Degree and he has also qualified additional examination in Hindi of graduation level.

2.1 The case of the applicant is that after he joined at Nashirabad, regular time table was given to him in the last week of June, 2003. While going through the time table, he found that he has been given the classes of Mathematics, Music, SUPW, Games, Library and English apart from Hindi. The applicant thereafter requested the Incharge who prepared the time table to allot him Hindi subject as he has passed the same as additional subject. It is further alleged that he even contacted the Headmaster of the Primary Section but he told him to go and consult the Principal who is overall incharge of the school. The applicant after taking permission entered in the chamber of the Principal and explained the problem. The Principal then became furious and told the applicant not to ask such questions to the Principal. She further threatened that in case if in future such question is asked she will get rid of him. Thereafter the applicant wrote a letter to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, R.O. Jaipur on 28/29.8.03 (Ann.A6) in which it was stated that the Principal forced the teachers to teach

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subjects which is not their academic subjects. In the said letter it was also stated that he is anticipating action from the side of the Principal, which can jeopardise his interest. It is further alleged that despite written complaint filed by the applicant to higher authorities, he received a warning letter dated 10.9.03 from respondent No.3 in which it has been stated that contents made in the letter (Ann.A6) are improper and he was warned not to right such letter in future. In case he wanted to say anything, the same should be routed through proper channel. Copy of this letter has been annexed as Ann.A7.

2.2 It is further stated that the Assistant Commissioner consulted the Principal regarding contents/complaint filed by the applicant. In this regard the applicant received a letter dated 11.9.2003 from the Principal by which the applicant was asked to submit documentary proof of his complaint written to the Assistant Commissioner. Copy of this letter has been placed on record as Ann.A8. In reply to above letters dated 10th and 11th September, 2003, the applicant sent reply dated 15/16.9.03 to the Assistant Commissioner stating interalia that complaint was lodged before him, however, without any authority, the Principal issued two memos. It is apparently an action taken with malafide attitude. The applicant requested the Assistant Commissioner to take proper action in the interest of justice. Ultimately thereafter the applicant received a memo dated 20.9.03 under the signature of the Headmistress, Primary Section under whom the applicant is directly working. It is further stated that below the signature of the Head Mistress signature of the Principal is also available. The said memo is also issued at the


42

: 4 :

instructions of the Principal. In the above memo, the applicant has been informed that when he was teaching English, Hindi and Library Science, it has been observed that he is poor in all the subjects and simultaneously it is found that he is also not acquainted with the object of teaching and nor he wanted to teach the students. The applicant was further advised to take lesson from Mrs. Neelmani Kathuria for English Teaching. Through the said memo the applicant was also informed that from 23.9.2003 he will be given Hindi subject for teaching to IVth C class instead of English. It was further informed that from the next session i.e. Session 2004 he has to teach English subject and by that time he will be expert in teaching english subject after taking classes from Smt. Neelmani Kathuria. Copy of the said memo has been placed on record as Ann.A12.

2.3 The applicant thereafter submitted representation dated 25.9.2003 to the Assistant Commissioner thereby stating interalia that the Principal is acting maliciously against his interest and subsequently, the applicant was transferred vide impugned order. The grievance of the applicant is that the said transfer has not been passed in public interest but at the behest of respondent No.3 as he has filed complaint against her before the higher authority.

3. Notices of this application were given to the respondents. The respondents have filed reply. In the reply it has been stated that as per policy of the Kendriya Vidyalaya Sangathan, the primary teachers have to teach all subjects at the primary level and not according to their specialisation in a particular subject. The



applicant is B.Com. and subjects offered in B.Com. are not taught at primary level in Kendriya Vidyalaya. As far as the additional qualification of the applicant i.e. passing of Hindi is concerned, the applicant was given period of Hindi for teaching and hence the applicant cannot have any grievance in that reference. It is further stated that for the grey areas of the teachers in any subject, workshops are being conducted at Vidyalaya as well as regional level and also the convenors/heads of the departments are available throughout the day to tackle any problem and/or the difficulty faced by the Teacher. Once in a month subject committee meetings are held to solve the problems faced by the teachers. Moreover, the Principal as Head of the institute is always available for demonstration lessons, model lessons and to give suggestions/advice/instructions to the teachers for better performance. Therefore, the Principal getting furious and/or annoyed simply does not arise.

3.1 The applicant instead of showing improvement in his performance launched a campaign of writing baseless, fabricated, concocted and imaginary stories to all the higher authorities only with the object to gain sympathy. The applicant miserably failed to show improvement in his performance and kept on constantly corresponding against the Principal. Keeping in view the entire facts and circumstances of the case, it was decided to withdraw teaching of English subject from the applicant with an advice to improve his performance under the guidance of Miss Neelmani Kathuria for the next session. The applicant made it a point of argument against the Principal and treated it as a blot on his ability to teach for the reasons best known to him. The applicant was given time

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and was advised by the Principal while commenting upon class room observation by the Principal/V.P./H.M. and the applicant even agreed to some of the suggestions. The relevant record shall be kept ready for the perusal of this Hon'ble Tribunal at the time of hearing/arguments on this OA. The applicant even refused to accept time table and made a note of dissent on the original time table itself. The allegation of malafide has been denied.

3.2 It is stated that Ann.A1 and A2 are perfectly legal and valid and called for no interferenceⁿ. The employer has got inherent right to transfer their employees from one place to another as the exigency demand.

4. During the course of arguments, the respondents have produced 5 documents dated 19.8.03, 25.8.03, 27.8.03, 18.9.03 and 20.9.02 signed by Smt. Vijay Laxmi Nagar, Principal, Kendriya Vidyalaya Nasirabad (respondent No.3). These documents are observation sheets of class room observations regarding the applicant. These observations have been produced with a sole purpose that the working of the applicant was not up to the mark. The applicant has filed additional affidavit whereby it has been categorically stated that the applicant has made a complaint against respondent No.3 to the Assistant Commissioner, Kendriya Vidyalaya, Jaipur Region on 28.8.03/1.9.03 under intimation to respondent No.3. In para 5 of the additional affidavit the applicant has categorically stated that these documents have been prepared/anti-dated after filing of the complaint and it is further stated that the above documents were sent to the ^{applicant} on 22.9.03, 24.9.03, 30.8.03 and 20.9.03 and so far as the document dated 22.9.03, the same was not got

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noted by the applicant. It is further stated that in the school there is one regular librarian viz. Shri M.I.Sindhi is posted. Apart from Mr. Sindhi additional charge of Library has been given to Smt. Thika (Yoga Teacher). The respondents have not filed any counter to the additional affidavit filed by the applicant.

5. *g* ~~He~~ have heard the learned counsel for the parties and gone through the material placed on record.

5.1 The precise grievance of the applicant is that he should not have been given English and Mathematic subjects especially when he is not having the particular academic subject and since he has done Hindi as an additional subject, instead of English, the applicant could not have been offered English subject for class IV C. Further, the grievance of the applicant is that since he has made complaint to the respondent No.2 in this behalf, the respondent No.3, who is Principal, got annoyed and prepared documents/observation sheets for class room instructions regarding the applicant by anti-dating them and it is on account of this malafide action on the part of respondent No.3 that the impugned order of transfer (Ann.A1) has been passed by the authority concerned at the instance of respondent No.3.

5.2 I have considered the submissions made by the learned counsel for the applicant. Admitted facts are that the applicant was transferred from Avika Nagar to Nasirabad at his own request vide order dated 31.3.2002 (Ann.A3) and he joined the school on 1.4.03 as Primary Teacher. It is also admitted fact that after joining at Nasirabad regular time table was given to the applicant in last week of June, 2002 (starting of the new session from

42

July, 2003) in which besides other subjects Library and English was one of the subjects which the applicant was required to teach. The allegation of the applicant that he made the grievance regarding this time table and also met the Principal has not been denied. Though the allegation of the applicant that on that action the Principal became furious has been denied by the respondent No.3 in her reply. It is also admitted fact between the parties that the applicant had made complaint regarding the time table to respondent No.2 vide letter dated 28/29.8.03 (Ann.A6) in which he has levelled allegations against the Principal and has also stated that he is expecting action from the side of the Principal, which can jeopardise his interest. Copy of this letter is also endorsed to the Principal (respondent No.3). It is also apparent from the record that respondent No.3 issued warning letter dated 10.9.03 that he should not make such comments in future. He was also advised to give such representations through proper channel. At this stage it is suffice to observe that when the grievance by the applicant is made against the respondent No.2 it was not proper for her to issue warning letter. Further, observation of respondent No.3 that such a complaint should have been routed through proper channel is highly technical ⁱⁿ nature inasmuch as the complaint was addressed to respondent No.2 but copy of the same was also endorsed to respondent No.3. As such it cannot be said that respondent No.3 was not aware of such complaint and the applicant was corresponding with the higher authorities. Be that as it may, the grievance of the applicant was ultimately redressed as can be seen from letter dated 20.9.03 (Ann.A12) whereby the applicant was informed that from 23.9.03 he will be given Hindi subject

for teaching class IV C class instead of English. It was further informed that from the next session i.e. session 2004 the applicant should teach the English subject and for that purpose he should take class from Smt. Neelmani Kathuria. On the face of this letter when the grievance of the applicant was met by the respondents and he was asked to take classes from Smt. Neemani Kathuria so that he can teach English subject from academic session 2004, it is not understood as to what prompted the respondents to issue impugned order dated 14.10.2003 (Ann.A1) after a period of about 3 weeks. Perusal of transfer order Ann.A1 show that the transfer order has been passed only in respect of one individual i.e. applicant and it is not an order passed as a routine transfer order or periodical transfer order of various employees but it has been issued only in one single case as it has been typed under the name of the applicant. Though the order mentioned that the transfer order has been passed on administrative grounds but nothing has been stated in the reply affidavit as to what were those administrative grounds. It is not the case of the respondents that there was shortage of staff at Jhalawar which necessiated the transfer of the applicant. Rather the case pleaded by the respondents in the reply affidavit and the copy of 5 documents placed on record subsequently in the nature of observation sheets is that the applicant miserably failed to show his improvement in the performance and kept on consistently corresponding against the Principal. The allegation that the applicant miserably failed to show improvement in his performance has been categorically denied by the applicant.

5.3 I have also perused documents/observation sheets for class room instructions regarding the applicant which

44

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has been placed on record as Ann. IIa, IIb IIc, IIF and IIG. Documents IIa and IIF are dated 19.8.03 and 18.9.03, the observation sheets in respect of Hindi subject whereby performance of the applicant has been condemned and not up to the mark. These observation sheets were made available to the applicant on 22.9.03 and 24.9.03 respectively, as can be seen from the remarks recorded by the applicant on these observation sheets, admittedly, after 28/29.8.03 when the applicant had made complaint to the Assistant commissioner (respondent No.2). The applicant has categorically stated that such documents have been anti-dated and prepared by respondent No.3 just to prejudice the competent authority so that the same can be used against the applicant in future. This averment made by the applicant in additional affidavit has not been controverted by respondent No.3. I have given thoughtful consideration regarding this aspect. The version of the applicant seems to be probable. In case the performance of the applicant in respect of Hindi subject was not up to the mark as per remarks recorded by the Principal in his observation sheet dated 19.8.2003 and 18.9.2003 why the applicant was given Hindi subject subsequently vide order dated 20.9.03 (Ann.A12) thereby withdrawing English subject of class IV C for which the applicant has made grievance? In normal course, if the performance of the applicant in respect of Hindi subject was not up to the mark, in view of observation of the Principal as per documents annexed as Ann.IIa and IIF, in that eventuality there was no occasion for giving further subject of Hindi to the applicant in respect of class IVC. Similarly, perusal of observation sheet Ann.IIb dated 27.8.03 pertaining to library subject, Ann.IIc dated 25.8.03


44

pertaining to English subject appears to have also been anti-dated as the same was received by the applicant on 24.9.03 much after the complaint was made by him to respondent No. 2 on 28/29.8.03. Thus the submissions on behalf of the applicant that these documents/observation sheets have been created for the purpose of using the same against the applicant cannot be wholly ruled out. As already stated above, the learned counsel for the applicant could not satisfy this Tribunal as to what prompted the respondents to transfer the applicant within a period of 3 weeks after passing of the order dated 20.9.03 (Ann.A12) especially when the grievance of the applicant was redressed and he was asked to prepare himself for teaching English subject in academic session 2004. The learned counsel for the respondents could not also satisfy as what are the administrative grounds and exigencies of service which prompted the respondents to pass a single order of transfer. In case the performance of the applicant was not up to the mark and he has failed to improve his performance and kept on consistently corresponding against the Principal as has been stated in the reply affidavit, in that eventuality, transfer is not a solution. It was well within the right of the respondents to take appropriate action against the applicant in accordance with the rules in case he is guilty of misconduct and is not performing his duties satisfactorily. From the material placed on record, it appears that there was something wrong between the applicant and respondent No.3 and apprehension of the applicant that respondent No.3 created the documents by antdating the same after he made a grievance regarding allotment of subject of English ^{instead of} ~~and~~ Hindi in the time

42

table issued to the applicant to respondent No.2 and these documents/observation sheets were subsequently used by respondent No.3 for getting the applicant transferred within a short span of 6 months cannot be said to be without basis.

5.4 The learned counsel for the respondents has vehemently argued that transfer is an incident of service and the applicant is holding a transferrable post and as such the same is not required to be interfered. The learned counsel for the respondents has drawn my attention to the decision of the Apex Court in the case of Union of India and ors. vs. H.N.Kirtania, (1989) 3 SCC 445, Chief General Manager (Telecom, N.E.Telecom Circle and anr. Vs. Rajendra Ch. Bhattacharjee and ors, (1995) 2 SCC 532, and Ful Bench decision delivered by the Principal Bench, Delhi in OA No. 770/87 decided on 27.4.88 in the case of Shri Kamlesh Trivedi vs. Indian Council of Agricultural Research and anr. to contend that it is not open to court or tribunal to interfere unless the transfer of employee is passed on account of malafie/illegal or in violation of the statutory rules and also that the scope of judicial review is very limited, unless there are strong and compelling grounds rendering the transfer order improper or unjustifiable. There is no dispute about the proposition of law as laid down by the Apex Court. It is settled position that the order of transfer made in public interest and in exigencies of service on administrative grounds cannot be interfered unless it is based on colourable or malafide exercise of power or is arbitrary order. The government has inherent power to transfer a Govt. employee holding a transferrable post. Transfer is an incident of service and not a condition of service but



: 13 :

at the same time where the order of transfer is innocuous and penal in nature and arbitrary causing great hardship to an employee, the court has power to interfere such order. It is also equally true that frequent, unscheduled and unreasonable transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. As already noticed above, the transfer of the applicant has been made within a period of 6 months in the middle of academic sessions. It is not a case of the respondents that there was a shortage of staff where the applicant was transferred. The transfer order has been passed only in individual case and it is not an order passed as a routine or periodical transfer order of employees. Thus, the applicant has been treated arbitrarily and unfairly by transferring him within a short span of 6 months. In case the applicant has failed to show improvement in his performance as alleged by the respondents, the transfer is not a remedy. Further if the conduct of the applicant was such that he was making unnecessary correspondence against the Principal, he could have proceeded departmentally as per rules. The transfer was not a proper remedy. Thus the appropriate authority has exercised the power of transfer not in bonafide manner and it appears that the authority concerned while issuing the transfer order has been guided by the extraneous and irrelevant considerations (documents/observation sheets prepared by respondent No.3 regarding the applicant), cannot be ruled out.

5. In view of what has been stated above, the OA is

64

: 14 :

allowed. The impugned order of transfer and relieving orders dated 14.10.03 and 17.10.03 (Ann.A1 and A2) are quashed. No costs.



(M.L.CHAUHAN)

Member (J)