

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision 04/03/04

OA 607/2003

Monammed Iqbal Sindhi, Librarian, Kendriya Vidyalaya, Nasirabad.

... Applicant

Versus

1. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. Asstt. Commissioner, KVS, Regional Office, 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
3. Smt. Vijay Laxmi Nagar, Principal, Kendriya Vidyalaya, Nasirabad, District Ajmer.

... Respondents

CORAM:Rs

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant

... Mr.P.V.Callia

For the Respondents

... Mr.V.S.Gurjar

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985 was filed to seek following relief :

"It is, therefore, prayed that the Hon'ble Tribunal may kindly call for and examine the entire records relating to this case and by an appropriate writ, order or direction the impugned transfer order (Ann.A/1) dated 9/10.12.2003 may kindly be declared illegal and the same may kindly be quashed and set aside. Consequently, the relieving order dated 15.12.2003 (Ann.A/2) may also be declared illegal and the respondents mayt be directed to allow the applicant to continue as Librarian at K. V. Nasirabad.

Any order prejudicial to the applicant during the pendency of this O.A. the same may also be declared illegal."

2. Before the case was taken up for admission, learned counsel for the respondents had already filed a caveat and served a copy of the same on the applicant. At the first hearing, counsel for the applicant prayed for consideration of interim prayer. However, in view of anxiety of the applicant the case was adjourned to short date with direction to respondents to file reply.

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3. Brief facts of the case are that the applicant was transferred from K.V. Nasirabad to K.V. Panchgram vide order dated 9/10.12.2003 (Ann.A/1). An order of relieving him was also issued on 15.12.2003 (Ann.A/2). The applicant has challenged both these orders alleging malafide against respondent No.3., Principal of K.V. Nasirabad. He has also alleged that in view of amended transfer policy he should have been transferred within Zone-2. As such, the impugned transfer order (Ann.A/1) is violative of rules on the subject.

4. In the application, the circumstances of his earlier transfer from Beawar to Aizwal in the year 2000 have been explained at length. It is stated that on that occasion he was transferred because of malafide intentions of the then Principal of K.V. Beawar. He had to approach the Tribunal by way of OA NO. 542/2000 and vide order dated 28.11.2000 (Ann.A/3) a stay on transfer was granted and finally the OA was allowed vide order dated 11.01.2001 because it was proved that the Principal had malafide intentions behind seeking applicant's transfer. At KVS Beawar the applicant served for 9½ years as Librarian and was posted to K.V. Nasirabad on 22.04.2002. The transfer challenged in this OA has thus been an early transfer in violation of rules. It is also a mid-session transfer. As per amended transfer policy (Ann.A/25) he should have been transferred within Zone-2 i.e. within region Delhi, Jaipur or Lucknow but due to the malicious intentions of the Principal she has sought his transfer to Zone-4 in Silchar Region.

5. To Prove malafide intentions of the Principal (respondent No.3), a few examples are given. One of these is her refusal to grant him permission to leave school premises every Friday afternoon for Namaz. Aggrieved by this, he had to take half day leave on every Friday. While refusing this permission the Principal has gone to the extent of demanding copies of government instructions under which she is bound to give him such permission. That even though he has shown her some past State

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Government instructions applicable within Rajasthan (Ann.A/8) and subsequently produced a document of the Government of India (Ann.A/9), issued by the Department of Posts & Telegraph in the year 1945/1958, she called his explanation for going for Friday Namaz and thereby hurt his religious feelings knowing fully well that as superior authority she should not be interfering in personal matters of faith of the subordinates. Another example of malicious harassment by the principal is alleged in her insistence that applicant should not leave the school library without prior permission, even to transact personal work at the local Bank. In connection with one such visit which was necessary because monthly pay is credited in Bank and periodical withdrawals are necessary, not only his explanation was called but also displeasure was conveyed and he was made to take casual leave. On another occasion, his explanation was called for absence without permission and while leaving school premises not entering departure time etc, in the register maintained in the School gate. While citing these examples it is stated that by such awkward correspondence she was creating evidence against him to ultimately seek his transfer which is malicious on her part.

6. A few more examples of malicious correspondence are cited in the application in proof of which annexures are also attached but the most noteworthy of these is one regarding abruptly relieving him of duties of Librarian and taking away keys of the Library from him on 07/08.10.2002. However, vide letter dated 27.11.2003 (Ann.A/21) he was asked to complete some work connected with the library even though the Principal was aware that he was not even performing the duties of Librarian. In this memo dated 27.11.2002 malafide intention is alleged. Similarly, in a matter of half day leave, for which explanation was called and although medical certificate was produced, the Principal treated it as absence and deducted one day salary.

7. A few examples of harassment of other teachers by picking out fault

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with their personal behaviour when they were relaxing in staff room etc. are given to prove that principal's behaviour is over bearing, bossy, non-cooperative and that she wants to run the institution more by her will and not according to rules. The applicant has also cited two examples of the echo of maladministration of K.V.Nasirabad in the Indian Parliament sought to be proved by Ann.A/26 and A/27 which are copies of record of deliberations of the Parliament dated 08.03.2000 and 27.07.2001. Even though Ann.A/26 dated 8.3.2000 and entire pleadings upon it in the application and rejoinder were withdrawn by the learned counsel due to vehement protest, even allegation of forgery and requirement of filing FIR by the counsel for the respondents but reliance has been placed on Ann.A/27 to say that corruption and mal-administration of respondent No.3 have been a matter of concern even to the members of the Parliament and to the Human Resource Development Minister.

8. About transfer order being in violation of established rules, it is stated that his transfer has been ordered in public interest as different from one on administrative grounds or on request. However, based on the tainted recommendation of the Principal (respondent No.3) and Chairman, Vidyalaya Management Committee (VMC), it can hardly be called an order in public interest. It is also violative of the guidelines (Ann.A/25) as he has been posted outside Zone-2. Normally the transfer should be ordered at the close of the academic session. Also this is a solitary transfer and not part of a chain and therefore not strictly in public interest.

9. The respondents have submitted exhausted replies, first against intrin relief and then against OA. They have vehemently denied the allegations of the order being in violation of Rules or backed by malicious intentions. It is stated that serving in an organisation the spread of which is country wide and it extends even to some stations abroad, transfer of the applicant from Nasirabad to Panchgram is only an incident of service. Referring to OA 542/2000, it is stated that the

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applicant is perhaps in the habit of approaching Tribunal whenever the transfer is inconvenient. However, he did not recourse to such measure when he was posted to Beawar. If any malicious intention against the applicant was there, how did he remain posted at Beawar for 9½ years ? But now when he has been transferred to Panchgram, he has filed this OA because the posting is not convenient to him.

10. In the reply the respondents have quoted case law to show the limited power Courts and Tribunals have in the matters of transfers. The policy (Ann.A/25) referred to in the application is more in the nature of guidelines and are not mandatory. The higher echelons of administration have different consideration for the fulfillment of which even mid session single transfer order can be issued. Relieving him without delay is also based upon administrative considerations, which cannot be questioned. Regarding alleged malafide intentions behind transfer, it is replied that all memos referred to above are to be treated in the nature of day to day communication between Principal and staff members rather than in the spirit of confrontation and the applicant is unnecessarily imputing motive behind it. In the matter of refusal to leave school for Friday prayers, it is brought out that it is as per KVS policy. The circular order cited by the applicant (Ann.A/9) does not apply to KVS, besides, it is forty years old and not relevant to the present case. This issue on the contrary brings out the psychosis of the applicant. It is stated that if staff members were to leave school premises for prayers during the school time, the teaching and other activities are bound to suffer and granting such permission would have been in violation of the rule of the KVS. Regarding absence from school for visiting Bank on 31.7.2002, an inquiry was conducted and it was found that the explanation given by the applicant was wrong. Regarding not signing register at the gate while leaving school premises during working hours, it is replied that such an arrangement exists because it is a Kendriya Vidyalaya School meant for the children of Army personnel, and to maintain decorum in Army area.

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11. Regarding applicant's allegation about arbitrarily relieving him from Library duties, it is stated that this became necessary because a large number of books were missing and complaints of mis-management in the Library. Stock verification of magazines and newspapers had to be done because the applicant had not cleared the bills of newspapers and magazines for period from April to October 2002 amounting to Rs.4500/-. He not only refused to clear the bills but also denied having received the same. He also refused to verify the newspapers and magazines lying in the Library. When verbal instructions failed, correspondence became necessary. When even this did not work, the principal asked the applicant to close Library and give the keys in a sealed cover. Next day in the presence of a committee applicant was asked to produce all newspapers and magazines but the applicant refused to cooperate and questioned Principal's authority about this procedure. It is explained that payment for newspapers etc. has to be made out of Vidyalaya Vikas Nidhi for which certain certifications are necessary about the presence of the magazines in the library which can be verified only by stock taking. Sealing of Library room was got done after discussing the matter in the Vidyalaya Management Committee on 16.10.2002. The Chairman and other members present ordered that the charge of Library be taken away from the applicant and given to some other responsible teacher. He was however asked to continue with the classes that he was taking, which duty has to be performed in the class rooms and not in the Library Room, but the applicant did not obey this order and rather spent time in the staff room according to his own sweet will. An attempt was again made on 18.11.2000 to verify the stock which could not be done because the applicant did not cooperate. He raised objection that paper seal of the door of the Library was broken. In the reply it is made clear that the seal was nothing but a slip of paper pasted on the door of the Library which can get torn even by wind but the seal on the lock was intact. This position was verified by the committee appointed for stock verification but the applicant avoided

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this exercise by raising one objection or the other. Ultimately, on 20.11.2002, after a resolution in the Vidyalaya Execution Committee, stock verification was done in the presence of a five members committee. The Committee members listed shortage of books worth Rs.20,942.22/-. The information about this was communicated to the Asstt. Commissioner, KVS, Regional Office, Jaipur. Under latter's instructions, stock verification was again done by a committee in which members of VMC and the applicant were included. The applicant avoided joining the committee and the exercise was done in his absence after informing him that the same would be done even in his absence and the applicant would be responsible for shortage of books, if any. However, the matter did not end here. The Lock of the library room was found tampered with/changed and could not be opened by Mrs. Trikha, the then Incharge of the Library. In these circumstances, the lock was again sealed and broken in front of Police. Police inquiry revealed that the original lock put by Mrs. Trikha had been replaced by another lock of the same make and manufacturer. Verification revealed that 640 books worth Rs.18000/- were stolen alongwith a cash of Rs.5000/- of Mrs. Trikha, which were placed there by her before locking the room. Surprisingly, two computers worth Rs. One lakh were not stolen. Curiously however rough record of missing books was also stolen. The matter is still under investigation by the Police. In the reply the respondents emphasised that these circumstances have not been brought on record by the applicant while alleging malafide against the Principal in relieving him of the duties of the Librarian.

12. In the reply it is repeatedly alleged that the applicant wants to take advantage of correspondence between Principal and himself to prove malice and bias of Principal against himself but the same is not proved. That the transfer has been ordered by the Headquarter Office but not even a whisper of malafide has been alleged against higher authorities ordering the transfer. He has also failed to disprove legality, validity and correctness of the transfer and relieving order, which are perfectly



legal, valid and in consonance with rules. Referring to the role of the VMC in day to day administration of the school, any bias of the VMC is also denied.

13. The contending parties were heard at length. Learned counsel for the applicant read through portions of annexures to prove malice through tone, tenor and contents of Principal's letters to the applicant. It was stated that all the memos are vague and convey only one aspect i.e. the authority of the Principal. As such, they are examples of bad administration and in this case they are nothing but concocted evidence of the Principal against the applicant for seeking his transfer. It was also reiterated that the transfer order is in violation of rules/guidelines issued vide OM (Ann.A/25). He also referred to the long distance involved in the transfer from Nasirabad to Panchgram in Silchar region and that it would take him seven days to travel home as and when it became necessary even though he is a low paid employee of the organisation. He contended that this transfer is more in the nature of punishment unwarrantedly imposed to uphold the will of the principal. That the duration of stay in Nasirabad is very short and no 'Administrative' or 'Public Interest' consideration has been brought out by the respondents for it. That once earlier also he was victim of such malice for which OA (No.542/2000) was allowed by the same Tribunal.

14. The respondents have refuted the above contentions very vehemently. While repeating the facts stated in the written replies it is argued that in every manner the applicant was defying the order of the Principal. That as head of the institution Principal's responsibility is not confined to managing only the Library but she is concerned with a strength of about 1400 students and sixty staff members but only the applicant is aggrieved by her behaviour and administrative action. It is argued that on one hand the applicant has made such a big issue of non permission for Friday prayer but he is refusing to attend the morning

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prayers in the school and wants to run his affairs according to his own will. There are many other staff members of his faith and community but they have never raised the issue of Friday prayer nor they have raised vindictiveness and malafide against her. It was reiterated that the order of Transfer has been issued by the Commissioner KVS against whom no malafide has been alleged. The circumstances in which the Library had to be sealed would reveal that the charge was taken away from him due to valid administrative reasons and this act cannot be branded as malicious.

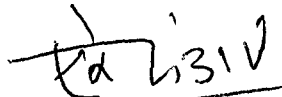
15. The learned counsel for the respondents also placed on record a long list of case law on the subject of limited jurisdiction of the Tribunal and Courts in matters of transfers. He also drew attentions to a similar matter decided by this very Bench on somewhat identical facts vide OA No.4/2004 decided on 12.02.2004 in the case of Ram Gopal Sen vs. Commissioner, Kendriya Vidyalaya Sangathan & ors. In conclusion he said that in these circumstances this OA deserves to be dismissed.

16. After careful consideration of all the pleadings and perusal of records including earlier decisions of higher courts and Tribunals on the subject of transfer namely; B.Vardha Rao v. State of Karnataka & Ors. - (1986) 4 SCC 131, E.B.Royappa v. State of Tamilnadu & Anr. - (1974) 4 SCC 3, Kamlesh Trivedi v. Indian Council of Agricultural Research & Anr. - Full Bench Judgement (CAT Principal Bench) OA 770/87, Decided on 21.4.88, UGI v. H.N.Kirtania - (1989) 3 SCC 445, Shilpi Bose (Mrs) & Ors. v. State of Bihar & Ors. - 1991 Supp (2) SCC 659, & State of MP & Anr. v. S.S.Kaurav & Ors. - (1995) 3 SCC 270. I have come to the conclusion that there is no case for interfering with the impugned orders because the applicant has neither succeeded in making out a case of malafides nor one of illegality in the orders per say. The explanation of the respondents on every fact which the applicant has treated malafide intention has been convincely refuted by the respondents. Admittedly, no malafide against the higher authorities who have passed the transfer order has been

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alleged. Even the malafide alleged against the principal is far from convincingly proved. The inconvenience involved in transfer to a distant location would not render the order illegal because the cited guidelines are only indicative and not mandatory. No doubt change of station is inconvenient but the request of the staff cannot be accommodated at all times because someone or the other has to serve even at inconvenient locations. It is a matter of record that the applicant has served at one location for a stretch of 9½ years, therefore, vindictiveness on the part of authorities ordering transfer can not be believed. In any case, guidelines cannot supercede exigencies of administration and the law is well established that the posting to a particular place or area cannot be claimed as a matter of right specially in a job which is transferable anywhere in the country. In the transfer policy there is no bar to single transfer and I am not convinced by the interpretation of the meaning of 'public interest' and 'administrative grounds' given by the learned counsel for the applicant. In fact, these words are wide enough in administrative parlance to cover such transfer orders. I cannot fail to take notice of certain complaints against the principal made by the applicant to higher authorities. The recommendations of the VMC including the principal for his transfer, if any, were also addressed to the same authorities. If higher authorities decided to issue transfer orders after considering both the versions, the same cannot be faulted with.

17. The upshoot of the above discussion is that the OA is bereft of merits and deserves to be dismissed. But before such an order is passed it would be relevant and in the interest of good administration to mention that the applicant should have approached higher authorities with whom the redressal of his grievance lies before coming to this forum and he can still do that. With these observations, the OA is dismissed with no order as to costs.


(A.K. BHANDARI)

MEMBER (A)