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**Central Administrative Tribunal
Jabalpur Bench**

OA No.448/06

Jabalpur, this the 30th day of August 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

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S/o Shri Felix

Principal

Kendriya Vidyalaya

1. STC, Jabalpur (M.P.)

Applicant

(By advocate Shri Manoj Sharma)

Versus

1. Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi through
Its Commissioner.
2. The Assistant Commissioner
Kendriya Vidyalaya
Jabalpur Regional office
Jabalpur.
3. Shri R.S.Ram
Assistant Commissioner
Kendriya Vidyalaya
Jabalpur Regional Office
Jabalpur.

(By advocate: Shri M.K.Verma &
Shri S.K.Rao, Sr. Counsel)

ORDER

By A.K.Gaur, Judicial Member

This original application is directed against the impugned order dated 3.7.2006 (A-1) whereby the applicant has been transferred from Kendriya Vidyalaya, 1 STC, Jabalpur to Kendriya

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Vidyalaya., Malda (West Bengal). He has prayed for quashing the transfer order as well as the order dated 6.7.06 (A-2) asking him to relinquish the charge forthwith.

2. The applicant has been working as Principal, Kendriya Vidyalaya, 1 STC Jabalpur since, May 2005. It is averred in the OA that the applicant came to Kendriya Vidyalaya, Jabalpur, on his request transfer from K.V.Srinagar in May 2005, on ground that his wife is working as Office Assistant in MPSEB, Jabalpur. It is stated that due to certain complaints made by the applicant against the Assistant Commissioner of Kendriya Vidyalaya (respondent No.3), the Assistant Commissioner started harassing him by having memos issued by Education Officer, which ultimately resulted in imposing a punishment of withholding of three increments without cumulative effect (A-5). On appeal, the penalty was reduced to the extent of withholding of one increment without cumulative effect (A-6). Immediately after the penalty was imposed, the applicant has been transferred vide the impugned order dated 3.7.2006.

3. Learned counsel for the applicant argued that the transfer order though couched in administrative exigency has clearly been issued out of malice. The applicant has been shunted out from Jabalpur within a span of one year of his posting and this has been done at the behest of respondent No.3 against whom the applicant had made complaints. It is also argued that the applicant had made complaints against the Assistant Commissioner because he demanded illegal gratification from the applicant. The impugned order is also against the transfer policy as the normal tenure of a Principal is five years. The learned counsel further argued that the transfer of the applicant to a far flung area, disturbing his family life, ^{is} ~~has~~ tantamounted to double punishment as the transfer came on the heels of the minor penalty already imposed on the applicant. He also argued that the Assistant Commissioner was highly prejudiced against the applicant because of the fact the applicant belonged to ST (Christian) category. The applicant was compelled to make complaints against the Assistant Commissioner because of

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the public humiliation heaped on him by the Assistant Commissioner on account of applicant's caste and community. The applicant has already crossed the age of 56. Therefore, the transfer order which has been issued against the transfer policy and close on the heels of the penalty is liable to be quashed, argued the learned counsel.

5. The respondents have filed a detailed reply in which they have vehemently denied that there was any malafide intention behind the transfer of the applicant. It has been contended that applicant has been in the habit of neglecting his duties and violating the procedures of Kendriya Vidyalaya for his personal interests and for which he had been given a number of show cause notices in the past. During his tenure as Principal in Kendriya Vidyalaya, Barkuhi, he had granted admission to his son Master Charles Felix to Class XI (Sc.) with Maths, by giving concession of 10 marks though he got only 40 marks, in violation of admission guidelines of KVS during the session 2000-2001, for which he was given a memo dated 27.3.2001. It is clearly stated in the reply that since the joining of the applicant in the Kendriya Vidyalaya, 1 STC, the discipline of the school was deteriorating day by day owing to his negligence of duty and his inability to control discipline among the students as well as teachers. Keeping in view the gravity of situation, In-charge Education officer along with another Education officer were assigned the work to look after the functioning of KV 1 STC situation and try to maintain discipline among all concerned. Further, in class X results of CBSE for the year 2006, KV 1 STC, Jabalpur stood at 6th position from the bottom and secured only 81.43% while the target set by the KVS Hqrs was 95% and above which is about 10% less than the Regional average of pass percentage. The performance of the applicant has never been praise-worthy because his behaviour, way of talking, and way of dealing with students/parents were not upto the mark and in accordance with that of a Principal of KV. The Education Officers of KVS Regional Office, Jabalpur had issued various

memoranda^s to the applicant on several issues advising him to change his behaviour and try for improvement of academic atmosphere of the Vidyalaya. Copies of memoranda issued to the applicants have been cumulatively filed along with the reply as Annexures R1 to R4.

6. In spite of repeated advice there was no improvement in the behavior and performance of the applicant. Hence the respondents had issued a charge sheet under Rule 16 of CCS (CCA) Rules 1965 calling for his explanation on the charges mentioned in the same (R-5). The reply of the applicant was not to the points mentioned in the charge sheet but demanded for providing documents. Respondent No.2 being the disciplinary authority had imposed the penalty vide order dated 17.3.2006. The order dated 17.3.2006 passed by the Assistant Commissioner was later modified by the Joint Commissioner of KVS on technical reasons. The Joint Commissioner, KVS while passing the order dated 9.6.2006 had specifically stated that the allegations leveled by the applicant were an after thought and no malafide whatsoever was found in the exercise of powers by the Assistant Commissioner, Jabalpur (R-7). In the order dated 9.6.2006, it was clearly mentioned that the functioning of the applicant be kept under strict observation. The Joint Commissioner had further observed that Smt.T.Annapurna, Education Officer of KVS, Regional Office, Jabalpur also issued various memoranda to the applicant at different points. The applicant instead of replying to the memos had questioned the authority of Education Officer. This further demonstrated the adamant and subversive attitude of the applicant.

7. It has also been submitted on behalf of the respondents that the applicant has been transferred as per the provisions of new transfer guidelines. In Para 13 of the reply it is clearly mentioned that 'it can be easily discerned that the applicant chose to level allegations because he was charge sheeted by the respondent No.2. The officers functioning in Regional office visited the Vidyalaya on several occasions and the condition of the Vidyalaya was so

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precarious that the authorities of Regional Office could not close their eyes. The Education Officer in charge of the Kendriya Vidyalaya No.1 STC, Jabalpur sought explanation from the applicant for the lapses noticed by Regional Office with a view to make him realize his lapses and mend himself. Further during a surprise visit made by the Assistant Commissioner to Kendriya Vidyalaya 1 STC, Jabalpur on 2.12.2005 duly accompanied by Sh.S.C.Khajuria and Smt.T.Annapurna, Education Officers; Shri G P Chauhan, Principal, KV CMM Jabalpur and Smt. S.N.P.Khan, Principal KV No.1, GCF, Jabalpur, certain serious discrepancies and irregularities were noticed and the applicant was advised to submit his explanation vide memo dated 2.12.2005. The reports submitted by Education Officers and members of the inspecting teams are self-explanatory and speak volumes about the functioning of the applicant. There was no occasion for the Education Officer to give false report against the applicant. The language employed by the applicant in the replies was distasteful to say the least. In Para 16 of the reply, it is mentioned that the transfer guidelines provides for effecting transfer of employees on administrative grounds. Para 8 (iv) of the transfer guidelines has been reproduced as under:

“On grounds of misconduct or unsatisfactory performance, as evidenced by issue a charge-sheet under Rule 14 of the CCS (CA) Rules, 1965 or imposition of a minor penalty under Rule 16 of the CCS (CCA) Rules, 1965.”

8. Therefore, there was no deviation from the transfer guidelines and there was no malafide at all. As regards the question of posting of spouses at one place, the respondents have placed reliance on 1992 Volume 1, SCC 306 – Bank of India Vs. Jagjeet Singh Mehta wherein the Hon'ble Supreme Court has observed as follows:

“No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not

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enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible."

9. We have heard the learned counsel appearing for the parties on either side and carefully gone through the records.

10. On perusal of the records, we find that the transfer order of the applicant has been issued immediately after imposition of the minor penalty on the applicant. This clearly indicates that the reason for the applicant's transfer is due to his inefficiency and incapability and also on account of imposition of the minor penalty which, according to the respondents, conforms to the new transfer guidelines. Although the applicant has alleged malafide against respondent No.2 & 3, but he has failed to indicate any specific instance of malafide. On the other hand, during the surprise visit made by the Assistant Commissioner to Kendriya Vidyalaya 1 STC, Jabalpur on 2.12.2005 duly accompanied by Sh. S.C. Khajuria and Smt. T. Annapurna, Education Officers, Shri G.P. Chauhan, Principal KV, CMM Jabalpur and Smt. S.N.P. Khan, Principal, KV No.1, GCF, Jabalpur, certain serious discrepancies and irregularities were noticed and the applicant was advised to submit his explanation vide memo dated 2.12.2005. The memo dated 2.12.05 can, by no stretch of imagination, be said to be a biased one and an outcome of malafide. In fact, in December 2005, the applicant was given the charge sheet and after receiving the charge sheet, the applicant became annoyed and disappointed with the respondents. If he wanted to level allegations against respondent No.2, he ought to have done that prior to December 2005. A bare perusal of A-4 reveals that the Education Officer monitored the performance of the applicant and found that he was not amenable to discipline and improvement. There was hardly any occasion for the Education officer to submit false reports against the applicant.

11. Learned counsel for the respondents argued that transfer is an incident of service and an employee is liable to be transferred

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from one place to another in administrative exigency. The order of transfer is liable to be interfered with only in three circumstances:

- (i) The transfer order is malafide;
- (ii) The transfer is punitive in nature or in violation of statutory rules;
- (iii) The transfer order has been passed by an incompetent authority.

12. He further argued that the Hon. Supreme Court has made it clear that administrative matters including transfer on administration ground effected by the department, adhering to the prescribed transfer guidelines is not subject to judicial review and should not be interfered with by Courts/Tribunals. In support of this contention, the following judgements have been cited by the respondents with relevant observations made by the Hon'ble Supreme Court:

- (i) (2004) 7 SCC 405 - State of U.P. and another Vs. Siya Ram and another

“The primary stand taken in the writ application was that the order of transfer was as a measure of punishment. An enquiry in departmental proceedings had been initiated. Without affording him an opportunity of being heard, the transfer was done as a measure of punishment. The court further observed that “the High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions, the courts or tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer.”

- (ii) (2004) 12 SCC 299 - Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and others.

“Transfer is an incidence of service. Who should be transferred and posted where, is a matter for the administrative authority to decide. Unless the order of

transfer is shown to be clearly arbitrary or is vitiated by mala fides or is made in violation of any operative guidelines or rules governing the transfer, the courts should not ordinarily interfere with it."

(iii) (2004) 4 SCC 245 - Union of India and others Vs. Janardhan Debanath and another

"The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by the respondents of holding an elaborate enquiry is to be insisted upon, the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated."

(iv) (2004) 11 SCC 402 - State of U.P. and others Vs. Gobardhan Lal

"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. That is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

(v) (2003) 4 SCC 104 - Public Services Tribunal Bar Association Vs. State of U.P. and another.

"Transfer is an incidence of service and normally should not be interfered with by courts."

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13. In the conspectus of the facts and circumstances of the present case, we are of the considered view that no ground for our interference has been made out by the applicant. The ground of malafide put forth by the applicant is not so formidable as to inspire our confidence to interfere with the order of transfer. There is no merit in the OA and the same is dismissed. No costs.

A.K. Gaur
(A.K. Gaur)
Judicial member

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

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पुस्तक सं ओ/न्या.....जबलपुर, दि.....
 पसिलिपि अद्यो धित:-
 (1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर
 (2) आवेदक श्री/श्रीमती/व्हु.....के काउंसल *Shri M. Sharma Adv.*
 (3) प्रत्यगी श्री/श्रीमती/व्हु.....के काउंसल *Shri M.K. Verma Adv.*
 (4) वॉक्माल, दोपअ., जबलपुर न्यायपीठ
 रूचजा एवं आवश्यक कार्यावाही हेतु
G.C. Srivastava
 जज रजिस्ट्रार
 1.9.06

Issued
on 1/9/06
by