

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 319 of 2005

Jabalpur, this the 3rd day of October, 2005

Hon'ble Shri Madan Mohan, Judicial Member

Nand Kishore Kori, aged about 56 years,
S/o. Shiv Ratan Kori, R/o. House No. 412,
Narghia Road, Galgala, Tilak Ward,
Jabalpur.

.... Applicant

(By Advocate – Shri S.K. Nagpal)

Versus

1. Union of India, through : The Secretary,
Government of India, Ministry of Defence,
Dept. of Defence Production, New Delhi.
2. Director General, Ordnance Factories,
Ordnance Factory Board, 10-A,
Shahced K. Bose Road, Kolkata.
3. Senior General Manager,
Vehicle Factory, Jabalpur. Respondents

(By Advocate – Shri S.A. Dharmadhikari)

ORDER

By filing this Original Application the applicant has claimed the following main reliefs :

"i) quash the impugned transfer order being malafide/discriminatory,

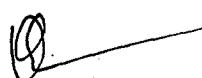
ii) direct the respondents that in case for any reason the applicant has to be transferred from present School, he may be adjusted in the Khamaria Factory School at Jabalpur where there is a vacancy due the death of Smt. Sheela Tantuwaya. If however, for any reason the applicant cannot be adjusted in any School at Jabalpur then he may be adjusted in any other School in Central Zone."



2. The brief facts of the case are that the applicant is working as a Teacher in the Primary School of Vehicle Factory, Jabalpur since 9.6.1979. He is a member of Scheduled Caste community. The seniority of the teachers in Ordnance Factory service is maintained zone wise. The Teachers are not transferred out of zone except on their own request. But to the utter surprise of the applicant he has been transferred by order dated 31.1.2005 to Ordnance Factory, Dehradun and has been released from the Factory with effect from 31.1.2005. The applicant filed OA No. 733/1999 which was disposed of by the Tribunal vide order dated 30.11.2003. Ever since filing of the aforesaid OA by the applicant, the respondent No. 3 has been adopting vindictive attitude against the applicant. This transfer of the applicant is malafide, without any justification. Smt. R.K. Manik, Teacher is working in the Vehicle Factory, Jabalpur Primary School since 5.10.1972, whereas the applicant is working since 9.6.1979. She has been retained in the said school. This clearly amounts to discrimination. The applicant submitted representation dated 1.2.2005 and also filed the OA No. 137/2005 which was disposed of by the Tribunal vide order dated 8.2.2005, directing the respondents to consider the representation of the applicant and till the said representation of the applicant was decided the operation of the order dated 31.1.2005 was stayed. The applicant submitted representation on 8.2.2005 which was rejected vide order dated 3.3.2005 (Annexure A-1/1). Hence, he has filed this Original Application.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicant that the seniority of the Teachers in Ordnance Factory services is maintained zone wise. Hence, the Teachers are not transferred out of the zone except on their own request. The applicant is ordered to be transferred from Jabalpur to Dehradun i.e. another zone. Thus, his seniority shall be adversely affected. Smt. R.K. Manik is working as Teacher in Vehicle Factory,



Jabalpur Primary school since 5.10.1972 i.e. 5 years earlier than the applicant and she was not disturbed. It is apparently hostile discrimination done towards the applicant by the respondents. My attention is drawn towards the judgment of the Hon'ble Punjab and Haryana High Court, 1996 (3) SLR 531 in the case of Oswal Steel Employees Union Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Faridabad and others, wherein the Hon'ble High Court has held that if the transfer is effected by way of punishment or if it is arbitrary or unfair, it is always open to the individual employee to challenge the same in appropriate proceedings. The applicant is about 56 years of age. Thus, this transfer order is malafide and in the nature of punishment. Therefore, this Original Application deserves to be allowed.

5. In reply the learned counsel for the respondents argued that the rationalization of the strength of Teachers to match functional requirement is an administrative necessity. The immediate reason and decisive factor for transferring the individual out of Vehicle Factory, Jabalpur was the report submitted by the factory authorities that the individual was in-disciplined and hence was a bad influence on the entire school in general and students in particular. In his earlier OA No. 137/2005, the Tribunal at the admission stage itself decided the same vide order dated 8.2.2005 directing the respondents to consider and decide his representation. The Director General of Ordnance Factories vide letter dated 3.3.2005 passed a detailed, speaking and reasoned order in compliance with the order dated 8.2.2005. The applicant was informed accordingly on 9.3.2005 and he was directed to report for duty at the new place of posting at Ordnance Factory, Dehradun in his own interest and in the interest of the Department vide factory order dated 9.3.2005. The applicant cannot take the plea that the respondents should have taken action to transfer all the teachers in excess of the requirement. The transfer is an incident of service. Therefore, the Department is free to post a person as per administrative requirements. He also argued that as per



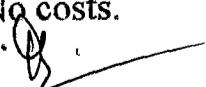
SRO 20 the incumbent in Group-C post are normally liable for service in any school in the same region in the Ordnance Factories Organization. But this will be without prejudice to the right of the management that in public interest, to transfer to equivalent post in any other school/region in the Ordnance Factories organization. This transfer has been ordered in public interest. Hence, the seniority of the applicant will also be protected. Looking to the administrative requirement the applicant has been transferred to Dehradun. The applicant cannot compare his case with Smt. R.K. Manik because the respondents have to take the decision where the services of the Teachers are to be utilized as per functional requirements. The ruling cited by the applicant does not apply in the present case as the Hon'ble Supreme Court in the case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & Anr., 2001 (8) SCC 574, held that transfer of employee is not only an incident but a condition of service. Hence, this Original Application deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, I find that the respondents have filed Annexure R-1 and in its note-7 it is mentioned that for administrative convenience the Ordnance Factory Board categorizes the schools as falling under certain geographical regions. The incumbent in Group-C posts in this schedule are normally liable for service in any school in the same region in the Ordnance Factories Organization. But this will be without prejudice to the right of the management that in the Public interest to transfer to equivalent posts in any other school/region in the Ordnance Factories Organization. Hence, the argument advanced on behalf of the respondents that the applicant can be transferred to any other region is duly supported by the aforesaid document Annexure R-1. As regards the argument of the learned counsel for the applicant that the word normally is mentioned in this document, I find that it seems to be of no help to the applicant because it is the prerogative of the respondents to transfer an employee to a particular place on public interest. I also find that the



apprehension of the applicant that his seniority shall be affected if he is transferred out of the region, in this regard I perused the letter dated 5.8.2005 (Annexure R-2), in which the respondents have clearly mentioned that with regard to the transfer of the applicant it was ordered to be in public interest, hence, the seniority of the applicant will be protected. This apprehension of the applicant is also removed by the respondents vide Annexure R-2. As regards the argument advanced on behalf of the applicant that Smt. R.K. Manik who was appointed 5 years earlier to him and is senior to him and she has not been transferred, I find that it is the discretion of the respondents to transfer a particular person to a particular place. The Courts/Tribunals are not required to interfere in this regard. I have perused the aforesaid ruling cited by the respondents in the case of Shri Bhagwan & Anr. (supra) and the Hon'ble Supreme Court has held that "(S)ervice Law – Transfer of employee – Nature of, and scope of judicial review of such transfer – Transfer of employee, held, is not only an incident but a condition of service – Unless shown to be an outcome of malafide exercise of power or violative of any statutory provision, held, not subject to judicial interference as a matter of routine – Courts or tribunals cannot substitute their own decision in the matter of transfer for that of the management – Hence, transfer of employee from corporate office of the employer Corporation to its project with protection of his seniority, held, quite valid – More so when the project was a new one not involving any risk at all of an adverse effect on the transferee's seniority – National Hydroelectric Power Corporation Seniority Rules, R.4.1.1."

7. Considering the aforesaid position, I feel that this Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.


(Madan Mohan)
Judicial Member

"SA"

पूर्णांकन सं ओ/न्या.....जगतलमुर, दि.....
पुलिलिपि उत्तरे प्रित्ता:-

प्रतिलिपि वार्ता प्राप्ति:-

(1) सगिला, उच्च वर्षायकरण कार परोडीहुगांज, जबलपुर
 (2) आवेदक श्री/श्रीमती/कु.वडे काउंसल S.K.Deygopal ०२०४४
 (3) पत्रपत्री श्री/श्रीमती/कु.वडे काउंसल S.P.Dhamnechikar
 (4) वर्षायक, लेपाल, जामुना राजस्थान
 सद्गुरु एवं आवश्यक वर्गर्थाद्वारा हैं कु. १२२११३२

उप रजिस्टर

~~Enclosed~~
3/10/05