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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 845 of 2002

Jabalpur, this the 6th day of January, 2003.

Hon'ble Mr. R.K. Upadhyaya - Member (Administrative)

M.C. Verma, S/o Shri C.L. Verma,
Aged about 49 years, PGT (Maths),
Kendriya Vidyalaya, New Katni Junction (NKJ),
Katni (M.P.), R/o Qr. No. 186/A RB-3, SKP New
Katni Junction (Under order of transfer
to K.V. Sibsagar)

- APPLICANT

(By Advocate - G.P. Kekre)

VERSUS

1. Union of India, Through the Secretary, Ministry of Human Resources, Development, New Delhi.
2. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheedjit Singh Marg, New Delhi. Through its Commissioner.
3. The Education Officer, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheedjit Singh Marg, New Delhi.
4. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Officer, Jabalpur Region, Jabalpur (M.P.).
5. The Principal, Kendriya Vidyalaya, New Katni Junction, Katni (M.P.).

- RESPONDENTS

(By Advocate - Shri M.K. Verma)

ORDER

The applicant has assailed memorandum dated 13.11.2002 (Annexure-A-3) by which his claim for cancellation of his transfer to K.V. Sibsagar, has been rejected.

2. It is stated that the applicant was posted as Post Graduate Teacher (for short 'PGT') (Mathematics) in Kendriya Vidyalaya, New Katni Junction, Katni (M.P.) since 1985. The respondent no. 2 vide impugned order dated 12.9.2002 (Annexure-A-1) transferred the applicant from Katni to Kendriya Vidyalaya No. 2 Sibsagar (Assam). He was also relieved in absentia as per order dated 17.9.2002 (Annexure-A-2) with a direction to report to the Principal K.V. No. 2 Sibsagar at the earliest. Aggrieved by that order

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of transfer, the applicant had approached to this Tribunal in O.A. 658 of 2002. By an order dated 30.9.2002, the Tribunal directed the respondent no.2 to dispose of pending representation dated 18.9.2002 and the impugned memorandum dated 13.11.2002 has been passed in pursuance to that order of this Tribunal.

2.1 The learned counsel of the applicant stated that in view of the long stay of the applicant, he has been applying for transfer and the applicant was given priority no.1 for Sehore as can be seen from page 41 of the O.A. Instead of transferring to the nearby place, the applicant has been inflicted this punishment order of transfer, transferring him more than 2200 kms away from his home town which is situated in Bina. He also invited attention to the short reply filed on behalf of the respondents wherein it is alleged that the applicant while working for last three years at Katni was involved in creating unpleasant scene before the Principal. The learned counsel stated that no such incident has been brought to the notice of the applicant and neither any memorandum has been issued nor any explanation has been called for from him. In this connection he invited attention to respondent no.2's circular letter dated 5.4.2000 (Annexure-A-10) regarding transfer of employees on administrative grounds, wherein it is stated as follows:-

"3. It has also been decided that an inquiry should be conducted within 3 months of transfer of an employee on administrative grounds. On inquiry, if it is established that the employee was not liable to be transferred on administrative grounds, he should be transferred back to the place from where he/she was transferred or nearby places, depending upon the availability of vacancy. It is made clear that the inquiry needs to be confined to ascertain whether the transfer of the employee was necessary on administrative grounds or motivated by extraneous considerations".

2.2 According to the learned counsel, no such enquiry has been made nor even initiated. Referring to the applicant's representation made to respondent no.2, the learned counsel stated that the impugned order of transfer

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to Shibsagar will adversely affect the family life of the applicant. His family includes his wife and two children. The daughter of the applicant is studying in B.Sc. 2nd year in St. Aloysious College, Jabalpur whereas his son is studying in Class XI at Katni. According to the applicant, he has been prepared for transfer but not for a punishment posting of the nature of the impugned order. The learned counsel invited attention to observations of this Tribunal in O.A.71/2001 in the case of S.P. Mishra Vs. Kendriya Vidyalaya Sangathan & others, wherein by order dated 1.6.2001 this Tribunal directed respondent no.1 to consider amending of the transfer order of the applicant to places mentioned in that case. While issuing this direction, the Tribunal observed that "(W)e do not find any reason for transferring a low paid employee to a distance place in J&K when there are number of vacancies available in nearby places. Even if the respondents wanted to transfer him out as they did not want to keep him in the same school for peace and discipline of the school, we do not see any specific reason for transferring him to J&K to the suffering of this low paid employee and also affecting the educational of his daughter". According to the learned counsel, this decision of the Tribunal in that O.A. squarely covers the case of the applicant. He further contends that the applicant himself has sought for a transfer and in view of his family circumstances and being a low paid employee, he should be accommodated in a nearby place as was ordered in that case.

3. The learned counsel of the respondents stated that the applicant being a KVS employee has all India transfer liability. The applicant has created an unpleasant scene before the Principal as well as before the students. Therefore, it has created an unhealthy atmosphere in the school and transfer of the applicant was in public interest on administrative grounds "in the interest of educational and administrative atmosphere of the Vidyalaya".

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3.1 The respondents have also stated that the transfer guidelines in paragraphs 5 & 6 stipulate that administrative transfers can be made even after 31st August. Reference has been made to several decisions of the Hon'ble Supreme Court by the respondents in which it has been emphasised that a transfer being an incidence of service cannot be objected to and the Tribunal and Courts should refrain from interfering with administrative orders.

3.2 The learned counsel of the respondents referring to the arguments of the applicant's counsel relating to the order dated 5.4.2000 (Annexure-A-10) regarding transfer of employees on administrative grounds, stated that the transfer order was issued on 12.9.2002 and the applicant immediately rushed to this Tribunal. Therefore, the plea raised should not be accepted as the claim is premature as the period of three months was not over before the applicant approached this Tribunal. However, he confirmed that as per his information the applicant has not been issued any memorandum of charges and nor any explanation for his activities before the Principal and the students, was sought for. According to him, this does not stop the respondents in transferring the applicant. So far as the place of posting of the applicant is concerned, it was stated that the same is decided on the needs of the organisation as determined by the respondent no.4.

4. Having heard the learned counsel of parties and after perusal of the material available on record, it is felt that there are several questions which deserve to be solved by the KVS. The respondents have stated that as many as 850 Kendriya Vidyalayas situated all over India including two abroad have been established to cater the educational needs of children of transferable central Government employees including Defence personnel by providing a common programme of education and to develop Vidyalaya as a model school in the context of national goal of Indian

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Education. It is desirable that for achieving such a goal, this organisation should be more responsive to the needs of the employee. The applicant has been working for several years at the station from which he wanted a transfer to nearby places on account of his personal convenience like education of children. Inspite of the fact that he was at waitling list no.1 for posting at Sehore, he has been sent at a station which is located at more than 2200 kms away from his home town at Bina. On account of education of his children, he was also not in a position to shift his family at this juncture. Nothing has been brought on record as to justify posting at Sibsagar only. If it is accepted that the applicant has been shifted on account of alleged 'creating unpleasant scene' it was desirable to complete the enquiry within three months as per respondent no.2's circular dated 5.4.2000(Annexure-A-10). The claim of the learned counsel of the respondents that this application was premature as three months' period was not over is misconceived inasmuch as no such process has been started so far. In any case, the enquiry if any was to be made and it was to be completed 'within' three months from the date of transfer order and not that it was to be started 'after' the lapse of three months. The transfer order in this case was issued on 12.9.2002 and that period of three months has already expired. The decisions of the Hon'ble Supreme Court in several cases point out that the Tribunals or Courts should not interfere with the administrative transfers. In the case of Shilpi Bose (Mrs) and others Vs, State of Bihar and others, (1991) 17 ATC 935 the Hon'ble Supreme Court has observed as follows-

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer

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orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest.."

4.1 So far as this case is concerned, the applicant himself had volunteered to be posted out. The reason given for transfer has not been elaborated by the respondents. As a low paid employee, the applicant should have been accommodated to place of his choice. Even though the administrative reason has not been elaborated by the respondents but that is of no consequence in view of the fact that the applicant himself volunteered to be transferred having already been posted at Katni for quite some time.

4.2 The issue for consideration is if the applicant was not desirable to be retained at Katni he should be transferred to far off place at Shibsagar in Assam. Katni being in Jabalpur region, he should have been shifted to Bhopal region where his place of choice was at priority no.1. Though some arguments have been advanced by the learned counsel of the respondents regarding determination of place based on account of the needs of the organisation, there is nothing to suggest as to why the vacancy at Sehore could not have been filled by transfer of the applicant to that place. The interpretation of the respondent no.2 that place of choice can be given only after having spent five years at the transferred place is misconceived. The whole purpose of giving choice is lost, if the applicant is compelled to join at a place where he does not want to go inspite of the fact that he had already spent more than five years at the place from where he has been transferred. The interpretation given by respondent no.2 in the memorandum dated 13.11.2002 (Annexure- A-3) deserves to be seriously considered by the respondent-organisation and modified suitably.

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4.3 Transfer orders cannot be used as punishment orders without following due process of enquiry following the principles of natural justice. In the present case, there is nothing to suggest that the applicant has ever been asked about his alleged misconduct of creating unpleasant scene. In any case, it is felt that the transfer order, as it is, deserves to be modified, as has been held by this Tribunal in the case of S.P. Mishra (supra) - a writ petition no. 3062/2001 filed by the respondent department against that order of the Tribunal was also dismissed by the Hon'ble High Court vide order dated 20.7.2001.

5. In the result, this Original Application is allowed. The impugned memorandum dated 13.11.2002 (Annexure-A-3) is quashed and set aside. The respondent no. 2 is directed to reconsider the posting of the applicant at either to the place of applicant's choice or to any other nearby place preferably in Bhopal region, within a period of three months from the date of communication of this order. In the meantime, no ~~coercive~~ ^{or} action pursuant to transfer order dated 12.9.2002 (Annexure-A-1) be taken against the applicant. In the facts and circumstances of the case, the parties are directed to bear their own costs.


(R.K. Upadhyaya)
Member (Admnv.)

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प्रांतीक्षण सं. ओ/वा.....जबलपुर, दि.....
परिविधि अधीक्षित:—

- (1) रमेश, उत्तर राजस्थान वार एमोरिलाल, जबलपुर
- (2) अमित श्री/महिला/कु.के काउंसल
- (3) रमेश श्री/महिला/कु.के काउंसल
- (4) वारानी, कोप्रभा, जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु


उप समिक्षक
8/11/03

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