

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 140/2005.

Jaipur, this the 18th day of May, 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

R. N. Dubey
S/o Shri Janaki Prasad Dubey,
Aged about 57 years,
R/o type IV-1, Kendriya Vidyalaya Sangathan,
Regional Office, Residential complex,
92, Gandhi Nagar, Bajaj Nagar,
Jaipur.

... Applicant.

By Advocate : Shri Manish Bhandari.

Vs.

1. The Commissioner,
Kendriya Vidyalaya Sangathan (Hqrs),
18, Institutional Area,
S. J. S. Marg,
New Delhi 110 016.
2. Shri R. L. Jamuda,
I.A.S.
Commissioner,
Kendriya Vidyalaya Sangathan (Hqrs),
18, Institutional Area,
S. J. S. Marg,
New Delhi 110 016.
3. Shri R. B. Meena,
Presently posted as Education Officer,
Kendriya Vidyalaya Sangathan (RO),
Hyderabad.

... Respondents.

By Advocate : Shri V. S. Gurjar for Respondent No.1&2.
Shri R. P. Sharma for Respondent No.3.

: O R D E R :

Per M. L. Chauhan, Judicial Member.

The Present application has been filed against the
order dated 4.4.2005 (Annexure A/1) whereby the applicant

was transferred from Jaipur Regional Office to Bhubaneshwar. By way of relief clause, it has been prayed that appropriate order or direction be issued to the respondents thereby declaring the impugned order dated 4.4.05 (Annexure A/1) as illegal and the same be quashed and set aside. It is further stated that in case the respondents intend to accommodate Respondent No.3 then he can be transferred to any other place.

2. Briefly stated the facts of the case are that the applicant while holding the post of Principal was promoted to the post of Education Officer and on his promotion he was transferred to Jaipur where he joined on 29.7.03. While the applicant was discharging the duties of the aforesaid post he was transferred from Jaipur Regional Office to Bhubaneshwar Office vide impugned order dated 4.4.05. It is further stated that the applicant has also made request to his transfer to Mumbai as one post would be available at Mumbai on retirement of Shri Venkataraman on 30.6.05 and as such, the order of transfer of the applicant could have been effected at that point of time and he could have been posted at Mumbai. The applicant has further pleaded that impugned order has been passed in order to accommodate Shri R. B. Meena, Respondent No.3, and on the basis of Caste consideration and not in public interest and administrative exigency. It is on these grounds that the

applicant has filed this OA thereby praying for the quashing of impugned order dated 4.4.05 (Annexure A/1).

3. When the matter was listed for admission on 6.4.05, this Tribunal granted interim stay to the effect that the status quo as it stands today, be maintained. The interim stay was granted on the premise that the applicant has been transferred with a view to adjust some other person and he is likely to retire within three years and had asked to choice station of posting at Mumbai which has not been exceeded too and instead he has been posted to a far away place.

4. Thereafter the reply was filed by the official respondents as well as by the private respondents. Respondent No.3 in his reply has specifically admitted that he has been transferred to Jaipur on the basis of his own request, which request has been accepted by the authorities. However, the allegation of malafide and that the transfer order was issued at the instant of relation of Respondent No.3 has been categorically denied. So far as the official respondents are concerned, the stand taken by them in the reply was that the transfer of the applicant has been made in public interest by the competent authority and allegation of malafide has been categorically denied. It is further stated that the application of the applicant for his request transfer from Jaipur to Mumbai, though, forwarded

by the Assistant Commissioner, was not recommended by him. Respondents have further stated that here the order of transfer has been made in administrative exigency, such order cannot be interfered in view of the law laid down by the Apex Court. Respondent No.2, Commissioner, Kendriya Vidyalaya Sangathan (KVS, for short), New Delhi, has also filed reply thereby denying the allegation that the transfer was made on the basis of cast consideration and it has been specifically stated that keeping in view the entire facts, circumstances and material placed on record the matter was considered and the transfer order was passed in view of the public interest and interest of the organization and keeping in mind the overall interest of the KVS as well as the smooth functioning of KVS, Regional Offices. It is further stated that Respondent No.3 has no ill will or malice to the applicant or any other employee of the KVS.

5. The applicant has filed rejoinder. Along with rejoinder, the applicant has annexed copy of the letter dated 3.3.05 (Annexure A/6), written by one Shri Santosh Mirdha, Education Officer, KVS (RO) Chandigarh, thereby requesting for her transfer to KVS, Regional Office, Jaipur. In rejoinder, the applicant has also reiterated his allegation that the transfer order of the applicant was effected in order to accommodate Respondent No.3 for extraneous consideration and not in administrative exigency as there are serious charges pending against the

applicant and even the charge of misappropriation of Rs.2Lakh is pending against Respondent No.3 since 2004. As such his transfer to Jaipur Region shall not be in public interest.

6. The matter was heard at length on 27.4.05 as interim stay was operating. During the course of arguments, Learned Counsel for the official respondents brought to the notice of this Tribunal Confidential letter dated 19.3.04 written by Assistant Commissioner regarding applicant's performance in the Institution. Relying on this letter, Learned Counsel for the official respondents argued that it was not in public interest to retain the applicant at Jaipur, as such, in view of the law laid down by the Apex Court in the case of Union of India and others vs. Janardhan Debanath and another (2004) 4 SCC 245, the employee can be transferred and it is not necessary to proceed by the same type of departmental enquiry as is conducted in cases leading to dismissal, discharge etc. Since the official respondents have relied upon the Confidential letter dated 19.3.04 in order to, justify the order of transfer of the applicant, whereas this fact was not pleaded in the reply, this Tribunal after hearing the parties at length passed order dated 27.4.05 which is in the following terms :-

" The case of the applicant is that impugned order has been passed solely in order to accommodate to Respondent No.3 who has served in Rajasthan for last 16 years and it is only for last one year that the Respondent No.3 remained out of Rajasthan on account of his promotion. It is further argued that

the Respondent No.3 has been adjusted at Rajasthan in order to hush up the case of misappropriation of Rs.2 lacs which is pending since 2004 and even the chargesheet has been prepared which has not been served upon the Respondent No.3 till date. On the other hand, Learned counsel for the official respondents has argued that the transfer of the applicant was effected on administrative ground in exercise of powers conferred in clause 5 of transfer guidelines effective w.e.f. 19.1.2005. For that purpose, learned counsel for the respondents has drawn my attention to confidential letter dated 19.3.2004 written by Assistant Commissioner and addressed to Commissioner, the perusal of which reveals that the performance of the applicant is unsatisfactory. Learned counsel for the official respondents argued that it was solely on this basis that the applicant was transferred vide impugned order. Since the official respondents in its reply has not disclosed that the applicant was transferred because of unsatisfactory academic performance as contended now, let the Commissioner, Kendriya Vidyalaya Sangathan file fresh Affidavit whether the letter dated 19.3.2004 written by Assistant Commissioner formed the basis to transfer the applicant vide impugned order dated 4.4.2005. The affidavit should also disclose whether the fact regarding alleged misappropriation of aforesaid amount by the respondent No.3 was in his knowledge while effecting the transfer of respondent NO.3 to Jaipur and despite these facts the respondent No.3 was adjusted. The affidavit shall be filed within a period of 7 days. In the meanwhile the Commissioner may also look into the possibility of adjusting the applicant at Mumbai which post is going to fall vacant on 30.6.2005. Interim Relief be continued till the next date. Be listed on 10.5.2005. CC be made available to the parties.

Pursuant to the aforesaid order passed by this Tribunal, Respondent No.2 has filed additional affidavit.

In additional affidavit, Respondent No.2 has categorically stated that the applicant was transferred from KVS, Jaipur Regional Office to KVS, Bhubaneshwar Regional Office, keeping in view the entire facts, circumstances and material present on record including letter dated 19.3.04, written by the Assistant

Commissioner, Regional Office, Jaipur, and it was only thereafter that order of transfer dated 4.4.05 was issued in public interest and in the interest of KVS as well as the smooth functioning of KVS, Regional Offices. It is further stated that the applicant is having an all India transfer liability and secondly there has been a complaint against the applicant. The order of transfer was issued after taking into consideration these aspects and if this action of effecting transfer upon the applicant is not taken, the image of KVS would have been tarnished.

7. So far as the second aspect of the matter whether it is possible to adjust the applicant at Mumbai, which post is going to fall vacant on the retirement of one Shri Venkataraman w.e.f. 30.6.05, the affidavit is silent and Respondent No.2 has not uttered even a single word to the effect that it is not possible to adjust the applicant at Mumbai. Respondent No.2 has also categorically stated that the fact whether the departmental proceedings are pending against Respondent No.3 were not in his knowledge while issuing the transfer order. The applicant has filed reply to the additional affidavit filed by Respondent No.2 pursuant to this Tribunal's order dated 27.4.05. Along with this additional reply, the applicant has also annexed letter dated 19.12.03 (Annexure A/7) which has been addressed to KVS, New Delhi, whereby the applicant has made grievance regarding not allotting

ld

quarter to him by the Assistant Commissioner. It has been contended by the applicant that since he has made complaint against the Assistant Commissioner vide letter dated 19.12.03 (Annexure A/3), the Confidential letter which has been written by him on 19.3.04 which is being now relied upon by the respondents and has now formed the basis for his transfer cannot be relied upon. Learned Counsel for the applicant has further argued that in case the performance of the applicant was not up to the mark, action should have been taken against him immediately thereafter in March/April 2004 and he could have been even transferred at that relevant point of time whereas the impugned order of transfer has been issued after a lapse of about one year. As such, according to the learned counsel for the applicant no reliance can be made to the Confidential letter dated 19.3.04. According to learned counsel for the applicant the whole exercise was done in order to adjust Respondent NO.3 against whom serious allegation of misappropriation is pending and the charge sheet has been pending before the Respondent No.2 since September 2004, as such, the contention of Respondent No.2 that he is not aware about the alleged allegation of misappropriation of Rs.21acs in which the applicant is also involved cannot be accepted. Learned Counsel for the applicant has also drawn my attention to the comparative result of the analysis of KVS (RO) Jaipur for the year 2004 of Education Officers to show that the performance of the applicant was 'Excellent' as compared

to other two Education Officers. Thus, the Confidential Report dated 19.3.04 which has been issued by the Assistant Commissioner, Jaipur, on the basis of the complaint made vide letter dated 19.12.03 (Annexure A/7) cannot be acted upon and relied while effecting transfer of the applicant vide impugned order dated 4.4.05.

8. On the other hand, Learned Counsel for the official respondents while relying on the decision of the Apex court in the case of Janardhan Debanath and another (supra) and other decisions of the Apex Court whereby it has been stated that where the transfers are made for reason of administrative exigency, the authority in charge of the administration would be best judge of the propriety, necessity or desirability of such transfer and the Court should not interfere in such matters. Learned Counsel for Respondent No.3 has argued that the applicant has only challenged his order of transfer but he has not challenged the order whereby Respondent No.3 was transferred to Jaipur, as such, no relief can be granted to the applicant, so long as the order of Respondent No.3 whereby he has been transferred to Jaipur is not challenged. Learned Counsel for Respondent No.3 has further argued that in case the applicant is aggrieved by his transfer order he should file representation before the higher authorities, which course he has not adopted. As such, the OA cannot be entertained.

9. I have heard the Learned Counsel for the parties and gone through the material placed on record.

10. Law on the point of transfer is well settled. The Apex Court in the case of State of M.P. vs. S. S. Kourav, AIR 1995 SC 1056 has held that the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. Further the Apex Court in the case of Union of India vs. S. L. Abbas AIR 1993 SC 2444 has held that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration.

11. Viewing the matter from the principle as culled out by the Supreme Court in various pronouncements, I am of the view that the scope of interference in the transfer matter is very limited. From the material placed on record, it is clear that the transfer of the applicant was effected on the basis of Confidential letter dated 19.3.04 and also that the applicant is having an all India transfer liability. No doubt the applicant has placed on record sufficient material to justify that the Confidential Letter dated 19.3.04 is outcome of the complaint made by the applicant against the Assistant Commissioner, KVS, vide letter dated 19.12.03 (Annexure A/7) and also that in case there was substance in such complaint the applicant could have been transferred immediately and as such, the respondents could not have waited for a period of about one year when the impugned order of transfer Annexure A/1 was passed, as such order of transfer is vitiated and arbitrary, yet at this stage, it will not be legally appropriate to quash the impugned order of transfer in view of subsequent development and alternative prayer of the applicant that he be adjusted at Mumbai as the applicant stood already relieved from the post of Education Officer, Jaipur Region, and he has to join at KVS, Bhubaneshwar Regional Office. On the contrary, Respondent No.3 who has been transferred to Jaipur from Hyderabad stood already relieved and in his place other person has joined at Hyderabad. As such, there is no post available to Respondent No.3 at

Hyderabad from where he has been transferred and could be adjusted. As such, in view of this development, I am of the view that the order of transfer of the applicant vide impugned order dated 4.4.05 (Annexure A/1) is not required to be interfered, though from the material placed on record, it is evident that impugned order of transfer is an outcome of the transfer of Respondent No.3 to Jaipur on his own request and he was adjusted at Jaipur despite the fact that there are allegation of misappropriation of substantial amount against him and he has served in Rajasthan for almost 16 years and it is only for ^{short} ~~a~~ period of about 10 years that applicant was posted outside Rajasthan on account of his promotion and also that there was more deserving candidate namely Smt. Santosh Mirdha, who has sought her transfer to Jaipur vide letter dated 3.3.05(Annexure A/6) on the ground that her husband is an employee of Rajasthan State Government and ~~is~~ posted at Jaipur. Be that as it may, as already stated above, even if the order of transfer has not been passed in administrative exigency and was passed only to accommodate Respondent No.3, this Tribunal is not interfering in the order of transfer because of subsequent development and reasons given herein above. So far as submission of the applicant that at least his case should be considered against the post which shall fall vacant on account of retirement of one Shri Venkataraman w.e.f. 30.6.05, opportunity was given to Respondent No.2 to explore this possibility. Respondent

No.2 in his additional affidavit has not stated that the applicant cannot be adjusted at Mumbai, rather, the affidavit is silent on this aspect.

12. Looking into the entire facts and circumstances of this case and the manner in which the impugned order of transfer Annexure A/1 has been passed, I am of the view that ends of justice will be met if applicant make representation to the higher authorities thereby bringing to the notice of the higher authorities of personal hardship as well as the manner in which the order of transfer has been passed in the instant case. Admittedly, the applicant has not made any representation to the higher authorities, as such, there was no occasion for the competent authority to consider such representation. Under these circumstances, it will be open to the applicant to make representation to the Chairman, KVS, New Delhi, about personal hardship and the manner in which impugned order of transfer has been passed by Respondent No.2. If such representation is made within a period of 7 days from the passing of this order, the same should be considered by the competent authority expeditiously as practicable and pass appropriate order. Till such order on the representation of the applicant is not passed by the Chairman, KVS, the applicant shall not be forced to join at new place of posting. Interim order granted on 6.4.05 and extended from time to time shall stand vacated.

13. With these observations, the OA is disposed of with no order as to costs.


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./