

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR
BENCH, JAIPUR

This, the 9th day of March, 2006

ORIGINAL APPLICATION NO. 590/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

R.K.Patel
S/o B.R.Patel,
aged about 41 years,
r/o 289, Bajrang Nagar, Kota
working as PGT (Physics),
Kendriya Vidyalaya No,1,
Station Road, Kota

.. Applicant

(By Advocate: Mr. Dharmendra Jain, proxy counsel to
Mr. Manish Bhandari)

Versus

1. Kendriya Vidyalaya Sangthan
through its Assistant Commissioner,
Regional Office,
92, Gandhi Nagar Marg,
Bajaj Nagar,
Jaipur.

.. Respondent

(By Advocate: Mr. V.S.Gurjar)

O R D E R (ORAL)

The applicant while working as PGT (Physics)

Kendriya Vidyalaya No1., Kota was issued charge sheet

dated 21.2.2005 (Ann.A1) and subsequently he was transferred to Kendriya Vidyalaya, Sriganganagar, relieving order of which dated 5.12.2005 has been placed on record as ann.A2. It is these orders which are under challenge in this OA.

2. When the matter was taken up for hearing on 28.2.2006, the attention of the learned counsel for the applicant was invited to Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 which stipulates that an application shall be based upon single cause of action and party may seek one or more relief as they are consequential to one another. The learned counsel for the applicant stated the he is restricting his relief only regarding his transfer and he is not pressing the prayer regarding quashing of the chargesheet at this stage. Thus, the present OA is confined only to transfer of the applicant from Kendriya Vidyalay No1., Kota to Kendriya Vidyalaya, Sriganganagar.

3. Briefly stated, facts of the case are that a complaint was received from some students of the Kendriya Vidyalaya No.1, Kota regarding indulging of teachers in private tuitions in the year 2004. A preliminary inquiry was conducted by the Education Officer, Kendriya Vidyalaya Sangathan, Regional Office, Jaipur and the complaint was substantiated as per the

statements given by the affected students of Kendriya Vidyalay No.1, Kota. The respondents considering this act on the part of the teachers to be serious in nature and amounting to unbecoming of Govt. servant, chargesheet under Rule 14 of the CCS (CCA) Rules was issued vide memorandum dated 21.2.2005 (Ann.A1) against the applicant as well as other two teachers. Subsequently, the applicant was transferred from Kendriya Vidyalaya No.1, Kota to Kendriya Vidyalaya, Sriganganagar. The applicant has alleged that the said complaint was originated at the instance of the Principal, Mrs. Chandra, who is biased against the applicant. The applicant has also annexed copy of one of the complaint dated 18.5.2004 as Ann.A3. On the basis of this complaint, it was argued that there were complaints against eight teachers whereas inquiry has been initiated against the applicant and two other teachers. As such, the applicant has been discriminated in the matter. It is further stated that the matter regarding indulging of the applicant in private tuitions is under inquiry and inquiry has not been completed so far, as such, so long as the inquiry is not completed, it cannot be said that the applicant is guilty of misconduct. Accordingly, under these circumstances, it was not proper for the respondents to transfer the applicant vide impugned order Ann.A2.

4. Notice of this application was given to the respondent. The fact that the applicant was found indulged in private tuition in the year 2004 as complained by some of the students of Kendriya Vidyalaya No.1, Kota has not been disputed. It is stated that a preliminary inquiry was conducted by the Education Officer, Kendriya Vidyalaya Sangathan, Regional Office, Jaipur in the matter on 4.1.2004 and the complaint was substantiated as per the statements given by the affected students of Kendriya Vidyalay No.1, Kota. Thus, according to the respondent, *prima facie*, this act on the part of the applicant appears to be serious in nature and amounts to unbecoming of Government servant owning to which the applicant was served with the charge sheet under Rule 14 vide memorandum dated 21.2.2005 (Ann.A1). It is further stated that the applicant was transferred in public interest from Kendriya Vidyalaya No.1, Kota to Kendriya Vidyalaya, Sriganganagar vide order dated 1.2.2005. Regarding allegation of malafide levelled against the Principal, Mrs. Amita Chandra, the respondent has stated that the applicant has not impleaded Mrs. Chandra, the then Principal, as party in the OA, as such, the allegation of malafide levelled by the applicant is baseless and cannot be gone into. It is further stated that the allegation levelled against the applicant was substantiated by way of preliminary inquiry and it was found that the

applicant alongwith two other teachers were indulged in private tuitions. Hence a joint disciplinary action against all the three teachers has been initiated by the competent authority.

5. At this stage, it may be pointed out that when the matter was taken up for hearing on 28.2.2006, and when the statement was made by the learned counsel for the applicant confining this OA only regarding his transfer, the learned counsel for the applicant further argued that the impugned order of transfer is bad on account of the fact that the Assistant Commissioner was not competent authority to pass the transfer order of the applicant. Since the question regarding passing of the transfer order by the Assistant Commissioner without any authority of law has not been pleaded by the applicant in the OA and it was pleaded during the course of arguments on 28.2.2006, the respondents in order to controvert this additional plea have filed additional reply. In the additional reply, the respondent has stated that Kendriya Vidyalaya Sangathan has issued new transfer guidelines w.e.f. 19.1.2005 and under paragraph 16 of the transfer guidelines it has been specifically provided that "Assistant Commissioner shall be competent to change the headquarters of the teacher on administrative exigencies for a period not exceeding 180 days at a stretch within an academic session to

any place within the region as deemed fit and direct him to discharge duties there, under intimation to KVS headquarters". Thus, according to the respondents, the order issued by the Assistant Commissioner, Kendriya Vidyalaya Sangthan, Regional Office, Jaipur is perfectly legal and valid and within the authority of the respondents. The respondents have further stated that this order of the Assistant Commissioner changing headquarter of the applicant was intimated to the Kendriya Vidyalaya Sangthan Headquarters. The competent authority of the Kendriya Vidyalaya Sangthan, New Delhi vide order dated 29/30.12.2005 conveyed ex-post-facto approval for transfer in public interest in respect of the applicant along with others in response to communication/information dated 20.12.2005. The respondent has also placed on record copy of ex-post-facto approval conveyed by the competent authority for transfer in public interest of the applicant and others on record as Ann.AR/1.

6. The applicant has not filed rejoinder.

7. Parties were heard at considerable length. I am of the view that the applicant has not made out any case for interference of this Tribunal.

7.1 Before I proceed further in the matter, it will be useful to notice decision of the Apex Court in transfer matters. The apex Court has repeatedly held

that the court should not interfere with the transfer orders which are made in public interest and for administrative reason unless the transfer is made in violation of any mandatory or statutory rules or on the ground of malafide. The Govt. servant holding a transferable post has no vested right to remain at one place or other, he is liable to be transferred from one place to other. Transfer order issued by the competent authority do not violate any of his legal right. Even if a transfer order is passed in violation of executive instructions or orders, the court ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. The Apex Court has further held that the Court and Tribunal cannot go into the question whether the transfer is in the public service or public interest would be served or not and also that the Court and Tribunal shall not interfere in the transfer matter as a matter of right as though they were appellate authority substituting its own decision for that of the employer because the order passed in the interest of administrative exigencies of service concerned. This is what the Apex Court had held in the case of Shilpi Bose vs. State of Bihar AIR 1991 SC 532, Union of India vs. S.L.Abbas, AIR 1993 SC 2444, State of UP and ors. vs. Gobardhan Lal, (2004) 11 SCC 402, State of UP vs. Siya Ram, (2004) 7 SCC 405 and in other cases. Further, the Apex court in the case of

Union of India and others vs. Janardhan Debanath and another, 2004 SCC (L&S) 631, held that where the allegation against employee are of serious nature and the conduct attributed is certainly unbecoming, in that eventuality for the purpose of effecting a transfer, the question of holding an inquiry 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.

8. Viewing the matter from the law as laid down by the Apex Court in the aforesaid cases, the applicant has not made out any case for interference of this Tribunal. The learned counsel for the applicant has impugned the order of transfer ~~copy~~ on the ground that the transfer has been effected on the basis of the complaint which has been initiated at the instance of the then Principal, Mrs. Chandra, who was biased against him and also that the respondents have adopted pick and choose method in initiating inquiry against the applicant and two other teachers, whereas

according to the complaint dated 18.5.2004 (Ann.A3) the allegations were levelled against eight teachers. I have given due consideration to the submissions made by the learned counsel for the applicant and is of the view that the applicant has not made out any case on this ground. It may be stated that the applicant has alleged vague allegations of malafide against Mrs. Chandra, the then Principal, without impleading her as one of the respondent. As such, these types of allegations are required to be ignored.

9. That apart, even if for arguments sake, it is assumed that the complaint was initiated at the instance of the Principal, the respondents have not acted on the said complaint at the first instance. From the material placed on record and as can be seen from the article of charge, it is clear that before acting upon the complaint made by the students, a preliminary enquiry was conducted by the respondents. The said preliminary inquiry was not conducted by the Principal against whom the allegation has been levelled by the applicant, but the same was conducted by the Education Officer against whom the applicant has not made even a whisper of allegation of malafide. The respondents have categorically stated that when the allegation was substantiated in the preliminary inquiry, it was thereafter that the applicant and two other teachers were charged and the applicant was also

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transferred in public interest. So far as the submissions of the learned counsel for the applicant to the effect that in the complaint Ann.A3 eight teachers have been named whereby the inquiry has been initiated against the applicant and two others, as such he has been discriminated, Suffice it to say that the respondents have not proceeded ~~on~~ on the basis of the complaint dated 18.5.2004 (Ann.A3). In the reply the respondent has categorically stated that the applicant and two other teachers have been chargesheeted on the basis of the preliminary inquiry conducted by the Education officer on 4.1.2004 which complaint was substantiated as per the statements given by the affecting students of Kendriya Vidyalaya No.1, Kota, as such, the allegation of discrimination levelled by the applicant is without any basis. The second ground pleaded by the applicant for his transfer during the pendency of inquiry is also without any basis and is not legally sustainable. In view of the law laid down by the Apex Court in the case of Janardhan Debanath and ors. (supra) whereby the Apex Court has categorically held that for the purpose of effecting a transfer the question of holding an inquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is prima facie satisfaction of the authority concerned on the contemporary report about occurrence complained of. In

the instant case the authority concerned has proceeded not only on the basis of the complaint received by them but the preliminary inquiry was also conducted thereby taking statement of the aggrieved students. It is only thereafter that the respondents have proceeded in the matter. As such, the action of the respondents in transferring the applicant cannot be faulted.

10. Further, the submission of the learned counsel for the applicant that the impugned order has been passed by the Assistant Commissioner, who is not competent authority to pass such order, is equally misconceived. As already stated above, the Assistant Commissioner is competent to transfer the teacher on administrative exigency for a period not exceeding 180 days at a stretch within academic session to any place within the region, as per paragraph 16 of the transfer guidelines which is effected from 19.1.2005. What is requirement of this paragraph is that intimation to this effect has to be given to the Kendriya Vidyalaya Sangathan Headquarters. From the material placed on record, it is evident that the Kendriya Vidyalaya Sangathan Headquarter has also granted ex-post-facto approval of the transfer of the applicant alongwith other persons in public interest vide order dated 29/30.12.2005. The applicant has not challenged *ex-post-facto approval of the transfer* validity of this order whereby transfer was effected by the competent authority for transferring the

applicant to Kendriya Vidyalaya, Sriganganagar. Thus, validity of the order dated 29/30.12.2005 cannot be gone into. Even in view of this subsequent development and in view of the approval granted by the competent authority vide order dated 29/30.12.2005, the applicant is not entitled to any relief.

11. For the foregoing reasons, the present OA is bereft of merit, which is accordingly dismissed with no order as to costs.



(M.L.CHAUHAN)

Member (Judicial)

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