

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

15.05.2007

OA No. 496/2006 with MA 100/2007

Mr. A.C. Upadhyay, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

Adjourned to 16.05.2007 as a first case after admission.

Prakash
(J.P. SHUKLA)
MEMBER (A)

AHQ

16-5-07

Mr. A. C. Upadhyay counsel for applicant
Mr. V. S. Gurjar counsel for respondents

Arguments heard

Order Reserved

Prakash
(J.P. Shukla)
Administrative Member

Prakash
(Kuldeep Singh)
Vice Chairman

Judgement:

1. Notice in the open court today

15.6.07.

Prakash
15/6/07.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the ^{15th June} day of May, 2007

ORIGINAL APPLICATION No.496/2006
With MA No.100/2007.

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

Ashvani Kumar Bhardwaj,
s/o Shri S.N.Bhardwaj,
aged about 48 years
Audit and Accounts Officer,
KVS, Jaipur
r/o Staff Quarter No.4, KVS Campus,
92, Gandhi Nagar Marg,
Bajaj Nagar,
Jaipur

.. Applicant

(By Advocate: Mr. A.C.Upadhyay)

Versus

1. Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi through Commissioner.
2. Joint Commissioner (Adm.) Shri P.R.Srivastava,

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Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi.

3. Asstt. Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
92, Gandhi Nagar,
Bajaj Nagar,
Jaipur
4. Shri D.K.Saini,
Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
92, Gandhi Nagar,
Bajaj Nagar,
Jaipur.

.. Respondents

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

ORDER

Per J. P. SHUKLA, ADMINISTRATIVE MEMBER.

The applicant has filed OA challenging the order of transfer vide which he had been transferred from Jaipur to Guwahati on administrative ground/public interest with immediate effect. The applicant has challenged the same before this Tribunal and this

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Tribunal vide order dated 22nd February, 2007 allowed the OA. Thereafter the respondents filed a Writ Petition before the Hon'ble High Court of Rajasthan. The said Writ Petition was allowed and the order passed by the Tribunal was set-aside and the Hon'ble High Court directed that the matter be heard afresh without any loss of time. While allowing the Writ Petition, the Hon'ble High Court has observed that the Tribunal had not given any reason in the entire order as to why it is a fit case for allowing the OA. So the matter is remanded back to this Tribunal.

2. The facts, as alleged by the applicant, in the OA are that the applicant who was working as Audit and Accounts Officer at Kendriya Vidyalaya Sangthan (KVS), Jaipur has raised certain objections to pass some bills of the firm who supplied the printed material in the name of NCCF. It is submitted that respondent No.3 pressurized the applicant to pass the said bills and to prepare the cheque in favour of the firm, which the applicant declined. Finally, the cheque was signed by the Assistant Commissioner himself and other official in place of the applicant.

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The applicant is also stated to have made a representation to the Central Vigilance Commissioner as well as to the Commissioner, KVS. Thereafter, respondent No.3 nominated the applicant as Member of the Purchase Committee, then the applicant made certain notings as a Member of the Purchase Committee. A memo was issued to the applicant vide Ann.A5 as to why the applicant has recorded such remarks. The applicant alleges that this shows mala-fides of respondent No.3 who had also pressurized the applicant to pass certain bogus bills, which the applicant had declined to do so. It is further stated that another Memo Ann.A11 was issued to the applicant and a minor penalty of reduction of pay by one stage without cumulative effect for a period of one year was imposed upon the applicant.

It is further submitted that respondent No.3 was not still satisfied with the imposition of minor penalty, and thus managed to transfer the applicant from Jaipur to Kolkata vide order 20.12.2006 and he was relieved in absentia. That order was challenged on the ground of incompetency ~~of authority~~ of authority who passed transfer order as mala-fides by filing OA No.419/2006 before this Tribunal and this Tribunal vide order dated 12.12.2006 disposed of the said OA quashing the said



transfer order on technical grounds, but the court kept it open for the respondents to pass any order transferring the applicant in accordance with the rules. After quashing of the transfer order, the applicant went to the KVS for joining his duty but he was not allowed to join his duty and to put his signature in the Attendence Register and he was further transferred by impugned order Ann.A1 from Jaipur to Guwahati, hence the applicant has filed this OA.

The applicant while impugning the order of transfer has also impleaded respondent No.3, Assistant Commissioner in his personal capacity as according to the applicant the impugned transfer order of the applicant has been passed on the complaint made by respondent No.3 and respondent No.1 has approved the transfer order against the established norms. The applicant also alleged that he cannot be punished twice i.e. by withholding of increment and also by way of transfer at the same time. It is further submitted that no officer can be deputed at hard stations who has completed the age of 45 years. The applicant crossed the age of 45 years, as such he should not have been transferred at a hard station like Guwahati. It is further stated that the applicant has been transferred in mid academic session



as his children are prosecuting studies at the University of Rajasthan.

Lastly, it has also been submitted that the transfer order has been issued in order to accommodate Shri Raghuveer Singh from Guwahati to Jaipur, which is against the order of the Tribunal.

3. The respondents are contesting the OA. They have submitted that the employees appointed to the KVS are liable to transfer anywhere in the country under Article 54 (k) of the Education code (Revised Edition) and according to Clause 1.1 of the new transfer guidelines, transfer or posting to a particular place cannot be claimed as a matter of right. The respondents also submitted that unless a transfer is against the guidelines, statutory rules, without jurisdiction and is actuated with mala-fides, the same cannot be interfered with in judicial review. It is further submitted that the transfer has been given effect to and the new incumbent has already joined. The respondent No.4 has also filed his personal affidavit denying allegations of mala-fides.

4. The applicant has filed rejoinder stating that the reply on behalf of the respondents has been filed by one Smt. Neelam Shekhawat, Adm. Officer, who was not competent to file reply.



5. We have heard the learned counsel for the parties and gone through the record.

6. It is trite law that any employee who has been transferred can only challenge the transfer order on the ground that it violates any statutory provisions or the transfer order has been issued with mala-fide intention perpetuated against the employee. In this case, we find that the applicant has filed to show that transfer has been issued because of mala-fides of respondent No.3 against the applicant. The applicant has also submitted that respondent No.1 has not applied his mind and without considering the facts given by the applicant regarding misuse of public funds by respondent No.3 and without taking any action against respondent No.3, the transfer of the applicant has been made on the written request/complaint submitted by respondent No.3. It is also submitted that the applicant has been transferred from Jaipur to Guwahati, which is hard station and as per norms, no officer can be deputed at hard station who had completed 45 years of age, but the applicant is above 45 years so he could not be posted at Guwahati.

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In order to substantiate his contention, the applicant has referred to a judgment in case of Dr. Ajay Kumar Sharma vs. State of Rajasthan, 2003 (1) WLC 438, wherein it has been observed that mala-fide transfer can be struck down by the Court. It is observed that if a transfer order finds nexus with administrative necessity, then the exercise of power of transfer will be upheld. If, however, operative reason has no such nexus then the transfer will be vulnerable and it will be a mala-fide use of power and will take within its sweep all situations where the nexus with administrative exigencies is absent. Relying on this judgment, the applicant submitted that the transfer order has been passed to accommodate one Shri Raghuvir Singh so it is a mala-fide exercise of powers. On the same line he has cited another judgment of Madhya Pradesh High Court in case of Prakash Chandra Saxena vs. State of M.P. and ors., 1980 (1) SLR 789 wherein it was also held that the mala-fide transfer can be set-aside.

As regard the contention of the applicant that the transfer has been made in mid academic session and for this purpose he relied upon the case of Director of School Education, Madras and ors. vs. O.Karuppa Thevan and anr., 1994 Supp (2) SCC 666



wherein it has been held that in the absence of an urgency such transfer was restrained to be given effect to during the mid academic session.

In order to show mala-fide, the applicant has also referred document Ann.A7, the noting put up by the applicant pointing out procuring of printing material at a higher rate. He has also referred to another document Ann.A8 regarding raising certain objections on the supply made by the firm. Then he has made complaint to the CVC also. The learned counsel appearing for the applicant emphasized that he had been made victim of the same and for that purpose he has been transferred in a mala-fide manner.

7. The respondents, in the reply, submit that transfer is prerogative of the administrative authority and the applicant is liable to serve in any part of the country and cannot raise objection. The respondents also raised objection that after the impugned transfer order was passed one Shri Raghuveer Singh, Audit and Accounts Officer from KVS Guwahati has already joined at Jaipur, so now at Jaipur no vacancy is available and the applicant has to join at Guwahati. It is also stated that Shri

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Raghuveer Singh who was posted at a hard station had already submitted his application as per the guidelines of the KVS that after completing his tenure at hard station he would claim posting, so the applicant was not transferred to accommodate Shri Raghuveer Singh but Shri Raghuveer Singh was given posting in accordance with the guidelines of the KVS and the applicant was also given posting as per these guidelines. It is denied that the impugned order has been issued by the Joint Commissioner, rather it has been passed by the competent authority.

As regards the allegation of malafide by the applicant on the basis of objections recorded by the applicant in respect of release of payment are stated to be false, baseless and misconceived and without any factual foundation. It is stated that the applicant was himself a Member of the Purchase Committee alongwith three other members. The accounts including all the purchases for the year 2005-2006 had been audited by the AG Audit Party for 10 days as well as by KVS internal audit party for three days and both the audit parties have found all the accounts and purchase as per procedure of the KVS rules and procedure. It is further submitted that



respondent No.4 joined as Assistant Commissioner at KVS, Regional Office, Jaipur on 10th August, 2005 and till then the study material was not rooted by the teachers of the Jaipur region. As per the instructions of KVS study material was to be prepared and distributed among the students by the end of September, 2005. So it was not possible at that stage to ask the teachers to prepare the study material and get it printed. Therefore, in consultation with the Purchase Committee that included all the Education Officers, Seniormost Principal, Administrative Officer and AAO, it was decided that neighbouring Assistant Commissioner, Chandigarh may be requested to supply copies of study material printed in that region for the students of Jaipur region at the same rates without any extra cost for transportation from Chandigarh to Jaipur as a special case for that year. It is further stated that the Assistant Commissioner, Chandigarh was kind enough to agree to the request for supply of study material so that students may not suffer in their studies on account of non-availability of the study material. It is also submitted that it has been the practice earlier to supply study material or other educational material of one region to other region. The proposal was made by the Education officer. These

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facts are fortified in view of the notesheet dated 8.9.2005 and subsequent follow up action taken vide communication dated 14.9.2005. It is also pointed out that the rates quoted by the NCCF were lowest and NCCF had also printed the question papers of half yearly examination, 2005 so it was decided that the order be given to NCCF for printing. These facts are fortified from the note drawn by the Purchase Committee including the applicant as member dated 29.11.2005. Thus, it is stated that the applicant has failed to make out any case of mala-fide.

It is further stated that the applicant was served with the memorandum dated 30.05.2000 while he was posted at KVS Jammu Region raising doubts in reference to his faithfulness, suitability and integrity and another memo dated 9.5.2005 in reference to claim of medical bills.

8. We have considered the rival contentions put forth by the parties.

9. As regards the judgment cited by the learned counsel for the applicant, we find that if there is an order of transfer passed by mala-fide exercise of powers that cannot be sustained and

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has to be struck down. In this case we have to find out whether the order passed by the Department is a mala-fide exercise of powers or it is a transfer in public interest and administrative exigencies. As regards procuring of study material from NCCF, Chandigarh is concerned, the respondents have justified procuring the study material from Chandigarh because when respondent No.3 joined at Jaipur as Assistant Commissioner, he found that teachers at Jaipur had not prepared the study material and it was too late to ask to prepare the study material, so the matter was raised before the Purchase Committee for procuring study material from the neighbouring State and the study material was then procured from the NCCF, Chandigarh at the same rates which were charged at Chandigarh and the transportation charges from Chandigarh to Jaipur were not paid. So it was a state of emergency that the study material has to be purchased from a neighbouring State and a request had to be made to the Assistant Commissioner, Chandigarh who further requested the NCCF to supply the study material. We find that the procurement methodology adopted is not in the spirit of proper public procurement of study material and leads to suspicion on the part of respondents and thus malafide can be



attributed. Although the rates quoted by the NCCF were lower than the rates for which quotations were called from Jaipur and the applicant was also a member of Purchase Committee.

10. The fact that the applicant had been raising frivolous objections over passing the medical and other bills as same is manifest from Ann.A/11 are concerned which are not being cleared by the applicant without any reason and for that purpose he was punished as admitted by the applicant himself. Although this reflects the working of the applicant for raising objections but it is one of the responsibilities of the applicant to point out financial irregularities which are to be considered by competent authority for taking appropriate decision. This should not be taken in the spirit of retaliation and to punish the applicant for not co-operating. This also leads to suspect mala-fide on the part of the respondents. The fact that applicant was issued similar Memos while he was posted at Jammu where also he had been raising frivolous objection over the purchases made in Jammu Region shows the working style of the applicant of being extra cautious or vigilant. In case applicant was found in malpractice,

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he would have been taken up accordingly but it should not form basis for transfer this time. Thus, we find that allegations of malafides against the respondents are not beyond doubt. So, in these circumstances, we find that the applicant has merit in his claim.

11. As regard issue of transfer order in mid academic session, in this regard we may state that although these are only guidelines which are directory in nature and not mandatory and the judgments cited by the learned counsel for the applicant shows that unless there is an emergency, the transfer order should not be issued in mid academic session. In this regard the respondents cited a recent judgment of the Hon'ble Rajasthan High Court whereby 208 Writ Petitions pertaining to transfer matter have been decided on 12th April, 2007. The Hon'ble High Court while deciding these Writ Petitions has also referred to various judgments such as Shilpi Bose and others vs. State of Bihar and others, AIR 1991 SC 532 wherein it has been held that a Government servant holding a transferable post has no vested right to remain posted at one place or the other and he is liable to be transferred from one place to another. The transfer order

Answer

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.

On mala-fide exercise of powers the Hon'ble High Court has also quoted the judgment titled State of U.P. and others vs. Gobardhanlal and D.B.Singh vs. D.K.Shukla and others reported in (2004) 11 SCC 402 wherein it has been held that "(E)ven 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 or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer".

In this judgment, the Hon'ble High Court has also relied upon another judgment in case titled Public Services Tribunals Bar Association vs. State of U.P. and another reported in (2003) 4 SCC 104, wherein the court observed as under:-



"Transfer is an incident of service and is made in administrative exigencies. Normally, it is not to be interfered with by the courts. The Supreme Court consistently has been taking a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner."

Similarly, the Hon'ble High Court has also quoted another case titled Kendriya Vidyalay Sangathan vs. Damodar Prasad Pandey and others reported in (2004) 12 SCC 299 wherein the court observed that unless the order of transfer is shown to be clearly arbitrary or is vitiated by malafides or is made in violation of any operative guidelines or rules governing the transfer the courts should not ordinarily interfere with it.

12. We have taken note of all these cited cases and we are aware of limited scope of interference but in this case it is amply evident that malafide on the part of respondent no. 3 is not limited to the personal malice only but also malice in law as respondent No. 3 initially managed to transfer the applicant vide order dated 20.10.2006 from KVS, Regional Office, Jaipur to KVS, Regional Office, Kolkatta without the approval of the competent authority. This impugned transfer order dated



20.10.2006 was quashed by this Tribunal on technical grounds vide its order dated 12.12.2006 in OA No. 419/2006 as the same was not issued by the competent authority. The reading of the said order dated 12.12.2006 will clearly indicate that although the learned counsel for the respondents pleaded that the transfer order does not suffer lack of competence of the authority. However, this Tribunal found that the transfer order has been issued by one Shri Rajvir Singh, Deputy Commissioner(Personnel) by his own name and it does not reflect that the same has been issued under the authority of Commissioner or by the Competent authority. Rather the tenor of the order shows that the order is passed by the Deputy Commissioner itself. The respondents also even tried to improve the competency of the impugned transfer order and submitted that it has been issued with the approval of the competent authority but this Tribunal observed that it is a settled law that subsequent improvement in the pleadings to defend the order cannot be entertained. Accordingly, this Tribunal quashed the transfer order dated 20.10.2006 on technical grounds. This Tribunal also observes that the transfer order was issued in haste and even without the approval of the competent authority

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simply because the applicant was raising some objections regarding certain irregularities committed in some purchases, which is one of the basic responsibility of the applicant in discharging his financial duties to bring out the irregularities to the notice of competent authorities.

On perusal of the relevant record, which was called for by this Tribunal to verify the facts in regard to comparative statement etc., it was found that the comparative statement produced by the respondents before the Tribunal and were in their custody through out were not an original record and seems to be replaced one which also creates doubt on the part of the respondents.

No joining time was given to the applicant in the transfer order and he was relieved by the order of the same date with immediate effect which also clearly shows malafide on the part of the respondents.

Instead of canceling the earlier transfer order dated 20.10.2006 passed by the incompetent authority, another transfer order dated 19.12.2006 was issued in continuance of that order directing the applicant to join at Guwahati is bad in the eyes of law. The applicant was transferred in the mid

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academic session and such a transfer is bad in the eyes of law as per judgement rendered in the case of **Director of School Education vs. O.Karuppa** 1994 Supp.(2) SCC 666.

Change in the place of posting and subsequent transfer order issued in continuation of first illegal order also indicates harassing attitude on the part of the respondents.

Not allowing the applicant to join his duties inspite of this Tribunal quashing transfer orders twice also is an indicative of malafide on the part of the respondents.

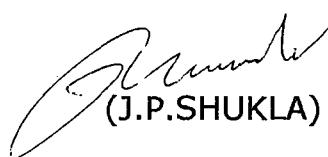
Thus the finding reveals that the transfer of the applicant was a malafide use of power on the part of the respondents which was based on the misunderstanding as certain objections were raised by the applicant on financial irregularities noted by him which was the part of the assigned responsibility to be discharged by him.

14. Accordingly, it is considered exceptionally fit case for interference by this Tribunal as the transfer orders were based on extraneous consideration and issued in colourable exercise of powers.



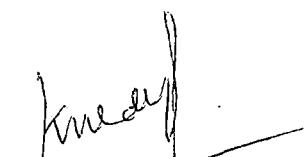
In view of above, we are of the considered opinion that the applicant had been able to make out a case of malafide transfer issued in colourable exercise of powers. Accordingly, OA is allowed and the transfer order dated 19.12.2006 (Annexure A/1) and Relieving order dated 19.12.2006 (Annexure A/2) are quashed and set aside and consequently the period from 23.10.2006 to 19.12.2006 is also directed to be treated on duty and remaining period as on leave. The respondents are directed to allow the applicant to join his duties.

15. With these observations, both OA and MA No. 100/2007 stands disposed of. No order as to costs.



(J.P.SHUKLA)

ADM. MEMBER


(KULDIP SINGH)

VICE CHAIRMAN