

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Jaipur, the 04th day of April , 2007

ORIGINAL APPLICATION NO. 77/2007

CORAM:

HON'BLE MR. J.P. SHUKLA, ADMINISTRATIVE MEMBER

Vijay Laxmi Nagar wife of Shri Pradip Nagar, aged about 51 years, resident of Principal Quarter, Nasirabad, Ajmer, presently working as Principal KV, Nasirabad, Ajmer.

By Advocate: Mr. Kesri J. Mehta

.....Applicant

Versus

1. Union of India through Secretary, Ministry of Human Resources Development, New Delhi.
2. The Deputy Commissioner, Kendriya Vidyalaya Sangathan.
3. The Commissioner, Kendriya Vidyalaya Sangathan. Both at 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
4. The Assistant Commissioner, KVS, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
5. The Chairman, Kendriya Vidyalaya Management Committee, Kendriya Vidyalaya, Mall Road, Nasirabad, District Ajmer.

By Advocate: Mr. V.S. Gurjar

.....Respondents

ORDER (ORAL)

PER MR. J.P. SHUKLA:

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This OA is preferred against the office order dated 09.03.2007 (Annexure A/1), issued by Respondent No. 2, by which the applicant has been transferred from Nasirabad to Nangal Bhur, followed by the office order dated 13.03.2007 (Annexure A/2) issued by Respondent No. 5, by which the

applicant has been directed to handover the complete charge to the Vice Principal.

2. Facts of the case in brief, as alleged by the applicant, are that the whole episode started when one student of Class XII, named Abhishek Rana, broke the glass pane of his class on 05.12.2006. From the inquiry it was revealed that he had done so deliberately. The said Abhishek had a reputation which was not very conducive to the atmosphere of the school and had a poor record of such behaviour often. Hence, on 07.12.2006, the applicant gave him a Transfer Certificate asking him to leave the school. On 08.12.2006, when the School had a Parent Teacher meeting, some students met the applicant and demanded that the Transfer Certificate given to Abhishek may be revoked. The applicant explained the students that this was not in anybody's interest. Thereafter, the students left without further protest. Thereafter the applicant being the Principal of the School, met each of the students separately. All of them submitted that they were incited by the mother of Abhishek and his elder brother, Ashish. They stated that they were scared of Ashish and his friends, who had asked them to stage the protest. It was also transpired later that these boys were sexually exploiting the girl students of the school by blackmailing them. When the applicant inquired from the girl students, they admitted the truth of the story. They also stated their story in written statements, and sought protection of the applicant. The applicant sent the said statements to the Chairman of KVS for further necessary action. After a few days, the Chairman asked the applicant to lodge a complaint with the Police. Hence, on

13.12.2006, the applicant lodged the complaint with the Police. The complaint contained the written statements of the boys and girls who were asked to protest against the Transfer Certificate given to Abhishek, the statements of witnesses who saw him breaking the glass pane as well as the statements of the girls who were being sexually exploited by Ashish Rana and his friends. However, the Police did not lodge any FIR.

3. On 06.02.2007, a boy of class VII was brought to the Applicant by some of his friends, telling her that he was addicted to chewing tobacco. Enquiry revealed that the said boy was being sexually exploited by one old painter named Shyam Sunder Gupta. He was using the gutka as an addiction to trap some boys of the school. After counseling the children, the applicant informed the Chairman, sending him the statements of the boys and the teachers who conducted the inquiry. The Chairman, in turn, informed the Police by a written complaint on 06.02.2007 enclosing the letter of the applicant and the statements of the children and the teachers who conducted the inquiry. A copy of the complaint written by the Chairman to the Police is at Annexure A/4. By this time, the media had got wind of the entire episode. They contacted the applicant who, after consultation with the Respondent No. 4, gave the truthful statement to the media. The media covered the episode on 18.02.2007. When the media published the whole issue, the police made investigation and arrested to Shyam Sunder Gupta, the Painter, who was involved in the homosexual exploitation of some school boys. Thereafter, three other culprits had also surrendered to the Police on 01.03.2007. Learned counsel for the applicant submitted that


the respondents felt that the applicant had destroyed the image of the school and, therefore, they issued the impugned order of transfer to the applicant.

4. Learned counsel for the applicant argued that although there is a plethora of judgements observing that Tribunal or the Courts should not interfere in cases of transfer of the employees, but this transfer has been made without any administrative exigency and the respondents have failed to point out any administrative exigency. Learned counsel for the applicant also brought to the notice of the Tribunal all the achievements of the applicant during her tenure in KV Nasirabad and that the respondents have not denied the same in their reply. It was also submitted that the complaint lodged in the year 2002 against the applicant, as mentioned by the respondents in their reply, has no relevance with the present case as no inquiry at all was made in that matter. It is being intended by the respondents now simply to dilute the matter. It was specifically brought out to the notice of the Tribunal by the learned counsel for the applicant that the Memorandum, dated 26.02.2003, proposing action against the applicant has been dropped and expunged and is now in the school record.

5. Learned counsel for the applicant has also brought out the respondents contention that the applicant had friendship with the Rana family and after something went wrong, the transfer certificate was issued to Abhishek Rana. But as per Annexure A/3, there is sufficient evidence to prove that the character of said Abhishek Rana was not good. It was further

argued that it has been mentioned by the respondents in their reply that said Abhishek Rana was taken back in the school after two days only but, in fact, he was taken back almost after one month and that too after having accepted the written assurance submitted by his father to the applicant that neither my wife nor my elder son will ever indulge or provoke in any of the school matter. The applicant, personally present, produced the original and the photocopy of the said written assurance. The learned counsel for the applicant also drew my attention to the letter dated 19.02.2007 (Annexure AR/2), written by the Police to the Applicant, by which it is clearly mentioned that the report was lodged with the Police at Nasirabad on 13.12.2006 and the Police had asked the applicant to provide photo copy of the enclosures submitted alongwith the report dated 13.12.2006.

6. Learned counsel for the applicant also brought to the notice of the Tribunal that neither the report of the fact finding inquiry has been produced by the respondents alongwith their reply nor the applicant was given an opportunity to represent before the fact finding enquiry committee. However, during the course of arguments, on a query raised by the Tribunal, learned counsel for the respondents provided copy of the report of the fact finding inquiry which has been taken on record.

 7. Learned counsel for the applicant also brought to the notice of the Tribunal that the media had wind of the entire episode and after the Assistant Commissioner had permitted

the applicant to tell the truth about the whole matter before the media, the applicant gave her statement to the media, but the fact finding inquiry report was never supplied to the applicant.

8. Learned counsel for the applicant brought to the notice of the Tribunal about the transfer guidelines, wherein no tenure has been prescribed for the post of Principal of the KVS. However, the applicant had given option for Jaipur, Chandigarh and Ajmer as her choice for place of posting on transfer.

9. Learned counsel for the respondents argued that the question of mid academic session transfer is not involved in the present case as son of the applicant is not at all prosecuting study at Nasirabad. As regards administrative exigency, transfer is a condition of service and is not a punishment. He also placed reliance on the judgement of the Hon'ble Supreme court in the case of **Union of India vs. S.L. Abbas**, 1993(4) SCC 357 and brought specific attention of the Tribunal towards paras nos. 8, 9 and 10 of the said judgement. It was argued by the learned counsel for the respondents side that on three grounds only the transfer can be assailed i.e. if there is malafide, violation of any statutory rule or if the transfer order is issued by an authority not competent to do so.. It is for the competent authority to satisfy himself to issue the transfer order and transfer of the applicant has been made on administrative exigency. As regards the incident, right from April, 2006, a few students were indulged in homo sexual activities with some outsiders

and it was only at the instance of the grand father of one student who reported the incident and brought it to the notice of the applicant. It was also brought to the notice of the Tribunal that FIR was never lodged to the Police as Per Annexure A/3. There is no dispatch number and it had never reached to the Police Station. The girls have also denied their earlier statements. Learned counsel for the respondents again argued that the matter was never reported to the Police by the applicant on 13.12.2006 and copy of the same was never given to the Chairman, KVS, or higher authorities. It was also brought to the notice of the Tribunal by the learned counsel for the respondents that the applicant is also a Member of the Transfer committee and the transfer orders have started to issue from January, 2007. Learned counsel for the respondents also produced a copy of the latest judgement of the CAT, Principal Bench, rendered in OA No. 1614/2006, **Udbhash Mukherjee vs. Union of India & Others** decided on 22.01.2007, wherein the transfer order was held to be just and proper.

10. After having heard the learned counsel for the parties and perusal of records, I am of the view that there is element of doubt that the applicant had reported the matter to the Police on 13.12.2006, as per Annexure A/3, as there is no dispatch number and no evidence is available on record to prove the same. However, during the course of arguments, it was personally clarified by the applicant that she had gone to the Police Station alongwith two teachers and reported the matter to the Police on 13.12.2006 itself. In another case, involving some outsiders named Shyam Sunder Gupta and

Rohit Saini, in regard to homo sexual activity with some innocent boys of Kendriya Vidyalaya , FIR was lodged on 17.02.2007, as per Page 118 of the rejoinder filed by the applicant, which is evidence to the effect that such matter was already reported to the Police prior to flashing of episode by the media on 18.02.2007. It has also been noticed by the Tribunal that the Police has arrested to Shri Shyam Sunder Gupta who was indulged in homo sexual activity with some students of KVS, Nasirabad, and the other three persons have also surrendered before the Police.


11. Prima-facie, there is enough material to believe and establish that the action of the respondents by issuing the transfer order, as per Annexure A/1, and subsequently directing the applicant to hand over the complete charge as per Annexure A/2, is not a normal or routine transfer matter but the transfer of the applicant has been made in haste as the applicant had given statement to the media and the whole episode was blown off by the media. Timing of the transfer also leads to believe that the transfer order is an outcome of the episode blown off by the media.

12. In fact, KVS management should have appreciated the courage displayed by the applicant in exposing the unsocial activities operating in and outside of the school campus to eliminate the same as a permanent remedy. It is felt that probably the management wanted to hide the whole episode to avoid affecting the image of KVS adversely.


13. Transfer of the applicant, at this juncture, will have adverse impact on her position and status and she is going to suffer irreparable loss which cannot be compensated in any manner.

14. Though this Tribunal is well aware of the limited scope of judicial review in transfer matters and normally no intervention is called for by the Tribunal in transfer matters, but in the facts & circumstances and peculiarity of the present case, it is considered necessary by this Tribunal to intervene and deliver justice. This Tribunal takes note of the courage of the applicant for reporting the matter to the Police and bringing the culprits and unsocial elements in light by exposing herself to risk. If the transfer of the applicant is affected, at this juncture, the public will lose confidence in the courts/Tribunals and unsocial elements will inspire confidence for such unsocial activities. I, therefore, in the interest of justice and special circumstances of the case, come to the conclusion that the action of the respondents in transferring the applicant is arbitrary, malafide, based on extraneous considerations and unjust.


15. Accordingly, the OA is allowed and the impugned transfer order dated 09.03.2007 (Annexure A/1), by which the applicant has been transferred from Nasirabad to Nangal Bhur, and the order dated



13.03.2007 (Annexure A/2), by which the applicant has been directed to handover the complete charge to the Vice Principal, are quashed and set aside. No order as to costs.



(J.P. SHUKLA)
MEMBER (A)



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