

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 8th day of April, 2011

Original Application No.109/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)

Dr. A.K.Bhatt
s/o Late Shri D.N.Bhatt,
presently working as Principal,
K.V.4, Hasanpura, Jaipur
r/o K.V.4, Hasanpura,
Jaipur

.. Applicant

(By Advocate: Shri R.N.Mathur with Shri Amit Mathur)

Versus

1. Union of India
through its Secretary,
Ministry of Human Resource Development,
Shastri Bhawan,
New Delhi.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. Shri Avinash Dikshit,
Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
4. Deputy Commissioner (P),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.

5. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
Bajaj Nagar,
Jaipur.
6. Smt. P.Dixit,
Vide Principal,
Kendriya Vidyalaya No.1,
Ajmer.

.. Respondents

(By Advocate: Shri V.S.Gurjar for resp. No. 2 to 5 and Shri R.P.Sharma for resp. No.6)

ORDER

The short controversy involved in this case is regarding transfer of the applicant vide order dated 14.3.2011 (Ann.A/1) from Jaipur to Nepanagar (Madhya Pradesh). It is alleged that the transfer has been made against the transfer policy, therefore, the present OA has been filed by the applicant seeking relief that order Ann.A/1 and A/2 may kindly be quashed and set-aside and respondents may be directed not to transfer the applicant and allow him to perform his duties at his present place of post i.e. K.V. No.4, Jaipur.

2. The brief facts of the case are that the applicant was initially selected directly and posted as Principal, Kendriya Vidyalaya (KV) No.1, AFS, Jodhpur in 1998. In pursuance of his appointment and posting he joined at Jodhpur on 20.10.1998. Subsequently, he was transferred at different places as Principal, KVs and is presently posted as Principal, KV No.4, Jaipur, but he is again transferred to



Nepanagar and in his place respondent No.4 has been given posting on promotion.

3. The impugned transfer order Ann.A/1 is challenged by the applicant on the ground that transfer order has been passed by the respondents in contravention to the transfer policy and refers the guidelines annexed with the OA as Ann.A/9. As per Clause-2 of the said guidelines, the tenure of the applicant is for 5 years and he has only completed 4 years and transferred prior to completion of the tenure of 5 years. Further challenge is on the ground that the applicant has been transferred in the month of March i.e at the crucial time when examination of Board classes and others are taking place and thus the order of transfer is not in the interest of administration but passed for the purpose to harass the applicant. Further, the applicant has been served with a chargesheet in the month of May, 2010 and departmental proceedings are taking place at Jaipur itself and if the order Ann.A/1 is not set-aside, the applicant would be debarred from raising his defence in the departmental enquiry.

4. It is also averred that the applicant earlier raised grievance regarding non payment of legal dues, but the respondents took no action in the matter, failing which the applicant preferred OA before this Tribunal which was registered as OA No.334/2010 and despite repeated opportunity, no reply has been filed by the respondents so far and on account of filing the aforesaid OA, the respondents have taken vindictive action and transferred the applicant.



5. It is also contended on behalf of the applicant that due to family circumstances of the applicant that his daughter is pursuing study at Jaipur and he himself is undergoing treatment in Jaipur and his ailing and old mother is also dependent on him, therefore, transfer of the applicant may be cancelled.

6. Alternatively, the applicant has prayed that the Principal, KV No.1 and 2 are having stay of more than 5 years at Jaipur while Principal of KV No.6 is due to attain the age of superannuation in the month of July, 2011 and the applicant can be accommodated on the aforesaid posts looking to the hardship of the applicant.

7. On the contrary, the learned counsel appearing for the respondents submits that though the applicant has assailed the action of the answering respondents alleging mala-fide and violation of transfer guidelines, while the order of transfer of the applicant is made by the competent authority, but has failed to lay any factual foundation to sustain the allegations of mala-fide and in support of his submissions placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of State of U.P. v. Gobardhan Lal reported at (2004) 11 SCC 402 wherein the Hon'ble Supreme Court has held as under:-

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an

order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable right, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

Further placed reliance on the judgment in the case of S.C.Saxena vs. Union of India and ors., reported at (2006) 9 SCC 583, wherein the Hon'ble Supreme Court was of the view that a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievance. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. Such tendency of not reporting at the new place of posting and indulging in litigation to ventilate his grievance need to be curbed.

With regard to reviewing the transfer order, the learned counsel appearing for the respondents referred to the judgment rendered by the Hon'ble Supreme Court in the case of State of UP vs. Gobardhan Lal (supra) wherein the Hon'ble Supreme Court observed that transfer is prerogative of the authorities concerned and the court should not normally interfere therewith except when



(i) transfer order shown to be vitiated by mala fides or (ii) in violation of any statutory provisions or (iii) having been passed by an authority not competent to pass such an order. After referring the aforesaid judgment, the learned counsel appearing for the respondents submits that the transfer order has been passed in public interest and also according to the guiding principles of transfer.

8. Be that as it may, having considered the rival submissions of the respective parties and upon careful perusal of the material available on record and the judgments referred to by the respective parties, as per the condition of service as held by the Hon'ble Supreme Court in the case of State of UP vs. Gobardhan Lal (supra), it is the prerogative of the authority concerned and in the instant case the impugned transfer has been passed in public interest and in view of the ratio decided by the Hon'ble Supreme Court in the case of Somesh Tiwari Vs. Union of India and Others, reported at (2009) 1 SCC (L&S) 411, which has been relied upon by the applicant, the Hon'ble Apex Court has held that transfer, which is ordinarily an incident of service, should not be interfered with save in cases where inter-alia mala-fide on the part of the authority is proved. As in the instant case though the applicant has impleaded Commissioner, KVS by name, but mere assertion of mala- fide does not survive the purpose as the applicant has utterly failed to prove the mala-fide against the respondents and scope of judicial review in such cases is very limited.



9. We have also perused the guidelines and it cannot be said that transfer order which has been passed by the respondents is contrary to the guidelines, as alleged by the applicant.

10. With regard to alternative prayer and request made by the applicant that if the respondents are not inclined to retain the applicant in Jaipur, he may be posted as Gurgaon, Delhi or Faridaabd. To consider such request again is the domain of the respondents and to this effect liberty is given to the applicant to represent before the respondents and it is for the respondents to consider the request made by the applicant but, in any case, I am not inclined to interfere with the transfer order (Ann.A/1).

10. Consequently, the OA is disposed of with the observations made hereinabove with no order as to costs.

11. In view of the order passed in the OA, no order is required to be passed in MA No.74/2011, which stands disposed of accordingly.


(JUSTICE K.S.RATHORE)
Judl. Member

R/