

19

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

23.08.2012

OA No. 233/2011

Mr. C.B. Sharma, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 23rd day of August, 2012

ORIGINAL APPLICATION No. 233/2011

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Vijay Pal Saini son of Shri Jagdish Prasad Saini, aged about 40 years, resident of Quarter No. C-1, Jawahar Navodaya Vidyalaya Campus, Patan, District Sikar and presently working as Electrician cum Plumber, Jawahar Navodaya Vidyalaya, Patan, District Sikar and under transfer to Jawahar Navodaya Vidyalaya, Pallu, District Hanumangarh (Rajasthan).

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Navodaya Vidyalaya Samiti through Joint Director (Administration), A-28, Kailash Colony, New Delhi -110 048.
2. Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi - 110 048.
3. Deputy Commissioner, Navodaya Vidyalaya Samiti, Jaipur Region, 18, Sangram Colony, Mahaveer Marg, C-Scheme, Jaipur.
4. Principal, Jawahar Navodaya Vidyalaya, Patan, District Sikar.

... Respondents

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

ORDER (ORAL)

The applicant has filed the present OA being aggrieved by his transfer order dated 18.04.2011 (Annexure A/1) vide which he has been transferred from Jawahar Navodaya Vidyalaya, Patan, District Sikar to Jawahar Navodaya Vidyalaya, Pallu, District Hanumangarh and his relieving order dated 20.04.2011 (Annexure A/2).

Anil Kumar

2. Learned counsel for the applicant submitted that the applicant was appointed on the post of Electrician cum Plumber vide order dated 10.11.1994. The appointing authority of the applicant is respondent no. 4. He was appointed on being sponsored by the Employment Exchange, Sikar. Thus it is clear that the applicant was selected to a particular school against a vacant post. The applicant since joining on the post is working under respondent no. 4 without any complaint. The respondent no. 4 vide letter dated 15/19.10.2010 requested the Jawahar Navodaya Vidyalaya under Jaipur circle regarding recommendations of the transfer (Annexure A/5). In response to this communication, the Principal of the Jawahar Navodaya Vidyalaya, Patan sent 'Nil' information vide letter dated 29.10.2010 (Annexure A/6). The applicant is a low paid employee and holding the post of Electrician cum Plumber in the pay band of Rs.5200-20200 with grade pay of Rs.2000. He belongs to Sikar District, which is 23 Kms. from Patan. His father & mother are old and facing illness. Respondent no. 3 without any base transferred the applicant from Jawahar Navodaya Vidyalaya, Patan, District Sikar to Jawahar Navodaya Vidyalaya, Pallu, District Hanumangarh at a distance of more than 425 Kms. and also relieved the applicant vide order dated 20.04.2011 (Annexure A/2). Thus the transfer in fact is punitive in nature. The transfer policy and guidelines do not provide for transfer of the official whose service is satisfactory and is appointed on a particular post. The transfer of the applicant is neither in public interest nor in administrative exigency and has been ordered due

Anil Kumar

to malafide attitude of respondent nos. 3 & 4. The applicant was selected for a particular Vidyalaya. Therefore, he cannot be transferred from one Vidyalaya to another Vidyalaya. Therefore, he prayed that the transfer order dated 16/18.04.2011 (Annexure A/1) and relieving order dated 20.04.2011 (Annexure A/2) be quashed and set aside and the OA be allowed.

3. On the contrary, learned counsel for the respondents submitted that it is a trite law that unless a transfer is against the statutory rules, without jurisdiction or is actuated with malafides, the same cannot be interfered with in a judicial review. He further submitted that appointment order of the applicant specifically stipulates a condition to the effect that his services are liable to be transferred at anywhere in India. Therefore, the contention of the applicant that since he has been appointed for a particular Vidyalaya i.e. Jawahar Navodaya Vidyalaya, Patan District Sikar and, therefore, he cannot be transferred to another Vidyalaya does not hold good. He has been working in Jawahar Navodaya Vidyalaya, Patan District Sikar since 1994 till date i.e. almost for 18 years. The applicant has not been able to prove any malafide against respondent no. 3 or respondent no. 4 nor they have been made party by name. He, therefore, submitted that presumption ^{is Anuladisama} in favour of the bonafide of the order unless contradicted by acceptable material and to support his averment, he referred to the judgment of the Hon'ble Supreme Court in the case of **State of U.P. vs. V.N. Prasad (Dr.)**, 1994 Supp. (2) SCC 151.

Anil Kumar

4. Learned counsel for the respondents also referred to the judgment of the Hon'ble Supreme Court in the case of **Union of India & Others vs. S.L. Abbas**, JT 1993 (3) SC 678 in which Hon'ble Supreme Court has held that unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the same is not open to interference before the Court. He also argued that Navodaya Vidyalayas are residential in nature and boarding & lodging is provided to the employees by the concerned Navodaya Vidyalaya Samiti. Therefore, the applicant will not face any inconvenience at his new place of posting.

5. Learned counsel for the respondents further argued that it is a settled law that Courts/ Tribunals should not normally interfere in the transfer order unless it is based on malafide exercise of power or violate of any statutory provision (an Act or rule) or passed by an authority not competent to do so. To support his averment he referred to the judgment of the Hon'ble Supreme Court in the case of **State of U.P. vs. Gobardhan Lal**, 2004 (11) SCC 402 at page 407.

Thus he submitted that the present OA has no merit and it should be dismissed with costs.

6. Heard learned counsel for the parties and perused the relevant documents on record. It is an admitted fact that the applicant was appointed in 1994 on the post of Electrician cum

Anil Kumar

Plumber in Jawahar Navodaya Vidyalaya, Patan District Sikar and he has been working there since then that is for the last 18 years. The transfer order of the applicant has been issued by the competent authority and it not in violation of any statutory provision (an Act or rule). The applicant has also not been able to prove any malafide against the authority, who has issued the transfer order. The transfer of an employee is an incidence of service. The ratio decided by the Hon'ble Supreme Court in the cases of (i) **State of U.P. vs. V.N. Prasad (Dr.)**, 1994 Supp. (2) SCC 151 (ii) **Union of India & Others vs. S.L. Abbas**, JT 1993 (3) SC 678 and (iii) **State of U.P. vs. Gobardhan Lal**, 2004 (11) SCC 402 is squarely applicable in the facts & circumstances of the present case. The applicant has failed to make out any case where he can be given any relief in the present OA. Therefore, I do not find any reason to interfere with the transfer order dated 16/18.04.2011 (Annexure A/1) and relieving order dated 20.04.2011 (Annexure A/2).

7. Consequently the OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ