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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

20.09.2011

OA No. 375/2011

Mr. Pradeep Mathur, counsel for applicant.
Mr. V.S. Gurjar, counsel for respondents.

Learned counsel for the applicant submits that he has filed rejoinder to the reply in the registry, and served the same to the learned counsel for the respondents. The registry is directed to place the same on record.

Put up the matter on 11.10.2011 for final hearing at this stage. No further adjournment will be given.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Kumawat

11-10-2011

Mr. Suresh Kashyap, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

Heard. The OA is disposed of by a
separate order.

Anil Kumar
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,
JAIPUR.

Jaipur, the 11th day of Octoberr, 2011

ORIGINAL APPLICATION NO. 375/2011

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Anjani Kumar Gupta son of Shri Ramesh Chand Gupta aged 39 years, resident of J.N.V. Dholpur (Rajasthan). Office Address: Navodiya Vidyalaya, Teacher PGT (Maths), Dholpur.

... Applicant

(By Advocate : Mr. Suresh Kashyap)

Versus

1. Union of India through the Secretary, Ministry of HRD, Department of School Education & Literacy, Government of India, New Delhi.
2. Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi through Commissioner.
3. Navodaya Vidyalaya Samiti, Mahavir Marg, C-Scheme, Jaipur through its Deputy Commissioner.
4. Jawahar Navodaya Vidyalaya, Purani Chawni, Bari Rod, Dholpur through its Principal.

... Respondents

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

ORDER (ORAL)

This is the second round of litigation between the parties.

The applicant has filed this OA being aggrieved by his transfer order dated 12.07.2011 (Annexure A/1) vide which he has been transferred on administrative grounds from JNV-Dholpur (Rajasthan) to JNV-Rajouri (J&K) and by his relieving order dated 12.07.2011 (Annexure A/2).

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2. Earlier the applicant has filed OA No. 303/2011, which was decided on 20.07.2011 (Annexure A/10). In this OA, the Tribunal had directed as follows:-

"Having considered the submission made on behalf of the applicant and considering the fact that the applicant has already been relieved, the applicant is directed to file a representation stating therein all the facts which are taken in the present OA. If such a representation is filed by the applicant, the respondents are directed to consider the representation of the applicant so filed by him sympathetically."

3. In pursuance of this order, the applicant filed a representation on 02.08.2011 (Annexure A/11) but without waiting for reasonable time for deciding the representation by the competent authority, the applicant has filed the present OA on 17.08.2011.

4. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that the applicant is rendering satisfactory service and there is no complaint whatsoever against him. Rather the applicant's service has been appreciated and his result has been outstanding, therefore, his transfer is illegal and arbitrary. That the applicant has been transferred to a place having distance of 1000 Kms. from his present place of posting and, therefore, the transfer is arbitrary and malafide. That the transfer of the applicant is contrary to the guidelines for transfer. That the wife of the applicant is posted at Agra and the applicant is posted at Dholpur. Therefore, the transfer of the applicant to JNV-Rajouri (J&V) is contrary to the transfer policy. That both

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the husband and wife are in service of the Union Government and they may be posted at one or nearby place. That the wife of the applicant is under treatment at Dholpur. Father of the applicant is 79 years old and he has to look after his father. Learned counsel for the applicant argued that transfer order has been issued on the behest of the Principal who was annoyed with the applicant, therefore, the transfer order may be cancelled on the ground of malafide. That cancellation of his transfer order was recommended by the District Magistrate, who is also the Chairman of the District Samiti and Member of Parliament of Dholpur but the respondent have not given any heed to such request and, therefore, his transfer order and relieving order dated 12.07.2011 (Annexure A/1 & A/2 respectively) may be quashed & set aside.

5. Learned counsel for the respondents argued that the transfer order of the applicant is on administrative grounds. That the administrative grounds do not necessarily means that there should be any adverse facts against the applicant. Sometimes an official is posted to another place on administrative grounds because he has been doing very well at a particular place and his services are required at another place. The applicant has not been able to prove any malafide against the competent authority who has issued the transfer order nor there is any allegation against him in the OA. Learned counsel for the respondents further submitted that the applicant has tried to make out a case of malafide against the Principal but he has not been made party by name. Moreover,

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the Principal has not transferred the applicant. Therefore, the question of malafide against the Principal in this case has no role. The applicant has failed to make out any case of malafide even against the Principal. That the applicant has been working at the present place of posting for almost seven years. There is no violation of the transfer policy/guidelines. Even according to the guidelines for transfer, a transfer can be made on administrative exigency. The wife of the applicant is not under the service of the Union, as claimed by the applicant in his OA, but she is serving under the State Government of U.P. The old age of the father or illness of the wife cannot be the sole ground for cancellation of the transfer order. It is a trite law that unless a transfer is against the statutory rules, without jurisdiction and/ or is actuated with malafides, the same cannot be interfered with in a judicial review. In the present case, there is no cause of action accrued in favour of the applicant so as to assail the legality, validity and correctness of the transfer order and the consequent relieving order, which is a condition of service. Therefore, the OA has no merit and is liable to be dismissed with costs.

6. Learned counsel for the respondents drew my attention to the judgment of the Hon'ble Supreme Court in the case of **State of U.P. vs. V.N. Prasad (Dr)**, 1995 Supp (2) SCC 151 in which the Hon'ble Supreme Court held in unequivocal terms that there is always a presumption in favour of bona fides unless contradicted to the contrary by acceptable material, the relevant portion of the judgment reads as under:-

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"2. The High Court, at the interlocutory stage of writ petition moved by the respondent, Dr V.N. Prasad, Principal, B.R.D. Medical College, Gorakhpur challenging an order of transfer, has stayed its operation. We are of the opinion that at the stage at which the matter was brought to engage the attention of the High Court, there was no *prima facie* material to establish any *mala fides* which required strong and convincing evidence. The presumption is in favour of the *bona fides* of the order unless contradicted by acceptable material. The interlocutory order of the High Court is, in our opinion, unjustified. The order is set aside. We request the High Court, however, to dispose of the main matter itself as expeditiously as possible."

7. He also referred to the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Janardhan Debanath**, 2004 (4) SCC 245 in which the Hon'ble Supreme Court has held as under:-

"Transfer unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration."

8. Having heard the rival submission of the parties and having perused the documents on record, I am of the opinion that the applicant has failed to make out any case for interference by this Tribunal. The transfer has been made on administrative grounds, which is clearly stated in the transfer order dated 12.07.2011 (Annexure A/1). As per the guidelines

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of transfer, a transfer can be made on administrative exigencies. It is not disputed that the applicant's post is a transferable post. The applicant had been at Dholpur for almost seven years. Even if it is admitted that the applicant's performance has been outstanding, even that cannot be a ground for cancellation of his transfer order. The benefit of excellence of the applicant should be used by the students of new place of posting. The applicant has not been able to prove any malafide against the competent authority, who has issued the transfer order. The transfer is an incidence of service. The ratio laid down by the Hon'ble Supreme Court in the case of **State of U.P. vs. V.N. Prasad (Dr)** (Supra) and **Union of India vs. Janardhan Debanath** (supra) is squarely applicable in this case. I, therefore, do not find any reason to interfere with the transfer order dated 12.07.2011 (Annexure A/1) and relieving order dated 12.07.2011 (Annexure A/2) and hence the OA is dismissed with no order as to costs. The interim stay granted by this Tribunal vide order dated 18.08.2011 with regard to impugned transfer/relieving order dated 12.07.2011 is hereby vacated.

9. Accordingly, the OA is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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