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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/01023/2014

Date of Decision : 13.05.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

Kulwant Kumar Sood, aged 47 years, S/o Sh. Rikhi Ram, working as PGT
(Economics), Jawahar Navodaya Vidyalaya, Sector 25 (West), Chandigarh.

Applicant

Versus

1. Navodaya Vidyalaya Samiti (Ministry of Human Resource Development, Department of School Education & Literacy) Government of India) B-15, Institutional Area, Sector 62, Noida through its Commissioner.
2. Deputy Commissioner, Navodaya Vidyalaya Samiti, (Ministry of Human Resource Development, Department of School Education & Literacy) (Government of India), Regional Office, Bay No.26-27, Sector 31-A, Chandigarh.
3. Principal, Jawahar Navodaya Vidyalaya, Sector 25 (West), Chandigarh.
4. Shri Sandeep Kumar, PGT (Economics), Jawahar Navodaya Vidyalaya, Shimla (H.P.).

Respondents

Present: Mr. R.K.Sharma, counsel for the applicant
Mr. D.R.Sharma, counsel for respondents no.1 to 3.
Mr. Navneet Jindal, counsel for respondent no.4.

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ORDER (Oral)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"8 (i) Quash office order no.5-76/2014-NVS(Estt.)/1502, dated 12.11.2014 (Annexure A-1) passed by respondent no.1, qua respondent no.4, to the extent whereby he has been transferred from Jawahar Navodaya Vidyalaya, Shimla to Jawahar Navodaya Vidyalaya, Chandigarh against the transfer policy as he has not completed his tenure at Shimla.

(ii) Quash office order no.5-76/2014-NVS(Estt.)/1503, dated 12.11.2014 (Annexure A-2) passed by respondent no.1 qua applicant whereby he has been transferred from Jawahar Navodaya Vidyalaya, Shimla as he has been displaced to accommodate respondent no.4, in violation of their transfer policy framed by the respondents themselves.

(iii) Issue directions to the respondents to allow the applicant to continue at his present place of posting without interruption."

2. When the matter was taken up for hearing on admission on 14.11.2014, the impugned order dated 12.11.2014 qua the applicant was stayed and this position continues till date.

3. The background of the matter is that the applicant initially joined Navodaya Vidyalaya Samiti as PGT (Economics) on 19.08.1994 at Jawahar Navodaya Vidyalaya, Hamirpur. Thereafter, he was transferred to Jawahar Navodaya Vidyalaya, Theog, District Shimla in public interest where he joined on 26.08.1996 and served there upto 05.12.1998 when the applicant was again transferred to Jawahar Navodaya Vidyalaya, Hamirpur. While working at

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Jawahar Navodaya Vidyalaya, Hamirpur, the applicant was promoted as Vice Principal and posted at JNV E.G. Hills under Shillong Region vide order no.10-1/2012-NVS(Pers.)769, dated 07.09.2012 (Annexure A-3). Since the applicant was planning for shifting to Chandigarh with a view to provide better higher education to his children, who are studying in school, therefore, he forewent his promotion. Later, while he was working at Jawahar Navodaya Vidyalaya, Hamirpur, he applied for transfer on request basis for Chandigarh. His request was considered and he was transferred from Hamirpur to Chandigarh, where he joined on 23.09.2013 and is presently working at Chandigarh. It is claimed in the OA that the work and conduct of the applicant during his entire service remained above board and his results are 100%. He has been awarded Best Teacher Award in the years 2008, 2009 and 2010. The applicant was again promoted as Vice Principal and posted at JNV Dhimaji (Shillong Region) vide order dated 18.07.2014. However, again the applicant had to forego his promotion as he wanted to shift his children to Chandigarh for better higher education particularly when his son is to join +1 class in the ensuing academic session. Cancellation order of promotion order issued by respondent no.2 vide office order dated 12.09.2014 is annexed as Annexure A-6. *As* _____

4. It is further stated that office of respondent no.1 issued another office order no.5-76/2014-NVS(Estt.)/1503, dated 12.11.2014 (Annexure A-2) as per which 15 teaching and non-teaching employees, including the applicant,

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were transferred in the interest of organization in order to accommodate persons transferred vide order at Annexure A-1. The applicant was transferred to Chandigarh as per transfer policy Annexure A-3 and he has hardly completed one year at Chandigarh and thus not completed his tenure. However, he has been uprooted ~~without~~ only with a view to accommodate respondent no.4, in violation of the transfer policy. Respondent no.4 was working at Jawahar Navodaya Vidyalaya at Shimla for the last 3-4 years and his wife is also working there as PGT (English). He had not completed his normal tenure. As per information of the applicant, respondent no.4 had committed grave misconduct and had misbehaved with the Incharge Principal at Shimla. He was placed under suspension and chargesheet was issued to him. After revocation of his suspension, he was posted at Jawahar Navodaya Vidyalaya, Ferozepur (Punjab) and the inquiry against him is under process. The grounds for special relaxation for posting respondent no.4 and his wife at Chandigarh when both were working at Shimla as mentioned in the impugned order (Annexure A-1) are not known. However, it appears that he has been adjusted at Chandigarh after upsetting the applicant and for his misconduct at Shimla, NV he has been rewarded. On the other hand the applicant has been punished for his good work and conduct without realizing that he had come to Chandigarh on his request without TA/TP after completing his tenure at Hamirpur and the reason for the request transfer was better education for his children at Chandigarh.

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5. In the grounds for relief it has, inter-alia, been stated as follows:-

- i) It is on the record of the respondents that the applicant was transferred to Chandigarh as per transfer policy in the year 2013 and he has hardly completed one year there. On the other hand respondent no.4 has not completed even normal tenure either at Shimla or at Ferozpur where he has been transferred after revocation of his suspension. He is stated to have not joined there and he may be on unauthorized absence. Therefore, transfer of the applicant is against the policy framed by the respondents.
- ii) As per Transfer Policy, displacement means to transfer an employee from the present place of posting to a new station / place for the purpose of accommodating another employee in his / her place. This is applicable for (i) unifying the couple in a Jawahar Navodaya Vidyalaya, (ii) giving choice place of posting to the employee coming from NER/Hard and difficult stations after completion of mandatory tenure and (iii) posting a female employee to in/out balance the male and female ratio in a JNV. In the present case respondent no.4 and his wife as mentioned in the order at Annexure A-1 are working at Jawahar Navodaya Vidyalaya, Shimla. Therefore, there is no justification for displacement of the applicant from Chandigarh when the couple is already working at the same station.
- iii) The respondents themselves have framed Transfer Policy (Annexure A-4) in which specific tenure has been fixed. It is on the record of the respondents that the applicant has hardly completed one year at his present place of posting i.e. Chandigarh and respondent no.4 has not completed his tenure at Shimla. Relaxation clause, if at all had to be applied, it can be applied for considering request of a person for transfer to relax his tenure, which was earlier 10 years and now has been fixed as five years for teachers and the relaxation clause cannot be applied for uprooting any person. Relaxation clause can be applied for giving benefit to an employee and not causing damage to any other employee. Thus, the action of the respondents is in violation of their own policy and is not sustainable in the eyes of law. It is well settled that if the Government lays down a policy for doing a particular thing in a particular manner, that thing has to be done in that manner only and the Government cannot violate policy guidelines, which are binding

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on it. But in the present case, this principle has been given complete go by.

6. In the written statement filed on behalf of respondents no.1 to 3, the facts in the OA have not been disputed. It has further been stated that though the applicant has been transferred to Chandigarh in the year 2013 but he has been posted to Shimla in the interest of the NVS. Respondent no.4 was posted at Chandigarh being couple case as Government of India has issued instructions from time to time for unification of couples and Samiti has also made such provision in the transfer policy for adjustment of couples. Hence, respondent no.4 was posted at Chandigarh as the post of PGT (English) had fallen vacant on account of transfer of Smt. Vandana Gupta. Respondent no.4 consequent upon revocation of his suspension was posted at JNV Ferozpur yet he had represented for his posting at Shimla or nearby Chandigarh. He had also filed OA No.063/00116/2014 before CAT, Chandigarh at Circuit Bench, Shimla. This OA was disposed of by this Tribunal vide order dated 17.10.2014 in limine without issuing notice to the respondents in the following terms:-

“One cannot dispute the proposition of law that a court of law would be quite slow in interfering with the transfer matters but that principle is based on sound premise that the authorities would be under obligation to take care of the domestic problems pointed out by the employees. In this case despite submission of representation by the wife of the applicant, no consideration has taken place and the applicant has been transferred to Ferozpur. It was expected from the respondents to have considered the circumstances relating to child of the applicant being ill and that his case is covered by couple case policy and then should have issued the transfer order. In any case, without commenting upon the transfer of the applicant to Ferozpur, we would expect the respondents to consider the representation submitted by the wife of the applicant for her posting at

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Chandigarh or nearby area and or posting of the applicant at appropriate place so that both of them could take care of their child, within a period of two months from the date of receipt of a certified copy of this order."

A copy of the order dated 17.10.2014 is annexed as Annexure R-1. Respondent no.4 and his wife Mrs. Rupali Sehgal, PGT (English) have been posted at JNV Chandigarh in relaxation of Transfer Policy with a view to adjust them at one station as per the DoPT instructions dated 30.09.2009.

7. In the written statement filed on behalf of respondent no.4, it has been stated that he was transferred to Chandigarh only after the C.A.T. Chandigarh Bench had directed the NVS to look into the representation made by respondent no.4 and his wife regarding their transfer to Chandigarh. The NVS had considered the matter regarding application of Mrs. Rupali Sehgal, wife of respondent no.4 for transfer to Chandigarh in view of the medical treatment of her daughter and respondent no.4 had been posted to Chandigarh, keeping in view the policy of NVS and the directions of Government of India that working couples should be posted at the same place as far as possible.

8. Arguments advanced by the learned counsel for the parties have been heard. Learned counsel for the applicant narrated the background of the matter and stated that there was no reason to displace the applicant from Chandigarh when he had not completed his tenure over there as he had been posted to Chandigarh as recently as in 2013. *As* _____

9. Learned counsel for respondents no.1 to 3 stated that since the CAT Chandigarh Bench had directed the NVS to consider the representation of respondent no.4 and his spouse for posting at Chandigarh, the adjustment had been made as per the transfer order dated 12.11.2014, whereby Sh. Sandeep Kumar, respondent no.4 was posted to Chandigarh against the post of PGT (Economics) and his wife Smt. Rupali Sehgal was posted as PGT (English) at Chandigarh. In order to adjust respondent no.4, the applicant had been shifted from Chandigarh to NV Shimla. Learned counsel representing respondent no.4 asserted that the posting of Sh. Sandeep Kumar, was in accordance with the Transfer Policy. He stated that the applicant had never been posted outside the Region while respondent no.4 had served at other places. Since the NVS had adjusted respondent no.4 and his spouse Smt. Rupali Sehgal at NV Chandigarh as per the Transfer Policy of the Samiti, there was no merit in the OA and the same deserved to be rejected.

10. We have given our careful consideration to the matter. From the material on record, it is quite clear that the applicant had not completed his normal tenure at NV Chandigarh and had been shifted prematurely only to adjust respondent no.4 Sh. Sandeep Kumar as PGT (Economics) at NV Chandigarh. Whatever be the merits of the claim of respondent no.4 and his spouse for posting at Chandigarh, the fact remains that the applicant has been transferred out from NV Chandigarh before completion of his tenure and this is clearly in

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violation of the Transfer Policy. Hence, the OA is allowed and the order dated 12.11.2014 (Annexure A-2) qua the applicant Sh. Kulwant Kumar Sood transferring him from Chandigarh to Shimla is quashed and the applicant is held entitled to continue as PGT (Economics) at Chandigarh. In view of this direction, the respondent NVS may issue appropriate orders regarding the posting of Sh. Sandeep Kumar, respondent no.4.

11. The OA is disposed of accordingly. No costs.

(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 13.05.2015

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