

(Reserved on 23.03.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **24th** day of **April, 2018.**

PRESENT:

**HON'BLE MR JUSTICE DINESH GUPTA, CHAIRMAN
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A**

ORIGINAL APPLICATION NO. 330/1486/2016

Lal Chand Patel, son of Late Arjun Patel, Resident of Village Salarpur, Post Office Mariahu (Kishunpur), District Jaunpur.

..... Applicant

By Advocate : Shri P.K. Vishwakarma

Versus

1. The Assistant Commissioner (Estt.I), Navodaya Vidyalaya Samiti, Government of India, B-15, Institutional India, Sector 62, Noida, District Gautam Budh Nagar, Uttar Pradesh.
2. Deputy Commissioner, Novodaya Vidyalaya Samiti, Lekhraj Panna, Third Floor, Sector -2, Vikas Nagar, Lucknow.
3. Principal, Jawahar Navodaya Vidyalaya, Patehrakalan, Mirzapur.
4. Shri Udai Narayan Srivastava, Art Teacher, Jawahar Navodaya Vidyalaya, Patehrakalan, Mirzapur.

..... Respondents

By Advocate : Shri B.P. Singh

ORDER

Delivered by :

Hon'ble Mr. Gokul Chandra Pati, Member (A):

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “i) To quash the impugned Final Transfer List passed by respondent no.1 (Annexure no.1 to the Compilation-I of original application), order dated 6-8-16 passed by the respondent no.1 (Annexure no.2 to the Compilation-I of original application), order dated 9-8-16 passed by respondent no.3 (Annexure no.3 to the compilation-I of original application).
- ii) To stay the operation of the Final Transfer List passed by respondent no.1 (Annexure no.1 to the compilation-I of original application), impugned order of rejection dated 6-8-16 of representation passed by respondent no.1 (Annexure no.2 to the compilation of original application), and relieving order dated 9-8-16 passed by respondent no.3 (Annexure no.3 to the compilation of original application) during pendency of the present application.)
- iii) To issue Order, Rule or Direction to the respondents to pay salary and other consequential benefits from the date of relieving order dated 9-8-16 to the applicant during the pendency of the present application.
- iv) to issue Order, Rule or Direction to the respondents if no choice place of request of applicant is vacant applicant be permitted to perform his duty at Jawahar Navodaya Vidyalaya Mirzapur till his retirement on humanitarian basis.
- v) issue any other suitable Order, Rule or Direction to which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.
- vi) to award cost of this litigation in favour of the applicant against the respondents.”

2. Brief facts of the case as in the OA are that the applicant is an Art Teacher at Jawahar Navodaya Vidyalaya Patehrakalan, Mirzapur since 1995 and his retirement is due on 31.08.2018. The transfer list was issued by the respondents in the month of June 2016, transferring him to Rewa from Mirzapur and aggrieved by his transfer, he

preferred a representation on 2.7.2016, which was rejected vide the impugned order dated 6.8.2016 (Annexure No. 2 to the OA). He was relieved by the order dated 9.8.2016 (Annexure No. 3 to the OA).

3. It has been stated that his transfer has been made in violation of transfer policy 2012 and letter dated 22.12.2015 (Annexure A-4) as in the said transfer policy, time schedule for various activities has been provided by which the proposed transfer list should be displayed by 15.3.2016 whereas the impugned transfer list has been issued in the month of June 2016. The applicant has further contended that he has to retire in less than 2 years and thus he should not be transferred from the existing place as per the policy. The applicant has also submitted his representation on 2.7.2016 to the respondent no.1 through the Principal of the Institution. He had filed a writ against his transfer and the said writ was dismissed on the ground of alternative remedy. Then the applicant filed this OA.

4. This case was listed for admission on 6.12.2016 and this Tribunal while issuing notice to the respondents rejected the prayer of interim relief on the ground that the applicant has failed to show any malafide or any violation of statutory provision and further relying upon the judgment of the Hon'ble Supreme Court in the case of ***Union of India vs. S.L.***

Abbas, 1993 (4) SCC 357, in which it has been held that who should be transferred where, is a matter for the appropriate authority to decide and the Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer and it cannot substitute its own judgment for that of the authority competent to transfer.

5. Pursuant to notice issued to the respondents, Counter Reply was filed stating that the impugned transfer order as well as relieving order have been passed in accordance with the circular dated 22.12.2015 (Annexure No. 4 to the OA). It is further stated that the applicant has been serving at JNV, Mirzapur, U.P. from 19.8.1995 and as such he completed the period of more than 20 years in same headquarter as on the cut-off date, i.e., 1.1.2016. The applicant had given two choice places for his transfer, i.e. JNV, Jaunpur and JNV, Varanasi in Annual Transfer Drive, 2016 as against three choices available to him. The said request of the applicant was duly considered by the competent authority and since the applicant is the resident of District Jaunpur, his request for transfer was not considered to transfer him to his home District – Jaunpur according to provision of Para-2(J) of the Transfer Policy/notification dated 4.4.2012 issued by Commissioner, Navodaya Vidyalaya Samiti. So far as his second choice place, i.e., JNV, Varanasi is concerned, there was no vacant post of Art Teacher in JNV, Varanasi where

another teacher was working since 28.6.2013 after completing the tenure in hard and difficult station.

6. The respondents have also stated in the Counter that the representation of the applicant has been rejected by the respondent authority in accordance with the transfer policy of the employees of the Navodaya Vidyalaya Samiti and the applicant has been relieved. It is also stated that in place of the applicant, Sri Udai Narayan Srivastava, who has been transferred from JNV, Bhadohi to JNV, Mirzapur, has joined the said post on 10.8.2016.

7. The respondents have further stated that the applicant by means of impugned order dated 6.8.2016, has been transferred from JNV, Mirzapur to JNV, Rewa (Bhopal Region), being the nearest place available from District – Mirzapur and home district, i.e., Jaunpur of the applicant. Further it is submitted that as per the provisions of paragraph 2 (q) of the said transfer policy dated 4.4.2012, the employees whose retirements are due within two years as on 1.1.2016 will not be normally considered for transfer. The date of birth of the applicant is 1.9.1958, as such the applicant was not covered under the said provision in the policy for Annual Transfer Drive 2016.

8. No Rejoinder has been filed by the applicant in this case. We have heard Shri R.K. Vishwakarma, learned counsel for the applicant, and Shri B.P. Singh, learned counsel for the respondents and have carefully perused the material placed on record.

9. The dispute pertaining to the transfer vide the impugned order dated 6.08.2016 has now lost its relevance in view of the long delay. In place of the applicant in JNV, Mirzapur, another teacher has already joined in his post. Hence, the transfer order dated 6.08.2016 cannot be reversed as per the prayer made in the OA. It is also noted that the applicant is going to retire from service on 31.08.2018.

10. In view of the above factual position in the case, we are not inclined to interfere in the decision of the respondents. Accordingly, the OA is liable to be dismissed and it is dismissed. No costs.

(Gokul Chandra Pati)
Member (A)

(Justice Dinesh Gupta)
Chairman

Anand...