

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-233/2015

Reserved on: 22.03.2016.

Pronounced on : 30.03.2016.

Hon'ble Sh. Shekhar Agarwal, Member (A)

Sh. Sukhbir Singh Malik, PGT
Aged about 54 years,
S/o Sh. Ram Swaroop Malik,
R/o H.No. 513, Sector-21-C,
Faridabad, Haryana.

..... Applicant

(through Sh. M.K. Bhardwaj, Advocate)

Versus

KVS & Ors. Through :

1. The Commissioner,
KVS, 18-Institutional Area,
Shahid Jeet Singh Marg,
New Delhi-110016.
2. The Additional Commissioner,
KVS, 18-Institutional Area,
Shahid Jeet Singh Marg,
New Delhi-110016.
3. The Deputy Commissioner,
KVS, Delhi Region,
JNU, New Delhi.
4. The Deputy Commissioner,
KVS, RO, Hathibadkla, Salawala,
Dehradun, Uttrakhand.
5. The Assistant Commissioner,
KVS, Headquarters,
118, Institutional Area,
S.J.S. Marg, New Delhi.
6. Smt. Namrata Semwal,
PGT (Physics)
Kendriya Vidyalaya,
N.M. Road, JNU Campus,
New Delhi.

.... Respondents

(through Sh. K.M. Singh, Advocate)

ORDER

The applicant, who was working as PGT (Physics), was transferred on 14.01.2013 from Kendriya Vidhyalaya, JNU Campus, New Mehrauli Road, New Delhi to K.V. No.1, HBK, Dehradun. Aggrieved by the transfer, the applicant submitted a representation against the same on 15.01.2013. On 19.01.2013, he was directed to join his new place of posting before his representation was considered. Accordingly, the applicant joined his new place of posting. On 11.02.2013, his representation was rejected. The applicant then filed OA-695/2013 before this Tribunal. This was disposed of on 01.07.2014 with a direction to the respondents to consider the representation of the applicant and take appropriate decision in the matter keeping in view that normally husband and wife were given posting at one place. The respondents in compliance thereof rejected the representation of the applicant on 26/28.08.2014. The applicant then filed CP-444/2014. This was, however, closed on 16.09.2014 with liberty given to the applicant to challenge the orders passed by the respondents in accordance with law. The applicant has now filed this O.A. before us seeking the following relief:-

“(a) to quash and set aside the impugned transfer order dated 26/28.08.2014 as well as order dated 21.07.2014 and direct the respondents to post the applicant as PGT (Physics) in KV, JNU against the vacancy which became available in July, 2014.

(b) To declare the action of respondents in transferring the applicant at far of place as illegal and unjustified and issue further directions for posting the applicant in Delhi on spouse ground.

(c) To allow the OA with cost.

(d) to pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

2. The contention of the applicant is that he has been transferred due to biased attitude of the authorities as he was General Secretary of All India Kendriya Vidyalaya Teachers Association as well as the Member of Joint Consultative Machinery. Certain teachers, who were also jealous of his election as General Secretary, started conspiracy against him. The applicant was threatened and disciplinary proceedings were started against him on frivolous allegations. He was issued a charge sheet under Rule-14 of CCS (CCA) Rules, 1965 on 27.12.2012. The applicant was replaced by the person of respondents own choice. He challenged their action by filing a Civil Suit No. 79/2013 (S.S. Malik & Ors. Vs. KVS), which is still pending adjudication.

2.1 The respondents were, however, determined to cause harm to the applicant and invoked para-7(e) of Transfer Guidelines for transferring the applicant. The aforesaid para reads as follows:-

“Provided, an employee can be transferred from a location if the employee's stay has become prejudicial to the interest of the organisation.”

2.2 The use of this Clause for transferring the applicant was totally unjustified as the applicant had been working in the interest of the entire organization. The respondents, however, filled up the post occupied by the applicant by transferring Smt. Namrata Semwal vide order dated 21.07.2014 and rejected applicant's representation. The applicant was having 23 transfer counts whereas Smt. Namrata Semwal had zero counts, yet she was transferred to Delhi and the claim of the applicant was ignored. The respondents have thus acted in violation of Articles 14 & 16 of the Constitution. The respondents have failed to appreciate that invoking Clause-7(e) of the Transfer Policy in applicant's case was totally unjustified. His transfer to Dehradun was a result of mala fide on the part of respondents. It was also in violation of the transfer guidelines. They have

even failed to consider the applicant's responsibility of looking after his old ailing father. Such a stigmatic transfer could not have been issued without giving an opportunity of hearing to the applicant. In the case of **Somesh Tiwari Vs. UOI**, (2009) 2 SCC 592 the Hon'ble Supreme Court have held that any transfer order, which is based on complaint, cannot be said to be justified. While transfer orders of certain other individuals, such as, Sh. Vijyesh Pande, PGT (Chemistry) have been modified on his request, the respondents have not extended the same treatment to the applicant. The applicant's wife, who was working as PGT (English) under GNCT of Delhi can be transferred only within Delhi. The respondents should have, therefore, posted the applicant in Delhi also in accordance with Instructions applicable in KVS.

3. In their reply, the respondents have stated that the Transfer Guidelines framed by the respondents came into force w.e.f. 01.04.2011 after approval of the Board of Governors. These Guidelines strive to maintain equitable distribution of its employees across all locations to ensure efficient functioning of the organization. All employees are liable to be transferred anywhere in India. While effecting such transfers organizational interest is given uppermost consideration.

3.1 As far as the applicant was concerned, he was transferred on administrative grounds by invoking Para-7(2) of KVS Transfer Guidelines. The vacancy of PGT (Physics) at KVS JNU Campus occurred due to transfer of one Smt. Poonam Yadav to Kanpur Station under Para-12 of KVS Transfer Guidelines. This vacancy was filled by accommodating Smt. Namrata Semwal in public interest. The applicant could not get transfer due to his lower priority position with existing transfer points. One Sh. Sanjay Agarwal, PGT (Physics), KV,

Rokharan with 59 points could not also be accommodated at Faridabad or other choices for want of vacancies.

3.2 The respondents have further submitted that this Tribunal may not like to interfere in the transfers exercising its power of judicial review. In this regard, they have placed reliance on the law laid down by Apex Court in the case of **Shilpi Boase and Ors. Vs. State of Bihar**, AIR 1991 SCC 532 as well as **UOI Vs. S.L. Abbas**, (1993) 4 SCC 367. The respondents have also relied on Apex Court judgment in the case of **State of UP & Ors. Vs. Gobardhan Lal**, 2004(3) SLJ 244 SC as well as Hon'ble High Court of Delhi in the case of **Sujata Kohli Vs. High Court of Delhi**, 148 (2008) DLT 17 (DB).

4. I have heard both sides and have perused the material on record. Learned counsel for the applicant Sh. M.K. Bhardwaj had argued that the transfer order of the applicant itself was not maintainable as it had been passed after invoking Clause-7(e) of the Transfer Policy. Learned counsel for the respondents Sh. K.M. Singh, however, justified invoking this Clause by stating that a charge sheet under Rule-14 of CCS(CCA) Rules was pending against the applicant, which made his continuation in KV, JNU Campus prejudicial to the interest of the organization. The aforesaid charge sheet is available at pages-39 to 46 of the paper-book. On going through the charges, I find that all the charges pertained to applicant's stay in Kendriya Vidhyalaya, JNU Campus. I, therefore, find justification in the action of the respondents in invoking Clause-7(e) to transfer the applicant out of Kendriya Vidhyalaya, JNU Campus.

4.1 Next, the learned counsel for the applicant argued that even though this Tribunal had given an order on 01.07.2014 in favour of the applicant, the respondents posted Smt. Namrata Semwal in JNU Campus on 21.07.2014 and

filled up the post, which should have gone to the applicant. On going through the records of this case, I find that this Tribunal vide order dated 01.07.2014 had directed the respondents to consider the representation of the applicant. There was no direction to keep any post in Delhi vacant for the applicant. Thus, the respondents were not under any obligation to keep the post vacated by the applicant, namely, PGT (Physics) in Kendriya Vidhyalaya, JNU Campus vacant till decision of the applicant's representation. In any case, during the course of arguments on being asked when Tribunal's order was served on the respondents, learned counsel for the applicant drew our attention to Annexure A-11 (page-125 of the paper-book). We find that this was done on 21.07.2014. Thus, on 21.07.2014, while this Tribunal's order dated 01.07.2014 was served in the office of the Commissioner, KVS, on the same date the Commissioner had posted Smt. Namrata Semwal as PGT (Physics) in Kendriya Vidhyalaya, JNU Campus. Learned counsel for the respondents had argued that the order dated 01.07.2014 was passed by the Tribunal in presence of counsel for the respondents. Be that as it may, as mentioned above, there was no direction in the aforesaid order not to fill up any particular post before deciding the representation of the applicant.

4.2 Next, learned counsel for the applicant argued that the applicant had 23 transfer counts whereas Smt. Namrata Semwal had none, yet, she was posted in place of the applicant. As mentioned above, the applicant was working in Kendriya Vidhyalaya, JNU Campus itself when he was transferred out to Dehradun. The 23 transfer counts were earned during the applicant's stay in Dehradun. These transfer counts shall no doubt be considered by the respondents in future transfers but cannot be used for seeking cancellation of transfer order issued on 14.01.2013 under Clause-7(e) to seek posting back to

Kendriya Vidhyalaya, JNU Campus from where the applicant was transferred out on administrative ground.

5. I, therefore, find no merit in this O.A. and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

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