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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/01013/2015

Thursday, this the 4th day of October, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Xavier.E.K.,
TGT Social Science,
JNV Chennithala, Alappuzha – 690 105.
Residing at JNV Quarters, Chennithala,
Alappuzha – 690 105.

...Applicant

(By Advocate – Mr.Vishnu S Chempazhanthiyil)

v e r s u s

1. Union of India represented by the Secretary,
Ministry of Human Resource & Development,
Shastri Bhawan, New Delhi – 110 001.
 2. The Commissioner, Navodaya Vidyalaya Samiti,
Department of School Education & Literacy,
Government of India, B15, Institutional Area,
Sector 62, Noida, Budh Nagar, Uttar Pradesh – 201 309.
 3. The Deputy Commissioner (Pers.),
Navodaya Vidyalaya Samiti (Hyderabad Region),
Ministry of Human Resource & Development,
1-1-10/3, Sardar Pater Road, Secunderabad – 500 003.
 4. The Principal,
Jawahar Navodaya Vidyalaya,
Chennithala, Alappuzha – 690 105.
 5. S.J.Annasseri,
The Principal,
Jawahar Navodaya Vidyalaya,
Chennithala, Alappuzha – 690 105.
- ...Respondents

**(By Advocates – Mr.P.R.Sreejith,ACGSC [R1]
& Mr.Millu Dandapani {R2-5})**

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This application having been heard on 28th September 2018, the Tribunal on 4th October 2018 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/1013/2015 is filed by Shri.Xavier.E.K., who is working as a TGT (Social Science) in Jawahar Navodaya Vidyalaya (JNV for short), Chennithala, Alappuzha. He seeks anullment of the disciplinary action initiated against him as per Annexure A-4 Articles of Charges and further action that the respondents propose to take. The reliefs sought in the O.A are as follows :

1. Call for the records leading to the issue of Annexure A-4 and set aside Annexure A-4.
2. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
3. Award the cost of these proceedings.

2. The facts of the case are :

The applicant is presently working as a TGT (Social Science) having started his career in 1991. The applicant's wife is also a TGT and presently posted at Gadag, Karnataka while the applicant came to JNV, Alappuzha in 2000. The applicant submits that his elder son has been diagonized with mental issues and is currently undergoing psychiatric treatment at various institutions in Kerala. Copies of the Medical certificates to this effect were produced at Annexure A-1 and Annexure A-2. In 2014 the applicant was suddenly transferred from JNV, Alappuzha to JNV Gadag. Since his daughter was at that point of time in 10th Standard and since he was the only

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care giver for his differently abled son who was diagnosed and suffering from Schizoaffective Disorder and since the respondents did not heed his request for stopping the transfer, the applicant filed O.A.No.632/2014 challenging the said transfer order. The main ground apart from the condition of his son was that the transfer had been effected at the motivated complaint of 5th respondent who was the then Principal of JNV, Alappuzha.

3. The said O.A was disposed of through order dated 25.11.2014 setting aside the transfer order of the applicant on the ground that the same was vitiated by malafide and the Tribunal concluded that the action of the Principal was based on personal malice (copy of the order is at Annexure A-3). The Hon'ble Tribunal rendering the finding went so far as to observe :

“13.In the reply filed he has even gone to the extent of saying that such contentions are nothing but falsehood. However, this Tribunal is not inclined to disregard Annexures A2, A3 and A10 medical certificates stating that applicant's son is affected with schizo affective disorder and that he requires supervised care on a long term basis. Only a person with a callous mind and is bent upon settling scores with the other can treat such certificates and situations as "totally wrong and misleading."

4. This Tribunal referring to the incidents that took place in 2009 and which were resurrected to justify the transfer in the year 2014, rejected the contentions of the respondents and found the transfer unjustified and biased.

5. The applicant alleges that the same incidents which allegedly occurred in 2009 are again the subject matter of the Charge Sheet filed vide Memorandum dated 30.1.2015, a true copy of which is at Annexure A-4

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(impugned). It is seen from the charge sheet that again the respondents have chosen to rely on the report of the Principal, JNV, Alappuzha. The determination of the respondents to pursue the case on the same cause of action rejected by the Tribunal as per Annexure A-3 judgment is further evidence of malice on the part of the respondents.

6. As grounds the contentions raised above have been further reiterated. The allegation in Annexure A-4 charge sheet is centred around alleged acts on the part of the applicant during 2007 and 2009 which were reportedly subversive of the Vidyalaya discipline. The very reason that no action was taken on the same until the issue of Annexure A-4 reveals that it is pre-meditated and borne out of malice.

7. The Respondent Nos.2-5 have filed a reply statement which details the Transfer Policy prevalent in JNV. As a part of transfer order on administrative grounds issued in respect of 11 teaching and one non-teaching staff, the applicant had been transferred from JNV, Alappuzha to JNV, Gulbarga, Karnataka vide order dated 8.8.2014. The charge sheet, the subject matter of this O.A came to be issued on 30.1.2015 and as the applicant had denied the charges, proceedings as per procedure laid down in CCS (CCA) Rules, 1965 are in progress and an Inquiry Officer and Presenting Officer have been appointed. It was at this point that the applicant obtained a favourable order dated 25.11.2015 in O.A.No.632/2014 which set aside the impugned transfer order with the applicant being allowed to continue at JNV, Alappuzha. However, it is stated that in

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compliance with the provisions contained in the Transfer Policy the disciplinary proceedings were initiated against the applicant as per the charge memo in question.

8. We have heard Shri.Vishnu S Chempazhanthiyil for the applicant and Shri.Millu Dandapani for the Respondent Nos.2-5. All pleadings both oral and documentary were examined.

9. As pointed out in the O.A and as pleaded by Shri.Vishnu S Chempazhanthiyil the applicant had successfully challenged his transfer order out of JNV, Alappuzha in O.A.No.632/2014. In the said O.A the respondents had taken a stand that the applicant's conduct has been found less than acceptable and that he had indulged in several activities amounting to misconduct. After examining the issue in detail this Tribunal had quashed the said transfer and relieving order, coming to the conclusion that the transfer order was not issued on administrative grounds. The Tribunal observed :

“18. On the other hand the preponderance of probabilities strongly indicate that the same was motivated by malice in fact as observed by the Hon'ble Apex Court in Somesh Tiwari's case (supra). If the respondents were really keen on transferring the applicant on the ground of alleged complaints received in 2009, they ought to have conducted an enquiry, not at this distant point of time. Annexure A4 guidelines issued by the DOP&T, Government of India on the transfer of parents having mentally ill children also has not been followed/adhered to by the respondents.”

10. Regretably this set back at the hands of the Tribunal did not act as a dampener on the enthusiasm of the respondents to punish the applicant. Despite the finding of the Tribunal that the alleged acts of misconduct

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indicated as the reason for the punishment transfer were the result of malice, the respondents have again chosen to use the very same incidents to initiate disciplinary action under CCS (CCA) Rules. The Statement of Imputation of Misconduct and the very sketchy Articles of Charge are further indication of this.

11. This Tribunal had examined the issue earlier in the O.A and had come to the conclusion that the charges did not stand before the touchstone of fairness and equity. This being so, we are somewhat surprised that the respondents have come to the conclusion that the very same charges could be a matter for initiating disciplinary action. Their action further affirms this Tribunal's view that the applicant has been at the receiving end of undiluted malice. Under the circumstances the O.A succeeds. The charge memo issued as Annexure A-4 is set aside along with Statement of Imputation. In view of this order, M.A.No.180/442/2018 is closed as infructuous. No costs.

(Dated this the 4th day of October 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/01013/2015

1. **Annexure A1** – True copy of the medical certificate dated 26.5.2008 issued by Consultant Psychiatrist of Navajyothi Child Psychiatry Centre, Kusumagiri, Kakkanad, Kochi.
 2. **Annexure A2** – True copy of the certificate dated 12.8.2014 issued by the Santhula Trust Hospital, Koothattukulam.
 3. **Annexure A3** – True copy of the order dated 25.11.2014 in O.A.No.180/00632/2014 of this Hon'ble Tribunal.
 4. **Annexure A4** – True copy of the Memorandum No.PF.No.TSS/19-28/NVS(HR)/(Estt.II)/2015/4490 dated 30.1.2015 issued by the 3rd respondent.
 5. **Annexure A5** – True copy of the reply dated 2.3.2015 to the 3rd respondent.
 6. **Annexure A6** – True copy of the representation dated 26.6.2015 to the 3rd respondent.
 7. **Annexure A7** – True copy of the communication dated 12.10.2015 to the 3rd respondent.
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