

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.210/00498/2018

Dated this Tuesday the 06th day of August, 2019.Coram: Dr. Bhagwan Sahai, Member (Administrative)
Shri R.N. Singh, Member (Judicial).

Smt. Pushpa Sonar,
Working as Staff Nurse in
Jawahar Navodaya Vidyalay,
Palus, Sangli,
Residing at -
JNV Palus, Dist. Sangli-416310. . . Applicant.

(By Advocate Shri V.A. Nagrani).

Versus

1. Union of India, through
the Commissioner,
Navodaya Vidyalaya Samiti,
B-15, Institutional Area,
Sector 62, Noida-201 370.
2. The Assistant Commissioner,
Navodaya Vidyalaya Samiti,
B-15 Institutional Area,
Sector 62, Noida-201 370.
3. The Deputy Commissioner,
Navodaya Vidyalaya Samiti,
Sheti Mahamandal Bhawan
(MSFC Ltd.), IInd Floor,
B-Wing, 270 Bhamburda,
Senapati Bapat Road,
Pune - 411 016.
4. The Principal,
Jawahar Navodaya Vidyalaya,
Palus, Sangli-416 310.
5. Kalpana Kamble,
Staff Nurse, JNV Satara,
Satara - 415 001. . . Respondents.

(By Advocate Shri V.S. Masurkar).

Order reserved on : 06.06.2019Order delivered on : 06.08.2019.

O R D E R
Per : Dr.Bhagwan Sahai, Member (A) .

Smt.Pushpa Sudhakar Sonar, while working as Staff Nurse with Jawahar Navodaya Vidyalaya (JNV) Palus, district Sangli filed this O.A. on 16.07.2018. She seeks quashing and setting aside of her transfer order dated 13.04.2018 and relieving order dated 25.04.2018 with consequential benefits and direction to the respondents to consider posting her at Satara or at Pune during the transfer drive of 2018. She also seeks direction to the respondents to relax condition of posting at home district and release her salary from May, 2018 by treating her to be on duty along with payment of the cost of this O.A.

2. Summarised facts:

2(a). The applicant has stated that after her initial appointment as Staff Nurse on 21.10.1998, she worked at JNV, Gondia upto 2002 and then was transferred to JNV, Sangli. Since then till the order of her transfer she has been working there without any complaint. No chargememo or warning or advisory note has been served on her by the Principal or any other authority.

2(b). On 01.04.2015 she had submitted her representation for her posting at Pune or Satara as her son was studying in B.E. Course and she was

only person to take his care. But by order dated 18.05.2015 issued by the Respondent No.2, she was transferred to JNV, Beed. She challenged that order in O.A.293/2015, which was disposed of on 31.08.2015 directing the respondents to enquire in detail into the allegations of the applicant in the O.A. and to consider her request dated 26.05.2015.

2(c). Since the respondents did not comply with the direction of the Tribunal in order dated 31.08.2015, she filed C.P.No.62/2015 which was disposed of on 21.10.2015 on submission of the respondents that she would be considered for transfer to Satara during transfers in next years, preferably before 31.03.2016, along with others. Thereafter the respondents issued order on 21.10.2015 in response to her representation stating therein that her request for transfer to JNV, Satara would be considered in the next year's transfers, preferably by 31.03.2016.

2(d). But during the transfer drive of 2016, she was not posted at JNV, Satara. Then she submitted a representation on 07.01.2017 requesting for transfer to JNV, Satara as per the assurance given to the Tribunal. She again applied for transfer to JNV, Satara and Pune during the transfer drive of 2017. But because of

her having approached the Tribunal earlier, by order dated 13.04.2018 she has been posted to JNV, Rajouri (Jammu & Kashmir) and was relieved from JNV, Sangli by order of 25.04.2018.

2(e). She again submitted a detailed representation to Respondent No.1 i.e. Commissioner, Navodaya Vidyalaya Samiti, Noida on 13.07.2018 for posting at JNV, Pune. Since the present order of her transfer is vindictive, it deserves to be set aside. Hence this O.A.

3. Contentions of the parties:

The applicant and her counsel contend that -

3(a). the orders dated 13.04.2018 and 25.04.2018 are illegal, void, arbitrary, malafide and in violation of respondents' own order dated 21.10.2015 as well as in violation of the undertaking given by them before this Tribunal. She is not asking for her retention at Sangli but seeks posting at Satara or Pune. She has been working at JNV, Sangli for the last 19 years without any complaint, she is legally separated from her husband and has responsibility of her son;

3(b). one Smt. Kalpana Kamble has been posted at JNV, Satara without any special reason by ignoring the case of the applicant and transferred her to

Rajouri which is almost 2500 kms. away from the present place. Therefore, her transfer should be set aside and the relief sought should be granted to her.

In reply and during arguments, the respondents and their counsel contend that -

3(c). the applicant is an employee of the Navodaya Vidyalaya Samiti, and therefore, liable to serve as per the requirement of the employer. Transfer is an incidence of service which is known to the applicant and, therefore, the O.A. is devoid of merit;

3(d): as per Supreme Court decision in S.C. Saxena Vs. Union of India & Ors. (2006) 9 SCC 583, a Government servant cannot disobey the transfer order by not reporting at the place of posting and then go to a Court to ventilate his grievance. It is his duty to first report for work where he is transferred and then make a representation about his personal problems. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed;

3(e). as per Section 21 of the Administrative Tribunals Act, 1985, the Tribunal shall not admit an application unless it is made within one year from the date of final order. In the present case, in compliance of the order of the Tribunal

dated 31.08.2015, the applicant's request has already been considered during the annual transfers of 2016, along with other eligible candidates as per the Transfer Policy and Guidelines. Her representation dated 07.01.2017 was also disposed of on 02.05.2017 and, therefore, if the applicant was aggrieved with non-consideration of her transfer to Pune or Satara during 2016, she ought to have filed this O.A. within the period of limitation, but this O.A. has been filed on 16.07.2018. Therefore, it is barred by limitation;

3(f). the applicant has impleaded Union of India through the Commissioner, Navodaya Vidyalaya Samiti, Noida as Respondent No.1 in spite of the fact that the Union of India has no role in the subject matter of the O.A. Therefore, the Respondent No.1 should be deleted from the array of respondents and the O.A. should be dismissed on this ground alone;

3(g). her allegation that the respondents have not complied with the order of the Tribunal dated 31.08.2015 is not correct. She has been working at JNV, Sangli from 02.08.2002 and thus had completed 13 years and 5 months as on cut off date i.e. 01.01.2006 for determining eligibility for request transfer during annual transfers of 2016.

As per the Transfer Policy of the Navodaya Vidyalaya Samiti, she was liable to be transferred from JNV, Sangli to elsewhere and her request has already been considered by the respondents on merit together with other eligible candidates. The applicant had given two choices of places i.e. JNV, Pune and JNV, Satara. According to her service record, Pune is her hometown. As per provision 2(j) of the Transfer Policy, no employee of the Navodaya Vidyalaya (except those who are recruited at Vidyalaya level), can be posted or transferred to his/her home district. Therefore, she cannot be posted at JNV, Pune;

3(h). about her second choice of JNV, Satara,

it is submitted that Smt.K.G. Kamble, Staff Nurse had been working at JNV, Raigad since 09.08.1996 and had completed 19 years and more than 4 months on 01.01.2016 and she had opted for JNV, Satara.

In view of her longer tenure at that station, she was considered for transfer to JNV, Satara, posted there accordingly and she has joined there on 23.05.2017;

3(i). in compliance with the order of the

Tribunal dated 31.08.2015, the Navodaya Vidyalaya Samiti also passed an order dated 21.10.2015 mentioning that she would be considered in the next year's transfer drive preferably before

31.03.2016 along with others, but this did not mean that she must be posted at the place of her choice without competing with other eligible candidates who also had sought transfer to those places;

3(j). since in the annual transfer drive of 2016, no one opted for JNV, Sangli where she had been working, she was not transferred during 2016 and was retained at JNV, Sangli only. For the annual transfers 2017, the applicant did not opt for choice of any place in the first round and second round. Smt. Manisha Shelke, Staff Nurse who had been working at JNV, Ratnagiri from 10.03.2001 and had completed 15 years and 9 months as on 01.01.2017, she was eligible for seeking request transfer. Since she had opted for JNV, Sangli, she was considered for the transfer and posted at JNV, Sangli during the annual transfers of 2017. As a result the present applicant having made no choice of place has been transferred to JNV, Rajouri. In this process of the transfers, there is no illegality or discrimination against her;

3(k). during the annual transfers of 2017, the transfers were made through online transfer portal by automated process as per provisions of the Transfer Policy and Guidelines and the applicant was also considered along with others;

3(1). the applicant has been trying to mislead the Tribunal. Her representations dated 07.01.2017, 17.02.2018 and 13.07.2018 have also been replied. None of the grounds of challenge in the O.A. is thus maintainable in law;

3(m). as per the position settled by the Apex Court decisions, it is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his/her present posting. Transfer is not only an incident but an essential condition of service;

(i). as per the Supreme Court decision in **Shilpi Bose and others Vs. State of Bihar and others, (1991) 2 Supp. 659**, the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other..

Transfer orders issued by the Competent Authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order and instead

the affected party should approach the higher authorities in the department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest.

(ii) .. Similar has been the Apex Court view in many other cases such as **Union of India and others Vs. S.L. Abbas (1993) 4 SCC 357, State of M.P. and others Vs. S.S. Kourav and others, 1995 (3) SCC 270, in Public Service Tribunal Bar Association Vs. UP & Another, AIR 2003 SC 115**, and it has been clearly held that no interim relief can be granted in the matter of transfer, suspension, dismissal and termination and, therefore, also the interim relief granted is liable to be vacated in the interest of justice. In view of these submissions, the present O.A. has no merit and, therefore, it should be dismissed.

4. Analysis and conclusions:

We have perused the OA memo, its Annexes and reply filed by the respondents, caselaws relied upon by the respondents and the arguments advanced before us by both sides on 06.06.2019. From a close study of the case record and careful consideration of the rival

contentions, our findings are as follows :-

4(a). As per the case record, earlier request of the applicant was favourably considered by the respondents when she was transferred to JNV, Sangli from JNV, Gondia. While she could not be posted to Pune, being her home district, other staff members Smt.Kamble with longer stay at the same place, was posted at Satara during 2016 transfers. During 2017 transfers, the applicant did not even opt for any place, hence she has been posted at JNR, Rajouri. In view of these facts, the applicant's allegation of vindictiveness against the respondents is not tenable.

4(b). The applicant had been posted at JNV, Sangli since 2002 and after 13 years when she was transferred to JNV, Beed in May, 2015, she challenged the order before this Tribunal in O.A.292/2015, which was decided on 31.08.2015 directing the respondents to consider the issues raised by her and take necessary action.

4(c). The respondents also assured that her request would be considered for transfer to JNV, Satara during the transfer drive in 2016

as per their order dated 21.10.2015. That is why the Contempt Petition filed by the applicant was also closed. But the respondents had assured only to consider her request along with others during 2016 transfers.

4(d): About home district of the applicant, on page 20 of the order of the Tribunal dated 31.08.2015 it was mentioned that at the time of joining of service, the applicant recorded her home district as Sangli. However on page 55 of the O.A., details of her service record reveal that her home district is Pune. In her identity card (page 59 of the O.A.), her home district as declared in service record is Pune. As per stipulations under the Transfer Policy of the respondents, an employee of the Navodaya Vidyalaya Samiti (except those recruited at the Vidyalaya level) cannot be posted to home district. In view of this and the fact that Pune is her home district as per her service record, the applicant cannot be posted at JNV, Pune. In spite of this specific stipulation applicable to all JNV Samiti employees of which she is aware, it is surprising to note that the applicant has been asking for posting at Pune.

Therefore, not posting her there is correct and justified.

4(e). During 2017, since Smt. Shelke had completed longer tenure at JNV, Raigad and opted for Satara, she had higher claim for that station, hence posted there. Since the applicant did not opt for any place of her choice during 2017 transfers, she has been posted by the automated process at Rajouri, the available vacant post.

4(f). Since the O.A. has challenged the orders dated 13.04.2018 and 25.04.2018, it is within limitation.

4(g). In view of these facts, the contention of the applicant that she has been discriminated against in not posting her to Satara and Pune is baseless. The action of the respondents does not suffer from any vice or infirmity.

In view of the different caselaws on the subject matter of transfers of public servants cited above by the respondents, their submissions are justified. In view of these facts and legal position settled in various Apex Court decisions, in our view the O.A.

lacks merit and it deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

JD
7/6/19