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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2834/2003
MA 444/2004
MA 1137/2004

New Delhi this the 3rd day of June, 2004

Hon'ble Shri Sarweshwar Jha, Member (A)

Smt. Poonam Sharma,
W/O Shri Anil Kumar Sharma,
SUPW Teacher JNV,
Ghaziabad (UP) R/O JNV Gaziabad.

..Applicant

(By Advocate Shri Subhash Sharma)

VERSUS

1. Navodaya Vidyalaya Samiti,
through its Commissioner,
Ministry of Human Resources
and Development, Administrative
Block, I.G.Stadium, I.P.Estate,
New Delhi.

2. Principal, JNV Dadri,
Gautam Budh Nagar,
U. P.

3. Dy.Director,
Navodaya Vidyalaya Samiti,
B-10 Sector C,
Aliganj Lucknow (UP)

..Respondents

(By Advocate Shri S.Rajappa)

O R D E R

Heard.

2. This OA has been filed by the applicant against the order of the respondent No.1 issued vide F.17-1/IRT/2003-04 dated 14.8.2003 whereby the applicant had been transferred from G.B.Nagar, Dadri to JNV Poonch (J&K). She has prayed that a direction be issued to the respondents to cancel the transfer order dated 14.8.2003.

3. The brief facts of the case are that the applicant is serving as an SUPW teacher at JNV,

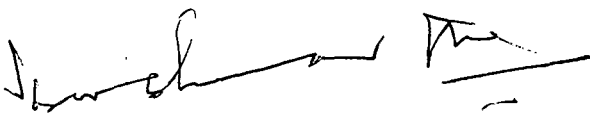
G.B.Nagar (UP). There was an incident in the said school on 29.7.2003 when some students had quarrelled among themselves which led to the matter being published in the local newspapers. The applicant has alleged that the students belonging to a particular community were assaulted in the Morning Assembly and she being a social teacher pleaded before the Principal not to be so harsh with the students of the particular community, as the same may lead to wider implications. On 30.7.2003, parents of two students approached the Principal and enquired about the matter from the Principal who, according to the applicant, humiliated them. This led to guardians of another two students submitting a written application before the SC/ ST Commission on 3.8.2003. She has also submitted that the parents of the students of a particular community approached the District Magistrate (SDM) and this led to a detailed enquiry having been held by the authority concerned. According to the applicant, the said enquiry is still pending. It has been mentioned by her that the Principal approached her and asked her to depose an affidavit in his favour and against the victims. She refused to accede to the request of the Principal, which, as alleged by her, led to issuing the said transfer order. She has further alleged that the Principal managed to send some representations through his favourite students and teachers for proving his innocence. However, according to the applicant, the facts of the matter relate to the incident which has been ascertained by the Assistant Director and the same



is on record. The applicant has further complained that the impugned order was passed two days after the visit of the Assistant Director to enquire into the matter. Before she could explain the position, as submitted by the applicant, she received the said impugned order.

4. The respondents have, however, denied the allegation as made by the applicant in the OA and has prayed that the applicant could be strictly put to prove the allegation made therein. Reference has been made by the respondents to the fact that the applicant had earlier approached the Tribunal vide OA 2199/2003 which was disposed of vide order dated 9.9.2003 with direction to the respondents to dispose of the applicant's representation by a detailed and speaking order. The Commissioner of Navodaya Vidyalaya Samiti passed the order dated 10.10.2003 after affording an opportunity of hearing to the applicant and giving her option to change the place of her posting from JNV Poonch to any other nearby JNV other than the place of her posting in J&K (Poonch). It has been mentioned by the respondents that the said suggestion has not been accepted by the applicant. They have argued that this attitude on the part of the applicant speaks of her conduct.

5. Referring to the fact that the applicant has All India transfer Liability, she has no right to



insist that she should be posted at a particular place only.

6. They have taken a view that the applicant thinks that she is the champion of the cause of SC and therefore, has acted in a manner prejudicial to the interest of the organisation by posing herself above law. They have alleged that the applicant accompanied by her husband who is an employee of a private organisation and also some others were responsible for getting a report on the said incident published alleging corporal punishment to the students on the basis of their caste which was not based on the fact. They have also referred to the need of maintaining congenial atmosphere in the school and which cannot be done without a Team effort.

7. Giving details in Para 6 of their reply, they have submitted that the incident was twisted and it was arranged ^{to} be published in newspapers to tarnish the image of the Principal and the Vidyalaya, which is the handiwork of the applicant and her husband who is an employee of a Pvt.limited company. The husband of the applicant had earlier brutally beaten the Chowkidar of the School and his medical treatment is still going on. This matter is reported to have been brought to the notice of the Deputy Director (Lucknow) who had ordered an enquiry into the matter. It has also been alleged that the husband of the applicant tried to put pressure



on the Principal in the matter so that he withdrew the enquiry.

8.. I also find that the respondents in Para 10 of the reply have referred to the decisions of this Tribunal without citing the cases in which it has been held that the transfer cannot be quashed because the applicant thinks that an order of transfer is activated by mala fide without proving the same. It has been further held that there are only two grounds; that it would be for the organisation to decide whether to hold departmental proceedings or to take proper action; and having decided not to go ahead with the enquiry, and to maintain efficiency in their organisation can, resort to transfer; and that an employee has no vested right to insist on being posted at a particular place when the services are transferable on All India basis. Attention has also been drawn to the fact that the transfer of employees falls within the exclusive domain of the administration and that the administration are the best judge as to where to put an employee to ensure that he/she provides the best to the organisation and further that unless the transfer is totally at variance with the notified guidelines and is clearly malafide there should not be any interference in the transfer ordered.

9.. Learned counsel for the applicant has also taken me through the rejoinder filed by him in which, among other things, mention has been made that the

Santhosh Kumar

Principal (Respondent No.2) had been served with Memo for maltreating the students earlier in JNV Komadi, Andhra Pradesh in March and July, 2003 which, according to the applicant, she has done even in the present case. The respondents, however, did not have occasion to file reply to the rejoinder as the learned counsel for the respondents felt that as per law relating to pleading, the same will be deemed to have been completed by filing of the rejoinder. In her opinion, there will be no end to filing replies to the replies filed. According to him, with filing of rejoinder, pleadings are stated to be complete.

10. On closer examination of the facts, I find that essentially the incident which was published in the newspaper arose from a quarrel among the students of the school on the campus in which there were efforts on the part of the Principal as well as others to resolve the same. It is also possible that in the process, one or two students' parents might have enquired about the matter when they might have felt humiliated by the Principal which led to publication of the report on the incident in the newspapers. It also appears that the applicant did participate in the entire episode taking her role as SUPW teacher which might have led to an impression having been created that she had a role in getting the incident published in the newspaper thereby giving bad name to the institution. It is noted ^{that} the Commissioner of JNV before passing his order dated 10.10.2003,





afforded an opportunity of hearing to the applicant and giving her an option for posting to any other nearby JNV other than the place of posting in J&K (Poonch). It is not clear from the submissions made by the applicant as to whether this suggestion of the Commissioner of NVS has been given conscious consideration by the applicant, keeping in view not only her personal problem but also the problems which the respondents face in maintaining a congenial atmosphere in the functioning of the Institution. It appears quite rational that the suggestion put-forth by the Commissioner of NVS should have been given due application of mind by the applicant. Keeping in view the totality of facts it would not be appropriate on the part of the respondents to bring her back to the same institution where she was serving earlier.

11. Having regard to the facts and circumstances of the case and particularly the fact that Commissioner of NVS has initiated a suggestion that the applicant could seek modification in the transfer order in favour of any JNV nearby, I am of the considered view that the ends of justice will be met if this OA is disposed of with a direction to the respondents to consider posting of the applicant to any JNV nearby the present place of posting so that there is least dislocation ^{and} ~~in~~



inconvenience to the applicant resulting from the said transfer order, depending on the availability of vacancies in the nearby JNVs.

12. With this, the OA stands disposed of.

 
(Sarweshwar Jha.)
Member (A)

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