
(2022) 09 CAT CK 0050

In the Central Administrative Tribunal

Case No : Original Application No. 2842 Of 2022

Vandana

APPELLANT

Vs

Kendriya Vidyalaya Sangathan & Ors

RESPONDENT

Date of Decision : 29-09-2022

Acts Referred:

Administrative Tribunals Act, 1985 — Section 24

Citation : (2022) 09 CAT CK 0050

Hon'ble Judges : Pratima K Gupta, Member (J)

Bench : Single Bench

Advocate : Saurabh Kumar, S. Rajappa, R. Gowrishankar

Final Decision : Disposed Of

Judgement

Pratima K. Gupta, Member (J)

1. In the present O.A. the applicant is aggrieved by the transfer order dated 16.09.2022, whereby she has been transferred from K.V. IFFCO Aonla Bareilly, U.P. to K.V. BSF, Krishna Nagar (W.B.).

2. Mr. Saurabh Kumar, learned counsel for the applicant presses for grant of interim relief and in support of his claim he argues that the respondents while passing the impugned transfer order have bypassed their transfer policy. He further draws support from the interim orders passed by this Tribunal in O.A. No.2673/2022 dated 21.09.2022, wherein similar transfer orders dated 16.09.2022 have been stayed.

3. Mr. S. Rajappa, learned counsel for the respondents appears on advance service and vehemently opposes the interim prayer and submits that the said guidelines do not give any indefeasible right to the applicant and accordingly, it is mandated for the applicant to join the place of posting and then agitate her claim. He further adds that the said order of transfer has been passed by the competent authority under the delegated powers with the respondents. He draws attention to Section 24 of the Administrative Tribunals Act, 1985, which reads as

under :

"24. Conditions as to making of interim orders

Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless (a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made, and (b) opportunity is given to such party to be heard in the matter. Provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order."

4. He seeks an opportunity to file reply in terms of the above provision and he is assisting us on the basis of oral instructions. He further states that the said order of transfer is passed in administrative exigencies and in order to do redistribution and rationalization of the teaching staff as there is dearth of teachers in different schools of the country. He adds that students at various schools at different places were suffering on account of non-availability of teachers, hence, the said step was taken by the respondents. He draws support from relevant paragraphs of the following judgments:

1. Hon'ble Supreme Court's Judgement in S.C. Saxena Versus Union of India in Civil Appeal No. 280/2003 decided on 21.02.2006:

"6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart there from, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too I decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of the misconduct of unauthorisedly remaining absent from duty."

2. Hon'ble Supreme Court's Judgment in Kendriya Vidyalaya Sangathan Versus Damodar Prasad Pandey in Civil Appeal No. 6207/2004 decided on 20.09.2004.

"4. Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any prescribed norms of principles governing the transfer (see *Ambani Kanta Ray vs. State of Orissa*, 1995 (Suppl) 4 SCC 169). Unless the order of transfer is vitiated by malafide or is made in violation of operative guidelines, the Court cannot interfere with it. (see *Union of India vs. S... Abbas* 1993 AIR(SC) 2444. Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of operative any guidelines or rules the courts should not ordinarily interfere with it. In *Union of India & Ors. Janardan Debanath & Anr.* 2004 (4) SCC 245 it was observed as follows:

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but at condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan* (2001) 8 SCC 574."

3. Hon'ble Supreme Court's Judgment in *SK Nausad Rahaman & Ors. Versus Union of India and Ors.* in Civil Appeal No. 1243/2022 with others decided on 10.03.2022.

"24. First and foremost, transfer in an All India Service is an incident of service. Whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service. An employee has no fundamental right or, for that matter, a vested right to claim a transfer or posting of their choice.

25. Second, executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer or posting. Individual convenience of persons who are employed in the service is subject to the overarching needs of the administration."

5. Heard the learned counsel for the parties. It cannot be disputed that the Tribunal has very limited jurisdiction in interfering with the transfer orders at this stage. It is also seen that it is a mass transfer for the reasons stated therein where it is clear that the said transfers have been made for administrative reasons and exigencies. It is also not in dispute that the teachers have an all

India liability to serve and accordingly, it was incumbent upon the teachers to serve at their respective places of transfer.

6. It is seen that mass transfers have taken place, the order of keeping the policy in abeyance was taken on 12.09.2022 and the transfer orders have been passed on 16.09.2022. The impugned transfer orders stipulate that their transfers have been given effect to from the said date itself. There is nothing on record to show as to why the policy was bypassed and what objectivity was taken to choose the applicants to serve at different places. I am of the view that while passing the orders it is incumbent upon the respondents to be guided by certain objectivity and transparency. There is no reason given by the respondents as to why the policy has been kept in abeyance.

7. The learned counsel for the respondents points out that the coordinate Bench of this Tribunal at Allahabad has not intervened in the similar transfer orders. Though, the learned counsel for the respondents makes a submission, however, since we are bound by the Court's order, therefore, the similar orders are being passed.

8. I appreciate the assistance given by the learned counsel for the respondents on the oral instructions. In these compelling circumstances and particularly in the light of the fact that the co-ordinate Benches of this Tribunal have already stayed the impugned transfer orders of similarly placed applicants in those O.As, it is not in dispute that the applicant before us is also similarly placed and is also affected by the said decision of the respondents.

9. In view of the aforesaid facts and circumstances, the present O.A. is disposed of with a direction that the applicant would prefer a fresh self-contained representation before the respondents espousing her claim within a week from the date of this order. The respondents shall decide the said representation on merits in view of the annual transfer policy after giving an opportunity of personal hearing by way of a reasoned and speaking order within a period of two months thereafter. The impugned transfer order qua applicant(s) is stayed and effect and operation of relieving order, if any, issued in pursuance of impugned transfer, is also stayed for a period of two months. If the applicant has already been relieved, the respondents shall allow her to join back immediately where she was posted prior to issuance of impugned transfer order.

10. The O.A. is disposed of in the aforesaid terms. No costs.

11. Pending M.A., if any, shall also stand disposed of accordingly.