

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00661/2019

Jabalpur, this Tuesday, the 03rd day of March, 2020

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Sonal Shukla, W/o Shri S.K. Shukla, aged about 40 years,
Occupation : P.G.T. (Chemistry), Kendriya Vidyalaya No.1,
Satna (M.P.) – 485001
-Applicant

(By Advocate – Shri Swapnil Ganguly)

V e r s u s

1. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi – 110016.
2. Assistant Commissioner (Esst.II,III), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi – 110016.
3. Principal Kendriya Vidyalaya, Ordnance Factory Khamaria, Jabalpur (M.P.) – 482001.
4. Shri Manish Kumar Gautam, P.G.T. (Chemistry), Kendriya Vidyalaya SECL, Jhagrakhand, District Korea (C.G.) 497447.
-Respondents

(By Advocate – Shri Manish Verma for respondents Nos.1 to 3 and Shri Amardeep Gupta for respondent No.4)

(Date of reserving order : 24.02.2020)

ORDER

By Navin Tandon, AM.

The applicant is aggrieved that her case for posting at
Kendriya Vidyalaya, Ordnance Factory Khamaria, Jabalpur

from a future date, i.e. w.e.f. 01.08.2019 has not been considered while the same has been considered for respondent No.4 vide order dated 22.07.2019 (Annexure A-1).

2. The undisputed facts of the case are as under:

2.1 The respondents had issued the office order dated 05.02.2019 (Annexure A-2), wherein promotions through Limited Departmental Examination from the post of TGT to PGT for the year 2014-15 to 2018-19 were issued. The names of the applicant (at Sr. No.90 for the year 2017-18) and respondent No.4 (at Sr. No.127 for the year 2018-19) featured in the said order. Both of them were working in Kendriya Vidyalaya at Jabalpur and were promoted as PGT (Chemistry). While the applicant was posted to Malanjkhanda, respondent No.4 was posted to Srikakulam.

2.2 The promotees were directed to give their acceptance by 09.02.2019 positively and they were to get relieved and join their duties by 25.02.2019, failing which the offer of promotion was to be automatically treated as withdrawn.

2.3 Both, applicant and respondent No.4, submitted their representations for change of posting.

2.4 The applicant approached this Tribunal in Original Application No.200/270/2019, wherein this Tribunal vide order dated 28.03.2019 (Annexure A-3) directed the respondents to decide the applicant's representation with a reasoned and speaking order. It was also directed that till such time representation is decided, the applicant shall be allowed to work at her present place of posting and offer of promotion of the applicant shall not be withdrawn. Accordingly, the respondents, vide their memorandum dated 21.05.2019 (Annexure A-4), changed her place of posting to KV, No.1 Satna. It further added therein that, "in so far as the modification to KV, Khamriya against vacancy to be arisen on 01.08.2019 is concerned, it is made clear that the same is not acceptable, in the interest of other teachers as well as in the interest of the organisation".

2.5 The applicant again submitted a representation [forwarded on 12.06.2019 (AnnexureA-5)] praying for her posting at Kendriya Vidyalaya Khamaria, Jabalapur, where the vacancy was to take place w.e.f. 01.08.2019.

2.6 She reported for duty at KV No.1 Satna on 28.06.2019 forenoon stating in her application "under protest as per my

representation sent through proper channel by letter no KV 1STC/JBP/PF/779 dated 12/06/2019”.

2.7 Respondent No.4 joined Srikakulam on 23.02.2019.

2.8 The respondents, vide their order dated 25.02.2019 (Annexure A-6), have modified the posting order of the respondent No.4 from Srikakulam to Jhagrakhand.

2.9 The respondents issued communication dated 07.06.2019 (Annexure RJ-4), wherein it was stated as under:

“With reference to the subject cited above, this is to inform that Kendriya Vidyalaya Sangathan (HQ) issued posting orders of teachers promoted through Limited Departmental Competitive Examination from PRT to TGT and TGT to PGT on 08.03.2019 and 05.02.2019 respectively. KVS has made all efforts to post teachers on promotion against an available vacancy in the same Kendriya Vidyalaya or nearby. In spite of that some teachers could not be posted nearby due to non-availability of vacancies. KVS, however, considered some requests of modification received from teachers promoted to the post of PGTs.....

KVS has not decided to provide an adequate opportunity to all those teachers who have been promoted through LDCE in 2019 and with to request for change of place of posting. They are directed to submit their representations through E-mail only on kvse23@gmail.com by 14.06.2019 till 05.00 PM positively. Representations received after the prescribed time/date will NOT be entertained by KVS. Those teachers who have already submitted their representations in this regard need not to submit again.”

2.10 Respondent No.4 submitted his representation on 15.07.2019 (Annexure R/4-5) for posting at Kendriya Vidyalaya

Khamaria, Jabalpur, where the post was going to be vacated on 31.07.2019.

2.11 The respondents vide their order dated 22.07.2019 (Annexure A-1) modified the place of posting of respondent No.4 from SECL, Jhagrakhand to Ordnance Factory Khamaria, Jabalpur w.e.f. 01.08.2019. It has been shown in the order that he was previously working at Khamaria, Jabalpur.

3. It is the case of the applicant that her husband is working at Kendriya Vidyalaya 1STC, Jabalpur and, therefore, as per the policy of the Central Government/ Kendriya Vidyalaya Sangathan, the spouse case should be considered on priority. She had always represented for being posted as PGT (Chemistry) at Kendriya Vidyalaya Khamaria, Jabalpur for the vacancy w.e.f. 01.08.2019. This was her request in the representation dated 18.03.2019 (Annexure R/4-4) as well as her representation dated 12.06.2019 (Annexure A-5). While her case was not considered, the request of respondent No.4 was acceded to vide order dated 22.07.2019 (Annexure A-1), wherein he is being accommodated in Kendriya Vidyalaya Khamaria, Jabalpur w.e.f. 01.08.2019.

4. The applicant has, therefore, prayed for the following reliefs:

“8. **RELIEF SOUGHT:**

It is, therefore, prayed that this Hon’ble Court may kindly be pleased to:-

- (i) Summon the entire relevant record from the possession of the respondents for its kind perusal;
- (ii) Quash and set aside the order dated 22.07.2019 (Annexure-A/1) in respect of posting of the respondent No.4 to KV OFK, Jabalpur w.e.f. 01.08.2019;
- (iii) After quashing the order dated 22.07.2019 (Annexure-A/1), direct the respondent authorities to consider the claim of the applicant for posting at KV OFK, Jabalpur w.e.f. 01.08.2019;
- (iv) Any other order/orders, which this Hon’ble Court deems, fit proper;
- (v) Cost of the original application may also kindly be awarded.”

5. Respondent No.4 has filed his reply on 30.07.2019 (alongwith Annexure R/4-1, R/4-2 and R/4-3) and detailed para-wise reply on 19.08.2019 (with Annexure R/4-4 and R/4-5). It has been submitted therein that the applicant and her husband, have mostly remained posted at Jabalpur or nearby places like Katni, whereas respondent No.4 was posted outside Jabalpur for more than six out of ten years of his service. He has described his personal problem of having 70 years old mother and two children studying at Jabalpur. The applicant in her representation dated 18.03.2019 (Annexure R/4-4) had sought

modification of her posting order from Kendriya Vidyalaya Malanjkhanda to Kendriya Vidyalayas of Khamaria/ Satna/ Dhana. The respondents considered her request and she was posted at Satna which was vacant. Now, that the respondent No.4 has posted at Kendriya Vidyalaya Khamaria, Jabalpur, the applicant is challenging his order, without challenging the modification of her posting order dated 21.05.2019 (Annexure A-4). Therefore, the O.A deserves to be dismissed.

6. The official respondents Nos.1 to 3 have submitted their reply wherein it has been stated that the order of the applicant was modified from Malanjkhanda to Satna as per the directions of this Tribunal. Her claim for posting at Kendriya Vidyalaya Khamaria, Jabalpur w.e.f. 01.08.2019, could not be considered in advance in the interest of other teachers as well as in the interest of the students of KV No.1 Satna where students were waiting for teacher at the time of issuance of order dated 21.05.2019. Further, it has been stated that, “simultaneously Sh. Manish Kumar Gautam, KV, Jabalpur who was also promoted through LDCE-2018 for the post of PGT(Chemistry) with posting at KV, Srikaulam and later his place of posting was modified at KV, Jhagarkhanda and re-modified at KV, OFK

Jabalpur vide this office order dated 22.07.2019 against the vacancy expected to come up on 01.08.2019. Hence there is no injustice in the case of re-modification of Sh. Manish Kumar Gautam.”

7. Heard the arguments of learned counsel of all the parties and perused the pleadings available on record.

8. Learned counsel for the applicant submitted that in terms of DoPT's O.M. dated 30.09.2009 (Annexure A-7), when both the spouses are working in the same department and if posts are available, they may mandatorily be posted at the same station.

8.1 The official respondents in their office order dated 25.02.2019 (Annexure A-6), have mentioned that no further request for modification of place of posting will be entertained by the Kendriya Vidyalaya Sangathan. However, in case of respondent No.4, this has been violated and his posting has again been modified on 22.07.2019 (Annexure A-1). He also submits that in both the orders namely; 25.02.2019 (Annexure A-6) and 22.07.2019 (Annexure A-1), there is no mention of Srikakulam, where respondent No.4 had joined on 23.02.2019.

9. Learned counsel for the official respondents submitted that all the efforts were made to help the recently promoted

teachers to get the place of posting as per their choice. However, it is not possible to satisfy everybody.

9.1 He cited the cases of **State of U.P and others vs. Gobardhan Lal** (2004) 11 SCC 402 and **Gujarat Electricity Board and another vs. Atmaram Sungomal Poshani**, (1989) 2 SCC 602 to buttress the point that posting of spouse at the same location does not have any statutory force and is only a guiding principle. He further submitted that the said transfer order does not suffer from malafide, have been passed by a competent authority; and is not in violation of statutory rules. Therefore, the transfer order cannot be challenged in a Court of Law.

10. Learned counsel for respondent No.4 vehemently argued that since the applicant has not impugned the order dated 21.05.2019 (Annexure A-4), there is no merit in this Original Application. He also submitted that under Section 19 of the Administrative Tribunals Act, 1985, the applicant cannot challenge the order of posting of respondent No.4 at Khamaria.

FINDINGS

11. Learned counsel for the applicant has laid emphasis on the point that orders dated 25.02.2019 (Annexure A-6)

mentioned no further modification of place of posting will be entertained. However, changes have been done by official respondents in order dated 22.07.2019 (Annexure A-1) to help respondent No.4. Also, modification of posting orders cannot be done after the same has been executed. Further, the respondents in order dated 31.08.2019 (Annexure RJ-5) have rejected the claim of respondent No.4 for modification of posting order in place of Jhagrakhand.

11.1 We find that official respondents in their communication dated 07.06.2019 (Annexure RJ-4) had again invited representation from all the teachers who were promoted through LDCE in 2019 for change of posting. Therefore, we do not find any irregularity in modifying the posting order of 05.02.2019 (Annexure A-2) through order dated 22.07.2019 (Annexure A-1), as it was a well publicised exercise. The order dated 31.08.2019 (Annexure RJ-5) is apparently a clerical/typographical mistake as respondent No.4 had already been adjusted at KV Khamaria w.e.f. 01.08.2019 vide orders dated 22.07.2019. Nothing much can be read into it. Regarding modification of posting order not permissible after the same have been executed, we find that this is only a technical point as

no body is prejudiced by this action. The official respondents have issued promotion orders for a large number of candidates and are continuously trying to help all the teachers in getting favourable place of posting as is evident from communication dated 07.06.2019 (Annexure RJ-4). No action has been done to favour any one individual in a clandestine way.

11.2 In view of the above, we do not find any merit in the objections raised by the learned counsel for the applicant.

12. Learned counsel for the respondent No.4 has averred that the O.A is not maintainable as order dated 21.05.2019 (Annexure A-4) has not been impugned.

12.1 It is seen that subsequent to issue of order dated 21.05.2019 (Annexure A-4), the official respondents have issued communication dated 07.06.2019 (Annexure RJ-4) and the applicant has represented on 12.06.2019 (Annexure A-5) for posting at KV Khamaria w.e.f. 01.08.2019. Therefore, the applicant has not left her claim for posting at KV Khamaria.

12.2 Accordingly, the objection raised by respondent No.4 is not sustainable.

13. The applicant and respondent No.4 were working as TGT in Jabalpur area. Their respective spouses are also working in

Kendriya Vidyalaya and were posted at Jabalpur. Meanwhile, the wife of respondent No.4 has been transferred to Amarkantak, and we were informed that she has joined on 13.03.2019.

14. The respondents had promoted a large number of teachers from TGT to PGT vide order dated 05.02.2019 (Annexure A-2). It has been their endeavor to try to give the posting suiting the various teachers as indicated by modification of the promotion order issued on 25.02.2019 (Annexure A-6), communication dated 07.06.2019 (Annexure RJ-4) and modification of place of postings dated 22.07.2019 (Annexure A-1).

15. The initial place of posting after promotion were modified, both for the applicant (after approaching this Tribunal in OA No.200/270/2019) and respondent No.4.

16. The respondents in their communication dated 07.06.2019 (Annexure RJ-4) again invited representations up to 14.06.2019, wherein it was mentioned that the teachers who had already submitted their representation in this regard need not submit again. It is seen that the applicant had already submitted her representation on 12.06.2019, whereas respondent No.4 submitted his representation on 15.07.2019 (Annexure R/4-5)

for posting at KV Khamaria w.e.f. 01.08.2019. Respondents issued impugned order dated 22.07.2019 (Annexure A-1) modifying the posting of respondent No.4 to KV Khamaria w.e.f 01.08.2019.

17. Hon'ble Supreme Court in a catena of judgments has held that transfer/postings are matters which are best left to the decision of appropriate authority. Courts/Tribunals should eschew interfering in the matter unless it is vitiated by malafide.

17.1 Similarly, judicial pronouncements by Hon'ble Apex Court has held that posting of husband and wife at the same place is not a legally enforceable right conferred upon a government employee.

17.2 Hon'ble Apex Court in **Union of India and others vs. S.L. Abbas**, 1994 SCC (L&S) 230 has held:

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.”

17.3 In the matters of **Gobardhan Lal** (supra), Hon'ble Supreme Court has held:

“8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

9. The very questions involved, as found noticed by the High Court in these cases, being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write ups in journals or newspaper reports. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any Authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities effecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the concerned authorities, the Courts and Tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the Courts are

attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously courts endeavour to safeguard the rights of parties.”

17.4 It is clear from the above cited judgments that unless transfer/postings is vitiated by malafide, Courts/Tribunals should exercise caution before interference.

18. In the present case, the respondents in their order dated 21.05.2019 (Annexure A-4), which was passed as per the directions of this Tribunal in OA 200/270/2019, have stated as under:-

*“Keeping in view of the facts and circumstances as given supra, order dated 28.03.2019 passed by Hon’ble Tribunal Jabalpur Bench, Jabalpur in OA No 200/270/2019 filed by the applicant, her case has been considered by the competent authority and acceded to. Hence her place of posting is hereby modified to KV, NO 1 Satna in place of KV, Malanjkhanda. **In so far as the modification to KV, Khamriya against vacancy to be arisen on 01.08.2019 is concerned, it is made clear that the same is not acceptable, in the interest of other teachers as well as in the interest of the organisation.**”*

(Emphasis supplied)

19. While no such conditions were put for other teachers, her request for KV Khamaria was pre-empted more than two months in advance of the date i.e. 01.08.2019. We find it quite incomprehensible. Further, when the respondents again issued

their communication dated 07.06.2019 (Annexure RJ-4), they have not considered the case of the applicant, who had applied within the time limits, but considered the case of respondent No.4, who applied much after the time limit had expired.

20. We also find that the applicant was promoted for the year 2017-18, whereas the respondent No.4 was selected for the year 2018-19. This would imply that the applicant is senior to respondent No.4. Therefore, while considering the two applications for KV Khamaria, the case of applicant should have received priority.

21. We do not find any merit in the averment of the official respondents that posting the applicant to KV Khamaria w.e.f. 01.08.2019 would have caused problems to the students to KV Satna, because now by posting respondent No.4 to Khamaria puts the students of KV Jhagrakhand in same situation.

22. From the above deliberation, it is quite clear that the applicant is suffering from malafide action on the part of the official respondents, and therefore, it is imperative that this Tribunal should interfere.

23. In our considered view, the posting of respondent No.4 at Kendriya Vidyalaya Khamaria w.e.f. 01.08.2019 cannot sustain

when tested at the anvil of equity and fair play, without considering the claim of the applicant for the same post.

24. Accordingly, the modification of place of posting on promotion vide order dated 22.07.2019 (Annexure A-1) qua respondent No.4 is quashed and set aside.

25. We are aware that Kendriya Vidyalaya has a Transfer Policy in place as per which employees are given transfer points as per a set criteria for own request transfer. The official respondents are directed to consider the case of both, the applicant as well as respondent No.4 on the basis of their transfer merit points as on 01.08.2019 (the date of vacancy of at Kendriya Vidyalaya Khamaria, Jabalpur) and post the person having higher merit as per the transfer points to KV Khamaria. This exercise shall be completed within a period of 60 days from the date of receipt of certified copy of this order.

26. The Original Application is disposed of as directed above. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-