

Central Administrative Tribunal  
Principal Bench

O.A.No.1245/2001

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 17<sup>th</sup> day of July, 2002

Mrs. Neena Arora  
w/o Shri Ved Rattan Arora  
r/o 67 South Park Apartments,  
Kalkaji  
New Delhi.

... Applicant

(By Advocate: Shri G.D.Gupta)

Vs.

1. Kendriya Vidyalaya Sangathan  
through its Commissioner  
18, Institutional Area  
Shaheed Jeet Singh Marg  
New Delhi - 110 016.

2. The Assistant Commissioner  
Kendriya Vidyalaya Sangathan  
Delhi Region  
JNU Campus,  
New Mehrauli Road  
New Delhi - 110 067.

... Respondents

(By Advocate: Shri S.Rajappa)

ORDER

By Shanker Raju, M(J):

Applicant, in this OA, impugns respondents' transfer order dated 19.4.2001 wherein she has been transferred as Post Graduate Teacher (Biology) from Kendriya Vidyalaya, Masjid Moth to Kendriya Vidyalaya, Paluwas (Bhiwani), and has sought quashing of the order and her retention at KVS, Sadiq Nagar. Applicant also assails the transfer policy of the respondents whereby the policy of "first come first go" is applied in case of the post declared surplus, and has also sought application of principle of "last come first go".

2. Applicant was directly recruited in 1979 as TGT (Science) in KVS, Jalandhar and was transferred to KVS, Delhi in 1984. She was promoted as PGT (Biology) in 1988. In 1992 she was transferred as PGT (Biology) to KVS, Sadiq Nagar.

3. It is stated that upto 1999 two posts of PGTs (Biology) were maintained in KVS, Sadiq Nagar and subsequently due to introduction of optional subject in Informatics Practice for senior students in place of Biology, it has been decided on 1.8.2000 to abolish one post of PGT (Biology) at KVS, Sadiq Nagar. Initially, in these posts one held by the applicant and the other was being held by one Miss. Urmil Gupta, PGT (Biology), and Miss. Gupta was posted as Principal, as a direct recruitment quota, and she was posted to KVS, Hindon in May, 2000 leaving behind the applicant as PGT (Biology). Thereafter one Mrs. Pratibha Kathuria, PGT (Biology) was posted to KVS, Sadiq Nagar on 1.10.2000 from Delhi Cantt. No.III.

4. Subsequently, Ms. U.Gupta has sought reversion from the post of PGT (Biology) but instead of posting her back to KVS, Sadiq Nagar she was firstly posted as PGT (Biology) to KVS, Sirsa and on her request for modification of posting orders, she was transferred to KVS, Delhi Cantt. No.III.

5. By an impugned order dated 19.4.2001 applicant was redeployed in KVS, Paluwas (Bhiwani) in public interest and in pursuance of fixation of staff strength in KVS for the year 2001-2002, applicant was treated as surplus in KVS, Sadiq Nagar.

6. Shri G.D.Gupta, learned senior counsel impugns the orders as well as the policy of the respondents inter-alia on the following grounds:

6.1 Applicant, by placing reliance on a decision of the Apex Court in 1989(3) SLR SC 730, stated that in abolition of post, the junior most employee is to go. In this background, it is stated that the policy of respondents in abolition of post and redeployment of the staff, and the principle of "first come first go" cannot be countenanced. According to him, by virtue of GFR 149(4)(iv), which is reproduced as under:

"149(4)(iv) All autonomous bodies or grantee institutions which receive more than 50% of their recurring expenditure in the form of grants-in-aid should formulate terms and conditions of service of their employees so that by and large they are broadly comparable to those applicable to similar categories of employees in Central Government."

7. As the KVS being an autonomous body and having more than 50% of the recurring expenditure in the forms of grants-in-aid and conditions of service of their employees could be brought in comparable to the similar category of employees of the Central Government. In the Central Government as per the Re-deployment of Surplus Staff) Rules, the principle of "last come first go", is to be followed as such the policy of the respondents' is contrary to the Central Government's policy, which cannot be upheld and is ultravires. In this background, it is stated that Ms.

U.Gupta, although senior to the applicant, while working as PGT (Biology) before she joined at Hindon, and the seniority of PGT (Biology) being common, she sought her reversion from the post of Principal and instead of being posted back as PGT (Biology) at KVS, Sadiq Nagar, she was deputed to Delhi Cantt. No.III from where one junior, Ms. Pratibha Katuria, PGT (Biology) was transferred to KVS rendering the applicant junior and this shows malafide of the respondents to oust the applicant. It is stated that even if Ms. U. Gupta could validly be transferred to KV, Delhi Cantt. No.III and Ms. P.Kathuria was rightly transferred to KV, Sadiq Nagar then in that case also Ms. P.Kathurai became liable to be transferred to KV, Paluwas (Bhiwani) being the junior most at KV, Sadiq Nagar on the principle of 'last come first go'.

8. By bringing Ms. P.Kathuria in the post of PGT (Biology) to KVS, Sadiq Nagar even if principle of longer duration or senior most persons is followed for transfer in case of reduction in strength, the action of the respondents is arbitrary. It is stated that Ms. U.Gupta had never transferred out of Delhi for one pretext or the other she had been retained in the post.

9. It is stated that before transfer of Ms. P. Kathuria vide order dated 20.9.2000, Ms. U.Gupta had already made her request for her reversion from the post of Principal in August, 2000, but despite her request to join at KVS, Sadiq Nagar, her request was not acceded to, and Smt. U.Gupta joined at Masjid

Moth, she has been transferred in place of applicant, being senior to her. In this background, it is further stated that when one post of PGT (Biology) was found surplus and abolition, the transfer of Ms. P.Katuria was against zero post. This was a calculated move to disturb the applicant being the senior most. As Ms. U.Gupta was promoted on deputation to KVS, Hindon on termination of deputation period, having lien at KV, Sadiq Nagar, should have been reverted back to the parent post. Further placing reliance on a decision of the Apex Court in Central Welfare Board & Others Vs. Anjali Bepari (Ms.) & Others, 1996 (10) SCC 133, it is contended that principle of "last come first go, envisages junior most to go. It is also stated that the principle of "first come first go" has not been decided conclusively in the meeting as this was only a proposal. It is stated that zero vacancy was created on 1.8.2000, the seniority is to be maintained region wise and the principle of "last come first go" be made applicable. It is stated that 66th meeting of Board of Governors (in short as "BOG") on 16.9.1999, the Commissioner has not taken a decision but made only a proposal.

10. Learned counsel further relied on a case of the Co-ordinate Bench in OA 250/2001 in Sunder Lal Vs. Union of India and Another (decided on 30.10.2001), to contend that in case of being surplus and abolition of post, instead of the principle of "first come first go", the principle of "last come first go" is to be resorted to.

11. Shri Gupta relied on a case in Mrs. Kamlesh Singh Vs. Chairman, KVS & Others, in OA No.2033/2001 (decided on 19.12.2001). Shri Gupta further stated that the transfer is against the guide-lines of the Government of India. In pursuance of the recommendations of the Fifth Central Pay Commission contained in OM dated 12.6.1997 stipulating that husband and wife should be allowed to retain in one station at least in case where children are below 10 years of age. As the applicant's husband is working in State Bank of India at New Delhi, she has one daughter of 7 years of age and the family having no other member to look after the girl except 85 years old mother-in-law, who is suffering from glaucoma, the decision of the respondents is not in conformity with the guide-lines.

12. It is further stated that applicant has been suffering from depression and various other ailments for which the treatment taken at Delhi is not available at a small place like Paluwas (Bhiwani). Another plea is that applicant has been discriminat~~ely~~ly treated by relieving her on 3.5.2001 (AN) and the action taken by the respondents is violative of Articles of 14 and 16 of the Constitution of India.

13. It is stated that Principle of KVS, Masjid Moth on 18.8.2001 recommended for revival of the post of PGT (Biology) and necessary approval of sanction on the ground of having more than 50 students in Class XI in a subject of Biology in the year 2001-2002.

14. By referring to the decision of the V.V.Deswal Vs. Commissioner, KVS (OA 1735/2000), it is stated the reference to the decision taken in 66th meeting of the BOG of KVS on 16.9.1999, no final decision has been placed on record by the respondents. It is stated that in view of the instructions issued on 24.7.1996, as is referred to as item No.3 of 66th Meeting of BOG, there are two types of surpluses - one automatic and the other created one. Created surplus who are posted against no vacancy, transfer is to be resorted after obtaining consent of the incumbents. In the event nobody is willing to move, the junior most in the vacancy is to be posted out.

15. It is further stated that applicant has been discriminated as other persons in similar circumstance, having longer stay, have not been affected which includes PGT (Biology) Ms. Usha Pillai, Ms. Santosh Kapoor and Ms. Lata Khanna as well as Ms. U.Gupta. It is stated that there are no guide-lines for declaring a person surplus. Shri Gupta referred to the decision of the Apex Court in Union of India & Others S.L.Abbas, 1993(2) SLR 585 to substantiate his plea and also stated that Lucknow Bench of this Tribunal in one of the decision <sup>observed that</sup> the Division-wise seniority is to be maintained and junior is to be moved out.

16. On the other hand, Shri S.Rajappa, learned counsel appearing on behalf of the respondents, in the reply, contended that during the year 2000-2001 two posts of PGT (Biology) were sanctioned, but due to introduction of Informatic

subjects in Class XI Science and opening of one section in Commerce stream for Class XII, Biology in Classes XI and XII have been declared surplus and also abolished on 3.1.2001. Applicant was transferred on 19.4.2001 and relieved on 3.5.2001(AN). It is stated that the principle of "last come first go" is not applicable when a person is transferred and re-deployed whereas the applicant has not been retrenched or made to lose her job. It is further stated that as the applicant's post was abolished, no other option was there but to transfer her.

17. In their written submissions, the respondents contended that the re-deployment and transfer of the applicant was a result of her longest stay at KVS, Masjid Moth, the decision of the KVS to transfer a Teacher with longest stay has already been upheld in V.V.Deswal's case supra, on the basis of minutes of the 66th meeting of BOG dated 16.9.1999, where being a corporate body, KVS has been held to be an autonomous body to frame its own rules and instructions. The orders of Government are not applicable as such the provisions of GFR 149 supra would have no application in the present case. As per the Education Code, the Teachers rendered surplus, have to move out to adjust staff strength. As the applicant is found in excess of the sanctioned strength and surplus and as Ms. U.Gupta, senior to her, was transferred on promotion to KV, Hindon, the exercise was carried out in the academic year 2000-2001, as applicant became the senior most in the School as per length of service, Ms. P.Katuria was posted at KV, Masjid Moth. On the request of

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Principal, on 1.8.2000 to KVS to reduce a post of PGT in the School for the reason that a new subject called Informatics Practice in the science stream of Class-XI and opening of a Section in Commerce stream in Class-XI were introduced. It is stated that due to this development, a period of Biology was reduced due to which the post of PGT (Biology) was reckoned as surplus. Hence the KVS authorities did not like to disturb the Teachers in that academic session, but a decision has been taken to render the post surplus during the ensuing academic Session of 2001-2002. It is also stated that as per Para 49(k) of the Education Code, having all India transfer liability and the transfer was made as per the guide-lines and has not been established to be malafide or arbitrary as well as punitive, mere routine transfer ~~on rendering~~<sup>h</sup> of post surplus would not be interfered by this Tribunal. It is stated that the apprehension of the applicant that had Ms. U. Gupta being posted back to KV, Masjid Moth, the applicant would have become junior and would not have been declared in excess of sanctioned strength. It is stated that Ms. U.Gupta was reverted on 23.10.2000 and she was posted at KV, Sirsa and her posting was modified to KV, Delhi Cantt. This decision was taken due to administrative exigencies. It is stated that when a person gets reverted, the reversion which will not be to the place of posting. By a decision of the S.L.Abbas, it is contended that it is for the administration to decide the posting. Learned counsel placed reliance on a decision of the Division Bench of the Tribunal in OA 2244/2001 (P.Krishna Kumar & Others Vs. Union of India & Others), decided on 1.1.2002 to contend that

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as per Clause 22 of the Memorandum of Association of KVS, BOG is fully competent to frame rules and relying upon the decision of the another Division Bench in Dr. Vivekanandini Jain & Others Vs. Commissioner, KVS & Others, (OA No.2849 of 2001, decided on 29.11.2001), it is contended that approval of the Government in fixing of the strength of KVS is required, if there is a budgetary problem, and the respondents are within the rights to transfer the Teachers on reduction of posts to other regions as well.

18. Shri Rajappa also places reliance on a decision of a Co-ordinate Bench in OA No.1729/2000 (B.S.Rana Vs. The Commissioner, KVS, decided on 31.10.2001), to contend that OM 12.6.1997 of DoPT stipulating posting of husband and wife together, who are having children less than 10 years of age is subject to the availability of vacancy and other administrative exigencies, and is not a thumb rule. It is further stated that the Tribunal has come to conclusion that the policy of identification of surplus and re-deployment of Teachers having longest stay is as per the policy laid down. In this background, it is stated that the policy/guide-lines of the respondents has already been upheld by the Tribunal and this Court cannot go into this vires. Shri Rajappa has also relied upon the decision of the Apex Court in Haribans Misra and Others Vs. Railway Board and Others, (1989) 2 SCC 84 to contend that a lien can be of a post and not on a place. As such transfer of Ms. U.Gupta to KVS, Delhi Cantt. cannot be found fault with. Learned counsel further relied on a decision of Calcutta Bench of this Tribunal in OA

No.170/2000 (Ms. Indrani Nag Vs. Union of India & Others, decided on 8.9.2000), wherein the transfer is challenged on account of re-deployment of Teacher having longest stay, this Tribunal has held that the Government orders of CCS (Redeployment of Surplus Staff) Rules, 1990 would have no application. It is lastly stated that the transfer being an incident of service and not a condition of service, the same in absence of malafide or arbitrariness cannot be interfered and by referring to a decision of the Apex Court in State of Madhya Pradesh & Ors. Vs. S.S.Kourav & Ors., JT 1995 (2) SC 498, it is contended that Courts and Tribunals are not appellate forums on transfer of officers on administrative grounds, and the wheels of administration should be allowed to run smoothly and are not to be expected to indict the working of the administrative system.

19. Shri G.D.Gupta, learned senior counsel, in his rejoinder, reiterates his pleas taken in the OA.

20. I have carefully considered the rival contentions of both the parties and perused the pleadings on record, including official record pertaining to the transfer of Ms. U.Gupta furnished to me by the respondents, and also MA file, for vacation of stay order which was passed on 16.5.2001, by the respondents.

21. In so far as the plea of the applicant as to the malafide of the respondents by changing Ms. U. Gupta's posting from Sirsa to Delhi Cantt. and not

posting her at KVS, Sadiq Nagar, where she had her lien thus making the applicant as senior most, be replaced on transfer to Paluwas (Bhiwani), cannot be countenanced, and I do not find any malafide in the action of the respondents. From the perusal of the records, it is transpired that Ms. U.Gupta was deputed to KVS, Hindon on promotion as a Principal. On her request, to revert her to her substantive post of PGT (Biology), the request was acceded to on 21.9.2000. As Smt. P.Katuria was posted on 20.9.2000, Ms. U.Gupta was posted on her request to KVS, Sirsa, she made request to the respondents vide her letter dated 24.10.2000 on account of extenuating circumstances including medical grounds to consider her case sympathetically to be posted at some School in New Delhi. The aforesaid request was acceded to by the respondents on 3.11.2000, by transferring the applicant to KVS, Delhi Cantt. No.III as on account of vacancy of post of PGT (Biology) at Delhi Cantt and the cancellation of transfer of Shri Rawneswar Jha, PGT (Hindi), KV, Bhurkunda whose name had wrongly appeared under the Biology post in the priority list, and who was earlier transferred to KVS, Delhi Cantt. No.3, the post of PGT (Biology) existed. The contention of the learned counsel that Ms. U.Gupta had requested her for posting back to KV, Masjid Moth or KV, Sadiq Nagar is not borne out from the record.

22. In my considered view, the respondents have taken a decision bonafidely and in administrative exigency, without any iota of malafide or arbitrariness. The contention of applicant that had Ms. U.Gupta being transferred back to KV, Masjid

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Moth, she would have become senior and has to be transferred, is only a figment of her imagination. I find that the decision to revert Ms. U.Gupta and her modified posting order to KV, Delhi Cantt. were in administrative exigencies. Applicant was transferred in ensuing academic session of 2001-2002 cannot dictate her terms that Ms. U.Gupta should have been posted to KV, Masjid Moth. In view of the S.S.Kourav & Ors.'s case supra, the wheels of administration should be allowed to run smoothly, it is the prerogative of the administration to post its employees anywhere particularly when in KVS, one has an all India transfer liability. As regards the contention that Ms. U.Gupta had lien at KV, Masjid Moth and any decision to post her back should be on the post of PGT (Biology) at Masjid Moth and not anywhere else is concerned, the Apex Court in Haribans Misra's case supra categorically held that a person has only a lien on the post and not a lien on the place. The decision to post Ms. P.Katuria had already been taken and she had been posted at KV, Masjid Moth and thereafter the decision was taken to modify the transfer order of the applicant by deputing her to Delhi Cantt. As Ms. U.Gupta could not have been posted to Masjid Moth as Ms. P.Katuria has already been deputed there. The contention is only a figment of imagination of the applicant, and having failed to establish any malafide, the action of the respondents is in the exigency of administration, and the decision of the respondents cannot be found fault with. The aforesaid contention of applicant is bereft of merit and is rejected.

23. In so far as challenge of the applicant to the transfer policy, based on the principle of "first come first go, where the longest stayee Teacher to be transferred in case of post rendered surplus, and the resort to GFR 149(4)(iv), to contend that the provisions of Government shall be comparable and would apply to the KVS is concerned, I find that as per the Education Code of the KVS, the surplus teachers rendered service have to be moved out to existing staff strength. Those who have put in longer service have to be posted out first. KVS in the 66th Meeting of BOG dated 16.9.1999, clearly lays down that the KVS being a Corporate Body and an autonomous body, can frame instructions, and Government orders are not applicable. The senior most Teachers in terms of the principle of "first come first go" have to be transferred instead of junior most Teachers. In Ms. Indrani Nag's case supra, the Calcutta Bench of this Court while dealing with the same controversy where the transfer has been effected on account of longest stay in KVS, transfer being the incident of service and being an all India transfer liability to be applicable to the teaching staff. The surplus staff is to be adjusted in some other Schools. This is only because it is a simple transfer from one KV to another KV. As the post of the applicant of PGT (Biology) was found in excess of the requirement of the KV as per the yardstick of the respondents, the same was not found in excess of the requirement of the organisation, i.e., KVS and there was a need of the post in another KVS and, therefore, the concerned establishment is not being sent out or retrenched, the applicant has been adjusted from one KV to another KV.

In this view of the matter, I do not find any irregularity in the transfer order which is not violative of guide-lines on transfer..

24. In Krishna Kumari's case supra and in view of the Clause 22 of the Memorandum of Association of the KVS where BOG is fully competent to frame rules and other conditions of service, and as per the Clause 25 of the Memorandum of Association empower the BOG to delegate the powers to the Chairman, the decision taken by the KVS to laid down the policy is to be within the perameters. The minutes of the meeting supplementary item No.3 in 66th meeting of the BOG held on 16.9.1999, and the policy of the KVS for service adjustment by issuing by a letter dated 24.7.1996 the policy having been held ultravires and the decision taken to transfer a Teacher having put in longest stay, in V.V.Deswal's case, the same is no more res-integra and cannot be gone into this OA. Apart from it, moreover, in B.S.Rana's case supra the policy of identification of surplus and re-deployment on the longest stay has been upheld by this Court. The decision of the Apex Court in Jawaharlal Nehru University Vs. Dr. K.S.Jawalkar & Ors., 1989(3) SLR 730 reiterated the principle of "last come first go" cannot be made applicable in this case, as the applicant has been transferred and re-deployed but has not been retrenched or lost her job. As the post was withdrawn/abolished by a sanctioned order dated 3.1.2001, there was no option but to transfer the applicant to KV, Paluwas (Bhiwani).

25. In so far as the case of Sundar Lal, cited by the applicant, the same would have no

application as the issue involved was termination of an employee. In so far as the posting of Ms. P.Katuria is concerned, the same was in an administrative exigency to look after the welfare of students and to ensure that they should not suffer in their studies.

26. In my considered view, GFR 149(4)(iv) is not mandatory. What has been laid down is to formulate terms and conditions so that by and large are broadly comparably as applicable to the employees of Central Government. If GFR is to be followed then autonomy of the KVS is to be dispensed with. Moreover, the decision of BOG was after consultation with the staff association and was a firm decision. The policy decision having not found to have any malafides or arbitrariness, cannot be interfered, in a judicial review, as held by the Apex Court in State of Punjab Vs. R.C.Bhagga, 1998(3) SLJ 45 as well as by the Apex Court in Director, Lift Irrigation Corporation Ltd. Vs. P.K.Mohanty & Ors., 1991(1) Scale SC 399. Moreover, the transfer of the applicant is in administrative exigency. As held by the Apex Court in N.K.Singh Vs. Union of India & Others, 1994(28) ATC 246 that in order to go into the malafides in a transfer, roving enquiry is impermissible. Mere suspicion or likely hood of some approaches is not enough in order to successfully contest the transfer and sudden unimpeachable evidence and a vitiating factor, which is not justifiable in larger public interest and exigency of administration should be interfered with.

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27. I have given careful thought to the contentions of the applicant and find that the action of the respondents in transferring the applicant is neither malafide nor derogative of the policy. This policy already upheld by the Court, is neither arbitrary nor violative of Articles 14 and 16 of the Constitution of India.

28. In so far as the contention of the applicant of posting her at the place of her husband, who is working in Delhi, and the contention that her child is less than 7 years, and her resort to the guide-lines of the Government issued on 12.6.1997, it is stipulated in the policy that in such cases posting is invariably done if no administrative problem surfaces.

29. In S.L.Abbas's case supra, it has been held that these guide-lines not confer upon Government employee a legally enforceable right. Although the request should be considered having regard to the administrative exigency.

30. As transfer of applicant was in administrative exigency and as the post has been declared surplus and abolished and having no post available to accommodate the applicant and the fact that these guide-lines cannot be claimed as right, this plea of the applicant is bereft of merit and is accordingly dismissed.

31. In the result and having regard to the reasons recorded above, I do not find any infirmity in the order passed by the respondents, the OA is bereft of merit and is accordingly dismissed. No costs.

32. Interim order already passed stands vacated..

S. Raju  
(Shanker Raju)  
Member(J)

/rao/