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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.2395/1999

New Delhi, this the 1st day of January, 2002

R.G.Nangia
s/o Late Shri Nounit Ram
r/o 7/11, East Patel Nagar
New Delhi - 110 008
TGT Kendriya Vidyalaya
S.P.Marg, Gole Market
New Delhi - 110 001. ... Applicant
(By Advocate: Shri R.K.Gupta)

Vs.

1. Kendriya Vidyalaya Sangthan
18, Institutional Area
Shahidjit Singh Marg
New Delhi - 110 016.
through its Deputy Commissioner(Acad.)
2. Principal
Kendriya Vidyalaya
S.P.Marg, Gole Market
New Delhi - 110 001. ... Respondents
(By Advocate: Shri S.Rajappa)

O R D E R

By Shanker Raju, Member (J):

The applicant joined as TGT (Science) in Kendriya Vidyalaya, has assailed an order passed on 30.10.1999 where having been declared surplus he has been transferred from K.V., S.P.Marg, Gole Market to K.V.No.1, Halwara. The applicant has sought quashing of this order with all consequential benefits.

2. Briefly stated, the applicant, who has been appointed as TGT (Science) on 3.7.1970 in Group 'C' post has been working with utmost satisfaction in various Schools in Delhi and lastly posted at K.V., S.P.Marg on being declared surplus, he has been transferred to K.V. No.1, Halwara in public interest. The applicant has been further served with relieving orders on 4th November, 1999.

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3. The applicant has assailed the orders on the ground that the respondents have declared him surplus is not in consonance with procedure laid down in Annexure-I of Chapter 48 of the CCS (Redeployment of Surplus Staff) Rules, 1990 (hereinafter called as 'Redeployment Rules') which are applicable to the employees of KVS. This has also been done without identifying the surplus staff, the action of the respondents is arbitrary. It is stated that certain Teachers have been declared surplus and have been posted back again in the same School. The applicant is a President of KVS Teachers' Association and acted as Defence Assistant in various disciplinary proceedings, he has been declared surplus, in violation of policy/guide-lines. It is stated that one lady TGT (Math), Smt. Sunita Wali who has been transferred from Jammu, has been adjusted as TGT (Math) which was declared surplus and she was to be transferred and not the applicant. It is contended that after being declared the applicant surplus, applications have been invited for appointment of TGT (Hindi, PCM, Sanskrit, Social Studies, English, CBZ, etc.). It is the contention of the applicant that if there was no post and then how these fresh appointments are taking place. Thus, this itself shows that the action is malafide and punitive. It is further stated that in response to Starred Question No. 270 in August, 1997 before the Parliament, no surplus Teacher was identified including TGT (Maths) then what occasioned the respondents to declare the staff as surplus in 1999. It is also stated that on one hand the respondents have stated that the post of

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the applicant has been declared surplus but on the other hand, the request has been made to create additional Sections in Class 6th and 9th due to increase in the strength of students which cannot be countenanced as per Article 105 of the Education Code, which stipulated that there cannot be a decrease in the sanctioned strength of the posts.

4. The applicant further submitted, in the written submissions filed, that as per the Redeployment Rules, while declaring a post surplus, the junior most is to give way, whereas the respondents have declared the persons with longer stay as surplus. It is further stated that the counter filed by the Assistant Commissioner who has not been authorised by the Deputy Commissioner, is not legally admissible as per Article 55 of the Memorandum of Association. According to the applicant, he made a representation prior to the impugned order but as there is no power with the competent authority to stay the impugned order he has filed this OA without exhausting the remedy. As per Redeployment Rules *ibid*, the same are also applicable to the employees of KVS as the KVS is an autonomous body and is fully financed by Ministry of Human Resources and Development, the same Rules have application to the employees of KVS. As per the Redeployment Rules *ibid*, one of the employees of KVS, namely, Shri Radhey Shyam Dwivedi, in CWP No.37733/98, has obtained stay of transfer on the basis of these Rules *vide* High Court order dated 15.12.1998. As per para 4.4 of the Revised Scheme of the KVS, junior most employee in the cadre has to be declared as surplus. According to the

respondents, the identification of surplus staff has been carried out as per the guide-lines but this cannot be done without following the guide-lines in Redeployment Rules *ibid*. The plea of the respondents' seniormost Teacher is to be declared as surplus is not correct. In fact, there is no policy or rules regarding declaring a Teacher surplus and the respondents have adopted pick and choose policy with extraneous consideration. According to him, in the order declaring the applicant surplus, dated 30.10.1999, at Sl.No.5, 8, 10, 15, 19 and 20, the Teachers have been declared surplus in the Schools but have been retained and posted back again in the same Schools. If the staff already working is surplus, there is no occasion of advertising for fresh recruitment. As per the Principal of the KV, S.P.Marg, request has been made by her for sanction of two Sections; one in Class VIIIth and other in Class IXth, where the strength in Sections was 52 and 53 respectively. Whereas as per Article 104 of the Education Code this cannot be exceeded beyond 40. The actual strength at KV, S.P.Marg, while calculating the surplus strength of the Teachers, relevant Rules have not been followed by the respondents. According to the Rules, the stipulated strength of the TGTs have been worked out of 16.45 but as per the order of surplus dated 12.7.1999, the strength of TGTs were 13.5 i.e., 3 TGTs were short than the actual strength. The name of S.P.Marg School does not figured in the surplus staff School. A Committee has been constituted on 16.9.1999 to identify the surplus staff as such even before constitution of Committee, the post of the applicant has been identified as surplus

on 12.7.1999, which itself indicating malafides in the order of transfer. It is further stated that sub-para(ii) of page 13 of the counter affidavit, the respondents have stated that as a result of which TGTs in three subjects, i.e., English, SST and Maths had been rendered surplus whereas in the letter written by Principal to the Assistant Commissioner, dated 27.9.1999 where the post of TGT (PCM) has been shown as surplus. In fact, TGT (PCM) cannot be declared as surplus as candidates having PCM qualification can teach three subjects namely, Physics, Chemistry and Maths but TGT (Maths) can teach only Maths. As the applicant is a TGT (Science), teaching Physics, the transfer of one Mrs. Sunita Wali was therefore made for extraneous consideration, and it is not on her own request. The respondents have discriminated the applicant arbitrarily as in pursuance of the directions of the Tribunal dated 14.12.2000, an affidavit has been filed showing one Shri K.P.Sharma has been transferred pursuant to the policy of March, 2000 whereas Shri Sharma in fact was transferred on 10.1.2000 and joined on 15.1.2000. In this back ground, it is stated that the applicant should have been adjusted first, before Shri K.P.Sharma, being at Sl. No.11 and then to Mr. Sharma who is at Sl. No.12. Placing reliance on a decision of this Court, i.e., of the Division Bench in Dr. Vivekanandini Jain & Others Vs. The Commissioner, KVS, New Delhi, decided on 15.5.2001 in OA No.1584/2000, it is contended that the transfer of Yoga Teacher on the basis of being declared surplus has already been set-aside which has been upheld by the High Court in CWP No.4092/2001.

5. It is also stated that the relieving orders have not been served upon the applicant validly the applicant has been wrongly relieved in absence on 9.11.1999 manipulating the documents. By way of an affidavit filed on 15.5.2000, it is contended that no Rules have been furnished by the respondents which are applicable for redeployment of surplus staff. It is stated that by an order dated 18.12.1999, one Shri B.P.Gupta and R.D.Sharma were transferred on promotion from Sector-2, R.K.Puram, Delhi School and Sainik Vihar as well as Shri Vidya Kishore and Indu Goswami as TGT (Physics) from Janak Puri and KV No.2, Delhi Cantt. and Maya Dutta, TGT (Chemistry) from KVS No.2 to Delhi Cantt, the applicant could have been existed against these vacancies as he was appointed as TGT (SC) as the subject Science but the respondents have failed to adjust the applicant.

6. The applicant has alleged malafides against the respondents by contending that if the post of TGT (PCM) has been abolished, why Smt. Sunita Wali has been adjusted though she does not belong to the PCM Group. The staff has been reduced on 12.7.1999 at the time the students were more than the sanctioned strength and there was no surplus in the Mathematics. According to him, if the demand for additional two Sections has been made, and additional accommodation is available in the School, their stand is misleading. As per 66th Meeting of the Board of Governors, held on 16.9.1999, there was a decision to constitute a Committee but without doing so, the identification of surplus staff is premature and shows favouritism to

certain Teachers and this makes randies, the transfer order is punitive and against the Rules of transfer as well as the policy laid down by the respondents. In pursuance of the transfer order dated 30.10.1999, Mr. K.P.Sharma was transferred but re-transferred to Delhi by an order dated 10.1.2000 and joined against Mr. Janaki Singh on 15.1.2000 whereas the Scheme came into operation in March, 2000, despite rejecting the request, by a letter dated 8.2.2000.

7. On the other hand, strongly rebutting the contentions of the applicant, by way of filing reply and written submissions, the respondents have contended that as the applicant had put longest stay in the S.P.Marg School, has been declared surplus and transferred by an order dated 30.10.1999 along with 51 more TGTs, who have been transferred on same grounds. As per Article 49 (k) of the Education Code, the employees carry all India transfer liability. For the academic year 1999-2000 KVS Headquarters vide their staff sanction order dated 12.7.1999 posts have been identified surplus for Class VIIIth and IXth, which was reduced to one Section each at the School. The KVS identified four posts as surplus and the same had to be reduced for different subjects. The identified subjects are TGT (English, Social Studies, Maths and Socially Useful Productive Work). After identification of the surplus posts, transfers have been effected as per the transfer guide-lines which stipulated that Teacher of a particular category having longest stay should be moved out transfer when rendered automatic surplus. The applicant having been identified as automatic surplus and being the TGT

(Maths), in public interest, as per the extant guide-lines, has been transferred to Halwara. It is also stated that no policy exists with regard to the identification of surplus staff. During the academic year 1998-99 when students have been promoted to Class VIIIth a new Section was opened to accommodate all of them. In results thereof 3rd Section in Class VIIth has been withdrawn and similarly 3rd Section was opened in Class IXth. But in the year 1999-2000, 3rd Section in Class Xth and VIIIth were reduced to bring uniformity in number of Sections from Classes I to Xth. This resulted in withdrawal of one Section each from Class VIIIth and Xth and as a result TGT in SST, Maths and English have been rendered surplus. This has been done as per the policy laid down by Board of Governors of KVS. It is stated that the Tribunal in OA 1728/2000 in A.K.Vashist Vs. KVS has upheld the policy decision of KVS with regard to render a post surplus. This decision has been affirmed by the High Court of Delhi. As the Committee report on freezing of Sections given by Baldev Mahajan was rejected by the Board of Governors in the 70th meeting held on 7.9.2001, the transfer of the applicant is in pursuance of the policy decision which is neither arbitrary nor malafide and is in conformity with the guide-lines as such the same cannot be interfered with.

8. As regards the other cases of Mrs. P.Bhandari and Mrs. Tara Rani, they have been relieved on 20.8.1999 and 7.9.1999 respectively, the applicant could not be transferred within the same region for want of vacancies. As against the 5

available vacancies 12 TGT (Maths) have been found surplus and only 5 could have been existed within the region. Placing reliance on a decision of the Apex Court, AIR 1993 SC 2444, it is stated that one has no legal enforceable right to be posted at a particular place of posting of his own choice. It is also stated that the applicant has not exhausted the remedy of filing representation against the transfer and the case is hit by the provisions of Section 20(2) of the Administrative Tribunals Act, 1985. The applicant was having relieved in absence vide order dated 9.11.1999 however, the same has been communicated to him and also personally delivered to him. It is also stated that the transfer was within the region is made by the Assistant Commissioner but on being surplus and having found no vacancy in the region the matter is reported to KVS Headquarters and it is the Deputy Commissioner (Administration) who has the power to make the transfer. As regard the other Teachers who have been adjusted one Smt. D.Ganguli has been adjusted on account of being a senior lady Teacher, it is stated that the other Teachers have been deputed to KVS for their adjustments within the region which has been considered sympathetically and three lady Teachers have been adjusted within the Delhi after span of four months. The applicant could have also sent a similar representation and waited for two months to enable the KVS to examine his request in detail and to look into the possibility whether he could be adjusted within the region along with other Teachers senior to him. According to them CCS (Redeployment of surplus staff) Rules ibid are not applicable but the Rules laid down by Board of Governors are to be followed. As regards

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the Starred Question of 270 before the Parliament, it is stated that it is pertaining to the Teachers rendered service in the year 1996-97 when the information was correctly answered as at that time there was no surplus situation existed. The surplus teachers were posted against the available vacancies as part of the continuing process. However, answer has been wrongly construed by the applicant. On receipt of the staff sanction orders for Principals recommended for restoration and for creation of Sections which was forwarded to Joint Commissioner (Academic) but the requests made by the Principals have not been acceded to. In the present case, as due to instructions received from the Ministry of Finance for freezing the Sections to cut short the Budget and as per the norms prescribed by CBSE to the KVS, there is absolutely no arbitrariness and pick and choose policy in the case of the applicant. It is also stated that among the 52 Teachers, only the applicant has questioned the validity of the order. As the KVS is an autonomous organisation under the Ministry of Human Resources Development is empowered to make its own policy which is subjected to review and modification with the due approval of the Board of Governors. In case of automatic surplus Teacher, procedure is to adjust him at the nearest School subject to the availability of the vacancy.

9. In their affidavit filed on 9.2.2001 the respondents have stated that Shri K.P.Sharma, TGT (Maths) has been transferred to Mathura has been called back in Delhi as he has accepted the initial orders of Transfer and on his request under the Scheme

of calling back which has been introduced in KVS in March, 2000, he has been existed back on account of his being hard punishment and other mitigating circumstances. As the applicant has not made any such request, his case has not been considered. Moreover, the applicant has not joined his duties at the transferred place.

10. I have carefully considered the rival contentions of both the parties and also perused the material on record including written submissions. The counter filed by the respondents cannot be found fault with and is filed by the competent authority. As per Article 49(k) of the Education Code ibid, the applicant is having all India transfer liability. The applicant in view of the decision of the Apex Court in S.L.Abbas's case supra, cannot be adjusted to his choicest place posting as a vested right. The contention of the learned counsel for the applicant that the Redeployment Rules ibid are to be applicable to the KVS and as per Rule 4.4 the junior most employee who has to be transferred will have no application in the facts and circumstances of the present case. The KVS having an autonomous body under the control of the Ministry of HRD, the policy laid down by the KVS is valid and made applicable for identified the surplus staff and having upheld the validity of such Scheme in Shri A.K.Vashist's case supra by this Court, the action of the respondents by resorting to their Scheme is legally sustainable. Identification and adjustment of surplus Teacher has been carried out as per the policy within the framework of Rules formulated by KVS and approved by the

Board of Governors. The Board of Governors being the Apex Body of KVS, is empowered to formulate the policies for the Sanghtan. Due to various amendments and changes made by the Board, various administrative orders have been issued and circulated among the offices and Schools, the policy/guide-lines for identification of such Teachers and their deployment have been made applicable for the year 1999-2000 there is no violation of Annexure I of Chapter 48 of the Code. As regards the contention of the applicant that he has been discriminated in the matter of his being declared surplus and is transferred is in violation of Article 14 and 16 whereas one Shri K.P.Sharma who has been transferred has been subjected to posting back in Delhi concerned, I do not find any merit in the contention of the applicant. The action has been taken by the respondents in pursuance of the staff sanction order dated 12.7.1999 identifying surplus Teachers for two Classes VIIIth and Xth/XIth, the applicant has been found to be automatic surplus at the movement the staff strength was reduced and in public interest has been transferred to Halwara. In their resort to maintain the uniformity in the number of Sections Class Ist to Class Xth the third section in Xth and VIIIth were reduced. As such one Section from each class has been withdrawn, as a result TGT (Maths) has been found surplus. This has been done in public interest and in administrative exigency the resort of the applicant to contend that Principal has written for creating more Sections will be of no help to him. It is a general request which is made by the Principals of the Schools but ultimate decision lies with the KVS Headquarters body in view of the

financial and budgetary control/position and having taken a firm decision, and rejected the request, the applicant cannot take resort to the letter written by the Principal to contend that the applicant has been wrongly identified as automatic surplus. Apart from it, the Committee report by Baldev Mahajan has been rejected by the Board of Governors, this policy decision has already been upheld by this Court in various cases, there is no malafide established in the action of the respondents and as regards the parliamentary question, the answer was correctly given pertaining to the staff position in 1996-97 which will have no bearing in the case of the applicant. In view of the decision in S.L.Abbas's case supra and having failed to establish any malafide or arbitrariness and in the absence of contravention of any statutory rules or orders, the applicant miserably failed to establish a prima-facie case for interference by this Court. However, I find that in pursuance of a contention made by the learned counsel for the applicant that the persons who have been declared surplus, namely, Shri K.P.Sharma who has been transferred to Mathura has been transferred back to Delhi, the respondents have directed to file an affidavit. In this affidavit, I find that the respondents have taken a plea that the Scheme of calling back which has been introduced in KVS in March, 2000, the applicant having failed to file a representation to the respondents, his case was not considered by the respondents and the applicant immediately on transfer had approached this Court without making representation and without availing the opportunity. The applicant has remained absent

despite being communicated the order of transfer and despite becoming aware of such transfer, and was rightly relieved in his absence.

11. In view of the above discussion and having regard to the interest of justice, though on merit the applicant has no case, the OA is disposed of with a direction to the applicant to join at the transferred place forthwith thereafter the applicant is directed to make a representation under the calling back Scheme of KVS of March, 2000 for his transfer back to Delhi within 15 days from the date of joining and thereafter, the respondents are directed to consider the same in accordance with the extant rules and instructions and policy guide-lines and pass a detailed and speaking order within a period of two months from the date of receipt of such representation. The respondents are also directed to pass appropriate orders regarding intervening period, i.e., from the date of transfer till the date of joining at the transferred place in accordance with Rules. The OA is accordingly disposed of. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

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