

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00987/2019

Jabalpur, this Wednesday, the 17th day of February, 2021

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER



Manoj Kumar Jain,
 S/o Shri M.P. Jain
 Aged about 41 years
 Occupation :TGT (Mathematics)
 Kendriya Vidyalaya CMM
 Jabalpur 482001 (MP)

-Applicant

(By Advocate –**Shri K.V.S. Sunil Rao**)

V e r s u s

1. Union of India,
 Department of School Education & Literacy,
 Through its Secretary, Room No.124,
 C-wing, Shastri Bhawan, New Delhi 110 001

2. Kendriya Vidyalaya Sangathan,
 18, Institutional Area, Shaheed Jeet Singh Marg,
 New Delhi 110006
 Through its Commissioner

3. Asst. Commissioner (Establishment)
 Kendriya Vidyalaya Sangathan,
 18 Institutional Area,
 Shaheed Jeet Singh Marg
 New Delhi 110006

- Respondents

(By Advocate –**Shri Manish Verma**)

(Date of reserving the order:-06.01.2021)

O R D E R

By Ramesh Singh Thakur, JM:-

The applicant has preferred this Original Application against the modification order dated 25.02.2019 (Annexure A/4) and order dated 26.06.2019 (Annexure A/8) issued by respondent No3 and has prayed to quash and set aside the said orders.



2. The applicant has prayed for the following relief:-

“8(i) Summon the entire relevant record from the possession of the respondents for its kind perusal;

8(ii) Upon holding that the orders dated 25.02.2019 and 26.0.2019 have been passed by the respondents No.3 being non-speaking order wherein en masse representations have been rejected without giving any reason, quash and set aside the orders dated 25.02.2019 (Annexure A/3) and the order dated 26.09.2019 (Annexure A/7);

8(iii) Command and direct the respondent authorities to consider the posting of the applicant to Kendriya Vidyalaya VFJ Shift 1 on the post of PGT (Mathematics) for which the vacancies is arising w.e.f.01.11.2019 in a time bound manner.

8(iv) Further command and direct the respondent No.1 to ensure that the grievance which has been registered may be redressed by the competent authority of the Kendriya Vidyalaya Sangathan in a

time bound manner after giving due opportunity of hearing to the applicant;

8(iii) Any other order/orders, which this Hon'ble Court deems, fit proper.

8(iv) Cost of the petition may also kindly be awarded. ”



3. The relevant facts of the case in brief are that the applicant is working at TGT (Mathematics) in Kendriya Vidyalaya Jabalpur. After participation in a Limited Departmental Competitive Examination (LDCE) the applicant has been promoted to PGT (Mathematics) and has been posted in KV, Asansol vide order dated 05.02.2019 (Annexure A/1). Since the wife of the applicant is working in K.V. Jabalpur as PGT (Hindi), the applicant filed representation for modification and posting the applicant to Jabalpur or nearby places to Jabalpur. The request of the applicant was rejected by non speaking order dated 25.02.2019 (Annexure A/3) whereas on the same date i.e. 25.02.2019 (Annexure A/4) respondent-department issued a modification of transfer in respect of 254 employees. The applicant thereafter made various

representations for posting to Jabalpur or nearby places on the spouse ground as well as his health ailments but the same was not acceded to.

4. On the other hand, learned counsel for the respondents in their reply have submitted that the applicant is working as TGT (Maths) who qualified LDCE 2018 for the post of PGT (Maths) and posted on promotion from KV CMM Jabalpur to Asansol and simultaneously his spouse Smt. Indira Yadav, TGT (Hindi) has been promoted through LDCE vide office memorandum dated 05.02.2019 and was posted at KV Puri on promotion but later on her place of posting was modified at KV No.2 GCF Jabalpur vide order dated 26.06.2019. Applicant has requested for modification in his place of posting from KV Asansol to Jabalpur on the ground that his spouse is working in KV GCF Jabalpur. Respondents submitted that most of the promotes have been accommodated against their choice place on the availability of vacancy. The applicant was informed vide office Memorandum dated



25.02.2019 that his case for modification has been considered but could not be acceded to due to non availability of vacancy. It is further submitted by the respondents that as per Article 71 of Education Code, the services of KVS are liable to be transferred to any Kendriya Vidyalaya of the Sangathan at any time on short notice on organizational reasons and administrative exigencies. Also as held by Hon'ble Apex Court that the individual's personal inconveniences have got little importance over administrative exigencies and public interest, particularly in the matter of transfer/posting. A new transfer guidelines has been framed by the respondents, which came into force w.e.f.01.04.2011 and duly approved by the Board of Governors which is any apex policy making body of KVS. The transfer Guidelines is amended from time to time in consultation with all the stakeholders and finally approved by the BOG. Transfers of teaching staff upto PGTs and non teaching staff up to Assistants (now ASOs) are affected as per the Transfer



Guidelines. The applicant cannot claim as a right to be posted at KV VF Jabalpur as only right contender being senior teacher as due to non availability of vacancy a teacher who was senior in panel at Serial No.109 (Shri S.S. Singh) has also been posted on promotion to KV Koliwada. Respondents have relied upon catena of judgments in the matters of Jittu @ Jitendra @ Jay vs. State of M.P. and others, Sanjay Kumar Pathak vs. State of M.P. , Karan Sinh vs. State of M.P. and others, Mohd. Masood Ahmed vs. State of U.P. and others, Abani Kanta Ray vs. State of Orissa (2007) 8 SCC, 174, Onkar Nath Tiwari vs. Chief Engineer, Minor Irrigation Deptt. (1997) 3 ESC 1866 and State of U.P. and another vs. Siya Ram and another (2004) 7 SCC 405.

5. The applicant has filed rejoinder to the reply filed by the respondents wherein it has been submitted by the applicant that the Department of Personnel and Training has issued guidelines with regard to posting of husband and wife in same station vide order dated 30.09.2009



(Annexure RJ-1). As per DoPT guidelines, KVS has also made modification with regard to posting and modification of posting of newly recruited teachers on spouse round and on PH grounds vide order dated 17.10.2019 (Annexure RJ-2).



The Board of Governors in its 109 meeting has relaxed the Merit-cum-Choice in the cases of spouse ground. The applicant has made representation with regard to modification of his place of posting on spouse ground and on health ground as he has been issued certificate of physically handicapped by 40%. The DoPT has issued guidelines vide order dated 13.03.2002 (Annexure RJ-4) with regard to posting of physically handicapped candidates to their native places or nearby native places. It has been stated that when both spouses are in same Central Service or working in same department, they may be mandatorily be posted at the same station. Since the applicant has been disabled by 40%, the applicant be posted at his native place or nearby native place. Further applicant submitted that his request for transfer to KV

Katni, Sagar and Mandla was not acceded and it was communicated to the applicant vide letter dated 26.06.2019 that no post is vacant in KV Mandla. But later on vide order dated 26.07.2019 (Annexure RJ/5) the respondent posted one Renu Shrivastava to K.V. Mandla. The applicant submitted that the teachers posted at KV Katni and KV Sagar are junior to the applicant as both the teachers were selected for the year 2018-19 whereas the applicant was selected for the year 2017-18 and as per the policy of posting the teacher senior is allotted place of posting therefore applicant ought to have been posted to KV Katni or KV Sagar. In the seniority list after Shri S.S. Singh the applicant is the senior person and as place of posting of Shri S.S. Singh has been modified from KV Koliwada, Mumbai to K.V. No.2 Indore vide order dated 25.02.2019 (Annexure RJ/6) and being senior after Shri S.S. Singh the applicant is eligible to be posted in KV VF Jabalpur wherein the post of PGT (Maths) is vacant. The respondents have made posting of teachers on spouse



ground as well as on ground of disability vide order dated 31.08.2019 (Annexure RJ/8).

6. Heard the learned counsel for both the parties and perused the pleadings and documents annexed with the O.A.



7. It is undisputed fact that the applicant was promoted and transferred from KV, CMM Jabalpur to KV, Asansol vide order dated 05.02.2019. It is also an undisputed fact that the applicant has filed various representations dated 27.02.2019, 06.05.2019 and 29.06.2019 for transferring him in nearby places on the spouse grounds and on health ground as he had undergone hip replacement surgery in November 2017 and he has attached the medical certificate while representing his case to respondent-department. The respondents have not uttered a single word/counter this fact in their reply regarding the applicant's health issue. We have perused the Medical Certificate issued by District Medical Board (Annexure A/13) as well as Disability Certificate issued by Department of Empowerment of

Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, dated 17.12.2019
(Annexure RJ/7) wherein it has been certified as under:-



*“(A) He is a case of Locomotor Disability
(B) The diagnosis in his case is THR LEFT
(C) He has 40% (in figure) Forty percent (in words) Permanent in relation to his (Hip) as per guidelines (to be specified).”*

8. Undisputedly the applicant is having 40% disability and the meaning of ‘person with disability’ and ‘disability’ have been defined under Section 2t and 2i. of the Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which reads as under:-

t. "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;

.....

i. "Disability" means

i. blindness;

ii. low vision;

iii. leprosy-cured;

iv. hearing impairment;

v. ***loco motor disability;***

vi.;

The applicant is certainly a person with disability but the respondent-department has not considered his case

sympathetically whereas the respondent department has issued modification orders dated 25.02.2019 (Annexure A/4), 26.06.2019 (Annexure A/8) and 22.07.2019 (Annexure A/10) where the employees have been given their choice of posting.



9. We have also perused Office Memorandum dated 05.02.2019 of the respondent-department, it has been stated in Paras 4 and 5, which reads as under:-

“4. No extension of joining time shall be allowed except for reasons of illness/confinement of the employee duly supported by medical certificate from Chief Medical Officer/Medical Supt./Civil Surgeon of Govt. Hospital/Distt. Hospitals or from Chief Medical Office of the Hospital of Public Sector Undertakings/Project to which the school is attached/Military or Command Hospital as the case may be. The request, if any of extension should be submitted through proper channel by 25.02.2019 to KVS (HQ) Positively.

5. It is also made clear that representation for either change of place of posting or for extension of time to join the post (other than covered under Para 4 above) will not be entertained under any circumstances.”

In the said memorandum, it has been mentioned at Para 5 that representation for either change of place of posting or

for extension of time to join the post (other than covered under Para 4 above) will not be entertained under any circumstances. The applicant had made various representations to the concerned authority enclosing the medical certificate. No reasons have been given in any of the rejection memorandum of the respondent-authority.



10. We have also perused the Office Memorandum dated 13.03.2002 issued by Department of Personnel and Training regarding posting of physically handicapped candidates, which reads as under:-

*"No. AB 14017/16/2002-Estt.(RR)
Government of India,
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training*

*New Delhi, the 13th March, 2002
Office Memorandum*

Subject : Posting of physically handicapped candidates.

Reference this Department's O.M. No. AB14017/41/41/90-Estt(RR) dated 10.5.1990 (copy enclosed) on the above subject.

2. It is clarified that the guideline contained in para 2 of this Department's O.M. dated 10.5.1990 that requests from physically handicapped employees for transfer to or near their native places may also be given preference, covers

physically handicapped employees in Groups A, B, C and D.

3. Suitable instructions may also be issued to all subordinate offices, etc.

4. Hindi version will follow.

sd/- (Alok Saxena)

Deputy Secretary to the Government of India”



Respondents have not given any reasons for rejection in their reply as well as at the time of argument regarding non consideration of applicant's request of transfer on health grounds. The judgment relied upon in the case of **S.L Abbas** (supra) and **Karan Singh** (supra), wherein it has been held that the transfer is an incident of service. No employee can dispute the aforesaid established fact that transfer is an incident of service, but the fact remains that the transfer has to be done keeping in view the various policies issued from time to time and it should not be vitiated by malafides or should not be contrary to the notification issued by the Government of India or by other authorities. In the present circumstances specially, in view of Annexure A/6 dated 06.05.2019, the applicant had



indicated that the applicant undergone hip replacement surgery and due to old age of father and his own health, the matter of the applicant may be considered. But the respondents have not considered the case of the applicant and not given any reasons for rejection. Furthermore, as per Annexure A/9 dated 29.06.2019, the applicant has made the representation for reconsideration of his transfer due to hip replacement surgery, completion of two years in hard area and also regarding the old age of his father and tender age of his son 6 years. The respondent-department has further not given any reasons for rejection his application for reconsideration. The detailed representation was further sent by applicant on 24.08.2019 (Annexure A/12) to the Commissioner again indicating his total hip replacement and also indicated the fact that the post of PGT (Maths) is going to vacant on 01.11.2019 and has requested the Commissioner to consider his representation. The respondents have further not considered and also not given any reasons for rejection. The applicant had placed

reliance upon Annexure RJ/1 DoPT Office Memorandum dated 20.09.2009 and also Annexure RJ/2 dated 17.10.2019 issued by Kendriya Vidyalaya Sangathan for guidelines regarding modification of place of posting of newly appointed teachers on the ground of spouse and PH grounds, as the applicant has already provided the disability certificate as per Annexure RJ/7 whereby the disability of the applicant is 40%. In such circumstances we are of the view that the respondent-department has overlooked their instructions and guidelines. Accordingly, the applicant to approach respondent-authority again with detailed representation with all relevant documents/certificate/ circular within a period of one week from the date of receiving the order of this Tribunal and respondents are directed to reconsider the applicant's case sympathetically, within a period of four weeks thereafter, keeping in view the transfer guidelines (Annexure RJ/2) and above DOPT's circular (Annexure RJ/1). Till the final order is passed by the respondents the status quo as of



today regarding the post of PGT (Maths) K.V. VF Jabalpur
1st Shift shall be maintained.

11. Hence, this Original Application is disposed of to the
above extent. No costs.



(Naini Jayaseelan)
Administrative Member

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(Ramesh Singh Thakur)
Judicial Member