

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Applications No.200/01067/2019 &
200/533/2020

Jabalpur, this Thursday, the 18th day of February, 2021

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



Anil Kumar Tamrakar S/o Shri Suraj Prasad Tamrakar A/a 44 years, Occupation: PGT(Maths) at KV Malanjkhand District Balaghat R/o B-4/49 HCL Township, Kendriya Vidyalaya Malanjkhand Dist. Balaghat (M.P.) 481116 Mob:8989775227

-Common applicant in both O.As.

**(By Advocate –Shri Mrigendra Singh Sr. Advocate assisted by
Shri Akshay Pawar in both O.As)**

V e r s u s

1. Union of India, Through the Secretary, Ministry of Human Resource & Development Department of School Education & Literacy, 124-C, Shastri Bhawan, New Delhi 110 001
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi 110016
3. The Assistant Commissioner (Estt.III) Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg New Delhi 110016
4. The Deputy Commissioner, Kendriya Vidyalaya Sangathan Jabalpur, Behind Science College, South Civil Lines, Jabalpur 482001

- Common respondents in both O.As.

(By Advocate –Shri Pankaj Dubey in both O.As)

(Date of reserving the order:-06.01.2021)

COMMON ORDER

By Ramesh Singh Thakur, JM:-

The applicant is aggrieved by the inaction of the respondents whereby his representation for modification in transfer place has been rejected by the respondent-department.



2. The applicant filed O.A. No.200/1067/2019 and subsequently filed M.A. No.200/409/2020 before this Tribunal whereby this Tribunal has directed the respondents to consider his detailed representation regarding posting at K.V. Khamariya as per rules. In compliance of the said order the respondents vide order dated 23.09.2020 has rejected the said representation of the applicant. Being aggrieved the applicant filed another O.A. No.200/533/2020 challenging the said impugned order dated 23.09.2020. Therefore these two Original Applications are being dismissed by this common order as the issues raised are same. The facts of O.A.

No.200/533/2020 are being stated in this order unless otherwise mentioned.

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



“8.1 To quash the impugned order dated 23.09.2020 and to direct the respondents to transfer the applicant to Kendriya Vidyalaya Khamaria Jabalpur as Post Graduate Teacher (PGT) Maths;

8.2 To direct the respondents to produce the entire record in relation to the applicant and the post of PGT Maths at Kendriya Vidyalaya Khamaria Jabalpur (MP).

8.3 To pass such other orders as it may deem fit under the circumstance of the case.”

4. The facts of the case are that the applicant was appointed on the post of PRT (primary Teacher) in respondent-School in the year 2005 and was promoted from PRT to TGT (Maths). The applicant appeared and was declared successful in Limited Departmental Competitive Examination on 05.02.2019. He was promoted to the post of PT (Maths) and was posted to Kendriya Vidyalaya (KV), Malanjkhand (Annexure A/1). The applicant submitted his representation dated 12.02.2019 requesting to transfer him to KV, Satna. The

respondents vide order dated 25.02.2019 accepted the request of several employees for modification of their place of posting but the name of applicant did not feature in the said list. Respondents issued second list of modification on 22.07.2020 however the applicant's name was not there. Thereafter the applicant came to know about that one post of PGT (Maths) is lying vacant at KV, Vehicle Factory Jabalpur. But the request of applicant has not been addressed by the respondents. The applicant filed O.A. No.100/1067/2019 for transfer to KV, Vehicle Factory, Jabalpur. During the pendency of the said case, the applicant came to know that one Mr. Sudarshan Prasad PGT (Maths) has retired on 31.07.2020 from K.V. Khamariya, Jabalpur and the post is lying vacant. The applicant moved an M.A. No.200/409/2020 in O.A. 200/1067/2019 for consideration of his candidature for posting as PGT (Maths) at KV Khamariya Jabalpur before this Tribunal wherein this Tribunal vide order dated 14.08.2020 has directed the respondents to consider the



representation of the applicant for transfer to KV Khamaria Jabalpur. Vide order dated 23.09.2020 the respondents have rejected the said representation. Hence this Original Application.



5. The respondents in their reply have submitted that the applicant who was working as TGT (Maths) in KV, Vehicle Factory Jabalpur and promoted to the post of PGT Maths through LDCE-2018 and was given posting at KV Malanjkhand in accordance with his panel position and available vacancy at the time of posting vide order dated 05.02.2019. He requested for modification of his place of posting at Satna through representation dated 12.02.2019. The vacancy of Satna got filled up through direct recruitment. The applicant was in Jabalpur for a period of little less than 10 years in the 15 years of his service. Initially when the applicant joined the Sangathan he was posted at Chirmiri and after completing his tenure for the hard station he got transferred to Jabalpur and since then he was out of Jabalpur only for a period of four months till

his transfer to Malanjkhand. It has been submitted by the respondents that the KVS has considered all the representation received from all stake holders for modification of their place of posting against the available vacancy and accordingly most of the cases have been acceded to except vacancy involved to be allowed to the direct recruitee. Therefore his request for transfer to KV, Satna could not be accommodated. It has been submitted by the respondent-department that the applicant's request for change of place of posting at K.V. Khamariya Jabalpur where the vacancy arisen on 31.07.2020 due to retirement of a teacher. But his case cannot acceded to before operation of all general transfer for the year 2020-21, moreover vacancy available at his requested place i.e. K.V. Khamaria may be filled up by other mode like surplus liquidation and spouse transfers to be effected in terms of decision of BOG 109th meeting to accommodate the teachers recruited for the year 2017 and 2019 on direct recruitment. The respondents further submitted that the



transfer and posting is the incident of service and all the employees has all India Transfer Liability. The transfer and posting are exclusive prerogative of the department concerned, in the absence of violation of any provisions of law and the four corners provided by the law there is no room for such claim of posting as the choice.



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

7. From the pleadings it is an admitted fact that the applicant joined KVS at PRT in the year 2005 and subsequently got promoted as PGT (Maths) and was posted to KV Malajkhand. It is also an admitted fact that applicant requested for transfer to K.V. Khamariya Jabalpur but his requested cannot be acceded to by the respondents as they have stated that his request for transfer cannot be acceded before operation of all general transfer for the year 2020-21, moreover vacancy available at his requested place i.e. K.V. Khamaria may be filled up by

other mode like surplus liquidation and spouse transfers to be effected in terms of decision of BOG 109th meeting to accommodate the teachers recruited for the year 2017 and 2019 on direct recruitment. It is undisputed that the applicant was posted at Jabalpur before his transfer to K.V. Malajkhand. The applicant has All India Transfer Liability and he cannot enjoy the privilege of remaining at Jabalpur throughout his entire career. The transfer order of the applicant has been issued by the competent authority and there are no allegations of any malafide in exercise of power by the competent authority in this matter.



8. In the matters of *Union of India Vs. S.L. Abbas*, (1993) 4 SCC 357 the Hon'ble Supreme Court has specifically held that who should be transferred where, is a matter for the appropriate authority to decide. In the matters of *State of M.P. Vs. S.S.Kourav*, (1995) 3 SCC 270 the Hon'ble Supreme Court has held that the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the



working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background or foundation. In the matters of *National Hydroelectric Power Corp. Ltd. Vs. Shri Bhagwan*, (2001) 8 SCC 574, the Hon'ble Supreme Court has held that unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned". Thus, it is a settled law that transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking

into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by malafides of infraction of any professed norms of principle governing the transfer which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personal management of all government departments. This must be left in public interest to the departmental heads subject to the limited judicial scrutiny indicated {See:

N.K.Singh Vs. Union of India, (1994) 6 SCC 98}. In the matters of **State of U.P. Vs. Gobardhan Lal, (2004) 11 SCC 402**, the Hon'ble Supreme Court has held that “[E]ven administrative guidelines for regulating transfers or containing transfer policies at best may afford an



opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision”.

9. Since there is no allegation of mala fide against any officer of the respondents nor any allegation with regard to competency of the officer who has passed the impugned order of transfer or violation of any statutory provision in the impugned transfer, we do not find any justification for



interfering with the impugned order of transfer. However, the applicant may take chance for general transfer for the vacancy available for the year 2020-21.

10. Accordingly, both the Original Applications are dismissed, however, without any order as to costs.



(Naini Jayaseelan)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

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