

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 335/2019

Date of decision: 23.07.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Smt. Hina P. Shah, Member (J)**

Laxmi Atlasiya wife of Shri Mukesh Kumar, aged about 41 years resident of Teacher Quarters, Kendriya Vidyalaya, CISF Campus, Deoli, District Tonk and presently working as Trained Graduate Teacher - Science (TGT - Science), Kendriya Vidyalaya, Deoli, District Tonk -304804.

...Applicant.

(Group-C, Mob.94270-24540)

(By Advocate: Shri C.B.Sharma)

Versus

1. Kendriya Vidyalaya Sangathan through its Joint Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
2. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
3. Assistant Commissioner (Establishment 2/3), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
4. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015.

...Respondents.

(By Advocate: Shri V.D. Sharma)

ORDER (ORAL)**Per: Dinesh Sharma, Member (A)**

In this OA the applicant, who is a Trained Graduate Teacher (TGT), Science, in Kendriya Vidyalaya Sangathan (KVS), presently posted at Deoli, has prayed for directing the respondents to consider her request for transfer to Nasirabad on ground that her spouse is a teacher in Jawahar Navodaya Vidyalaya, Nasirabad. She has stated that she had served at Khambhath, Gujrat from 2008 to 2012 and at a hard station (Air Force, Bhuj, Gujrat) from 2012 to 2017. She had come to Deoli in the year 2017 as there was no post of TGT Science available at Nasirabad at that time. She has enclosed the transfer guidelines issued vide order dated 26/4/2017 (Annexure A/2) and the instructions of GOI dated 30/9/2009, regarding posting husband and wife together (Annexure A/3) to support her case. She has made several requests for transfer to Nasirabad, but her request has not been granted, while in other cases, following directions from the CAT, the respondents have accommodated similar requests of other teachers. She has alleged that a post of TGT Science is currently lying vacant due to promotion of one Shri Rupendra, but the respondents are not considering her case and hence this O.A.

(3)

2. The respondents, in their reply, have stated that the KVS is an autonomous organization. It has framed revised transfer guidelines for its teaching/non-teaching posts, though transfer and postings are a right of the Sangathan which it would endeavour to exercise in the best interest of the students with due regard to the principles of equity and transparency vis-a-vis employees. These guidelines do not vest any employee with any right. The respondents have denied the allegation of the applicant that her case has not been considered. It is stated that her case is covered under spouse ground for which she is entitled to get +40 transfer counts on account of other Central Government spouse case as per the transfer guidelines and accordingly her case would be processed by the computer system along with other employees, if she applies for the same. The respondents have stated that presently no vacancy is available at Nasirabad for transfer/displacement. The case of the applicant can be considered only under the process of annual request transfer for the year 2019-20, if she applies for the same and she would be given +40 transfer counts (on spouse ground) but she is not eligible under Para 16(d)(3) of the transfer guidelines. The respondents agreed to consider her request for transfer under their guidelines, if there is a vacancy available and the applicant applies for it.

(4)

3. The applicant has filed a rejoinder. It is stated that in February 2019, there was a post available in Nasirabad, but despite the applicant pursuing her request, the respondents allowed one Ram Avtar Meena, who was transferred from Nasirabad to Halwara No.2, to continue at Nasirabad. The applicant has further applied for the year 2019-2020 in the month of July 2019, and stated that one post of TGT Science is available in KV No. 2 (CRPF). The applicant has again claimed that her case is covered under para 16(d)(3) of the guidelines published for the year 2018 (Annexure A/11).

4. We have gone through the pleadings, and heard the arguments of the learned counsels of both the parties. Both the counsels reiterated what is stated in the pleadings. There is no denying the fact that the transfers and postings are inevitable in any multi-unit organization and no employee can claim a right to serve at a particular place. It has also been decided in a number of cases (by the Hon'ble High Courts and the Apex Court) that these powers to transfer and post any person at any place should not be exercised arbitrarily and every organization should follow the rules which it lays down for itself. In the present case, the respondents have agreed to consider the request of the applicant as per their rules. The only difference is about whether Para 16 (d)(3) of these guidelines (similar paragraph in both the guidelines published for the year 2017 and 2018) applies to the

applicant or not. We are reproducing below this Paragraph 16 (of 2018 guidelines enclosed with the rejoinder at Annexure A/11):-

"16. CALENDAR OF ACTIVITIES OF ANNUAL TRANSFER

A detailed calendar of activities of annual transfer will be prepared by KVS to effect annual transfers pursuant to these guidelines. As far as possible, the following time frame/deadlines will be followed to complete the process:-

- a) Issuance of transfer orders by 31st May by KVS.
- b) Modifications/Cancellations on administrative ground/ to remove anomalies in transfer orders already issued by 30th June by KVS.
- c) Transfer against No-Taker Vacancy by 31st July.
- d) Transfer requests in exceptional circumstances against clear vacancies or in place of an employee who is willing to be transferred out against another vacancy will be done with the approval of the Commissioner KVS after 31st July in the following cases:-

 - 1) Death of Family Person.
 - 2) MDG of employee self & family member as per annexure-1 of transfer guidelines.
 - 3) Spouse cases.

Note: In case of tie within above categories, preference would be given in above order i.e. DFP, MDG, Spouse. In case of tie within Spouse category order of preference would be as follows:

- (i) Spouse of KVS employee,
- (ii) Spouse of Govt. of India employee,
- (iii) Spouse of State Govt. employees,
- (iv) Any other Spouse case.
- e) No Transfers would be ordered during annual examinations, i.e. during February and March."

This para clearly talks about the calendar to be followed and the paragraph (d) talks of exceptional circumstances when a request

(6)

can be considered even after 31st of July. The applicant has already made a request following the normal calendar and the respondents have agreed to consider it following their guidelines. None of the parties has claimed (and we have no reason to believe) that the same guidelines which were followed in the year 2017 and 2018 are not continued thereafter. The currently prevalent pandemic conditions do provide sufficient justification to treat the present circumstances as exceptional and the respondents can invoke Para (d) (if other conditions like vacancy, eligibility etc. are met) to accommodate the request of the applicant on spouse ground, even if it happens after 31st of July in the current year.

5. Hence, we dispose of the O.A. with a direction to the respondents to consider the request of the applicant for her transfer (Annexure A/14), as and when a vacancy arises at the requested place, if there is no one else having a better claim than her, as per the respondents' own published guidelines in this regard.

6. There shall be no order as to costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/