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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 15th day of Sept. 2006.

Original Application No. 1224 of 2005.

Hon'ble Mr. P.K. Chatterji, Member-A

Sabhajit, S/o Sri Shivdas, TGT (Sanskrit),
Kendriya Vidyalaya, Manauri, Allahabad,
R/o Vill. Gaura Kamal Post Office, Ismailpur,
Jalalpur, Ambadkar Nagar.

... Applicants

By Adv: Sri A.K. Dwivedi & Sri Uma Kant

V E R S U S

1. Union of India, HRD Ministry through its Secretary, Shastri Bhawan, NEW DELHI.
2. Education Officer/Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area Shahidjot Singh Marg, NEW DELHI.
3. Kendriya Vidyalaya, Manauri, Allahabad through its Principal, Air Force Station, MANAURI.

• • • • Respondents

By Adv: Sri D.P. Singh.

O R D E R

The applicant of this OA is a Trained Graduate Teacher (TGT) of the Kendriya Vidyalaya Sangathan (KVS) and posted at Manauri, Allahabad. He was earlier posted at Kokrajhar, Assam, which is in the North East and supposed to be a difficult station. On 30.08.2004, the applicant was transferred from Kendriya Vidyalaya (KV), Kakrajhar to KV Manauri, Allahabad, in the second shift. But within a span

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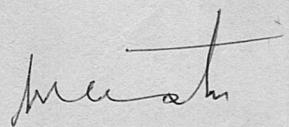
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of eight months and few days, the applicant was again transferred in terms of Clause 10 (2) of the transfer guidelines of KVS to accommodate Smt. Usha Mishra, who was to come on transfer from Chirimiri, Chatthisgarh. But as Smt. Usha Mishra did not come to join in her new place of posting, the applicant continued to work till 15.09.2005 when suddenly he was relieved allegedly to accommodate some favorite teacher of KVS.

2. Being aggrieved, the applicant made a representation to Commissioner KVS, New Delhi on 22.09.2005 with the request for re-consideration of his transfer for the reason that he had been at Manauri for less than a year after serving at hard station for over three years. The applicant has also submitted that his wife Smt. Girja Kumar was Chief Supervisor in Bal Vikas Pustahar Parashurampur for which reasons his transfer again to a far off place will cause hardship to the applicant. Not only this, it would also upset the education of his childrens who were studying at Allahabad.

3. The learned counsel for the applicant has brought to the notice of the Tribunal the relevant provisions of Rule 10(2) of the transfer guidelines, which is as follows: -

"10. (2) Where transfer is sought by a teacher under clause 8 of the transfer guidelines after a continuous stay of 02 years in the **VERY HARD STATION** OR 3 YEARS IN THE North East, A & N



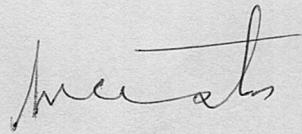
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Islands and other declared hard stations or by a teacher falling under the grounds of medical/death of spouse/less than three years to retire or very hard case involving human compassion, in the event of non-availability of vacancy at his choice station, the vacancy shall be created to accommodate him by transferring the junior most teacher in the service of KVS in the said station of the same category (Post/Subject). However, the Principals who have been retained under clause 4 to promote excellence would not be displaced under this clause.

Note: Date of appointment on regular basis will be the criteria to decide service in KVS in the said post. While displacing teachers immunity shall be granted to the teachers, as applicable, for identifying and redeploying excess to the requirement of teacher. Apart from them, president/General Secretary of the recognized service association of KVS, who are also the members of JCM, will also be granted immunity. This facility is applicable for regional level also."

4. The learned counsel for the applicant, has brought to the notice of the Tribunal, several identical issues in which the Tribunal passed favourable orders. In particular, the learned counsel for the applicant spoke at length about OA No. 282 of 2005, **Ms Priti Kathyar Vs. KVS and other connected cases** decided by a Division Bench of CAT Lucknow Bench. This case also related to the interpretation of para 10(2) and 18 (b) of the transfer guidelines of KVS. The learned counsel submits that the applicant got a favorable decision from the Tribunal. The relevant portion of the judgment is as under:

"53. In the above view of the matter, we are of the considered view that the policy of transfer as promulgated by the KVS requires reconsideration, as certain provisions are violative of Articles 14 and 16 of the Constitution of India and some of them are unworkable, causing prejudice to the teachers. We, accordingly, partly allow these OAs with the following directions:



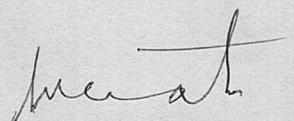
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- i. Respondents are directed to re-examine the policy to reconsider it in the light of the observations made above.
- ii. The orders of transfer passed in each case shall not be given effect to till the matter is reconsidered by a decision of the KVS in writing with reasons.
- iii. Any transfer order already effected and relieving ordered, in, those cases applicants would be restored back to their status quo ante till that period they would be disbursed for work rendered, salary and pay and allowances.
- iv. On reconsideration by a reasoned and speaking order, which shall be passed within a period of two months from the date of receipt of a copy of this order, respondents shall either modify the transfer order or pass fresh orders of transfer. No costs."

5. Categorically stating that the ratio of these judgments should apply to the present OA, the applicant has sought the following reliefs:

- "i. issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 30.05.2004 and 15.09.2005.
- ii. issue a writ, order or direction of mandamus directing the respondents to make payment of the petitioner salary as and when its due.
- iii. issue any other writ, order or direction which this Court may deem fit and proper under the facts and circumstances of the case.
- iv. award the costs of the O.A."

6. The learned counsel for the respondents drew the attention of the Tribunal to para 16, 17 and 18 of their CA. In these paragraphs the respondents have averred that the applicant was transferred in the 2nd shift of KV, Manauri, Allahabad and due to closure of the 2nd shift, he became surplus. Smt. Nisha Singh also a TGT having longest stay at the

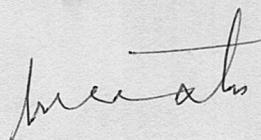


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station was proposed for redeployment out of Allahabad and the applicant was proposed for posting at KV, Naini against the vacancy created by the transfer of Smt. Nisha Singh. But in the meantime an application came under para 10(2) of the transfer guidelines of the KVS and some other teachers had to be transferred. For this reason it was not possible to accommodate the applicant at Naini and he was ordered to be transferred to KV, Chirimiri.

7. Against a particular inquiry by the Tribunal as to whether all other teachers working in the 2nd shift at Manauri were also transferred on being rendered surplus, the respondents have stated that this information was not obtained from the respondents because of the fact that there was no mention of this aspect in the OA. The applicant was not challenging the transfer for any hostile discrimination among the teachers of the 2nd shift at Manauri who were rendered surplus. The Tribunal asked the learned counsel for the applicant whether they had any allegation on this ground to which they said that it was not so. Therefore, the Tribunal is not going into this particular issue for a decision of this OA.

8. Learned counsel for the respondents has further stated that the applicant relies mostly on two OAs i.e. OA No. 282 of 2005, Priti Kathyar and OA No.



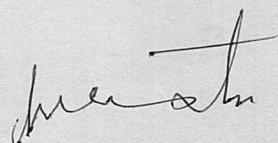
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1225 of 2005, Smt Maya Singh. In one case the favorable decision, which the applicant got, was quashed by the Hon'ble High Court and in the second OA a Writ Petition was filed against the decision of the Tribunal.

9. The learned counsel for the respondents, however, brought to the notice of this Tribunal decisions from a good number of cases, decided by the Apex Court on the question of judicial intervention in the cases of transfer. He quoted the relevant portion of the judgment from the following Apex Court decisions:-

- a. *AIR 1991 SC pg 532, Shilpi Bose Vs. U.O.I. & Ors*
- b. *AIR 1993 SC pg 2444, U.O.I. & Ors Vs. S.L. Abbas*
- c. *FLR 2004 (Vol. 101) pg 586, State of UP Vs. Govardhan Lal*
- d. *FLR 2005 (Vol. 107) pg 37, Maj Gen A.K. Bansal Vs. U.O.I. & Ors*
- e. *Judgment of Hon'ble Lucknow High Court*

10. The sum and substance of the submission of the learned counsel for the respondents was that the Apex Court has issued clear cut direction that the administrative decisions regarding transfer should not be interfered with unless the cases of mala-fide are clearly established. The norms and the tenure guidelines are merely guidelines and although these

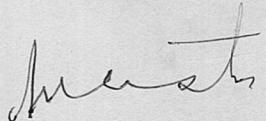


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are followed as far as practicable, still in the exigencies of service in view of special circumstances it is necessary to resort the transfer out of turn. These are made in the interest of service and the Tribunal cannot go into the propriety or merit of such transfer except when there is clear cut violation of natural justice and patent display of malafide. The learned counsel further submitted that the applicant has not attributed any malafide on the part of the respondents. The fact that he was brought back from Kokrajhar on completion of his tenure testifies that the respondents had no mal intention in causing him hardship. But his transfer from Manauri became unavoidable due to the closure of the 2nd shift. For this reason the Tribunal should not interfere with the decision of the respondents.

11. The relevant extract from the several Apex Court judgments as cited by the learned counsel for the respondents are as follows: -

a. State of UP Vs. Govardhan Lal (supra): A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This if for the reasons that Courts or Tribunals cannot



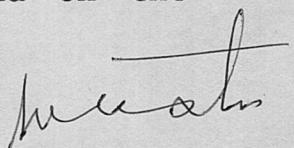
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substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are bases on concrete materials.

b. The learned counsel also cited from the judgment of Union of India & Ors Vs. S.L. Abbas (supra): "The administrative Tribunals sitting in judgment over the orders of transfer - It cannot substitute its own judgments for that of the authority competent to transfer".

c. In the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others the observation was - "A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department".

12. A look at the present OA indicates that the relief has been sought on the ground that the rules 10(2) and 18(b) of the transfer guidelines are violative of Article 14, 16 and 311 of the Constitution of India and because 18 (b) gave unfettered power to the Commissioner in the matter of making deviations from the scheme and on the

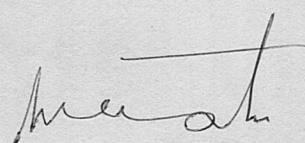


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question of exempting the Principals from the ambit of normal tenure by making a distinction from other teachers. The relief has also been sought mainly on the strength of the judgment of the CAT, Lucknow Bench **Ms Priti Katyar** (supra) and similar cases.

13. The learned counsel for the respondents have countered the arguments of the applicant on this aspect by saying that the judgment of the Tribunal of the Lucknow Bench in the cases of Ms Priti Katyar and a number of identical OAs were taken up for review by the Hon'ble Lucknow High Court in a bunch of Writ Petitions. In the said Writ Petitions the issue involved were considered by the Hon'ble High Court which has observed with regard to the policy Guidelines for transfer of the KVS that the policy guidelines were re-examined and modified w.e.f. 14.03.2006. For this reason no grievance should lie on this ground. The relevant part of the decision given by Hon'ble Pradeep Kant and Hon'ble D.V. Sharma is cited below:

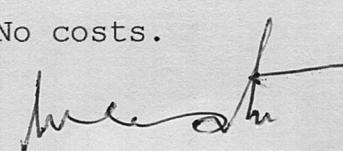
"We would like to put on record that though initially these petitions had been filed, challenging the order passed by the Central Administrative Tribunal in various original applications but since during the course of time the Sangathan has re-considered and re-examined the policy of transfer and has modified their policy with effect from 14th March, 2006, the learned counsel for the petitioner Sri Kapil Deo, Senior Advocate assisted by Sri Avinash Pal and learned counsel for the respondents, do agree that in view of the new policy which has already been enforced with effect from 14th March, 2006 the transfer orders of the private respondents which have not been quashed by the Tribunal and are still in force may also be reconsidered in the light of the policy now in existence."



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14. I am therefore, of the view that this aspect of the matter could be laid to rest. This, however, being the ground of this OA the cause of grievance is already removed. Nor is there any allegation of malafide in the matter of the transfer.

15. Therefore, the ends of justice will be met if the respondents are directed to review the transfer order of the applicant in the light of revised policy guidelines dated 14.03.2006 and issue appropriate orders within a period of three months from the date of receipt of this order. With that direction this OA is deposed of. No costs.



Member (A)

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