

OA No. 291/307/2020

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/307/2020

Order reserved on 22.07.2021

DATE OF ORDER: 29.07.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Bharat Lal Meena son of Shri Prahlad Meena aged about 32 years R/o Village Bhadkya, Post Beejalpur, Tehsil & District Karauli-322255 presently working as TGT. Mob. 8619259749.

....Applicant

Shri Amit Mathur, counsel for applicant (through Video Conferencing).

VERSUS

1. Kendriya Vidyalaya Sangthan through its Commissioner, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi-110016.
2. Deputy Commissioner, Kendriya Vidyalaya Sangthan (Regional Office) 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015.

....Respondents

Shri Hawa Singh, counsel for respondents (through Video Conferencing).

ORDER**Per: Hina P. Shah, Judicial Member**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for quashing and setting aside the impugned order dated 17.07.2020 along with corrigendum dated 20.07.2020 and that directions be issued to the respondents to give posting to the applicant at Jaipur.

2. (a) The brief facts of the case, as stated by the applicant, are that applicant was initially appointed as PRT in January 2009 and was posted at Dinjam, Assam. Thereafter, he was selected for the post of TGT (Hindi) after appearing in the selection process and was given promotion against the year 2015-16 and was posted at Jaipur. On 09.03.2019, he made a representation to the respondents that his year of promotion be changed from 2015-16 as he was not eligible for the same in that year. The Principal of K.V. No. 1, Bajaj Nagar, Jaipur recommended the official respondents to change year of promotion of the applicant and requested the Principal, K.V. No. 5,

Jaipur to keep the post vacant till the correction in the promotion order is made. Accordingly, said correction was carried out in the promotion order. It was also requested that his case for promotion be considered for the year 2016-17, 2017-18 and 2018-19. Instead of keeping post vacant, one Shri Girraj Prasad Meena who also was promoted along with the applicant and was given posting at Bharatpur approached the official respondents and prayed that he may be given posting at K.V. No. 5 Jaipur instead of Bharatpur in place of applicant.

(b) Since no action was taken by respondents, said Shri Girraj Prasad Meena approached C.A.T., Jaipur by filing O.A. No. 291/119/2019, and this Tribunal vide order dated 12.03.2019 directed the respondents to decide his representation and, accordingly, the posting of Shri Girraj Prasad Meena was modified from K.V. Bharatpur to K.V. No. 5, Jaipur. As no correction was carried out in the year of promotion of the applicant by official respondents on time, said Shri Girraj Prasad Meena was posted at K.V. No. 5, Jaipur. Therefore, being aggrieved by the action of respondents in posting of Shri Girraj Prasad Meena,

instead of the applicant, he filed OA No. 291/343/2019 before this Bench of the Tribunal and respondents vide its order dated 19.09.2019, (Annexure A/7), gave promotion and posting to applicant at Rewari. Since the post at K.V. No. 1, Jaipur was already filled, the applicant had no option but to join the place on promotion. The Tribunal, in the meantime, observed that O.A. has become infructuous as the applicant was given promotion. Liberty was given to the applicant to make representation to respondents for considering his place of posting at Jaipur vide order dated 10.01.2020.

(c) Accordingly, applicant made a representation for considering him for posting at K.V. No. 4, Jaipur as a vacancy would arise in K.V. No. 4, Jaipur on 30.04.2020 as T.G.T. (Hindi) posted there, would retire on that date. As no action was taken by the respondents on his representation, he again approached this Tribunal by filing OA No. 143/2020 and this Tribunal vide its order dated 04.03.2020, (Annexure A/11), directed the respondents to consider his representation. Again as no action was taken, the

applicant was forced to file a Contempt Petition and only after issuance of notices by the Tribunal, respondents decided the representation of the applicant and vide order dated 17.07.2020 and corrigendum dated 20.07.2020 rejected the prayer of the applicant pointing out 'organizational interest'.

(d) The applicant states that he was entitled for posting at K.V. No. 5 at Jaipur but due to ulterior motive and malafide intention instead posted Shri Girraj Prasad Meena. Rights of the applicant had already accrued for posting at Jaipur in 2019 itself but respondents to adjust persons of their choice posted Shri Girraj Prasad Meena ahead of the applicant. Therefore, being aggrieved by the orders dated 17.07.2020 as well as 20.07.2020, (Annexure A/1), the applicant has approached this Tribunal for redressal of his grievances.

3. (a) After issue of notices, respondents have filed their reply stating that Transfer is an incidence of service and the provisions in Transfer Guidelines do not confer any right on the employees in matter of transfer. Therefore, employees are bound to undergo

transfers being made by the organization at any place within the country with no option for the employees except in respect of certain contingencies specially visualized in the Transfer Guidelines. As an autonomous body, Kendriya Vidyalaya Sangathan has framed its policy on transfer in the interest of its employees. These guidelines regarding transfers are meant essentially for the internal use of the Sangathan and do not vest any employee with any right.

(b) In the present case, the applicant has filed the present O.A. being aggrieved by the rejection of his representation for posting in Jaipur against vacant post of TGT (Hindi). The grounds assigned by the applicant is that in organizational interest, the respondents are unjustified in stating that applicant cannot be posted at Jaipur. The term 'organizational interest' used by the respondents is vague and unspecific in the context of the matter. The post was vacant and the applicant was found fit for posting at Jaipur. Due to administrative delay and ulterior motive, he was deprived of joining at Jaipur in 2019 and the post was filled by some ineligible person.

Therefore, the orders passed by respondents is unsustainable in the eyes of law. But, on the other hand, the facts detailed out by the applicant while assailing the legality, validity and correctness of the orders made by the competent authority would reveal that the facts are concocted and creations of imagination of the applicant, rather contrary to the material available on record. This Tribunal, in the light of several judgments of the Hon'ble Apex Court, has time and again 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 the same are vitiated by malafides or is made in violation of any statutory provisions.

(c) In the present case, the applicant was promoted through LDCE-2015-16 to the post of TGT (Hindi) with posting at K.V. No. 5, Jaipur vide order dated 08.03.2019. But he was not allowed to join at Jaipur as he was not found eligible for the said post in 2015-16. On examination of his case, he was found eligible for the post of TGT (Hindi) for the year 2016-17 in place of the year 2015-16. Accordingly, the applicant

was posted to K.V. Rewari on promotion and was directed to join on or before 28.09.2019 instead of K.V. No. 5, Jaipur. Thereafter, the applicant has filed several OAs and the present O.A. is also filed by him for giving posting at Jaipur. The Competent Authority in compliance of the directions of this Tribunal has decided the pending representation sympathetically within the time frame giving personal hearing to the applicant keeping in view the policy guidelines prevalent in the department. Respondents further clarified that vacancies do arise and get filled which is a regular feature. Request of transfer of applicants are accommodated giving preference to the organizational interest in compliance of the well defined transfer guidelines.

(d) The applicant has failed to make out any case, worth the name, so as to sustain the challenge to the order of transfer made by the competent authority without there being any violation of any legal rights of the applicant. Therefore, the order of transfer is legal, valid and in consonance with the service law jurisprudence. Hence, claim of the applicant and the

O.A. preferred by the applicant are merits rejection at the threshold.

4. The applicant has filed a rejoinder stating that he denies the submissions of the respondents. They were supposed to decide the year of promotion of the applicant in March 2019 itself when he had represented to the respondents for changing his year of promotion. Intentionally, the delay has been committed by the respondents for changing his year of promotion and same cannot be a ground in changing his place of posting. The respondents kept the issue pending for a long time, which was done intentionally to accommodate other person. However in order to give benefit to Shri Girraj Prasad Meena, the said person was posted at K.V. No. 5, Jaipur instead of the applicant and for which reason the applicant cannot be punished. The said error of the respondents can be rectified by adjusting the applicant to the available vacancies in Jaipur as vacancies of TGT (Hindi) are available in K.V. No. 4 and K.V. No. 1, Jaipur. As also he is facing domestic as well as medical problems of his mother, his presence in Jaipur is required for

taking care of the family. Therefore, his prayer is to accommodate him on available vacancy in Jaipur.

5. Heard learned counsels for the parties through Video Conferencing and perused the material available on record.

6. The applicant as well as respondents reiterated their stand as stated earlier.

7. The factual matrix of the case is that the applicant has joined Kendriya Vidyalaya Sangathan as PRT and was posted at Assam. Thereafter, after undergoing selection process of LDCE, he was posted and promoted as TGT (Hindi) at K.V. No. 5 Jaipur. Since his year of promotion was wrongly mentioned as 2015-16, he represented for correction in the year of promotion to the respondents. The applicant made a representation to the Competent Authority through proper channel for necessary correction. The Principal, K.V. No. 1, Jaipur had intimated Principal K.V. No. 5, Jaipur to keep the post of TGT (Hindi) vacant till the correction is carried out in the year of promotion in the case of the applicant vide his letter dated

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09.03.2019 (Annexure A/4). In the meanwhile, one Shri Girraj Prasad Meena approached this Tribunal for modification in his place of posting from Bharatpur to Jaipur and this Tribunal vide its order dated 12.03.2019 had disposed of the said O.A No. 119/2019. Thereafter, respondents allowed Shri Girraj Prasad Meena to join at K.V. No. 5, Jaipur vide order dated 31.05.2019 (Annexure A/6). Also, the correction in the year of promotion in respect of the applicant was carried out by the Competent Authority vide letter dated 19.09.2019, (Annexure A/7), and his year of promotion for LDCE was corrected as 2016-17 and the applicant was promoted and posted at K.V. Rewari on promotion, which was decided while the O.A. No. 343/2019 filed by the applicant was pending. The said O.A. was dismissed as infructuous vide order dated 10.01.2020. Again the applicant made a representation dated 27.01.2020 to the Competent Authority for posting him at Jaipur as vacancy was due to arise in K.V. No. 4, Jaipur on 30.04.2020. Again applicant approached this Tribunal by way of O.A. No. 143/2020 and this Tribunal vide its order dated 04.03.2020 directed the competent authority to dispose of his pending representation within four

weeks from the date of receipt of a certified copy of the order. The Competent Authority vide its order dated 17.07.2020 and corrigendum dated 20.07.2020 (Annexure A/1) considered the grievance of the applicant sympathetically but stated that his request for posting at K.V. Jaipur could not be acceded to due to organizational interest.

8. From the pleadings annexed to the O.A., we have observed that the applicant is interested to be posted in Jaipur may be due to his domestic problems and other grounds raised by him is that the respondents purposely delayed in correcting his year of promotion due to which his rightful claim for posting him at K.V. Jaipur was frustrated and in his place Shri Girraj Prasad Meena was adjusted. It is to be noted that in transfer of a government employee, scope of judicial review is very limited and the same cannot be interfered unless the orders are passed in colourable exercise of power, the same is passed in violation of rules or passed by incompetent authority. It is clear that wheels of administration cannot be interfered by the Courts or Tribunals who cannot act as an Appellate Authority to decide who should be placed at which

place as it is to be left to the Authority to decide. May be the Administration may fill the post or keep the post vacant in Organizational interest as it is they who know as to which person can be adjusted seeing his grievances and taking into consideration other factors in the interest of the Organization. In the present case, the applicant has failed to point out any violation of rule or guidelines by the respondents in the posting order. Also with regard to the ground raised by the applicant that purposely respondents have posted Shri Girraj Prasad Meena in his place though the Principal K.V. No. 1 had intimated Principal K.V. No. 5 to keep the post vacant for the applicant but in vast Organization of K.V.S., such posts cannot be reserved for any particular person as it is for the Department to post any person keeping in mind various factors and taking into consideration rules and guidelines. In an All India Transfer liability, no person has a right to a particular post and the same has been observed by the Hon'ble Apex Court in umpteen number of cases. Therefore, as the representation of the applicant was considered sympathetically and posting of the applicant at Jaipur could not be possible in Organizational interest, the said transfer cannot be

interfered by the Courts as it is clear that the Courts are not Appellate Forums to interfere in these issues for the reasons as discussed earlier.

9. In view of the discussions made herein above, we do not find any reason for interference in the impugned order dated 17.07.2020 and corrigendum dated 20.07.2020 (Annexure A/1)) as the same are just and proper and the O.A. is devoid of any merits. However, it is made clear that in case, there is a vacancy and the Organization feels that the applicant can be adjusted, then the Department can pass appropriate orders keeping in mind the personal problems/difficulties of the applicant and the policy/guidelines also to be taken into consideration.

10. Accordingly, Original Application is disposed of with the observations as mentioned above. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER