

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/279/2021

Order reserved on 01.10.2021

DATE OF ORDER: 12.10.2021

CORAM

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

Vidhi Mathur W/o Shri Niraj Mathur aged about 55 years, R/o 5/298 SFS, Mansarovar, Jaipur-302020 (Raj.) presently working as PGT-Physics, under transfer from K.V. No. 4 to K.V. Phulera (Group-B employee) M-9414447481.

....Applicant

Shri Amit Mathur with Shri Vipul Diwakar, counsel for applicant.

VERSUS

1. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016 – Through its Commissioner.
2. Assistant Commissioner (Estt. II/III) Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
3. Sh. Yudhishter Sharma, PGT Physics, K.V. No. 4 Shahid Sagat Singh Marg, Khatipura Road, Jaipur-302012 (Rajasthan).
4. Sh. Sohan Lal Verma PGT-Physics, K.V. No. 1, Bajaj Nagar, Tonk Phatak, Jaipur-302015 (Rajasthan).

.... Respondents

Shri Hawa Singh, counsel for respondent Nos. 1 & 2.

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 praying for quashing and setting aside the transfer order dated 10.09.2021 (Annexure A/1) and that the applicant be allowed to continue in Kendriya Vidyalaya No. 4, Jaipur with all consequential benefits.

2. The brief facts of the case, as stated by the applicant, are that she was initially appointed as TGT (PCM) on 09.10.1987 at K.V. No. 2, Khetri Nagar, District Jhunjhunu, (Rajasthan). Thereafter, she was promoted as PGT (Physics) on 30.08.1994. Applicant has joined her present place of posting on 27.12.2008. Her husband is working in Rajasthan State Pollution Control Board, which is a Statutory Body, as Senior Environmental Engineer. Respondent No. 3, (Shri Yudhishter Sharma), was posted in K.V. No. 5. He has been declared surplus by the official respondents. Considering Para 5 (a) and (7) of the Transfer Guidelines of Kendriya Vidyalaya Sangathan, respondent No. 3 has been given posting in K. V. No.4

where applicant was posted. The applicant has been displaced only to adjust respondent No. 3 and she has been transferred to Phulera from K. V. No. 4, Jaipur. The order of posting of respondent No. 3 from K.V. No. 5 Jaipur to K. V. No. 4 is attached as annexure A/1 and by the same order dated 10.09.2021, the applicant has been posted to K.V. Phulera. On 06.09.2021, new Transfer Guidelines have been notified by the official respondents and as per the said policy, person with more displacement counts will be displaced. Respondent No. 4 is having more displacement counts than the applicant and whereas applicant is having only two displacement counts. In her 19 years of service, she was posted at Jaipur for a period of 17 years and Mount Abu for 02 years and has 34 displacement counts. But as her husband is working in State Govt., she is entitled for -30 displacement counts. As she was conferred with KVS Regional Incentive Award, therefore, she became entitled to another -2 points. Thus, she is having only 2 displacement counts to be counted for transfer. As respondent No. 4 is working in K.V. No. 1 Jaipur since 2014, he has completed six years of service in K.V. Jaipur and, thus, has 12 displacement counts. As he

has been awarded KVS Regional Incentive Award, he is entitled for -2 points. Thus, respondent No. 4 has 10 displacement counts against 2 displacement counts of the applicant. Therefore, as per the transfer policy, person with more displacement counts should be transferred and, thus, respondent No. 4 should have been transferred as per policy and not the applicant. Thus, being aggrieved by the transfer order dated 10.09.2021 (Annexure A/1) whereby the applicant has been transferred to accommodate respondent No.3 ignoring the displacement counts of the applicant, the applicant has filed the present O.A. for redressal of her grievance.

3. a) Respondents, after issue of notices, filed their reply and stated that the administrative transfers of KVS to eliminate surplus staff are generally issued in the beginning of the session (2021-22) to ensure optimum utilization of available staff and so for fixation of staff strength in Kendriya Vidyalayas (KV) for the year 2021-22, a letter dated 01.06.2021 was addressed by Headquarter to Deputy Commissioner of all regions for redeployment of excess staff in Kendriya Vidyalayas over and above the sanctioned staff strength for the year 2021-22. Accordingly, the

staff in excess of the sanctioned strength in certain Kendriya Vidyalayas were required to be redeployed in terms of clause 5 (a) and 7 of the transfer guidelines effective from 01.04.2011 and amended from time to time. It is to be stated that transfer of the employees of KVS dated 10.09.2021 were made according to the transfer guidelines of 2018. It is further stated that in pursuance to the letter dated 01.06.2021, they were required to send the details of surplus staff which were to be redeployed to the KVS HQ by 15.06.2021 followed by post in the proforma-A & B prescribed in the annexure. Proforma 'A' is meant for showing Vidyalaya level surplus data whereas Proforma 'B' is meant for station level surplus data. Thus, while sending the details of surplus staff, provisions contained in clause 5 (a) and 7 of the transfer guidelines were to be taken into consideration. Displacement count of the surplus employees for the year 2021, as per transfer counts/displacement counts 2019 onwards, were required to be added as per existing transfer guidelines, while sending the information of surplus staff.

b) The datas were collected in month of June 2021 of the surplus staff for the transfers but due to

COVID-19 problems, transfers were made in the month of September, 2021 under the transfer policy of 2018 as data was collected and complete exercise was initiated and completed under the transfer policy of 2018. Thus, the process was started under the previous transfer guidelines of 2018, which were even notified through KVS website on 06.09.2021 and circulated vide KVS HQ letter dated 08.09.2021. Therefore, contention of the applicant that transfer is made under new transfer guidelines is not accepted as transfers were carried out under 2018 transfer guidelines. As per the transfer guidelines and according to the displacement counts, applicant is having 12 displacement counts, respondent No. 3 is having -44 displacement counts and respondent No. 4 is having 10 displacement counts. The calculation of displacement counts as on 30.06.2021 was made as per the transfer guidelines 2018-19. Therefore, Jaipur Station Applicant is having the highest displacement counts and Annexure R/4 is the chart showing the details. In the proforma, Applicant gave 5 choices of postings, in which KV Phulera was her 1st choice and on displacement of surplus staff, she has been posted at her 1st choice KV Phulera on her having highest

displacement counts as 12 at the station (Jaipur). Thus, the applicant was relieved from K.V. No. 4, Jaipur on 13.09.2021 and respondent No. 3 has joined K. V. No. 4 Jaipur on 14.09.2021. Annexure R/6, collectively, is the relieving order of applicant and joining report of respondent No. 3. Thus, as there is no illegality or violation of rules in the decision making process, there is no question of any interim relief and the O.A. deserves to be dismissed at admission stage itself. In their support, the official respondents have relied upon the following judgments / orders:-

- "(i) State of U.P. vs. Gobardhan Lal, reported in (2004) 11 SCC 402
- (ii) Airports Authority of India vs. Rajeev Ratan Pandey, reported in (2009) 8 SCC 337
- (iii) National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan, reported in (2001) 8 SCC 574.
- (iv) Union of India vs. Modiluft Ltd., reported in (2003) 6 SCC 65
- (v) State of U.P. vs. Visheshwar, reported in 1995 Supp (3) 590
- (vi) Home Secretary, U.T. of Chandigarh vs. Darshjit Singh Grewal, reported in (1993) 4 SCC 25
- (vii) Ritona Consultancy (P) Ltd. vs. Lohia Jute Press, reported in (2001) 3 SCC 68."

4. Applicant has not filed any rejoinder denying the contentions raised by the official respondents

5. Heard learned counsels for the parties at length and examined the pleadings brought on record.

6. The applicant has reiterated her stand as stated earlier. She further stated that the impugned action of official respondents is in violation to their own policy dated 06.09.2021. As per the policy, the employee who has become surplus is required to be transferred against clear vacancies. Though no vacancy was available in K.V. No. 4 Jaipur, yet respondent No. 4 has been accommodated. It is further stated that the person with more displacement counts has to be displaced and as per the policy, respondent No. 4 is having more displacement counts. Prior to enforcing transfer policy dated 06.09.2021, official respondents have issued transfer guidelines in 2018, therein the spouse of State Govt. employee/ State PSU/State Autonomous Bodies were allowed -20 displacement counts. The same has been increased to -30 displacement counts w.e.f. 06.09.2021. The old policy has been superseded by new policy dated 06.09.2021. As per the new policy, Applicant has become entitled for -30 displacement counts as her husband has been posted in State Autonomous Body. As she is a lady employee, she has been allowed certain benefits by

the KVS, which have been withdrawn and not taken care by the official respondents while passing the impugned transfer order dated 10.09.2021. Thus, the present transfer order is in violation of transfer guidelines dated 06.09.2021 and, therefore, the impugned transfer order deserves to be quashed and set aside.

7. The official respondents too reiterated their submissions made earlier and added that the transfer of the KVS employees were made according to the transfer guidelines of 2018. As per the letter of the KVS HQ dated 01.06.2019 written to Deputy Commissioners of all regions, a direction was given to pay attention to Paras 5(a) and 7 of the transfer guidelines of 2018, which pertains to liquidation of surplus situation of the staff by transferring on administrative grounds. The surplus staff datas were collected from each KV and station as it takes time to determine the vacancies all over India and it is a time consuming process. The surplus staff has to be adjusted according to the existing policy by collecting data and showing actual position of the vacancies. Every year surplus staff is to be adjusted before the regular transfer is to be made, for the reason that a

clear position of the vacancy will be available. Accordingly, data were collected in the month of June 2021 of the surplus staff for the transfers but due to COVID-19 problems, transfers were made in the month of September 2021 under the transfer policy of 2018. Therefore, the process was started under the previous transfer guidelines of 2018 and not under the new guidelines which were even notified through KVS website on 06.09.2021 and circulated vide KVS HQ letter dated 08.09.2021. As no prudent man can reach a conclusion that such a lengthy process can be completed in 3-4 days, contention of applicant that transfer is made under new guidelines cannot be accepted. Thus, the prayers of the applicant are not sustainable in eyes of law as Transfer is an incidence of service and the same cannot be interfered unless there is a violation of statutory rules or provisions or that the same has been passed by an incompetent authority. Also in matter of transfer of a government employee, scope of judicial review is limited and the Courts should not normally interfere in the same as it is to be left to the employer to decide who is to be kept at which place as wheels of administration have to function and employee has no legal right to be posted

at a particular place. As applicant has got her first choice, she is posted at Phulera and respondent No. 4 has joined at K.V. No. 4 as per transfer guidelines of 2018. Thus, the action of the respondents does not deserve any interference as the same is in accordance with law.

8. After hearing the parties and perusing the pleadings, the factual matrix of the case is that the applicant after her initial appointment as TGT (PCM) on 09.10.1987 was then promoted as PGT (Physics) on 30.08.1994. She has joined the present place of posting on 27.12.2008 and that her husband is working in State Autonomous Body i.e. Rajasthan State Pollution Control Board. According to the applicant, official respondents have to consider the transfer only as per new transfer policy dated 06.09.2021 which has come into force before the impugned transfer order dated 10.09.2021 has been passed. Her claim is that she has only two displacement counts whereas respondent No. 4 has 10 displacement counts and, therefore, as per the new transfer policy, person with more displacement counts should be transferred. Thus, official respondents cannot disown their own policy dated 06.09.2021 and

as such the applicant should be allowed to continue at K.V. No. 4, Jaipur.

9. As seen, the official respondents have very categorically stated that as per KVS HQ letter No. F.11046/SUR/2021-22/KVS/HQ/E-II/1106-33 dated 01.06.2021 addressed to the Deputy Commissioners of all regions for redeployment of excess staff in Kendriya Vidyalayas over and above the sanctioned staff strength for the year 2021-22 be carried out. It was also asked by the said letter to immediately determine the Vidyalaya wise/station wise surplus staff after taking the sanction of posts into account in different cadres for the year 2021-22. They were also required to furnish details of surplus staff that need to be redeployed by KVS HQ, positively by email followed by post in Proforma-A & B prescribed in the Annexure. It was also clarified that while sending the details of surplus staff, provisions contained in clause 5(a) and 7 of transfer guidelines be specifically taken into consideration. Also that displacement counts of the surplus employees for the year 2021, as per transfer counts/displacement counts 2019 onwards, may be added as per the existing transfer guidelines, while sending the information of the surplus staff. There

were several other conditions specified as to what information is required. It was also clarified that normally transfers do take place before the session resumes but due to COVID-19, the transfers have taken place in the month of September 2021 under the transfer policy of 2018 as data were collected and complete exercise was completed under the transfer policy of 2018. Therefore, we have observed that the process was started under the previous transfer guidelines of 2018 and not under the new transfer guidelines. The same were notified through KVS website on 06.09.2021 and also circulated vide KV HQ letter dated 08.09.2021. Thus, we are also clear and have no doubt to understand that though the new transfer policy came into existence on 06.09.2021 but the procedure had already been started as per the previous transfer policy of 2018.

10. Now coming to the question of displacement counts which are considered in the present case and which is the foundation for the basic transfer in question, we have seen the chart produced by the respondents in their reply at Annexure R/4. Though, the applicant has submitted her displacement counts as well as that of the respondent No. 3 and

respondent No. 4, but the chart annexed is very clear and we do not find any case of discrimination in the same. The point system which has been followed in the case of the applicant is also followed in the case of private respondents.

11. Coming to the major grounds raised by the applicant that the official respondents have to follow the new transfer policy which has come into force on 06.09.2021 cannot be accepted as the basis/foundation for the impugned transfer order is that it takes time to collect several information/data which is required to carry out transfer as though the new transfer policy came into force on 06.09.2021 but the actual procedure started way back in June 2021 and, therefore, it is highly impossible to act as per transfer policy of 06.09.2021. Thus, the impugned transfer order dated 10.09.2021, (Annexure A/1), cannot be interfered as on the face of it, it is clear that as per the choices asked by the Department to its employees, the first option submitted from the five options by the applicant, her very first option has been considered and she has been posted to K.V. Phulera. Now coming to the submission of the applicant that the present transfer is only to

accommodate respondent No. 4 also does not hold good as seen from the displacement counts and the transfer policy of 2018, the official respondents have acted as per rules and displacements points/marks /counts are given under each head which is clear that there is no violation of policy in transferring respondent No. 4 to K.V. No. 4, Jaipur. Also the present transfer order dated 10.09.2021 is a General transfer order wherein total 79 persons are considered wherein due to fixation of staff strength, the staff in excess of the sanctioned strength are redeployed in terms of Clause 5 (a)and 7 of the transfer guidelines effective from 01.04.2011 and amended from time to time. We have also seen that the said transfer order is issued in public interest and with immediate effect. Therefore, none of the grounds are sustainable and the same do not hold good.

12. We are in agreement with the judgments relied by the learned counsel for the official respondents that in the matter of transfer of a government employee, scope of judicial review is limited and Courts should normally not interfere in the said transfers. Also that Courts should not act as an Appellate Authority to assess the administrative needs and requirements of

the Department. Also, that no government servant or employee of a public undertaking has any legal right to be posted at any one particular place.

13. In the light of the observations made hereinabove, the impugned transfer order dated 10.09.2021, (Annexure A/1), does not call for any interference as the same is just and proper. The Original Application filed by the applicant being devoid of any merits deserves to be dismissed. Accordingly, the Original Application is dismissed. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

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