

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/454/2019

Order reserved on 31.03.2021

DATE OF ORDER: 12.04.2021

CORAM

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

Sugan Chand Jat S/o Shri Bhuramal aged about 57 years, R/o 47, Gyatri Nagar-I, Tonk Road, Sanganer, Jaipur-302029 (Raj.), presently working as PGT Commerce in K.V. Sikar (Group 'B') M-9414876970.

....Applicant

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

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. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015 (Rajasthan).
4. Principal, Kendriya Vidyalaya Sikar, Sabalpura NH No. 11, Sikar-332001 (Rajasthan).
5. Shri Ajay Sharma, PGT (Commerce), Kendriya Vidyalaya No. 1, Ajmer (CRPF Gr-I), Golf Course Road, CRPF Group Centre-1, Rajasthan, Ajmer-305007 (under transfer).

....Respondents

Shri Hawa Singh, counsel for respondent Nos. 1 to 4 (through Video Conferencing).

Shri C.B. Sharma, counsel for respondent No. 5 (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 01.08.2019 (Annexure A/1) to the extent of respondent No. 5 and that directions be issued to the official respondents to transfer the applicant from his present place of posting to K.V. No. 5, Jaipur with immediate effect and that transfer of respondent No. 5 from K.V. No. 1 Ajmer to K.V. No. 5, Jaipur under the category of No Taker Vacancy be quashed and set aside.

2. The brief facts of the case, as stated by the applicant, are that he was initially appointed as PGT (Commerce) in the year 1992 and was posted at several places and his last posting was at K.V. Sikar. The official respondents/KVS had issued Transfer Guidelines on 13.04.2018 in the subject matter of

Notification of KVS Transfer Guidelines 2018 for Non-Teaching Staff upto Assistant Section Officer and Teaching Staff upto PGT. As per para 11(g) of the Transfer Guidelines, KVS is considering transfer against 'No Taker Vacancy'. On 26.07.2019, official respondents issued a Notification, (Annexure A/3), inviting Online applications for request transfers against 'No Taker Vacancies' and Mutual Transfers for 2019. The vacancies under the category of 'No Taker Vacancies' were notified by the respondents, which was displayed online on their website (Annexure A/4). In the vacancies displayed by official respondents, no vacancy of PGT (Commerce) in K.V. No. 5, Jaipur was notified. No vacancy was available under the category of 'No Taker Vacancy'. Despite this fact of no vacancy of PGT (Commerce) in K.V.No. 5, Jaipur being displayed, the applicant applied under Para 11(g) of Transfer Guidelines of 2018 against No Taker Vacancy and, therefore, as no vacancy of PGT (Commerce) in K.V. No. 5 was notified, after filing the form, there was no submit option/button being displayed. The respondent No. 5 applied for No Taker Vacancy for K.V. No. 5 and vide order dated 01.08.2019, (Annexure A/1), he was transferred from K.V. No. 1,

Ajmer to K.V. No. 5, Jaipur against the post of PGT (Commerce). It is clear that as no vacancy was displayed for PGT (Commerce) in K.V. No.5, Jaipur under No Taker Vacancy, so the application made by applicant was not accepted. Applicant states that it came to his knowledge that vacancy was available, but as the same was not displayed but the official respondents vide order dated 01.08.2019, transferred the respondent No. 5 from Ajmer to Jaipur. Therefore, the applicant submitted a representation to respondent No. 1 through proper channel and mentioned that he had more transfer counts/points than respondent No. 5, (Shri Ajay Sharma), and also pointed out that No Taker Vacancy was not advertised for PGT (Commerce) in K.V. No. 5, Jaipur and as he is undergoing treatment in Jaipur, he is entitled to be transferred against No Taker Vacancy. He submitted his representation dated 02.08.2019 (Annexure A/5) in this behalf which was duly forwarded by the Principal to Deputy Commissioner, KVS, Jaipur vide letter dated 02.08.2019 (Annexure A/6). Even as per seniority as on 01.01.2018, applicant stands at Sl. No. 304 and respondent No. 5 stands at Sl. No. 2516. Further, applicant is due to retire on superannuation

on 30.06.2022. As per Clause IV of Para 11(g) of Transfer Policy, if two persons are claiming posting at one place against No Taker Policy, then the person who is senior will have a preferential right. Accordingly, applicant is senior to respondent No. 5. Even otherwise, as per Annual Transfer 2019, the transfer counts of applicant are more as compared to respondent No. 5, but the respondents intentionally for the reasons best known to them have not published the vacancy of PGT (Commerce) under No Taker Vacancy, but instead given posting to respondent No. 5. This clearly shows institutional malice and legal malice as otherwise applicant was entitled for posting under No Taker Vacancies at K.V. No. 5, Jaipur to the post of PGT (Commerce). It also shows mala fide act of official respondents as well as undue benefit being given de hors the rules to the respondent No. 5. Thus, being aggrieved by the impugned order dated 01.08.2019 (Annexure A/1), applicant has approached this Tribunal for redressal of his grievance by way of filing the present Original Application.

3. After issue of notices, the official respondents have filed their reply stating that a new Transfer guideline was framed by the official respondents, which came into force w.e.f. 2018 and the same was duly approved by the Board of Governors which is the Apex Policy making body of KVS. The transfer guidelines is amended from time to time in consultation with all stakeholders and finally approved by the BOG. Transfers of teaching staff upto PGTs and non-teaching staff upto Assistants (now ASOs) are effected as per Transfer Guidelines. The official respondents state that the facts detailed out by the applicant while assailing the legality, validity and correctness of the order made by the Competent Authority would reveal that the facts are concocted and creations of imagination, rather contrary to the material available on record. It is apparent on the face of record that 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 of the legal rights of the applicant. It is submitted that the KVS has invited online applications for request transfers against 'No Taker Vacancy' and mutual transfers for the year

2019-20 vide letter dated 26.07.2019 in which method for apply for transfer under 'No Taker Vacancy' and date of online submission was 26.07.2019 to 28.07.2019 and verification of the data by controlling officer and date of submission was 29.07.2019. It is further stated that vacancies shown in the notification for 'No Taker Vacancy' are tentative this means that vacancy may be added and reduced for the purpose of 'No Taker Vacancy' at the time of effecting transfer under para 11(g) of the transfer guidelines. It is a fact that application of applicant was not received in KVS (HQ) and the application of private respondent No. 5 who has applied under 11(g) of the transfer guidelines was received online under 'No Taker Vacancy' from K.V. No. 1, Ajmer to K.V. No. 5, Jaipur. It was later found that applicant is senior in KVS Seniority and respondent No. 5 is junior in seniority but due to non-availability of application of applicant in time, the applicant could not get his transfer under 11(g) of the transfer guidelines. In this regard, official respondents further state that applicant should have applied in time likewise other KVS employees so there is no unjust action of official respondents in issuing of transfer order. The

application of the applicant was written on 02.08.2019 through Principal concerned. In so far as availability of no option button as indicated by the applicant is concerned, it is stated that it is the onus of the applicant and not of the organization who is prepared for making transfer of its employees. Though respondent No. 5 is junior compared to the applicant in seniority as well as transfer counts, but respondent No. 5 had made an application under 11(g) of the transfer guidelines under 'No Taker Vacancy' and it is only on the basis of the application of respondent No. 5, that he was transferred and applicant could not be transferred as KVS had not received application of the applicant for request transfer through online under 'No Taker Vacancy'. Therefore, the contention of the applicant that respondent No. 5 should not be relieved from K.V. No.1, Ajmer to join K.V. No. 5 at Jaipur being junior in seniority as compared to applicant cannot be accepted. As the relieving of respondent No. 5 is in compliance of the transfer order dated 01.08.2019 issued by the KVS (HQ) on the ground of availability of the application before effecting of the transfer under No Taker Vacancy, so question does not arise for tie up with other contenders in a situation

where no application is available of senior teacher in the same category of PGT (Commerce). Therefore, the allegations levelled by the applicant are denied. Thus, order of transfer is legal, valid and consonance with the service law jurisprudence. Hence, the claim of the applicant deserves rejection of the O.A. as the same is devoid of merits.

4. The private respondent No. 5 has also filed its reply stating that the applicant had nowhere applied against 'No Taker Vacancy' in the period from 26.07.2019 to 28.07.2019 as prescribed by the KVS authorities vide Annexure A/3 and when answering respondent transferred from K.V. No. 1 Ajmer to K.V. No. 5 Jaipur then by manipulation got forwarded his request on 02.08.2019 which is evident from Annexure A/5 & A/6 and the applicant has mentioned wrong reasons, whereas other officials like respondent No. 5 had submitted application within the prescribed period of three days i.e. from 26.07.2019 to 28.07.2019. It is clear that as regards provisions of 11(g) clause (iv) & (v), the applicant never submitted his request within time period. So his consideration does not arise and as respondent No. 5 submitted his request well within

time has been considered and KVS authorities therefore have rightly passed order dated 01.08.2019. It is further stated that the applicant annexed only one page of provisional vacancies which belong to sub-staff and it was also mentioned that the same is subject to change without prior intimation and teaching staff always applied for transfer on availability of vacancy and as vacancy on which respondent No. 5 is transferred was available, so he was rightly considered for transfer as per his request. Also the version of the applicant that he had applied online but no submit option/button was displayed is far from truth as the applicant has not applied within the prescribed period of three days i.e. 26.07.2019 to 28.07.2019. In fact the application of the applicant was submitted to the Principal on 02.08.2019 who put his remark on the same day and also forwarded the same to K.V. Authorities at New Delhi on 02.08.2019 but the respondent No. 5 was already transferred on 01.08.2019 and, thus, it is clear that the applicant neither made his application for transfer before 01.08.2019 nor got his request forwarded before the said date of transfer of respondent No. 5. Thus, in view of this position, official respondents rightly

considered the respondent No. 5 for transfer under 'No Taker Vacancy' and transferred him from K.V. No. 1 Ajmer to K.V. No. 5, Jaipur and there is no violation of any procedure nor the transfer policy.

5. The applicant has filed a rejoinder to the reply filed by official respondents stating that the official respondents issued Notification on 26.07.2019 for 'No Taker Vacancy'. No post of PGT (Commerce) was mentioned in the Notification. No post of PGT (Commerce) was lying vacant with the official respondents in K.V. No. 5 Jaipur on 26.07.2019. It is on 01.08.2019, Smt. Kavita Chandana PGT (Commerce) was transferred from K.V. No. 5, Jaipur vide transfer order dated 01.08.2019 (Annexure A/9), Jaipur and she was relieved on 02.08.2019. Therefore, the vacancy for K.V. No. 5 Jaipur got arisen on 02.08.2019 on relieving of Smt. Kavita Chandana and her transfer to K.V. Lalgarh, Jattan vide order dated 01.08.2019. Thus, with the transfer of Smt. Kavita Chandana to Lalgarh, Jattan, the vacancy arises in K.V. No. 5 only on 02.08.2019. Therefore, there was no vacancy under 'No taker Category' as on 01.08.2019. Hence, as per the guidelines issued by

the official respondents dated 26.07.2019, any vacancy which may arise or result due to the transfer of any employee during the transfer against 'No Taker Vacancy' shall not be allotted to any employee during the process. 'No taker vacancy' was in fact available at Lalgarh, Jatan and Smt. Kavita Chandana had applied for the same. It is only on transfer of Smt. Kavita Chandana vacancy was created in K.V. No. 5 Jaipur. Thus, it is clear that the above vacancy cannot be filled under 'No Taker Vacancy'. The communication dated 26.07.2019 debars the consideration of the case of respondent No. 5 against 'No Taker Vacancy'. It is once again submitted that on 01.08.2019, there was no vacancy whatsoever available with the respondents. Therefore, the question is if the vacancy itself has arisen on 02.08.2019 which could not have been filled under 'No Taker Vacancy', then how the official respondents have accepted the application of respondent No. 5 and on 02.08.2019 itself passed the order to post respondent No. 5, which clearly proves that official respondents have committed illegality. It clearly shows that they have played fraud with the court also by concealing the fact that 'No Taker Vacancy' was not available upto 02.08.2019. It is

further stated that under Right to Information Act, information was received by the applicant that no vacancy under 'No Taker Vacancy' was available with the official respondents in K.V. No. 5 Jaipur. It is also evident from RTI reply, (Annexure A/10), that on 01.08.2019, the transfer order of Smt. Kavita Chandana was passed and who was relieved only on 02.08.2019. It was also made evident from RTI reply that the application of respondent No. 5 was not at all verified and the Notification provides that on 29.07.2019 applications made will be verified. The official respondents should have taken note of the fact that applicant was senior to respondent No. 5, had more counts and is due to retire in less than three years' time period and is also undergoing treatment in Jaipur, which is evident from Annexure A/11. Thus, applicant had a preferential right for posting at K.V. No. 5 Jaipur ahead of respondent No. 5. Therefore, in view of the averments made, it is clear that the transfer order of respondent No. 5 deserves to be cancelled.

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

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

8. The factual matrix of the case is that Kendriya Vidyalaya Sangathan (KVS) has published Transfer Guidelines of KVS 2018 vide letter dated 13.04.2018 (Annexure A/2) under the subject matter of Notification of KVS Transfer Guidelines 2018 for non-teaching staff upto Assistant Section Officer and teaching staff upto PGTs. As per the said Guidelines, para 11(g) is with regard to Transfer against 'No Taker Vacancy'. 'No Taker Vacancy' means a post which remains vacant after the completion of annual transfer calendar and 'No Taker Vacancy' transfer will be considered at the end of transfer calendar. In case there are more than one claimant employee for the same post in a Kendriya Vidyalaya (except employees covered under (iii) above), preference will be given to the employee who will be Senior-Most in terms of service in KVS. Also Transfers under 'No Taker Vacancy' will be treated as Request Transfer as per

para 9 of the said guidelines. On 26.07.2019, official respondents issued Notification, (Annexure A/3), inviting online applications for request transfers against 'No Taker Vacancies and Mutual Transfers for 2019. The official respondents notified the available vacancy position under the category of No Taker Vacancy-2019, as per Annexure A/4. In the said vacancies displayed, no vacancy of PGT (Commerce) was notified under 'No Taker Vacancy' at KV No. 5, Jaipur as in fact, there were no vacancies for PGT (Commerce) at KV No. 5 Jaipur on the date of the Notification i.e. 26.07.2019. It is clear that as no vacancies were notified for PGT (Commerce) at K.V. No. 5, Jaipur under 'No Taker Vacancy', no applications could have been considered for the said post of PGT (Commerce) in K.V. No. 5, Jaipur between the dates mentioned in the notification i.e. 26.07.2019 to 28.09.2019.

9. From the pleadings annexed to the O.A., we have noticed that respondent No. 5 has made his application for transfer to the post of PGT (Commerce) at K.V. No. 5 Jaipur between the time period mentioned in the Notification dated 26.07.2019;

though no post was actually vacant on the said date of Notification. The post of PGT (Commerce) at K.V. No. 5 Jaipur got vacant only on 02.08.2019 after Smt. Kavita Chandana who applied under 'No Taker Vacancy' for K.V. Lalgarh Jattan was considered and she was transferred vide order dated 01.08.2019 (Annexure A/9) and she was relieved on 02.08.2019. Therefore, as per the guidelines issued by the official respondents vide letter dated 26.07.2019 (Annexure A/3), any vacancy which may arise or result due to the transfer of any employee during the transfer against 'No Taker Vacancies' shall not be allotted to any employee during the process. Thus, the question which requires our consideration is that if the vacancy itself has arisen on 02.08.2019, which could not have been filled under 'No Taker Vacancy' as per the Notification dated 26.07.2019, then how the respondents have accepted the application of respondent No. 5. This clearly shows that official respondents have shown arbitrariness in passing orders in favour of the respondent No. 5. The impugned order dated 01.08.2019 (Annexure A/1) qua the respondent No. 5 clearly proves that official respondents have committed illegality and there is

clear cut violation of its own transfer guidelines. It also proves that official respondents have allowed undue benefit to respondent No. 5, which is clear that despite vacancy not being notified for PGT (Commerce) at K.V. No. 5 Jaipur, respondent No. 5 applies for the same and the respondent No. 5 is transferred in pursuance to the same. It also shows ulterior motive on behalf of the official respondents in not notifying the said vacancy. Therefore, admittedly, as the applicant was senior to respondent No. 5, in fact, if at all the vacancy for the post of PGT (Commerce) at K.V. No. 5 Jaipur was to be considered, it should have been allotted to the applicant only. But official respondents for the reasons best known to them have got it allotted to respondent No. 5. Thus, it is clear that official respondents have acted dehors the rules and violated the same to give undue benefit to respondent No. 5. Therefore, we have no hesitation to cancel the transfer order dated 01.08.2019 (Annexure A/1) qua the respondent No. 5 as the same is illegal, arbitrary and unlawful, as respondent No. 5 could not have applied as per Notification dated 26.07.2019 when no vacancy was

displayed nor the same was in existence for PGT (Commerce) at K.V. No.5, Jaipur at that relevant time.

10. In view of observations made above, the impugned order dated 01.08.2019, (Annexure A/1), qua the respondent No. 5, whereby respondent No. 5 has been transferred on his own request against 'No Taker Vacancy', is hereby quashed and set aside. Also the official respondents are directed to consider the case of the applicant afresh as per rules for transfer to the post of PGT (Commerce) at K.V. No. 5, Jaipur since he is due to retire on superannuation within about one year and two months and that he is undergoing treatment at Jaipur. The said exercise be carried out by the official respondents within four weeks from the date of receipt of a certified copy of this order.

11. Accordingly, present Original Application is disposed of with the above observations and directions. No order as to costs.

**(HINA P. SHAH)
JUDICIAL MEMBER**

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**