

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00228/2019

Jodhpur, 5th March, 2021

CORAM

HON'BLE MRS. JASMINE AHMED, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

1. Om Prakash Vaishnav S/o Shri Bajrang Das Vaishnav, Aged 46 years, Bycaste Vaishnav, R/o 160 Adarsh Nagar, Jhalamand, Jodhpur (Rajasthan).
2. Priti Maharshi W/o Shri Nirupam Maharshi, Aged 38 years, Bycaste Brahmin, R/o KVS Colony, Air Force Station, Jaisalmer (Raj).
3. Heman Pandya S/o Shri Prakash Chand Pandya, aged 38 years, R/o KVS Colony, Air Force Station, Jaisalmer.
4. Poonam Kumari W/o Shri Uma Shankar, aged 30 years, Bycaste Regar, R/o KVS Colony, Air Force Station, Jaisalmer.
5. Ram Kishore S/o Shri Rampal Banta, Aged 44 years, Bycaste Jat, R/o Nehru Colony, Barmer (Rajasthan).
6. Gyan Chand Mochi S/o Shri Banwari Lal, Aged 39 years, Bycaste Mochi, R/o K.V.S. Colony, Suratgarh, Sri Ganganagar (Rajasthan).

[Applicant No. 1 to 4 are working under Respondent No. 4 as PGT/TGT and Applicant No. 5 is working under Respondent No. 5 as PGT and applicant No. 6 is working under respondent No. 6]

.....Applicants

By Advocate: Mr. Jog Singh Bhati, present, through VC.

Versus

1. Kendriya Vidhyalaya Sangthan, 18-Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016, Through its Commissioner.
2. Assistant Commissioner (Establishment), Kendriya Vidhyalaya Sangthan, 18-Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
3. Deputy Commissioner, Kendriya vidhyalaya Sangthan, Regional Office, 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015 (Rajasthan).
4. Principal, Kendriya Vidhyalaya Air Force Station, Jaisalmer (Rajasthan).
5. Principal, Kendriya Vidhyalaya, Jalipa Cant, Barmer.
6. Principal, Kendriya Vidhyalaya No. 1, Airforce, Suratgarh, Sri Ganganagar.

.....Respondents

By Advocate: Mr. Avinash Acharya, present, through VC.

ORDER (Oral)

Per Hon'ble Mrs. Jasmine Ahmed, Member (J)

Mr Jog Singh Bhati, counsel for the applicants and Mr Avinash Acharya, counsel for the respondents, are present through V.C.

Heard.

2. Present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs :

- (i) The applicants may be permitted to maintain this joint application and the same may kindly be allowed; and
- (ii) The conditions imposed of providing cut off date as on 30th June in the para 6(1) and 10(1) and 10 (7) of the policy, 2018/2019 (Annex. A/2) may be declared illegal and be struck down along with Annex. A/1 dated 31.08.2019.
- (iii) The respondents may be directed to relax the period of short fall of less than 45 days in completing three years of the applicants at hard station and to consider them eligible for transfer by awarding 55 points on account of hard station tenure.
- (iv) The respondents may consider the applicants for transfer by awarding them the benefits of hard station and their tenure may be considered as completed of three years.
- (v) Any other relief which this Hon'ble Tribunal deems just and proper in favour of the applicants may be passed.

3. At the very outset, learned counsel for the applicants submits that he does not wish to press the matter with regard to applicants No. 1,2,3,4 and 6 as they are not aggrieved now. He, however, submits that matter may be heard in regard to the applicant No. 5, i.e. Mr Ram Kishore. Accordingly, matter has been heard in regard to applicant No. 5 only.

4. It is the contention of learned counsel for the applicant that applicant No. 5 (hereinafter referred to

applicant only) was transferred to Jalipa, Barmer on 04.08.2016 which is a hard station as per policy of the respondents. It is the contention of the applicant that the applicant could not complete 03 years' hard station tenure on 30.06.2019 as he has been transferred by the respondents themselves in the month of August, 2016. Learned counsel for the applicant drew our attention to the fact that the delay in joining at hard station, i.e. Barmer can be attributed to the respondents only as the annual transfers in that year started online and thereafter as per guidelines issued, process of annual transfer was to be completed before 30th June in that year. Thus, learned counsel for the applicant states that the applicant cannot be made to suffer on account of process of transfer being started by the respondents at a later stage in that year. He also states that if respondents would have started process of annual transfer in time as per the guidelines, the applicant could have got the benefit of completion of 03 years' tenure at hard station in June, 2019 which would have counted from the year 2016 as commencement of the hard station tenure and made him eligible for consideration of awarding 55 additional points bringing him in the highest rank to get transfer at his own choice. Learned

counsel for the applicant further states that till date there is a vacancy of TGT (Sanskrit) in KVS BSF Jodhpur which is choice place of the applicant and the respondents can very well adjust the applicant at his desired place of posting. In this regard, he drew our attention to para 7(a) of transfer guidelines (page 24 of the paper book) for the year 2018, which reads as under :

a) Provided, cut off mark D1 on Displacement Count i.e. equal to 10 (Ten) displacement count & D2 on displacement count, i.e. equal to 10 (Ten) displacement count with 10 years stay at the station have been prescribed below which an employee shall not be displaced in a particular year to accommodate the transfer request of employees under para 5(c).

In a situation where clear vacancy is not available at the desired station(s) to accommodate the request of employee who has completed tenure in NER/Hard/Very Hard station & whose transfer count is equal to C1, then, an employee who is posted at one of the desired stations & having D1 displacement count, i.e. equal to 10 (Ten) displacement count, shall be displaced to accommodate the transfer request of such employee.

So far as, transfer requests of other priority category employees under para 5(c) i.e. LTR/ DFP/MDG/PH employee/Widow/Single Parent are concerned, they would be given priority in transfer against the available vacancies at their choice stations. If vacancy is not available at the choice station(s), then, an employee who is having D2 displacement count, i.e. equal to 10 displacement count+ 10 years stay at the station shall be displaced to accommodate the transfer request of these employees.

Referring to aforequoted method of administrative transfer provided in the guidelines, learned counsel for the applicant submits that as per these guidelines, the applicant should have been given priority over any other

category for seeking his choice transfer and by giving benefits of displacement counts.

5. Per contra, learned counsel for the respondents states that the applicant could not completed 03 years' hard station tenure before 30th June, 2019, therefore, he cannot claim his choice posting. He further states that the applicant made a representation to the respondents and that representation was dismissed by the respondents vide letter dated 12.12.2019. Hence, if applicant is aggrieved of the said rejection letter, he should have challenged the same in new OA or amend the present OA. However, the applicant failed to do so. Learned counsel for the respondents also states that the applicant has already completed his hard station tenure of 03 years' by this time as required under the guidelines/policy for consideration of choice posting and annual transfer process is going to commence after 31st March of this year which could not take place in the previous years due to Covid-19 pandemic. Now as the process will start again, the case of the applicant is already under consideration due to completion of 03 years' hard station tenure by the applicant.

6. On a specific query by the Bench, learned counsel for the respondents submits that the case of the applicant for transfer will be considered alongwith all the request transfers as provided under the guidelines/policy. To which, learned counsel for the applicant submits that the case of the applicant should be considered at higher pedestal and not in the future annual transfer process as the applicant have completed 03 years' hard station tenure in the year 2019. At this stage, learned counsel for the respondents states that in any case, the case of the applicant is going to be considered by virtue of completion of his 03 years' hard station tenure and he will be given priority as per policy/guidelines.

7. We have heard learned counsels for the parties and perused the material available on record. We feel that the issue contested by the parties whether the applicant completed 03 years' hard station tenure in the year 2019 or 2020 is not relevant now in the present circumstances. The applicant joined his hard station on 05.08.2016 pursuant to order dated 04.08.2016 issued by the respondents at Jalipa Cant, Barmer and in any case, the applicant could not have completed his 03 years' hard

station tenure on 30th June, 2019 pursuant to the same. It is also not disputed by the respondents that delay in joining at hard station in the year 2016 during annual transfer is not attributed to the applicant as the same took place due to process being started online at that time and thus, nothing wrong can be attributed to the applicant.

8. Taking into consideration submission made by counsels for the parties, we feel that the applicant is entitled to get little more consideration while comparing his case with any other hard station tenure completed candidate eligible for transfer during annual transfers commencing from 1st April in the KVS. Accordingly, we direct the respondents to treat the applicant's case as a special category case during annual transfers for the year 2021 as it has not been disputed that there is a clear cut vacancy of TGT (Sanskrit) at KVS BSF Jodhpur, which is a choice place of posting of the applicant. Therefore, respondents shall consider the case of the applicant for the same.

9. In view of discussions hereinabove made, respondents are directed to consider the case of the applicant for transfer after completion of 03 years' hard

station tenure as discussed in above paragraph, within a month from the date of receipt of certified copy of this order and pass appropriate order as per rules.

10. In terms of above direction, OA is disposed of with no order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

ss

(JASMINE AHMED)
MEMBER (J)