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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO: 253/2006

DATE OF ORDER: **21.12.2006**

M A Qureshi : Applicant

Mr. K.K. Shah : Advocate for the Petitioner

VERSUS

The Commissioner KVS & Anr. : Respondents

Mr. P.S. Bhati. : Counsel for the Respondents 1 & 2
Notices not issued to R.3

CORAM:

Hon'ble Mr. J K Kaushik, Judicial Member
Hon'ble Mr. R.R. Bhandari, Administrative Member.

.....

1. Whether Reporters of local papers may be allowed to see the Judgement ? *No*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

R.R. Bhandari
(R.R. Bhandari)
Administrative Member

J K Kaushik
(J K Kaushik)
Judicial Member

.....



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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

Original Application No. 253/2006

Date of order 21st December 2006.

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

M.A. Qureshi S/o Late Shri Zahoor Ahmed, aged 51 years, R/o Basni House, Kapra Bagar, Jodhpur (Raj.), (PGT-History at K.V. No. 1, Army, Jodhpur).

...Applicant.

Mr. K. K. Shah, counsel for the applicant.

VERSUS

1. The Commissioner, Kendriya Vidyalaya Sangathan HQ, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi - 110016.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, (Regional Office) 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur - 302015.
3. H.H. Lal, PGT-History, K.V. No. 1 (AFS), Jodhpur.

...Respondents.

Mr. P.S. Bhati, counsel for respondents No. 1 & 2.
Notices not issued in respect of respondent No. 3.

ORDER

(By Mr. J K Kaushik, Judicial Member)

Shri M.A. Qureshi has assailed the order-dated 18.10.2006 and consequential relieving order dated 23.10.2006 (Annexure A/1) and has prayed for setting aside of the same with a further direction to make payment of the salary for the month of July 2006, etc.

2. Skipping up the superfluities, the indubitable facts as borne out from the pleadings of both the parties, are that the applicant was initially appointed in the KVS on 17.09.1984 and is presently working as PGT (History) in K.V. No. 1 (Army), Jodhpur. He was transferred

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from Jodhpur to K.V. Mehsana in December 2000 on the ground of displacement in public interest. He joined at Mehsana on 06.01.2001. He was transferred from Mehsana to K.V. (AFS) Naliya (hard station) in public interest vide order dated 17.06.2002. He was again transferred vide order dated 29.09.2003 from Naliya to K.V. No. 1 (AFS) Agra (outside region) on the ground of closure of Arts Stream at Naliya. He was further subjected to transfer from Agra to K.V. Mathura vide order dated 30.05.2005 in public interest on displacement. He was allowed on request transfer on 29.07.2005 back from Mathura to Agra. He once again applied for own request transfer and gave option for Jodhpur as first choice and Bikaner as second choice. He was allowed own request transfer vide order dated 14.07.2006 from Agra to Bikaner. He was relieved vide order dated 31.07.2006 from Agra. He came to know that a post was vacant at Jodhpur and his request transfer from Bikaner to Jodhpur was acceptable to the authorities and transfer came to be modified accordingly vide order dated 11/12.09.2006. The applicant was accordingly relieved vide order dated 16.09.2006 from Bikaner and he immediately joined at Jodhpur. He has stayed at Jodhpur for about a month and the impugned transfer order dated 18.10.2006 has been issued by which the applicant has been ordered to be transferred from K.V. No. 1 (Army) Jodhpur to K.V., AFS, Jaisalmer in public interest. The same was followed by relieving order-dated 23.10.2006. The transfer said to have been made under para 16.2 of the transfer guidelines of K.V.S. One Shri G.S. Charan posted at K.V. AFS Jaisalmer is being accommodated by displacing the applicant under the said clause. The daughter of the applicant is studying in 10th class in K.V. No. 1 (AFS) Jodhpur. The Original Application has been filed on numerous grounds mentioned in para 5 and its sub-paras. Certain

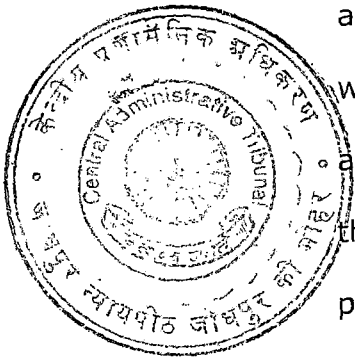


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minute details relating to the transfer policy in vogue have been narrated.

3. As regards the variances in facts, it has been averred that the very policy makes it clear that the procedural aspects are for internal use and not to vest with any right on any employee. One cannot complain about the ills of the policy after availing the benefits of the same. The transfer guidelines cannot be said to be bad for the reason of mere inconvenience to some of the individuals. It has been averred that no arbitrariness or malafide was ever involved in any decision of the respondents and the whole actions were taken strictly in accordance with the law. Shri G.S. Charan requested for his transfer and gave only one option for Jodhpur in priority category of LTR as well as medical on the ground that his wife is suffering from Cancer and the treatment is only available in Jodhpur MDM Hospital. Therefore the own request transfer was considered on priority basis as far as possible. The petitioner was the longest stayee as PGT (History) because the respondent No. 3 stood in a protected clause available to the spouses in KVS. As per the service conditions, the applicant can be transferred to any place in administrative exigency. The grounds mentioned in the OA have been generally refuted. The transfer of the applicant has been made in accordance with the transfer guidelines. The provision of counselling is applicable when the mass transfers are made because to enable the department to fulfil the exercise in a smooth manner and is a procedural aspect which need not be invoked in individual cases. The transfers by displacement are permissible under clause 15 and an employee who has not completed even three years tenure can be transferred if one is a longest stayee out of all the preferred stations taken together. Shri Charan made only one choice



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because due to an ailment as serious as Cancer of the spouse, the respondents had no choice except to displace the applicant.

4. Both the learned counsel have reiterated the facts and grounds mentioned in the respective pleadings of the parties as noticed above. They have made us to traverse through various para of the policy as well as other records forming part of this case. Learned counsel for the applicant has tried to demonstrate that the whole exercise has been done to accommodate one of the favourites of the respondents. He has submitted that Mr. Charan who has said to be favoured by displacing the applicant has deliberately given only one choice whereas as per the policy in vogue, he was required to give five choices. He has submitted that Shri Charan's wife is suffering from Cancer for the last about 3 years and the hospital facilities for treatment of Cancer are available at number of places in Rajasthan and it is incorrect to say that only Jodhpur is the place where such facilities are available. He has emphasized that during the preceding three years no emergency has arisen and Mr. Charan has been managing his affairs. It was next submitted that para 15.1 and 16.2 of the transfer guidelines of KVS have in fact been thrown over-board and the same have not been adhered to at all. The applicant was not given counselling by RTC as per the specific provision in the policy. Transferring a person who came on request just one month back cannot be justified on any count and for that reason very specific safeguard has been provided under para 15.1 of the policy that displacement should not be done before completing a period of three years. By giving only one option, it could not have been feasible for the authorities to give effect to the provisions made in the said para in the spirit they have been designed.

The respondents in fact have moved in a mechanical way with a



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predetermined objective of making a room for said Shri Charan at any cost.

5. Per contra, learned counsel for the respondents with equal vehemence has opposed the contentions raised on behalf of the applicant. He has submitted that the policy in vogue has been issued for the internal purposes of the organization and does not give any right to any person. He has also submitted that the applicant in the past has also taken the advantage of various provisions of the said policy and now he cannot turn round and take a diametrical opposite stand that the policy is bad. In support of his contentions, he has also placed reliance of one of a recent judgment of Hon'ble Rajasthan High Court at Jodhpur in the case of **WO L. Singh vs. Union of India** (S.B. Civil Writ Petition No. 4868/2006) passed on 31.10.2006. He has led ample stress on para 15.1 and 16.2 of the policy and strived hard to persuade us that it is the choice of the individual to opt for one place or for more than one place and it is not necessary that one is required to give option for five places. He has also submitted that para 16.2 of the policy provide for counselling by RTC in case of teachers identified for displacement is not meant for individual transfer. In fact when mass transfers take place, the counselling is resorted to and therefore in the instant case, there was no question of any counselling, since it was case of single transfer. He has also submitted that the policy of the transfer is not under challenge and the complete exercise has been done well in consonance with the said policy; otherwise also the due procedure has been followed and the same cannot be interfered with in view of the provisions enshrined under Article 13 of the Constitution. He next submitted that the respondents have weighed the comparative hardships of the applicant



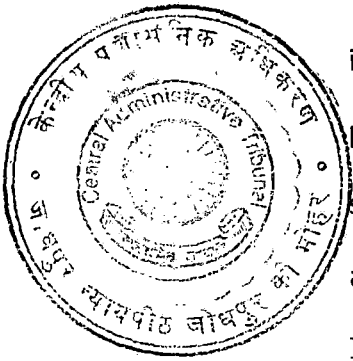
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vis-à-vis Shri Charan and the condition of the later being more deplorable, resulted in acceding to his request by displacing the applicant. There is no allegation of malafide against any of the authority and no such authority has been impleaded as a party respondent, therefore, the impugned transfer order cannot be interfered with and the Original Application deserves to be summarily dismissed.

6. We have considered the rival submissions put forth on behalf of both the parties. As far as factual aspect of this case are concerned, there is hardly any dispute. It is a fact that the applicant has hardly remained at Jodhpur for a month after he joined in execution of his own request transfer. He was subjected to frequent transfers, mostly in public interest during last six years. The main reason for his present displacement has been that wife of one Shri G S Charan is suffering from cancer disease and the alleged need for her treatment at Jodhpur alone. The KVS employees can be transferred throughout India and admittedly there are numerous places where the treatment facility for cancer disease is available but the said Shri Charan gave only one option for Jodhpur for some undisclosed reasons.



7. As far as the legal position in regard to the scope of judicial review in case of transfer matters is concerned, it is well settled that the question of transfer of a public servant is to be decided by the competent authorities. The court will not sit in judgment over the satisfaction of the competent authorities on the point that certain public servant has to be transferred in the interest of service and replace the judgment of administrative authority by its own findings. This is, however, not to say that there is no scope for judicial

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intervention in the case of transfer. The court or a judicial forum can intervene and set aside the transfer order if the same is found to be mala fide or in breach of Constitutional provisions or binding administrative instructions and statutory rule or is capricious and based on extraneous considerations or is in colourable exercise of powers.

8. Before advertng to the crux of matter, we find it expedient to reproduce the contents of relevant portions from the Transfer Policy in vogue, as under:



"15.1 Where transfer is sought by a teacher coming under PCGR and no vacancy is available at the station of his choice, required vacancy will be created by displacing a teacher of the same category (post/subject) with longest stay at the said station, and not belonging to CDA. However, nobody shall be displaced in this manner, as far as possible, before completing a tenure of three years. If no non-CDA category employee with more than 3 years' tenure is not available at the station of first choice of a PCGR category employee, the exercise will be done for locating such a person at stations of his second, third and lower choices, in that order. If no non-CDA employee with more than 3 years' tenure is available at any of the stations of choice, the non-CDA employee with longest tenure out of all the preferred stations taken together, will be displaced. The displaced teacher will be accommodated against available nearby vacancy as far as possible within the region. The resultant vacancies arising out of transfers orders as per first priority list, will be used to accommodate non-PCGR category requests, who could not be accommodated in the first priority list, to the extent possible.

16.2 Transfers of persons in PCGR category by displacement of others by Regional Offices.

Where intra region transfer is sought by a teacher coming under PCGR category and no vacancy is available at the station of his choice, required vacancy will be created as per provision of para 15.1. The teachers so identified for displacement shall be called for counselling by the RTC by 16th July." (underlining ours)

9. We may assert that in the instant case none of the provisions of the transfer policy are under challenge and therefore the judgement in case **WO L. Singh supra** has no application to the controversy involved in the instant case. As regards the interpretation of any order is concerned, if the plain meaning is clear and there is no ambiguity, the external aid e.g. that of harmonious construction is not

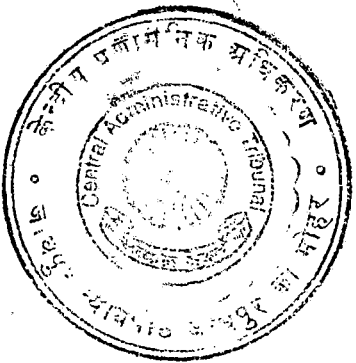
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required to be applied. Further, an affidavit or explanation cannot be relied on to improve or supplement an order, as has been held by a Constitution Bench in **Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi** (AIR 1978 SC 851). The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order which is bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

10. The main plank of defence of the respondents has been that one is not required to give five options in case of such transfers (on ground of LTR or medical) and since Shri Charan gave only one option for Jodhpur, they had to accede to his request in accordance with the provisions of para 15.1 of the Transfer policy wherein it has been provided that if no non-CDA category employee with more than 3 years' tenure is available at the station of first choice of a PCGR category employee, the exercise will be done for locating such a person at stations of his second, third and lower choices, in that order. If no non-CDA employee with more than 3 years tenure is available at any of the stations of choice, the non-CDA employee with longest tenure out of all the preferred stations taken together will be displaced. The applicant was only the person having longest stayee at Jodhpur and that is why he was displaced. Ostensibly the submission looks attractive but in fact, the same is anomalous and implausible. The scope of said para would be narrowed down if the defence version were taken to its logical end. It would be infeasible and unworkable as to how the authority would carry out the exercise of locating the

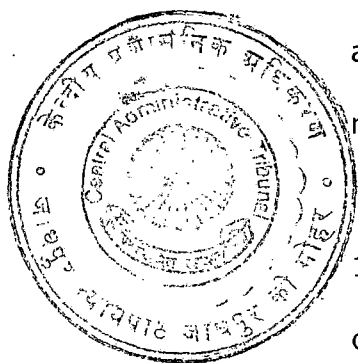


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vacancy at other places and find a non-CDA with longest tenure in all the preferred stations. As per the golden rule of interpretation, the provisions are to be read as a whole and no word is to be treated as redundant. But with the aforesaid defence version the underlined words of para 15.1 of transfer policy as indicated in para 8 of this order would become redundant. The very object of not to displace a person having less than three years stay, as far as possible, would get frustrated. In this view of the position, it is imperative that one must give five options in such cases. This intention of policy maker is supported by the five columns provided in the computer-designed format meant of submission of options. The required columns for various purposes have been printed therein. Thus, we are unable to accept the aforesaid contention of the learned counsel for the respondents.

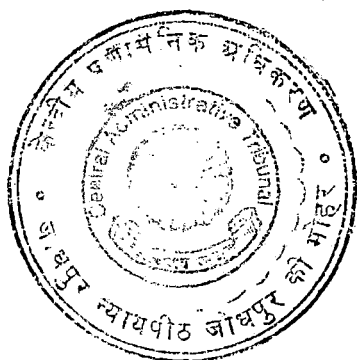


11. The other issue requiring consideration is regarding the provision of counselling by RTC of the teachers so identified for displacement. As per the applicant the same is a must but as per defence version the same is required only when numbers of transfers are being made. The bare perusal of ibid para 16.2 of the Transfer Policy reveals that the same provides for the counselling in unequivocal and unambiguous terms without and rider, what so ever. The law of interpretation has already been pointed out in the aforesaid para No. 9, by referring to the decision in Mohinder Singh Gill's case. The explanation supplanted by the respondents cannot therefore be taken into account. The purpose of providing the counselling can hardly be overemphasized and it must have been obviously for mitigating the hardships of a person sought to be displaced. Therefore, plea of the respondents is

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held to be an afterthought exercise just to justify their act on any pretext; might be repugnant or inconsistent to the very policy.

12. From the aforesaid propositions, it may be safely inferred that the applicant's transfer has been ordered by taking the wrong facts especially regarding medical facilities for treatment of cancer, into consideration as well as by misconstruing the provisions law. We may hasten to add that a transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. Therefore, the exercise of the power of transfer must be just and fair. A Division Bench of the Bombay High Court in case of **Seshrao Nagorao Umap V. State of Maharashtra** (1985) II LLJ 73, in brief passage but with admirable comprehensiveness has summarized the law on this aspect as under:



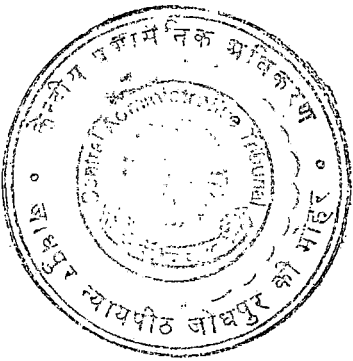
"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers without sufficient reasons to justify such transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration that even administrative actions should be just and fair." (Underlining ours).

Examining this case on the touchstone of the principles of law propounded above, we find that there is absolutely no nexus of transfer of the applicant with the object sought to be achieved and in this view of the matter, the impugned transfer order cannot be sustained.

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13. Certain other pleas have been put forth on behalf of the respondents that the very transfer policy is meant for internal use by the Institution and no vested right would be created in favour of any one by the same. There is no doubt that the transfer policy is only a guideline and almost directory in substance. But we cannot forget that such policies are at least binding on the administration. Further, the rule of law has to prevail since all the progressive societies march from contract to status. The plea seems to be adduced only to be rejected. In the instant case, no administrative interest or service exigency was involved and the whole episode in the result of doing a favour or so-called justice to one by doing injustice to the other which can never be approved. Misplaced sympathy can never be a justification for wrong actions. We are not impressed from another plea that applicant has been sought to be displaced on the basis of comparative hardships between him and that of Shri Charan. Even the discretionary power vested in the public authority, has to be exercised in a fair manner taking into account all the relevant materials and the same cannot be exercised for an unauthorized purpose. It is however not necessary to examine the question of malice in law in this case since it is trite law that if a discretionary power has been exercised for an unauthorized purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith.



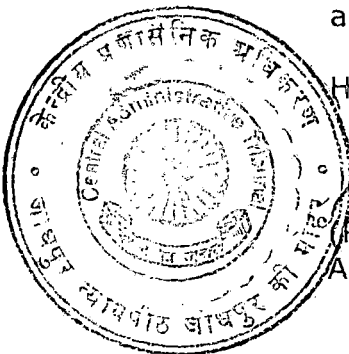
14. Before parting with this order, we have few words of caution for the respondents. The frequent and untimely transfers have adverse effect on the studies of the students of tender age besides causing agony to the concerned teacher. Every transfer in public interest or in the interest of administration encumbers the public exchequer with heavy costs. The national policy of avoiding transfers in mid of the

academic session has special ⁻¹²⁻ significance to the educational institutions. The authorities should ascertain/verify the factual aspect and properly apply their mind so as to avoid any unpleasant situation in future.

However, we would do well in expressing out deep appreciation to both the learned counsel representing the parties, for their valuable help, rendered for disposal of this case.

15. The upshot of the aforesaid discussions is that the Original Application merits acceptance. The same stands allowed. The impugned orders dated 18.10.2006 (A/1) and dated 23.10.2006 (A/2) are hereby quashed. The rule already issued, is made absolute.

However, there shall be no order as to costs.



R R Bhandari
(R R BHANDARI)
ADMINISTRATIVE MEMBER

J K Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER

jsv

Received copy
of Rajan K. S.
For K. K. S. Adv.
2/11/07

Part II and III destroyed
in my presence on 11/4/14
under the supervision of
Section officer (1) as per
order dated 3/10/14

Section officer (Record)

For P. S. Adv.

Received copy
order by K. K. S. Adv.
28/12/06