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

Original Application. No. 217/2007

Date of order: 29th February, 2008

Hon'ble Mr. Tarsem Lal, Administrative Member.

Mohd. Ikbal Sindhi, S/o late Mohd Ibrahim Sindhi, aged 52 years, C/o M.S. Sindhi, Foot Ball Coach, r/o Inside Sivanchi Gate, Sindhiyon Ka Bas, Kabu Khan Ka chowk, Jodhpur. [Presently posted as KV Pokaran (BSF)].

: applicant.

Rep. By Mr. Vivek shah Proxy counsel

For Mr. K.K.Shah, : Counsel for the applicant.

VERSUS

1. Kendriya Vidhyalaya Sangathan, through its Commissioner, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi 110 016.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, (Regional Office), 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur 302 015.

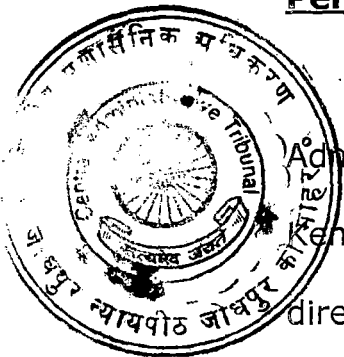
: Respondents.

Rep. By Mr. R.S. Shekhawat proxy counsel

For Mr. P.S. Bhati : Counsel for the respondents.

ORDER

Per Mr. Tarsem Lal, Administrative Member.



The applicant has filed this O.A under Sec. 19 of the Administrative Tribunals Act, 1985, praying that the respondents Kendriya Vidyalaya Sangathan (KVS for short) may please be directed to consider the transfer of the applicant to Jodhpur as per the priority in terms of transfer guidelines and the order dated 04.04.2007 (annex. A/1) may kindly be quashed and set aside.

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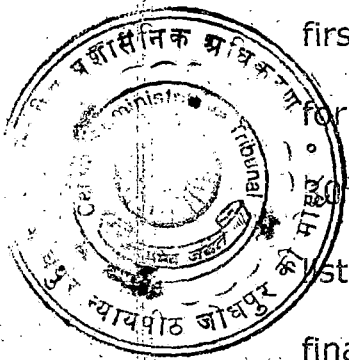
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2. The facts in brief as applicable in the case are that the applicant joined as Librarian on 29.09.1986 at KVS Vadodra (Makarpura) Air Force. Thereafter he was transferred to KV Barmer and KV Nasirabad. In the month of March 2004, he was transferred to KV Cachar Panchgram (HPC) and stayed there upto April 2007. According to the transfer policy effective from 14.03.2006, the applicant preferred an application for request transfer under PCGR category for the year 2007-2008 on 21.12.2006 (Annex. A/2) under para 16.2 of the transfer guidelines.

3. After receipt of all the applications for request transfers from the employees in the same category/posts, the respondents issued a list of request transfers (annex. A/3) in which the applicant was placed at priority No.1 for Jodhpur and other four places of choice as well.

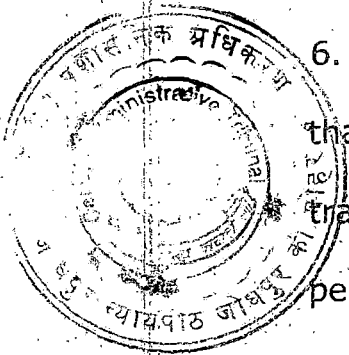
4. As required under clause 14 of the transfer guidelines, the first priority list shall be prepared by listing of applications received for inter regional transfer and shall be displayed on KVS website by 10th April and if any one has any objection against the said priority list he/she could make the representation by 15th May. Thereafter final transfer order will be issued by 20th May. The respondents have issued the said transfer guidelines on 14.03.2006 (annex. A/5).



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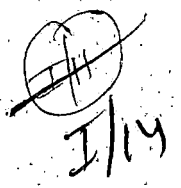
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5. As the applicant stood at the top priority for transfer to Jodhpur, he was waiting for his transfer to Jodhpur. But the transfer order dated 04.04.2007 (annex. A/1) was issued under which he was transferred from KV Cachar Panchgram (HPC) to KV Pokaran (BSF). The applicant was relieved vide order dated 26.04.2007 (annex. A/6) and the applicant joined duty at KV Pokaran (BSF) on 14.05.2007. The applicant has pleaded that he was transferred to KV Pokaran from KV Cachar Panchgram (HPC) which is in North Eastern Region (Hard Station) and therefore, he is entitled to 30 marks as per clause 13 of the transfer guidelines, whereas he has been transferred to KV Pokaran (BSF) which was his 5th choice of station instead of Jodhpur which was his first choice of place of posting. The applicant has also pointed out that his transfer order could not be issued before 20th May as provided under Clause 14 of the transfer guidelines. Aggrieved by the above, the applicant has filed this OA and prayed for the relief as given in para 1 above.



6. The respondents are contesting the O.A, inter alia pleading that KVS caters to the educational needs of the children of transferable Central Government employees including defence personnel for providing common programme of education. At present there are 979 KVs situated all over India including three abroad. The employees appointed to KVS are liable to transfer anywhere in India under the transfer policy issued by the KVS vide

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its policy dated 14.03.2006 (supra). The applicant has applied for inter regional transfer under PCGR category as per para 14 and 15 of the Transfer Guidelines of KVS. The respondents have pleaded that as per the revised Schedule of calendar of activity, the first priority list based on applications received for annual request transfer as per para 14.1 is 20th February and upto March 10th representation regarding the priority list could be made. The Transfer orders based on the final first priority list would be issued upto 5th April and in the instant case the applicant has quoted the old schedule.

7. The respondents have stated that persons belonging to PCGR category will be accommodated firstly on the available vacancies and secondly to the extent of vacancies are not available by displacement of employees as per para 15. The respondents have pleaded that vacancy for the post of librarian was available at one of his choice of place of postings i.e. at Pokaran, and therefore the applicant was transferred to Pokaran against the available vacancy.

The respondents have further pleaded that while implementing such policies, some staff/teachers may feel aggrieved by the same but that cannot form a ground for quashing the policy as such.

Administrative exigencies is a continuous process by which organization tries to keep pace with the progress of the institution as a whole, which ultimately results in providing continuous and uninterrupted teaching to the students. The respondents have stated that a Division Bench of the Hon'ble High court of Delhi had



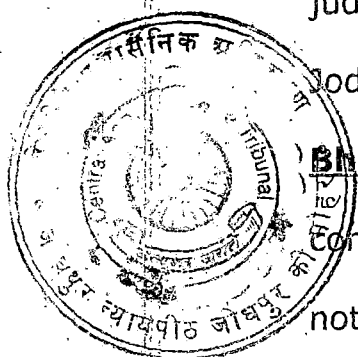

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held in Vidyut Board's case that policy decision may be changed from time to time, and no mandamus can be issued regarding adoption of policy decision. They have further stated that the applicant has been transferred from KV Cachar Panchgram to KV Pokaran on request against the vacancy available at the time of effecting the transfer as per the provision of para 14 of the KVS Transfer Guidelines effective from 14.03.2006. In view of the above the respondents have stated that the O.A is bereft of merits and the same may be dismissed with costs.

8. Learned counsel for the parties have been heard. They have generally repeated the averments made in their respective pleadings. The learned counsel for the applicant has stated that according to the existing policy, the applicant could not have been transferred before 20.05.2007, whereas the impugned order has been passed on 04.04.2007 (Annex. A/1) i.e. before the stipulated date. He has also pleaded that the priority list for transfer was not published in the website of KV as required under the transfer policy. The learned counsel for the applicant relied on the judgement of the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Writ Petition no. 4335/2007, [**Devi singh Bhati vs. KVS and ors.**- decided on 07.08. 2007] in support of his contention that the applicant should be posted to Jodhpur only and not to Pokaran. The relevant portion reads as under:

"..... We find as the transfer policy has been designed meticulously, particularly in respect of on request transfers on priority category with specific object to be achieve the benefit of incumbent to secure speedy and required medical aid to provide emotional security in time of distress and lastly to see that an incumbent at the close of



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his period of service settles at his desired place with least hassles leaving little scope for discretion in the matter with the authorities concerned the implementation of policy and they are required to follow strictly the norms.....

Para 12.2 makes it clear that first claim of request transfer will be against available vacancies and to the extent vacancies are not available, by displacement of employees as per Para 15 the requests are to be operated. This clearly reflects that the displacement of employees is not to be resorted to as far as possible, so long as vacancies are available on one other place of options. We are unable to accept the contention of the learned counsel for the petitioner that even if the vacancies are available on one or other five options given by him still in order to accommodate him at the first priority as per his option he is entitled to be accommodated even by displacing other employee.....

..... But it is also clear that policy does not require as pre condition that incumbent must in all circumstances give five options even if in the scheme of things and the object with which the policy has been framed. Such an alternative may not be possible in all circumstances. What is required that an incumbent may give 'upto' 5 alternative options in order of his preference, but expression 'upto' cannot be read as must. What is conveyed by expression 'upto' is clearly not more than 5.

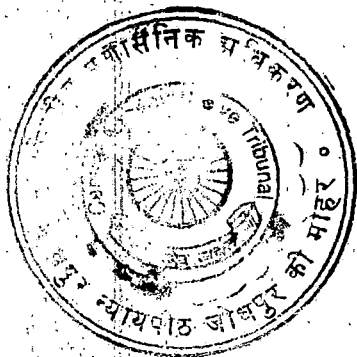
..... if the incumbent does not have such option or he does not want to move except to one or two from place, he must give names of 5 stations and then to deny an incumbent benefit of his consideration on the ground that he has been given one of his choiced place notwithstanding, it be destructive of the object of the policy itself, as has been amply demonstrated in the present case.

However, if the vacancies are not available then para 15.1 is very instructive about it that in such event the PCGR category of request will be given effect to as far as possible by displacing the persons already posted at the place of his choice.

It clearly gives out that in such event in the first place the person to be dislocated for posting a person falling in PCGR category shall be searched at the place of his first priority to be posted on transfer. It is only if nobody is available to be dislocated on the basis of criteria stated in para 15.1 that a person having more than three years tenure is available at station of first choice of a PCGR, then the same exercise will be carried out in respect of station of his second choice. Failing which this search may be carried successively for third and lower choices. But this is a clear indication that the place of choice in order of priority has to be considered for giving effective posting in terms of request for transfer in priority category and is not merely at the discretion of the authorities to find one or other place of the five choices required to be made by the employee.....

..... The fact remains that the policy is very meticulous to ensure that as far as possible 'on request transfer applicants' in priority categories get their utmost priority choice of posting commensurating with object with which the transfer on request has been considered to be on priority basis.

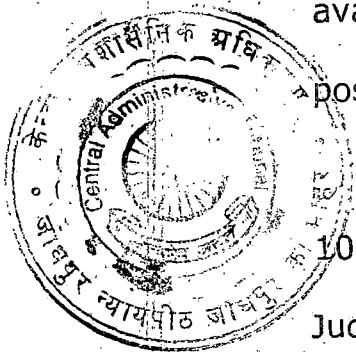
We are conscious of the fact that respondents had not compulsion to frame such policy but having framed such policy which is not contrary to law. They can be held bound by it.



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9. The learned counsel for the respondents have pleaded that the applicant has quoted the calendar of transfer as per old transfer policy dated 14.03.2006. He pleaded that certain paras of the same transfer policy have since been revised and the revised guidelines are also of the same date. i.e. 14.03.2006. He produced a copy of the revised Transfer Policy which was taken on record. Under the revised transfer guidelines, applications for transfer could be received in the headquarters upto 10th January. The first priority list shall be prepared by listing of applications received for inter regional transfers against available vacancies and shall be displayed on KVS website by 20th February. Representations against proposed transfer in the first priority list are received upto 10th March and the final transfer order would be issued by 5th April. Therefore the impugned order Annex. A/1 issued in this case is in order. He also confirmed that the priority list was displayed in the KVS website before transfer orders were issued and the applicant has not submitted any representation against the same. The applicant was transferred to Pokaran as a clear vacancy was available at Pokaran which was also one of his choice of places of posting.



10. The learned counsel for the respondents relied on the Judgements of the Apex Court in the case of **S.C. Saxena vs. UOI and ors.** [(2006) 9 SCC 583] and **Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey and ors.** [(2004) 12 SCC 299]. The learned counsel further pleaded that the Hon'ble

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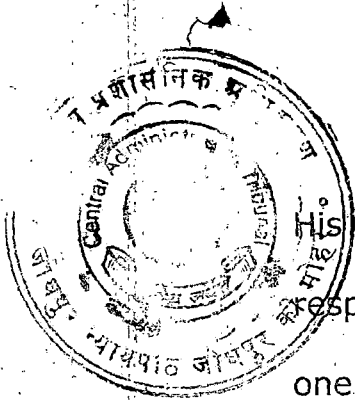
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Apex Court has time and again held that the Courts should not interfere in the policy matters. The learned counsel further prayed that as the transfer guidelines is a policy matter of the KVS and the transfer of the applicant has been made in accordance with the policy guidelines, this Court should not interfere with the transfer order issued in the instant case.

11. I have considered this carefully and perused the documents placed on record. The applicant had joined KVS as Librarian on 29.09.86 at KVS Vadodra and thereafter he was transferred to KV Barmer and KV Nasirabad. In March 2004, he was transferred to KV Cachar Panchgram (HPC) wherein he stayed upto April 2007. While asking for request transfer under PCGR category inter regional transfer, he had given option for the following places:

1. Jodhpur
2. Beawar
3. Jalipa
4. Ajmer
5. Pokaran.



His priority for all the above stations was number one. The respondents have transferred the applicant to Pokaran which was one of his choice stations and a vacancy was also available at the time of effecting his transfer.

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12. As regards the case of **Devi Singh Bhati vs. KVS and others**, cited by the learned counsel for the applicant, the facts of both the case are distinguishable on many grounds. Firstly the applicant (Devi singh Bhati) was due for retirement and wanted to settle at Jaipur whereas he was posted to Jalipa Uttarlai. Secondly he had given the choice of Jaipur whereas he was transferred at a place other than of his choice station. Thirdly, a vacancy was likely to take place at Jaipur whereas he was transferred Jalipa Uttarlai without adjusting against the likely vacancy. Fourthly, he had not been relieved from the place of previous posting and not joined at the transferred place of posting. Whereas in the case under consideration, the applicant is not immediately due for retirement as the same has not been pleaded by him. Pokaran was one of his choice stations and vacancy was not available at any other station at the time of effecting transfer as pleaded by the respondents. Moreover, the applicant was relieved on 26.04.2007 and has since joined at Pokaran on 14.05.2007. In the case of **Devi Singh Bhati vs. KVS and others**, the Hon'ble High court of Judicature for Rajasthan at Jodhpur has made the following observations:-

page 5:

"..... There is no dispute that the petitioner's case fall in the category of 'LTR' as his remaining service is less than three years before he retires when he made the application."

page 10:

" Petitioner has pointed out that his first station of choice was Jaipur, where he is to settle on retirement. There are persons on the same post/subject as the petitioner is, but instead of making room for the petitioner at Jaipur (sic Jalipa) he has been posted at Jalipa Uttarlai, which makes him further away from the place of his settlement after retirement. Hence the action of the respondent is arbitrary and against the policy, defeating its very purpose..... "



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page 11:

"..... The essence of the transfer policy is for making a room for request transfer, as far as possible no person should be dislocated. If dislocation has to be made then the cyclic order provided under Rule 15.1 is to be followed....."

page 12:

".... Petitioner's first choice on request under LTR priority for his transfer from Jodhpur station to his last term before retirement was at Jaipur and there has been a request from a person posted at Jaipur for his transfer from Jaipur to elsewhere. He pointed out from Annex. 5 that petitioners case was included in the priority list issued on website at item No. 3 disclosing his desired transfer from KV No. 2 Jodhpur (Army) whereas there has been on request for application for transfer from Bhagwan Sahaya posted at KVRO Jaipur from Jaipur to other stations....."

page 14:

".....para 12.2 makes it clear that first claim of request transfer will be against available vacancies and to the extent vacancies are not available, by displacement of employees as per para 15 the requests are to be operated. This clearly reflects that the displacement of employees is not to be resorted to as far as possible, so long as vacancies are available on one or other place of options. We are unable to accept the contention of learned counsel for the petitioner that even if the vacancies are available on one or other five options given by him still in order to accommodate him at the first priority as per his option he is entitled to be accommodated even by displacing other employee."

page 18:

"..... As per Annex. A-5 there was a person posted at Jaipur who has desired his transfer out of Jaipur. It is not the case before us that at Jaipur any person falling in priority category above petitioner was there. In such event merely on the basis of said applications the post at Jaipur ought to have been considered vacant. But that has not been done. In such even there was no justification for not transferring the petitioner to Jaipur but to another place farther away from Jaipur merely on the ground that some body from Uttarlai Jallipa has sought his transfer to Jodhpur and his post at Uttarlai was considered vacant. If the request of an incumbent at Uttarlai Jallipa is to be considered as making a vacancy available at Uttarlai Jallipa, then by parity of reason a request of transfer desired from Jaipur by any incumbent must be considered that a vacancy at Jaipur is also available. If on the submissions of learned counsel for the respondent vacancy is available both at Jaipur and Uttarlai Jallipa because of pending request of the transfer from that place the petitioner had first claim to be posted at Jaipur against the available vacancy....."



13 It is well settled law that Courts/tribunals should not interfere with the transfer orders issued by the executive authorities unless the same are vitiated by malafides or issued in violation of statutory rules or the transfer orders are issued by an authority

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who is not competent to issue such orders. No such grounds have been alleged by the applicant in his transfer from KV Cachar, Panchgram to KV Pokaran.

14. The Hon'ble Supreme Court in the case of **State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402, at page 406:** have held as under:

" A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjecture or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer. "

15. The Apex Court in the case of **E.P. Royappa vs. State of Tamil Nadu, [AIR 1974 SC 555]** has also held as under:

" Secondly, we must not also overlook that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a serious set of charges of oblique conduct against the Chief Minister. That is in itself a rather extra-ordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and, therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up - these considerations are wholly



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irrelevant in judicial approach - but because otherwise, functioning effectively would become difficult in a democracy. It is from this stand point that we must assess the merit of the allegations of malafides made by the petitioner against the second respondent."

16. The Apex Court in the case of **Shilpi Bose (Mrs) v. State of Bihar**, [1991 Supp (2) SCC 659] has observed under:

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department.

17. Further in **Union of India v. S.L. Abbas**, (1993) 4 SCC 357, at page 359, the Apex Court has held that

" 7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. "

18. Similar view has been taken by the Supreme Court in **National Hydroelectric Power Corpn. Ltd. V. Shri Bhagwan**, (2001) 8 SCC 574, at page 577:



" No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration." Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Court or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for

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that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned.

19. In **State of Madhya Pradesh v. S.S. Kourav**, [1995 SCC Service Law Judgment 350=1995(2) SLJ 109 (SC)] the Apex Court observed that

" 4 The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds; the wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places; it is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation."

In this case the applicant has been posted at one of his choice stations, though lowest in his priority, where the vacancy was available at the time of his transfer. The applicant has already joined at the next station of posting.

20. In view of the above discussion, settled case laws and as the transfer has been effected according to the transfer guidelines, this Court would not like to interfere with the orders passed by the respondents. Hence the O.A is disallowed. No order as to costs.



Tarsem Lal 28/7/08

[Tarsem Lal]
Administrative Member.

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Section officer (Record)