

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

Original Application No. 51/2007

7/28

Date of Order : 1st April, 2008.

CORAM :

HON'BLE MR. JUSTICE A.K. YOG, JUDICIAL MEMBER

HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER

Smt. Jay Shree Parihar W/o Shri R.S. Parihar aged 54 years, R/o 24-B,
Abhaygarh Scheme, Opp. K.V. No. 1 (KV), Jodhpur (Raj)

.....Applicant.

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

Versus

1.The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional
Area, Shaheed Jeet Singh Marg, New Delhi.

2.Assistant Commissioner, Kendriya Vidyalaya Sangathan (R.O.) 92,
Gandhi Nagar Marg, Bajaj Nagar, Jaipur - 302015.

3.Shri D.K.Saini, Assistant Commissioner, Kendriya Vidyalaya
Sangathan (R.O.), 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur - 302
015.

.....Respondents.

By Mr. P.S.Bhati, Advocate, counsel for respondents.

ORDER

[PER JUSTICE A.K.YOG, MEMBER (J)]



Heard Sh. K.K. Shah, Advocate, Shri P.S. Bhati, Advocate,
representing the Applicant and the Respondents respectively. Perused
the pleadings on record.

The case in hand has a 'chequered history' comprising of more than one inning. The back-drop of events has an unusual setting.

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Smt. Jai Shree Parihar (P.E.T.) / the applicant, at relevant time, was posted as Teacher and serving at Kendriya Vidyalaya, R.D. Mines (Near Udaipur), a school - owned and managed by Kendriya Vidyalaya Sangathan (KVS). She submitted 'application' requesting for her transfer under 'Category of Employees Spouse' on the ground that her husband was an employee of Public Sector Undertaking (PSU/ONGC) working at Jodhpur as contemplated under Priority No. III or V of Para 12.4 of Transfer Guidelines in force w.e.f. 14th March, 2006 (Annex.A/4 to the O.A.). On the other hand, one Smt. Sudha Chouhan, (PET) working in another school of KVS at Pokran, also applied and requested for transfer to Jodhpur on the ground falling in Priority No. I (1) of said Para 12.4 of Transfer Guidelines contending that her husband was an employee of KVS, posted at Jodhpur. In the Priority List dated 30th August, 2006 / Annex. A-5 to the O.A. - notified by the Respondents, name of the applicant / Jai Shree Parihar, was placed in Priority No. - I due to error / defect in Software, instead of showing the name of Ms. Sudha Chouhan. It is not disputed that Ms. Sudha Chouhan should have been placed in Priority No. I and that name of Ms. Parihar, who was not eligible, was shown in 'Priority No. I. '

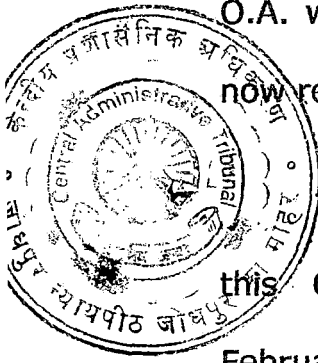


Acting on the basis of said incorrect Priority List, transfer order dated September 22, 2006 was issued by the Assistant Commissioner, KVS, Jaipur and Ms. Jai Shree Parihar (on her ^{own} request) was transferred from KVS School at R.D. Mines to KVS (BSF), Jodhpur,

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with immediate effect; Annex.A/6 to the O.A. The Principal, KVS, R.D. Mines, District Rajsamand, relieved Smt. Parihar, vide order dated 25th September, 2006/Annex.A-7 to the O.A. and, thereafter, Ms. Parihar, submitted her 'joining-report' at K.V., BSF, Jodhpur on 26th September, 2006 / Annex.A-8 to the O.A.

Smt. Sudha Chouhan, due to mistake in placement and being aggrieved, approached higher authorities pointing-out 'apparent mistake' in 'Priority' but 'higher-authorities' failed to take prompt action. This compelled Smt. Sudha Chouhan to file OA No. 237/2006 before this Tribunal on 4th October, 2006 claiming relief to the effect that direction be given to the respondents to 'correct' the mistake by amending the priority list dated 6th September, 2006 as per Transfer Guideline and place her (Sudha Chouhan) in 'Priority No. I' and post her at KV (BSF), Jodhpur. In this O.A., Smt. Jai Shree Parihar, was not impleaded as respondent even though, her name appeared in Para 4(G) of this O.A. No. 237/2006 under title 'Facts of the Case'. This O.A. was filed through Shri K.K.Shah, Advocate, the learned counsel, now representing Smt. Jai Shree Parihar,



The applicant in this O.A. No. 51/2007 under consideration. In this O.A. 237/2006, respondents filed counter-reply dated 6th February, 2007 bringing on record that the mistake in Priority List was due to 'fault in the Software'; this mistake is rectified / corrected by issuing order dated 8.12.2006 and consequential order dated 12.12.2006 as a consequence of which transfer order dated 22.09.2006 transferring Ms. Parihar (instead of Ms. Sudha Chouhan) at Jodhpur, was withdrawn and Ms. Parihar was relieved from Jodhpur

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(Signature) I/31

to join at Pokran. Ms. Parihar now feeling aggrieved, filed O.A. No. 293/2006 against said orders dated 8.12.2006 and 12.12.2006 (Annex.A/9 and A/10) on the ground that Transfer Order dated 22.9.2006 was already exhausted and given effect to on her joining at Jodhpur vide her joining report dated 26.9.2006/Annex.A/7 and, therefore, it could not be recalled or corrected. This time, Smt. Sudha Chouhan (whose name appeared in the pleading of said O.A. 293/2006), was not impleaded. This O.A. No. 293/2006 was also filed by Shri K.K. Shah, Advocate. Interestingly, same counsel represented both – Ms. Parihar / Ms. Chouhan, in their respective OA. Against each other.

The Tribunal passed interim order dated 13th December, 2006 in favour of Ms. Parihar in aforesaid OA No. 293/2006 , relevant extracts of this interim order reads :-



"..... We have considered the contentions raised on behalf of the applicant and have also gone through the various documents which form part of this O.A. We are of the considered opinion that the operation of the impugned order dated 12.12.2006 at Annex. A/1 should be stayed and in case, the applicant has already been relieved from her present post, she should be taken back on the post from which she is sought to be relieved i.e. PET, Kendriya Vidhayalaya, BSF, Jodhpur as a consequence of cancellation of a non-existent order, till the next date. Ordered accordingly".

Respondents filed counter-reply dated 17.1.2007; justifying its both orders dated 8/12.12.2006 on the ground of 'Administrative exigencies', equality and fair treatment as per Transfer Guidelines. Preliminary direction of non-impleadment of necessary party (Ms.Chauhan) was also pleaded and pressed.

(Signature)

Said O.A. No. 293/2006 was finally allowed vide order dated 19.01.2007 on the ground that transfer order dated 22.9.2006, having been 'exhausted' could not be recalled/set aside relevant operative para of said order dated 19th January, 2007 reads :-

"In the premises, we find that there is ample force in this O.A. and the same stands allowed, accordingly. The impugned order dated 08.12.2006 and the relieving order dated 12.12.2006 (Annex.A/1) are hereby quashed with all consequential benefits. The interim order already granted is made absolute. In the facts and circumstances of this case, the parties are directed to bear their own costs."

On the other hand, in the counter reply dated 6.2.2007, filed by the respondents in OA No. 237/2006 (filed by Ms. Chouhan), it was pleaded that in view of the notices issued by the Tribunal in this O.A., the Department had taken steps to correct 'inadvertent-mistake' of the software and same has been rectified by issuing appropriate orders - viz., orders dated 8.12.2006 / 12.12.2006; and that Ms. Chouhan can have no grievance. The said O.A. was rendered infructuous. Tribunal passed order dated 14th February, 2007 which reads :-



"Learned counsel for the applicant submitted that the applicant is satisfied with the relief granted by the respondents since the transfer has already been carried out. He has also submitted that the O.A. is now rendered infructuous."

"In view of the above, the Original Application is dismissed having become infructuous."

In pursuance to the above quoted Tribunal order dated 19th January, 2007 in OA no. 293/2006, the Assistant Commissioner, KVS, Jaipur, withdrew his earlier order dated 8th December, 2006 and issued fresh order dated 2nd March, 2007 / Annex.A/12 to the O.A. 51/2007 and further passed another consequential impugned order/s dated 2.03.2007(Annex. A/1 to the O.A.) transferring Smt. Parihar from Jodhpur to KVS (BSF), Pokran in public interest with immediate effect

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and order dated 9.3.2007 / Annex. A-2 relieving her from Jodhpur and to report at KV (BSF), Pokran.

Feeling aggrieved, Smt. Parihar, filed present O.A. No. 51/2007, on 20th December, 2007. 'Dasti'- notices were to be served vide Tribunal order dated 12.3.2007. Record shows that Respondents No. 1 and 2 filed counter - reply - through Sh. P.S. Bhati, Advocate. His Vakalatnama is signed by Principal, K.V., Jodhpur - and not 'The Commissioner, KVS, New Delhi (impleaded as Respondent No. 1 in the O.A.). The Vakalatnama- also does not purport to be signed by the Respondent No. 2 (Assistant Commissioner, KVS, Jaipur/and respondent No. 3/D.K. Saini. On Vakalatnama however - in different ink, it is mentioned by hand 'Respondent No. 1 to 3'. On record, we find that Shri K.K. Shah, Advocate, has filed his 'Affidavit of service of Dasti Notice. Its relevant para 1 and 2 read -

"I, K.K.Shah, S/o Late Shri A.M. Shah, aged 57 years, B/c Jain, Address Rajasthan High Court, Jodhpur do hereby state on oath as under:-

That I am the counsel of the applicant in above mentioned original application. The Notices were served by the husband of applicant Jaishree Parihar to the respondents No. 1, 2 & 3 in their respective address and confirmed to me.

That the receipt of service of Dasti Notice is enclosed with this affidavit.

Deponent"

The notice - meant for service upon D.K. Saini / Respondent No. 3 (submitted along with affidavit of Sh. K.K. Shah, Advocate, in the Registry), shows that it was got served and received by someone in the office of (Ksherity) KVS, Jaipur. This shows that Dasti Notice is not served upon personally upon Shri D.K. Saini/Respondent No.3. Thus,

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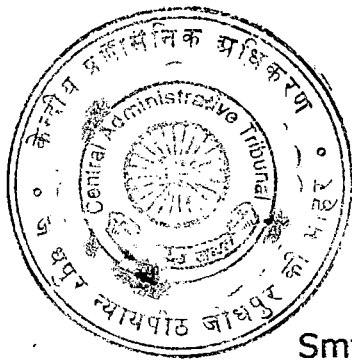


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there is no 'Dasti-service' in the eyes of law. The above shows that 'parties' and the Registry, CAT-Jodhpur Bench, has treating matter of 'service' lightly and without require seriousness. It is to be mentioned that all the above is being noticed by the Bench - when case was already heard for couple of hours on merit of the OA. We would have, normally directed fresh service upon respondent No. 3 but, in the entirety of the circumstances of this case, we proceed to consider the plea of 'mala fide' on merit.

For convenience, we reproduce para 4 & 5 of Tribunal Order dated 22.3.2007 in this O.A. - which reads :-



"4. On this, learned advocate for the respondents mentioned that since Shri D.K. Saini is also the Assistant Commissioner and therefore respondents No. 2 and 3 should be considered as one party. However, if the learned advocate for applicant insist on separate reply from the respondent no. 3, in his personal capacity than he seeks an adjournment to file reply.

5. Accordingly, respondent No.3, Shri D.K. Saini, may submit his reply within four weeks time and thereafter, the applicant counsel may submit rejoinder, if any. List the case on 06.07.2007 for admission."

Smt. Parihar then filed a D.B.Civil Writ Petition No. 1623/2007 before High Court of Judicature for Rajasthan at Jodhpur against above referred orders dated 2.3.2007 and order dated 9.3.2007 (Annex. 1 & 2 respectively to OA No. 51 of 2007) and also order dated 22.3.2007 (on the order-sheet of said O.A.).

Since Smt. Jai Shree Parihar, failed to join at 'Pokran' in pursuance to the orders dated 2.3.2007 and 9.3.2007 (challenged in OA No. 51/2007) the respondents issued another order dated 20th April, 2007, on the ground that she had lost her lien by abandonment on the post of PET by not joining the post at Pokran. Smt. Parihar, challenged said order by filing O.A. No. 89/2007 on the ground that

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she was mentally disturbed and had applied for leave, in other words
- she was prevented by sufficient cause and failed to join at Pokran.
She also file M.A.No. 72/2007 with the prayer to accept certain documents on record in support of her case. The Tribunal (Single Member Bench) passed an interim order dated 27th April, 2007. Relevant para 7 of the aforesaid interim order dated 27th April, 2007 reads :

"7. Leave applied for and the application for extension is not rejected. Instead removal order was passed. We notice that the applicant is on leave up to 28.4.2007 and therefore, termination order dated 20.4.2007 which is based on earlier proceedings dated 4.4.2007, cannot legally occupy the field. There may be technical hurdle to continue action, if once leave is granted on the initial application. So although there is an order of removal, we feel that it is required to be kept under suspension and should not be operational. As a consequence, respondents will be bound to admit the applicant for duty, if she report for duty on 30.5.2007, before the Principal, Central School, Pokhran. She may present herself for duty at Central School, Pokhran and Principal KV should admit her for duty, on production of a copy of this order. She will have to intimate the Assistant Commissioner by forwarding a compliance report. After hearing the respondents, of course, if requirement is found, follow up orders could be passed."



Said O.A. No. 89/2002, was finally allowed by D.B. of this Tribunal vide order dated 2nd November, 2007. Relevant para 28, 29 and 30 of the said order are being reproduced as under :-

"28. In view of the above discussion, it is obvious that Smt. Jayshree Parihar had applied for sanction of earned leave for the period from 10.03.2007 to 18.04.2007 and 19.04.2007 to 28.04.2007 for which no intimation relating to sanction or rejecting the same has been given to her by the respondents. She had also filed Original Application No. 51/2007 before this Bench of the Tribunal for cancellation of her transfer order from KV (BSF), Jodhpur to KV (BSF), Pokhran. She had also filed a D.B. Civil Writ Petition No. 1623/2007 before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur for cancellation of her transfer order from KV (BSF), Jodhpur to KV (BSF), Pokhran.

The above facts of filing of an O.A. No. 51/2007 before this Bench of the Tribunal and a D.B. Civil Writ Petition No. 1623/2007 before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur, were very well within the knowledge of the respondents. Therefore, in view of the circumstances and facts of this case, it is clear that there was no intention of the applicant for abandonment of her post. In view of this, the impugned order dated 20.04.2007 (Annex.A/1) vide which the loss of lien on her abandonment of the post of PET has been confirmed and removed from the service of Kendriya Vidyalaya Sangathan, are

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hereby quashed and set aside. The interim orders already issued vide orders dated 27.04.2007 are made absolute.

29. The applicant also reported for duties at KV BSF, Pokhran on 30.04.2007 as per orders and discussions in the open Court on 27th April, 2007 whereas the date for reporting for duty given in the order was 30.05.2007 on account of typographical error. The respondents adopted a very stubborn attitude by not allowing her to join her duties at Pokhran on 30.04.2007 instead of making repeated requests by her in person as well as in writing. If there was any doubt to the respondents, they could have sought clarification from this Bench of the Tribunal or from their counsel.

In view of this, the respondents are directed to treat the period from 30.04.2007 to 29.05.2007 as on duty and pay her all consequential benefits including arrears of pay and allowances (if any due as on date) for the same.

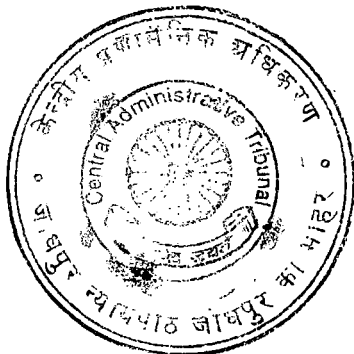
30. In view of the above discussions, Original Application No. 89/2007, and Misc. Application No. 72/2007 are hereby allowed. No order as to costs."

It is evident that Smt. Parihar herself asked for joining at Pokran and as on date, she is working at Pokran in pursuance to the order dated 12.3.2007 and 9.3.2007 (referred to above).

Present O.A. No. 51/2007 was also taken up for hearing along with above mentioned OA No. 89/2007. This O.A. No. 51/2007 was dismissed on the ground that applicant was simultaneously pursuing two remedies. Relevant Paras 19 and 20 of the Tribunal's order dated 2nd November, 2007 dismissing this O.A. 51/2007 read :

"19. It is clear that applicant is pursuing two remedies for seeking same primary reliefs simultaneously in two Courts by filing O.A. No. 51/2007 in this Tribunal and D.B. Civil Writ Petition No. 1623/2007 before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur which is, admittedly still pending before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur.

20. In view of the above discussion, the present Original Application is dismissed at this stage without entering upon the merits of the case on the ground of pendency of D.B. Civil Writ Petition No. 1623/2007 before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur."



Being aggrieved, Smt. Parihar, challenged aforesaid Tribunal order dated 2.11.2007 (Annex. A-11 to the OA), by seeking

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amendments in the above mentioned Writ Petition No. 1623/2007)
pending in High Court.

It may be noted that in the said Writ Petition Smt. Sudha Chouhan was again not impleaded as respondent. The D.B. of the High Court passed order dated 13th December, 2006 (placed on record of OA), which reads :-

"The application for amendment is not opposed, as such the same is allowed. The amended writ is taken on record.

At this stage both the learned counsel submit that the order Annexure-11 dismissing the Original Application No. 51/2007 be set aside, and the matter be sent back to the learned Tribunal with a direction to decide the matter of sustainability of the transfer of the petitioner on its own merits after hearing both the counsels, and in accordance with law, so also with utmost expediency.

Accordingly, the writ petition is allowed. The order Annexure-11 passed by the learned Central Administrative Tribunal is set aside, and the learned Central Administrative Tribunal, Jodhpur Bench, Jodhpur is directed to restore back the Original Application No. 51/2007, and decide the same as above, and most expeditiously. Both the parties are directed to appear before the learned Tribunal on 19.12.2007."



In pursuance to the said order, this case has been listed again for decision on merits.

The record of all the above OAs initiated before the Tribunal shows that Ms. Parihar has resorted to 'hide and seek' game and abused process of Court by initiating simultaneous proceedings which is against public policy

Coming to the merit of the case, it is to be noted that basic facts are not in dispute but, before we deal with the contentions raised on behalf of respective parties, it will be useful to refer to the Transfer Guide-lines / Annex.A-4 to the O.A., relevant extract whereof is reproduced :-

[Signature]

NEW TRANSFER GUIDELINES W.E.F. 14.3.2006.

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1. BASIC PRINCIPLES

1.1 All employees of the KVS are liable to be transferred and posted anywhere in India, at any time, and for any period, as requirements of public service and of the Sangathan may dictate. Transfers and postings are a right of the Sangathan which it would endeavour to exercise in the best interest of the students, with due regard to the principles of equity and transparency vis-à-vis its employees.

1.2 These guidelines regarding transfers are meant essentially for the internal use of the Sangathan and do not vest any employee with any right.

1.3 Objectives of the Sangathan's transfer policy are :-

i.) To deploy available staff in an optimum manner so that, inter - alia, employees are evenly distributed across regions and schools, with special regard to the interest of students in Priority Areas [as defined in para 2(1) (xi)].

ii.) To maximize the overall satisfaction level of its employees, subject always to the paramount need to protect academic interest of students and administrative efficiency of the organization.

**DEFINITIONS**

(1) In these guidelines unless the context otherwise requires :

i) "Category whose Dislocation will be avoided (CDA)

xxx xxxx xxx xxx

ii) "Commissioner" means Commissioner, Kendriya Vidyalaya Sangathan, including any officer thereof who has been authorized or delegated to exercise all or any of the powers and functions of the Commissioner.

iii) & iv) xxx xxx xxx xxx

v) "Employees Spouse" means a spouse who is a paid employee in an organization, and does not include a self-employed spouse.

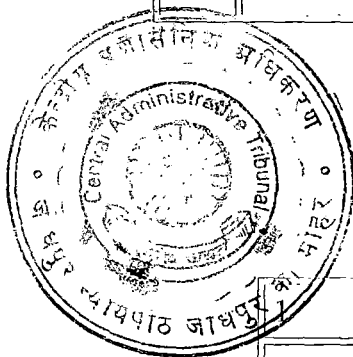
vi) to xxi) xxx xxx xxx xxx

3. AUTHORITIES COMPETENT TO EFFECT TRANSFERS :

(1) Subject to the general powers of the Commissioner to effect all manner of transfers of persons upto the level of Education Officers, transfers of the kind shown in Col. 1 below will be effected by the authorities shown against them in Co.1.2:-

De -

	Type of Transfers	Authority which will Transfer
	(1)	(2)
1	(i) Inter-regional Transfers (ii) Intra-regional Transfers of Principals and Vice Principals	Commissioner
2	Intra-regional Transfers of employees upto the level of PGTs, except:- (i) Mutual Transfers, and (ii) Admn. Transfers on grounds of misconduct or unsatisfactory performance [(vide para 8(iv), below)]	Assistant Commissioner, on the recommendation of the Regional Transfer Committee (RTC)
3	Intra-regional transfers of the following kinds upto the level of PGTs :- (i) Mutual Transfers, and (ii) Admn. Transfers on grounds of misconduct or unsatisfactory performance [(vide para 8(iv), below)]	Assistant Commissioner



(2) The Regional Transfer Committee mentioned in sub para (1) above will consist of the following viz.,

	Assistant Commissioner	Chairman
2	Senior-most Education Officer of the Region-to be nominated by the Assistant Commissioner.	Member
3.	Two senior-most Principals of the Region - to be nominated by the Assistant Commissioner.	Members
4.	Administrative Officer of the Regional Office [or Superintendent (Admn.) if AO's post is vacant]	Secretary

[Signature]

(3) XXX XXX XXX XXX

(4) It will be the responsibility of the Chairman to ensure that recommendations of the Committee are fully in accordance with these guidelines. In case, in his opinion, a majority recommendation is inconsistent with these guidelines, he will not implement it but will refer the matter to the Commissioner for orders.

7. ADMINISTRATIVE TRANSFERS TO ELIMINATE STAFF SURPLUS.

7.1 In the Kendriya Vidyalayas where teachers are in surplus, action will be taken to reduce such surplus to zero in the following manner :

(i) All teachers of relevant category working in Kendriya Vidyalayas having a surplus in that category will be notified that teachers of that category in requisite numbers need to be transferred out to eliminate the surplus, and it will be ascertained whether any of them are willing to be transferred out of other KVs within the region having vacancies in relevant category. To the extent possible, surplus will be eliminated by transferring willing teachers, who respond to the above notice, to vacant posts within the Region.



8. ADMINISTRATIVE TRANSFERS ON OTHER GROUNDS

Besides transfers to eliminate surplus, as indicated in Para 7 above, other administrative grounds on which staff may be transferred are as follows :-

i) Due to completion of maximum tenure prescribed for certain posts as specified below :-

S. No.	Post	Maximum Prescribed Tenure (In Years)
1	Assistant Commissioner	03
2.	Education Officer	05

While there would be no maximum prescribed tenure for Principals, cases of such of them as have completed five years in the same school, will be examined, and transfer effected to the extent necessary in pursuance to the objectives spelt out in para 1.3.

(ii) To fill up vacancies in Priority Areas.

(iii) To accommodate requests of teachers belonging to PCGR category for a place where no vacancy is available.

(iv) On grounds of misconduct or unsatisfactory performance, as evidenced by issue of a charge-sheet under Rule 14 of the CCS (CC&A) Rules, 1965 or imposition of a minor penalty under Rule 16 of the CCS (CC&A) Rules, 1965.

(v) Closure of a Kendriya Vidyalaya.

(vi) Other administrative exigencies.



12.4 Posting with an Employee Spouse

As far as practicable, request for transfer to join an employee spouse, either at the same station or at a nearby station, shall be considered and for this reason specific entitlement points have been provided in Para 13. In the event of a tie among the same category of spouses, lady employee would be given preference over male employee, and inter-se priority among different categories shall be as follows :-

Category of Employees Spouse Priority

- | | |
|--|-----|
| 1. Where Spouse is a Sangathan Employee | I |
| 2. Where Spouse is a Central Government Employee | II |
| 3. Where Spouse is an employee of an Autonomous body or PSU under the Central Government | III |
| 4. Where Spouse is an employee of a State Government or its autonomous body or PSU | IV |
| 5. Spouse working in an organization Other than 1-4 above. | V |

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15. SECOND PRIORITY LIST : INTER-REGIONAL TRANSFERS OF PERSONS IN PCGR CATEGORY BY DISPLACEMENT OF OTHERS AND CERTAIN CONSEQUENTIAL TRANSFERS

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.



15.2 Second priority list prepared as per para 15.1 above, shall be displayed on KVS website by 20th May, and representations against it will be received upto 5th June. Final Transfer orders, after taking representations into consideration, shall be issued by 10th June.

15.3 Any correction/modification which become necessary in transfers as per first and second priority lists by KVS (HQ) shall be issued by 25th June.

16. TRANSFERS BY REGIONAL OFFICES

Applications for intra – region request transfer shall be considered by the Regional Transfer Committee only after the inter region transfer orders have been issued by the KVS (HQ).

16.1 Request Transfers against available vacancies by Regional Office ;

The first priority list shall be prepared by listing of applications received for intra-regional transfers taking into account the entitlement points as per para 13 above.

This priority list shall be displayed on RO website by 26th June. Representations against transfers proposed in first priority list shall be received by 10th July, and final transfer orders shall be issued by 15th July. The first priority list shall be prepared as per provisions of para 12 and 13 above.

[Signature]

17. TRANSFERS UNDER SPECIAL CIRCUMSTANCES

17.1 Notwithstanding anything contained in Para 11.1, transfer application of a teacher may be entertained upto 31st August for transfer to a station in respect of which no other person has made request even if such teacher has not submitted the application in the prescribed proforma by the last date specified in Para 11.1. In case of vacancies in Priority Areas requests of teachers shall be considered throughout the year.

17.2 KVS reserves the right to transfer any teacher to any place at any time due to administrative exigencies. Commissioner may pass orders in such cases."

17.3 Transfers on account of serious illness, when it is not practicable to defer the transfer till next year without causing serious danger to the life of the teacher, his spouse or ailing son / daughter, may be effected by Commissioner at any time during the year.

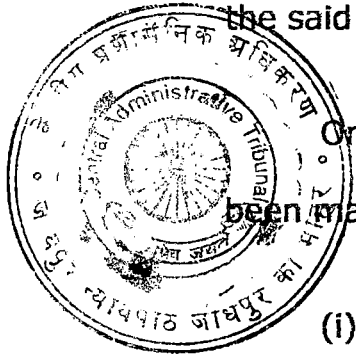


There is no dispute that for intra-regional 'request- transfer', applications were invited as per 'time-schedule' and other procedural formalities vide transfer order dated 22nd September, 2006 / Annex.A-6 to the O.A., passed by 'competent authority'. Admittedly, there was 'mistake' in 'Priority List' and Smt. Jai Shree Parihar, PET was wrongly placed – at Sl. No. 1 in Priority-category No.I (though her spouse was not KVS employee); Smt. Sudha Chouhan (whose spouse/husband, V.K.Singh, was working as TGT (BIO) at KV No. IAFS at Jodhpur was wrongly deprived of at S.No. 1 in Priority category I.

Claim of Smt. Parihar at this stage, primarily, rests upon 'interim order' dated 13th December, 2006 as affirmed by final order dated 19th January, 2007, in OA No. 293/2006/Annex.A-11 to the present O.A.

But, the applicant and her counsel should not forget that 'Arms' of Curt are long enough to reach injustice, vide – 1996 (1) SCC 589 (P-7).

As noted above, Smt. Sudha Chouhan, was not impleaded in the said OA No. 293/2006 and, therefore, the order dated 19.1.2007 (passed by the Tribunal in OA No. 293/2006) cannot prejudice/non-suit Smt. Sudha Chouhan. In the present O.A. 51/2006 also, Smt. Sudha Chouhan, has not been impleaded even though her name appears in Para 5 (d) of this O.A. Smt. Jai Shree Parihar cannot be granted relief in this O.A. which prejudices rights of Ms. Sudha Chouhan. Admittedly, there is one post only at Jodhpur and Ms. Chouhan is entitled in Law/Transfer Guidelines to be posted/placed on it. Two persons cannot work on one 'post' and therefore no relief can be granted to Ms. Parihar. One must bear in mind - 'Fraud' / 'Mistake' and Justice cannot dwell together as it vitiates Fair Play and Good Conscience; See 2000 (3) SCC 581 (Para 3). granted relief claimed in the said O.A.



On behalf of Smt. Jai Shree Parihar, following submissions have been made :

(i) Impugned transfer order dated 2nd March, 2007 / Annex. A-1 is illegal and without authority, (a) because Assistant Commissioner can only pass order of transfer only on the recommendation of the Regional Transfer Committee (RTC) vide Para 3 of Transfer Guidelines (quoted above) (b) transfer order on 'administrative- exigencies' other than routine transfers, can be passed only by 'Commissioner, KVS' vide para 17.2 of the Guide-lines (quoted above).

At the first place, there is no specific/categorical pleading 'on facts' to support above submission - and hence, the respondent had

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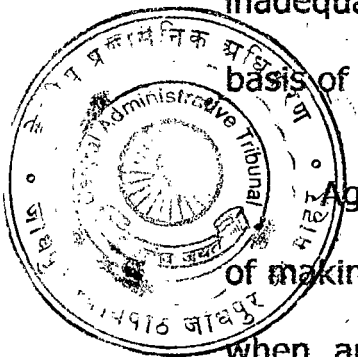
no opportunity to meet said 'objection'. Further, there is no categorical ground on this aspect in para 5 of the OA to enable the respondent to defend themselves on this score. There is no basis to raise above grievances.

The applicant has misreably failed to plead ^{by requisite facts} and ^{entire OA in hand} ^{there is no or} shows, 'categorical / specific legal objection on the ground of absence of RTC recommendation and/or absence of delegation of power by the 'Commissioner' in favour of the Assistant Commissioner, as provided vide Para 2 (ii) of Guidelines quoted above or otherwise in view of Para 3 read with para 17.2 of the Transfer Guidelines.

On the other hand in Para 4 (I) of the O.A. (quoted above) Smt. Parihar - concedes that the Assistant Commissioner / respondent No. 2 was 'competent authority' to transfer P.E.T. within the region. Para 4 (m) of the O.A.(quoted above), also hints out that so called error in software (though no effort appears to have been made to find out whether it was by 'MISTAKE' or by 'MANIPULATION' at the instance of its 'BENEFICIARY', i.e. Ms. Parihar) was responsible for 'Incorrect Priority'. The pleadings, as they stand on record, are wholly vague and inadequate as they are not sufficient to inform the respondent of the basis of attack to the impugned order.

Again recommendation by 'RTC' is required while initial exercise of making 'Transfer' is undertaken under Para 3 to 16 of the Guidelines when authorities make both 'either 'Regional' and 'Intra Regional' transfers as per schedule given in the Guidelines itself. In the instant case, nobody disputes that there was no 'recommendation' while initial

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transfer order dated 22.9.2006 / Annex.A-6 was passed showing - by mistake, name of Ms. Parihar instead of Ms. Chouhan.

The argument that RTC's recommendation is not obtained while passing the present impugned order dated 2nd March, 2007, is misconceived / misplaced. The said order is, in effect the nature of correction of an apparent 'Mistake' and no RTC recommendation, as such was required for this subsequent impugned order.

It is well settled that every 'Authority/Court or Tribunal' has all inherent power to review/correct its 'in-advertent' and 'apparent' mistake - like the one due to erratic- functioning of computer or the like. There can be no denial that an order based on 'MISTAKE' (apparent and inadvertant) and/or 'FRAUD' - is a non-est order in the eyes of law and it cannot confer 'right' of any nature enforceable in Law /Court.

(ii) The Tribunal's order dated 19th January, 2007 (in OA No. 293/2006 was obtained behind the back of Ms. Chouhan (the most effected person and necessary party. Thus, this order does not binding her. Respondents have been placed in a predicament and have no option but to pass the present impugned order/s dated 2nd + 9th March, 2007 (Annex.A-1 and A/2 to the OA) in public interest/ administrative exigencies inasmuch as 'two-persons' cannot be allowed to work on one post. It shall perpetuate injustice to the 'students' - who shall be deprived of services of a Teacher in some other school. This principle is enshrined in legal maxim 'NECESSIATES PUBLIC

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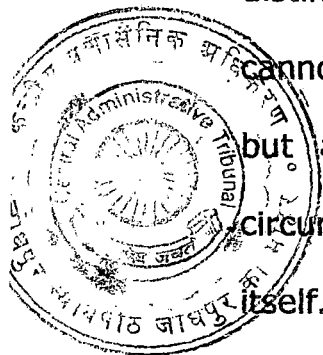
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MAJOR EST QUAM PRIVATE - (Public necessity is superior to private) and it is always to be borne in mind.

Apart from the above, the impugned order dated 2nd March, 2007 (Annex.A/1), was to prevent wastage of 'public money' by payment of salary to two persons - working on one 'post'

Learned counsel for the applicant further submitted that impugned order only alleges 'public interest' but it has not shown what public interest is served. In other words, non disclosure of the nature of public interest renders the impugned order dated 2nd March, 2007 as illegal. He relies upon decision in the case of *Smt. Kulwant Kaur Vs. Ch. Suraj Bhan & Ors.* [1991 (1) SLR 744]. The said case is, clearly distinguishable on facts and, therefore, the ratio laid down therein, cannot be made applicable in the instant case. It is not only ridiculous but also preposterous to expect authority to indicate grounds / circumstances / reason to justify 'Public Interest' in a transfer order itself. Department is not supposed to disclose the facts to support public interest and/or administrative exigencies in transfer orders. The learned counsel for the respondents referred to the case of (*Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and Others*), AIR 2004 SC 4850 (para -4) wherein, Hon'ble Supreme Court held that the Court/s should not interfere with order of transfer which is neither mala fide nor against guide-lines or policy.

Public Interest is, Writ Large in the instant case. Two persons cannot be paid 'Salary' for working on one post. Compelling the department shall mean compelling respondent to commit financial



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Irregularity which shall lead to and, dissipation of 'exchequer' of an educational institution. Law permits neither of the two.

The learned counsel for applicant conceded during 'course of arguments' that said para 15 of the guide-lines is not relevant as it deals with 'Inter-regional' transfers whereas - our case is of 'Intra-regional' transfer.

(iv) Learned counsel next submitted that impugned order suffers from 'mala fide' on the part of respondent No. 3 Shri D.K. Saini, the then Assistant Commissioner, KVS, Jaipur. ^{ay} In this respect, ^{ay} he refer to ^{ay} para 4 (I) of the OA (quoted above).

^{ay} ~~This~~ ^{ay} second submission is based ~~on mala fide~~ based on the facts pleaded in para 4 (I) of the O.A. and ^{ay} also the grounds ^{ay} contained in para 5 (d) which is quoted below :

"4- FACTS OF THE CASE

4(a) to (k) xxx xxx xxx xxx

4(I) That the impugned order has been issued ~~maliciously~~ ^{ay} respondent No. 3 because on earlier occasion when he issued cancellation order, the same was quashed which was also in relation to posting back to RD Mines from Jodhpur. It appears that it has hurt the ego of the respondent NO. 3 because it is he who is competent authority to transfer PET within the region. The respondent No. 3 has acted in an unbefitting manner because what he could not do by annex. A/9, he did it by annex.A/1. It is totally colourable exercise of power vested in him such action deserves to be viewed seriously."

4(m) xxx xxx xxx xxx

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5(a) to (c) xxxxxxxx xxx xxx xxx xxx

5(d) That the respondent No. 2 was duty bound to abide by the Transfer Guidelines if at all any transfer is to be effected, because in all other cases the guidelines are being followed. Such action is discriminatory & against the mandate of Article 14 of the Constitution of India. In all fairness under such circumstances the longest stayee was required to be transferred in terms of para 15.1 of Transfer

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Guidelines. The applicant has spent barely 5 & ½ months at Jodhpur and she has been transferred."

5(e) to (h) xxx xxx xxx xxx"

It is being argued that allegations of 'mala fide' against Shri D.K. Saini, vide para 4(I) of the O.A. are un-rebutted as he has failed to file his own affidavit to convert the same. 'Averments' / 'Allegations' made at the behest of the applicant in the OA cannot always be treated at sacrosanct or the 'last- word on Earth'.

Before relying upon them they have to be examined and tested *prima facie*, of its substance.

As noted earlier in this order, the record shows that 'Dasti notice' was not served personally upon Shri D.K.Saini/respondent No.3.

At the risk of repetition, it is reiterated that the notice kept in Part 'C' of this O.A., was returned by Shri K.K. Shah, Advocate, along with his own affidavit, which shows that it was served and received by some official in the office of K.V.S., Regional Office, Bajaj Nagar, Jaipur; and that it was not served upon Sh. D.K.Saini. The Stamp of KVS on this notice bears endorsement of someone which do not tally with the signatures shown at the end of the impugned order passed by said Shri D.K. Saini, Assistant Commissioner.

The applicant himself having failed to serve notice personally upon Shri D.K.Saini, cannot take advantage of his own mistake/default. The affidavit dated 15.3.2007 of Shri K.K. Shah, Advocate, filed in support of service of Dasti Notice shows that it is against 'facts on record' and to that extent, 'mis-leading'. No one can

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be permitted to seek premium out of one's own default / mistake. Court/Tribunal refuse to enforce 'right' arising out of 'fraud' or 'mistake' or where genesis of claim itself is based upon 'jugglery' in 'legal proceedings/action' which, in the facts of a given case, constitute 'abuse of process of Court/Law'.

Further, the impugned order dated 2nd March, 2006, has not been passed by Shri D.K. Saini. at his own instance or out of his sole 'discretion'. Perusal of the said impugned order shows that it is being issued in pursuance to letter dated 4th December, 2006 of K.V.S. Headquarter, requiring said respondent No. 2/3 to pass fresh orders and said order dated 4.12.2006 has not been assailed so far.



The respondents, left with no option, passed fresh order transferring Smt. Parihar, to Pokran un-disputedly, the only nearest place available at that time. There are no attending circumstances to show that authority in question has acted with 'bias' or 'mala fide'.

There is another interesting aspect of this case which is being conveniently ignored by Smt. Jai Shree Parihar i.e. she had already joined at Pokran in pursuance to the order dated 2nd March, 2007 (subject matter of challenge in the present O.A.); she was admittedly relieved from Jodhpur and later joined at Pokran though with 'delay' on her part which was according to her 'involuntary' and justified in view of her 'Leave-Applications', but according to the respondents - voluntary 'abandonment of service' as there was willful failure on the part of Ms. Parihar, to report on duty at Pokran, leading to termination order dated 20.4.2007 which led to the filing of OA No. 89/2007 and

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the Tribunal, at her own instance, set-aside order of termination dated 20.4.2007 and directed the respondent to allow her to join at Pokran. In view of it, the impugned order dated 2.3.2006 has also been given effect to on the same analogy on which she obtained Tribunal order dated 19.1.2007 (in OA No. 293/2006 = Jay Shree Parihar Vs. Commissioner, KVS & Others) and, therefore, said order dated 2.3.2007 also, cannot be set aside or quashed now.

Relevant pleadings in OA No. 89/2007 (filed by Ms. Parihar) against 'termination order dated 20.4.2007 and that of Tribunal order dated 2.11.2007 - deciding said OA are reproduced -



a That on receipt of annex.A/8, the applicant sent an application for Earned Leave (EL) from 10.3.07 to 18.04.07 on 10.4.07 to the respondent no. 2 by fax as well as by regd. Post. The application dtd. 10.4.07 is placed as Annexure A/10. Not finding herself still mentally and physically fit the applicant submitted another application for extension of EL from 19.4.07 to 28.4.07 on 20.04.07 to the respondent no. 2 by fax as well as by the post. It is relevant to state that the applicant though medically sick did not avail medical leave but requested for EL which she has accumulated over the years of her long service. The application dated 20.4.07 is placed as Annexure A/11.

4(M) That shockingly on the very day when the applicant has requested for extension of service i.e. 20.4.07, the respondent no. 2 issued the impugned order on 20.4.07, confirming the loss of lien on her abandoned of the post of PET and removed from service of KVS w.e.f. 10.3.07. The impugned order dtd. 20.4.07 is placed as Annexure A/1.

5(G) That the applicant has no unfettered right to remain on posting at Jodhpur only and once she is medically fit and no order in favour of the applicant is passed, she will be joining at her new place of posting. The applicant is a Physical Education Teacher and during this period when summer vacations are approaching she may not be required at any place. The applicant has served for more than 21 yrs. Without any grievance and accepted the dictum of the respondents for all these years. She does not fall in the category of employees who have been absenting frequently and even now once the applicant is medically fit she will abide by the dictum of the respondents.

5(H) That sub para (1) (b) of Art. 81 (d) envisages that the appointing authority should be satisfied of the reasons of not joining the duties and in the present case the applicant has categorically stated that she was not mentally fit to resume duties. If at all any medical certificate were required to avail EL, the same could have been asked as the ground of EL was medical only. The respondent no. 2 neither asked for any medical certificates nor conveyed the grant of EL which is against the principles of natural justice."

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Smt. Parihar, has to thank herself for placing herself in a 'paradox'.

She has forfeited her right to join at Jodhpur - if any under Tribunal order dated 19.1.2007 in OA No. 293/2006.

Law and Equity - both are against her.

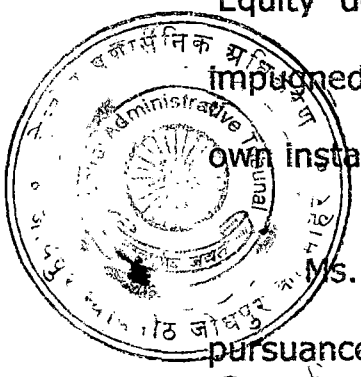
It is also to be noted that order dated 19.1.2007 in OA No. 293/2007 - Jai Shree Parihar Vs. UOI & Ors. - loses efficacy inasmuch as it was deliberately obtained behind the back of 'Necessary Party' (Ms. Sudha Chouhan) and also that, Ms. Parihar herself occupied and acquiesced to the subsequent Transfer Orders dated 2.3.2007 - shifting her from Jodhpur to 'Pokran' (vide OA No. 89/2007 decided on 2.11.2007) where she has been working now for couple of months.

'Equity' demand that Ms Parihar should continue at 'Pokran' since the impugned Transfer Order has already been given effect to - at her own instance (see OA No. 89/2007) vide final order dated 2.11.2007.

Ms. Parihar had herself joined without protest at Pokran - in pursuance to the order dated 2.3.2007 (challenged in this OA) and in view of above noted subsequent development, she cannot now maintain present OA No. 51/2007. She cannot be allowed to 'Aprobate' and 'Reprobate' at one and the same time.

'Mistake' must be 'undone' as soon as discovered. As soon as Ms. Parihar - admits that her name was wrongly placed in Priority No. I, she has neither 'Moral' nor 'Legal' justification to stay at Jodhpur.

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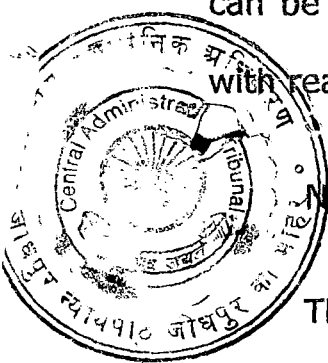
Case in hand is an illustrious example of 'Hide-Seek' in Court (for the above reason and also for prosecuting two remedies simultaneously) which has always been deprecated and not approved of on the ground of 'Public Policy'.

Taking in account entirety of the circumstances of this case, particularly in view of Tribunal's earlier order dated 2nd November, 2007 (in OA No. 89/2007); as well as the interest of students at KVS - school at Pokran, no relief can be given now at this stage in this O.A.

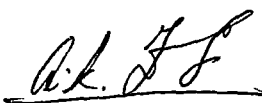
In the end, we may observe - 'It is one of paradoxies of law' that some time delinquent person, in his anxiety to elude the coils of legal machinery tends to exaggerate the dimension of his own misbehaviour. On the other hand, - 'concept of fairness in administrative action has been the subject matter of considerable judicial debate but, there is total unanimity on the basic element of the concept to the effect that the same is dependant upon the facts and circumstances of each case pending scrutiny before Court and no straight jacket formula can be evolved therefor. As a matter of fact 'fairness' is synonymous with reasonableness.

No other point urged or pressed.

There is no substance in the submissions made by the learned counsel representing Ms. Jay Shree Parihar. Present O.A. is devoid of merit. It is accordingly dismissed. No orders as to cost.


(R.R.Bhandari)

Member (A)


(A.K.Yog)

Member (J)

ONE SET. LISA J. R. MEND
S. LIAISON MEMBERSHIP
ON 9.4.08 BSL
9.4.08

Lead copy
for 03/4

Lead copy branch

Part II and III destroyed
in my presence on 15/12/14
under the supervision of
section officer (j) as per
order dated 19/8/2014
[Signature]
Section officer (Record)