

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**ORIGINAL APPLICATION NO. 193/2008**

**DATE OF ORDER: 29.05.09**

**CORAM:**

**HON'BLE MR. N.D. RAGHAVAN, VICE CHAIRMAN**

Himmat Singh Panwar S/o Radha Kishan Panwar, aged 51 years,  
R/o 21/376 Chopasani Housing Board, Jodhpur (Raj.).

(Presently posted as UDC, K.V. Jalipa Cantt., Barmer).

...Applicant.

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

**VERSUS**



1. Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi - 110016, through its Commissioner.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, (Regional Office), 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015.
3. Shri Lal Singh Gehlot, U.D.C. Kendriya Vidyalaya No. 1 (Army), Jodhpur.

...Respondents.

Mr. V.S. Gurjar, counsel for respondent Nos. 1 & 2.  
Mr. M.S. Godara, counsel for respondent No. 3.

**ORDER****Per Hon'ble Mr. N.D. Raghavan, Vice Chairman**

Facts of the case, according to the applicant, are briefly these:- In the year 2006, the applicant was displaced being surplus to Kendriya Vidyalaya Jalipa Cantt., Barmer. One Shri Vishnu Prakash was posted at Kendriya Vidyalaya, Jodhpur in spite of the fact that he was transferred on administrative ground in the year 2001 and who should not have been transferred within 5 years at the same station and not at all in the same Vidyalaya. Before being transferred to Kendriya Vidyalaya, Jalipa Cantt., Barmer, such facts / grievances were brought to the notice of the respondent No. 2 but in vain. The applicant preferred yearly request transfer application and respondent No. 3 also preferred it but illegally showed the date of joining as 02.11.2006 whereas he has joined on 03.11.2006 and thus was not longer stayee than the applicant, because both were transferred on displacement vide order dated 18.10.2006 and the applicant joined on 02.11.2006 and hence was longest stayee to be considered for transfer on request. The representation of the applicant has not yet been decided and respondent No. 3 has been transferred to K.V., Jodhpur, without verifying the fact of joining after the applicant on displacement. Hence, this Original Application has been preferred by the applicant praying for allowing it and directing the respondent-department to transfer the applicant to any Kendriya Vidyalaya in Jodhpur even if by displacing respondent No. 3.



2. Learned counsel for the applicant has submitted as below: -

2.1 The applicant is working on the post of U.D.C., Kendriya Vidyalaya, Jalipa Cantt., Barmer. He was identified as surplus for displacement under para 16.2 at Sl. No. 10 vide letter dated 18.09.2006 of the respondent-Sangathan. In pursuance of the above letter, the applicant was called for counselling by respondent No. 2 where he submitted a representation requesting not to displace him since it is not as per the Transfer Guidelines. In the letter, the applicant inter alia submitted that one Shri Vishnu Prakash, UDC was transferred on administrative grounds from K.V. No. 1 Army Jodhpur to Banswara, but subsequently the transfer order was modified on the request of Shri Vishnu Prakash to K.V. Jalipa Cantt. Copy of such representation is dated 22.09.2006 marked as annexure A/1 to the O.A.



2.2 The respondent-Sangathan did not pay any heed to the representation of the applicant and transferred him under para 16.2 of the Transfer Guidelines from K.V. No. 1 Army, Jodhpur to K.V. Jalipa Cantt. in public interest with immediate effect vide order dated 18.10.2006. Respondent No. 3, Shri Lal Singh Gehlot, on the same day of 18.10.2006 was

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also transferred under para 16.2 of the Transfer Guidelines in public interest from K.V. No. 2 AFS, Jodhpur to K.V. AFS Uttarlai. Copies of both the orders dated 18.10.2006 are jointly marked as Annexure A/2 and A/3 to the O.A.

2.3 Pursuant to the letter dated 18.10.2006, the applicant was relieved from K.V. No. 1 Army, Jodhpur, with a direction to report to the Principal of K.V., Jalipa Cantt. vide order dated 31.10.2006 (Annex. A/4). The applicant gave his joining report to the Principal, K.V. Jalipa Cantt. on 02.11.2006 (forenoon). Subsequently, the Principal informed the Assistant Commissioner vide letter dated 02.11.2006 with regard to the joining of the applicant on 02.11.2006. Copies of both the letters dated 02.11.2006 are jointly marked as Annexure A/5 and A/6 to the O.A. Respondent No. 3, Shri Lal Singh Gehlot, joined at K.V. Uttarlai on 03.11.2006, a day after joining of the applicant and the joining letter dated 03.11.2006 is marked as Annexure A/7 to the O.A.



2.4 After joining at Jalipa Cantt., the applicant preferred yearly request transfer application by application dated 18.12.2006 for transferring him to any K.V. in

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Jodhpur. Copy of such application dated 18.12.2006 is marked as A/8 to the O.A.

2.5 The applicant came to know that respondent No. 3 has also applied for request transfer in December, 2006 when the applicant too applied but respondent No. 3 stated the date of joining at K.V. Uttarlai as 02.11.2006 instead of 03.11.2006 and therefore without checking the record, respondent No. 2 accepted the transfer application of respondent No. 3 considering him to be senior as per the service record and respondent No. 3 was transferred to K.V. No. 1 Army Jodhpur within a period of six and a half months only. As per the transfer guidelines, the persons who have been transferred on displacements would be considered for their retransfer on the basis of longest stayed on displacement. It is clear from the date of joining on transfer by the applicant as well as respondent No. 3 that the applicant was longer stayee than respondent No. 3 and that therefore in all fairness he should be transferred in the place of respondent No. 3. The transfer order of respondent No. 3 dated 25.05.2007 is marked as Annexure A/9 to the O.A. Initially, the applicant could not come to know of such illegal transfer of respondent No. 3 and he only came to know somewhere in September, 2007.



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2.6 Once again, the applicant preferred a request transfer application vide application dated 20.12.2007 for the year 2008, which is at Annexure A/10 to the O.A., for transferring him to any Kendriya Vidyalaya in Jodhpur but the respondent-Sangathan, even after that, did not consider it which is still pending and there is no hope as the time has elapsed. Ultimately, the applicant preferred a representation to the Grievance Officer i.e. Respondent No. 2 for the redressal of his grievances, vide letter dated 12.06.2008, inter alia, submitting that Shri Lal Singh Gehlot was transferred from K.V. Uttarlai to K.V. No. 1 Army Jodhpur by making false and misleading statements before the authorities concerned that he joined on 02.11.2006, as it is clear from annexure A/6 and A/7 that the applicant joined the K.V. Jalipa Cantt. on 02.11.2006 and respondent No. 3 Shri Lal Singh Gehlot joined at K.V. Uttarlai on 03.11.2006, as both were transferred in public interest on the same day vide order dated 18.10.2006 by annexure A/2 and A/3.



2.7 His representation submitted that Shri Vishnu Prakash, UDC of K.V. Jalipa Cantt. was transferred from K.V. No. 1 Army Jodhpur to K.V. Banswara in the year 2001, but at his own request it was modified to K.V. Jalipa Cantt. Ultimately he was

transferred to K.V. No. 1 Army, Jodhpur, on his own request, within five years from the date when he was transferred on administrative ground from K.V. No. 1 Army Jodhpur to K.V. Jalipa Cantt. It is against para 12.4 of the transfer guidelines i.e. no person who has been transferred on administrative ground can be transferred back to the same station within five years and not at all in the same Kendriya Vidyalaya where from he was transferred. Copy of representation dated 12.06.2008 is marked as Annexure A/11 to the O.A. Moreover, till date the respondent-Sangathan is sitting as a silent spectator and not deciding the representation of the applicant.

3. On the other hand, learned counsel for respondent Nos. 1 & 2 submitted as below: -

3.1) Paragraph 3 of the O.A. shows that this O.A. is not within the statutory period of limitation as prescribed u/s 20 r/w 21 of the Administrative Tribunals Act, 1985. It may kindly be seen as preliminary objection that in December, 2006, representation was made by the applicant for transferring him and admittedly the O.A. has been filed in August, 2008 and thus, one year time has elapsed from June, 2007 to June, 2008. The applicant has also not filed application for condonation of delay apart paragraph 8 of the reply at page 58 may be seen. The decision of the Hon'ble Apex Court in the case of State of



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**U.P. vs. Gobardhan Lal reported in (2004) 11 SCC**

**402, at page 407** is relied upon by the respondents and the extracted paragraphs 7 and 8 of the judgment therein are sine qua non for the O.A. to be dismissed even on merits.

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3.2 Further more, annexure A/10 in page 29 at page 32 the date may be seen therein as having been dated 20.12.2007 which cannot be clubbed for the year 2008, as per Rule 10 of the CAT (Procedure) Rules. Therefore, both on the point of limitation as well as on merits, the applicant has no case. Hence the O.A. deserves to be dismissed in any event.

4. Learned counsel for the respondent No. 3 submitted as below: -

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4.1 Whatever the arguments advanced by the learned counsel for respondent Nos. 1 & 2, is adopted for respondent No. 3. No adverse order has been passed against the applicant, while so how the applicant can ask the respondent-department for transferring him from one place to another. The applicant on this core itself has failed to establish the maintainability of this O.A. Hence, not only that this O.A. deserves to be dismissed on the point of limitation but also even on merits together with costs.

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5. Learned counsel for the applicant filed two copies of the letter dated 30.09.2008 of the Kendriya Vidyalaya Sangathan (Regional Office), Jaipur, addressed to the Principal, Kendriya Vidyalaya, Jalipa Cantt. and also letter dated 03.11.2006 of Shri Lal Singh Gehlot, UDC, K.V., AFS, Uttarlai, reflecting the correction of the date 02.11.2006 into 03.11.2006 and allowing Shri Lal Singh Gehlot to join in the forenoon of 03.11.2006 in support of his stand but rightly the learned counsel for the respondent Nos. 1 & 2 has pointed out that as to how the applicant's counsel could get a copy of these two letters for relying upon without serving on the respondents' counsel even though the letters may be pertaining to the respondent-Sangathan at Jaipur and Uttarlai and more especially when these letters do not form part of the record and also are not under challenge.

6. Learned counsel for the applicant, respondent Nos. 1 & 2 as well as respondent No. 3 have been heard meticulously both on the point of limitation as well as on merits, besides going through the facts of the case on record in the light of the case laws relied upon by the concerned.



6.1 In so far as the point of limitation is concerned, the preliminary submissions made by the respondents at

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pages 38 onwards may be seen apart from those on merits.

*sub* 6.2 According to Clause 1.1 of the Transfer Guidelines, the transfer or place of posting to a particular place cannot be claimed as a matter of right.

*sub* 6.3 In the case of **State of U.P. vs. V.N. Prasad (Dr.)**, reported in 1995 Supp (2) SCC 151, at page 152, the Hon'ble Supreme Court has held in unequivocal terms that there is always a presumption in favour of bona fides unless contradicted to the contrary by acceptable material. In the instant case, the O.A. preferred by the applicant with vague, indefinite and imaginary allegations without there being any foundation to sustain the averments made, on the basis of facts which are not in existence as well as the facts necessary to constitute the basis to draw inference of any mala fides or foul play, contrary to the presumption of bona fides as alleged by the applicant, have not been pleaded by the applicant and no acceptable material has been placed on record to sustain such allegations by any stretch of imagination.



*sub* 6.4 Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions or the order is passed by incompetent authority, such transfer order is not open to

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interference before the Court, as laid down by the Hon'ble Apex Court in the case of **Union of India & Ors. vs. S.L. Abbas** reported in [(JT 1993) (3) SC 678].

65 The Hon'ble Supreme Court in **B. Varadha Rao's** case has referred to the quotations of Their Lordships' earlier decisions to the effect that the norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer of the Government servants.

66 In the instant case, the applicant has not challenged the order of transfer on the ground of violation of any statutory provisions made thereof and there is not even a whisper of any allegation of mala fide against the authority who made the transfer order nor is there any allegation that the transfer order passed by the authority is not a competent authority.

67 In the case of **Union of India vs. Janardhan Debanath** reported in (2004) 4 SCC 245, at page 251, the Hon'ble Supreme Court has reiterated the law laid down earlier and also gave verdict with reference to the manner, nature and extent of exercise to be undertaken by the Courts/Tribunals in a case to adjudge whether it casts a



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stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions – status, service prospects financially and the same yardstick, norms or stands cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration. The relevant record available leaves no room for any doubt that the impugned order of transfer made has been made in the public interest by the competent authority and there are no allegations of any mala fides against the authority who made the transfer order of the applicant. The applicant cannot insist for posting at a particular station of his own choice for all times.



para 6.8 In the case of **Union of India vs. S.L. Abbas**, reported in (1993) 4 SCC 357, at page 360, the Hon'ble Supreme Court has relied upon Fundament Rule 11 and 15 to

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highlight that an order of transfer is an incident of Government service. Fundamental Rule 11 says that the whole time of a Government servant is at the disposal of the Government, which pays him and he may be employed in any manner required by proper authority. Fundamental Rule 15 says that the President may transfer a Government servant from one post to another. 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.

*para* 6.9 The applicant herein has established not even one ingredient out of three ingredients herein stated as above.

*para* 6.10 The applicant joined at K.V., Jalipa Cantt. on 02.11.2006 at 11.30 A.M., which is after lunch break since joining in afternoon and not in forenoon as per the direction of the Kendriya Vidyalaya, though it is inadvertently mentioned as F/N by the Principal concerned. Therefore, the joining of the applicant was treated w.e.f. 03.11.2006 (F/N) instead of 02.11.2006. Therefore, Shri Lal Singh Gehlot, respondent No. 3, joined on 03.11.2006 (F/N). Thus, there is no element of any illegality in the action of the respondent-department.



*July 6.11* In the case of **State of U.P. vs. Gobardhan Lal**, reported in (2004) 11 SCC 402, at page 407, the Hon'ble Apex Court has held that unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. 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 conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

*July 6.12* In the case of **National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan**, reported in (2001) 8 SCC 574, at page 578, the Hon'ble Supreme Court has held that it is by now well settled and often reiterated by this Court that 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 the class or category of *Adm.*



transferable posts from one place to other is not only an incident, but a condition of service necessary too in public interest and efficient in the public administration.

para 6-13 There is substance in the submissions of the learned counsel for the respondents that at station seniority list, the joining was reflected as 02.11.2006 instead of 03.11.2006 which was on account of typing mistake and cannot be assailed since transfer was based on joining of both the employees and main criteria of transfer in the instant case at hand is date of birth as joining of both the applicant and respondent No. 3 was treated w.e.f. 03.11.2006 (F/N).

para 6-14 In the case of **Shilpi Bose (Mrs.) vs. State of Bihar**, reported in 1991 Supp (2) SCC 659, at page 661, the Hon'ble Supreme Court has held that 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. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration, which would not be conducive to public interest.

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There are so many decisions cited by the respondents vehemently reiterating the earlier ratio decidendi of the Hon'ble Apex Court, which are not repeated here, as is evident from the counter filed by the respondents.

- 6.15. Apart from the fact that the applicant seems to have no case on merits, even on the preliminary point of limitation itself the applicant does not seem to have case. The grievance of the applicant is the non-consideration of his yearly request transfer application made vide application dated 18.12.2006 (Annexure A/8), as detailed out in sub para 7 of para 4 of the O.A., but the O.A. was filed in August, 2008. The applicant's right to file O.A. under Section 21 of the Administrative Tribunals Act, 1985 accrues as soon as six months' expiry from the date of filing of the representation. Therefore the applicant's right has accrued to file O.A. in the month of June, 2007 itself and under Section 21 of the Administrative Tribunals Act, 1985, the period of limitation of one year therefrom expires, in the instant case, by 18<sup>th</sup> June, 2008 whereas the present O.A. has been filed on 29<sup>th</sup> August, 2008. On this score itself, this O.A. is time barred by nearly three months and it is unnecessary for the matter to have been dealt with on merits as discussed above. However, it has been discussed only to highlight that the applicant has case

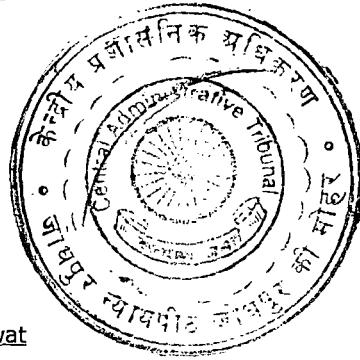


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neither on the preliminary point of limitation nor even  
on the point of merit.

*T.A.* In any event, the Original Application is dismissed  
accordingly as above. *No order as to cost. lit.*



(N.D. Raghavan)  
Vice Chairman

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RIC  
Rajani Kant  
Foster K. K. Sesh  
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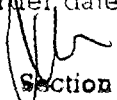
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Part II and III destroyed  
in my presence on 8/7/09  
under the supervision of  
section officer ( ) as per  
order dated 07/07/2015.

  
Section officer (Record)