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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No. 487 of 2011

Dated this the 12th day of April, 2012

CORAM

HON'BLE MR. B.K. SINHA, ADMINISTRATIVE MEMBER

• D.K. Singh S/o Shri Lal Singh,
Aged 51 years, resident of Plot No.24,
Behind Bungalow No.8, Residency Road, Jodhpur
At present working on the post of Librarian at
Kendriya Vidyalaya (AFS), Uttarai (Barmer). ...Applicant

(By Advocate Mr. Vinay Jain)

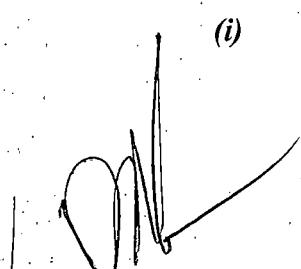
Vs.

1. Kendriya Vidyalaya Sangathan through Commissioner,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan,
Regional Office, 92, Ganghi Nagar Marg,
Bapu Bazar, Jaipur.
3. The Education Officer (now Assistant Commissioner)
Kendriya Vidyalaya Sangathan, 18 Institutional Area,
Shaheed Jeet Singh Marg, New Delhi. ...Respondents

(By Advocate Mr. V.S. Gurjar)

O R D E R (Oral)

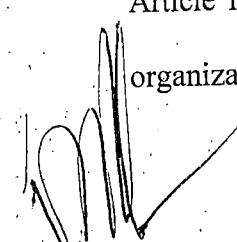
1. The instant OA has been filed seeking the implementation of Transfer Guidelines for Teachers (upto PGTs) and Others upto Assistants of the Kendriya Vidyalay Sangathan referred hereafter as the KVS.
2. The OA seeks the following relief for the applicant:
 - (i) *That respondent department be directed to pass appropriate order in respect of applicant for posting at any of the school of respondents at Jodhpur in pursuance of letter dated 10.8.2011 and 8.8.2011.*



- (ii) *Any other direction or order which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case in the interest of justice may kindly be passed in favour of the applicant.*

Facts of the case

3. The applicant is working against the transferable post of Librarian since 5.8.2007 at Kendriya Vidyalaya (AFS), Utterlai (Barmer). Utterlai is considered to be a place of 'hard posting' and is subject to the transfer guidelines of the KVS [A1]. These guidelines provide for transfer on request. Accordingly, the applicant has submitted an application on 4.12.2010 to a place of his choice. The KVS HAD invited applications from other employees "*who have completed their tenure in hard/very hard/any region but could not get their transfer in their choice stations for the year 2011-2012 owing to the non-availability of vacancy/eligible displace in their choice stations*". [F.No.1-1/2011-12/KVS(HQ)/ (Estt.II) dated 8.8.2011][A3] This claim of the applicant was admitted by the respondents organization and the Deputy Commissioner KVS Regional Office, Jaipur, who figures as Respondent No.2, issued a list of candidates eligible for transfer to their choice destination vide his letter dated 10.8.2011[A4]. The applicant figures at Serial No.4 of this list. The applicant has further submitted that his wife is also a Government employee posted at Junawas, Balesar (Jodhpur). He has prayed that his parents being old the applicant should be posted to Jodhpur. The grievance of the applicant is that while others who figure in the list of candidates eligible for posting of their choice following their having served out a hard posting and have been given postings according to their choice, he alone has been singled out and no posting has been given as yet. The applicant has cited the particular instances of Rakesh Kumar Gill who figures at Sl.No.1 and Manishkumar Jaiwal at Sl.No.5 in A4 who have been given desired postings. The applicants finds this behaviour of the respondent organization discriminatory, arbitrary and vioaltive of Article 14 of the Constitution and seeks a directive from this Tribunal to the respondent organization for a posting as per the choice indicated by him.



Stand of the Respondents

4. The respondents have filed their CA contesting the OA wherein it has been submitted that there are as many as 1089 Kendiryा Vidyalayas in India and 03 abroad. The employees appointed in the KVS are liable for transfer anywhere in India at any point of time. Transfer to a desired location cannot be claimed as a matter of right. While affecting the transfer the interest of the organization prevails over other interests. The respondents here have relied upon a decided case of the Hon'ble Apex Court namely **State of UP Vs. Gobardhan Lal (2004) 11 SCC 402 at page 407**. At present, the respondents contend that the applicant in the instant case, is not aggrieved by any transfer order rather he is insisting for a place of posting of his choice. Coming to the facts the respondents submit "*the request of the applicant for transfer to Kendiryा Vidyalayas, located at Jodhpur has been considered but the same could not be acceded to for want of vacancy of Librarian at the station and eligible employee who could be displaced to accommodate the applicant.*" [Para 7 of CA]. The respondents have further relied upon the decided cases of the Hon'ble Apex Court in **Airports Authority of India V. Rajeev Ratan Pandey, (2009) 8 SCC 337 at page 339**, **Union of India Vs. Janardhan Debnath, (2004)4 SCC 245 at page 251**, **Union of India Vs. S.L.Abbas ,(1993) 4 SCC 357 at page 360** to substantiate that transfer is an inherent incident of service; it cannot be claimed as a matter of right; and that even where husband and wife are working in the same organization they cannot as of right claim to be relieved of the ordinary incidents of all India service. The respondents have therefore prayed for the OA being dismissed.

Facts in issue.

5. Having gone through the pleadings of the rival parties, the documents adduced by them and the arguments submitted in the court, the following facts in issue emerged:

(i)

That whether transfer to a desired place on completion of a hard posting is a right of the incumbent;

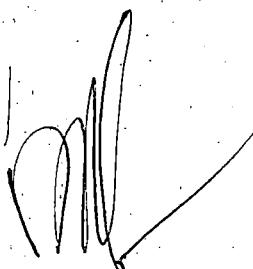
- (ii) *That whether the conduct of the respondent organization has been discriminatory towards the applicant in any manner whatsoever;*
- (iii) *That what relief, if any, could be given to the applicant.*

That whether transfer to a desired place on completion of a hard posting is a right of the incumbent;

6. The crux of the argument of the applicant appears to be that having issued a set of guidelines the respondent organization is bound to implement the same in letter and in its spirit; any deviation from the same would call for swift intervention from the Courts. It has to be clearly understood that transfer is a necessary incident inherent of service. No Government Servant can either claim to continue at a particular place of posting throughout his service career or to seek a coveted posting as a matter of right. The Hon'ble Apex Court has held in **State of UP Vs. Gobardhan Lal (2004) 11 SCC 402** at page 407 :

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or Rule) 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. Even administrative guidelines for regulating transfer or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any statutory provision.

8. 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



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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 malafides 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."

7. The Hon'ble Supreme Court also looks with disfavour upon the tendency of the Courts to intervene where the declared policy of transfer had been transgressed. In the case of **Airports Authority of India V. Rajeev Ratan Pandey, (2009) 8 SCC 337** at **page 339** the Respondent No.1, a Senior Manager, Engineering was transferred from Lucknow (Northern Region) to Calicut (Southern Region) by the appellant.

"2.Respondent 1 challenged the order of transfer by filing a writ petition before the High Court on the grounds viz that the order of transfer has been issued against the transfer policy inasmuch as it provides that the inter-regional transfers shall not be made before the incumbent completes at least five-year tenure in that region, that the official shall not normally be transferred within region second time unless all others in that cadre have done one turn of out of region transfer; that except in cases where operational/administrative reasons warrant, transfers shall normally be avoided and transfer when made shall be in accordance with the seniority at the station in the region.

10. In the writ petition, the transfer order has been assailed by the present Respondent 1 on the sole ground that it was violative of transfer policy framed by the appellant. The High Court, did not even find any contravention of transfer policy in transferring Respondent 1 from Lucknow to Calicut. In a matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.

11. In the present case, the High Court fell into a grave error in staying the transfer order which, if allowed to stand, may cause prejudice to the administrative functioning of the appellant."

8. In the case of **Union of India Vs. Janardhan Debnath, (2004)4 SCC 245** at **page 251** the case was different from the instant case. Here the respondent who had misbehaved with a senior lady officer with a view to force her to draw the charge sheet against a particular employee were transferred from Agartala to Meghalaya Division.



The facts of the case are not similar to the present one as there has been no transfer and there is no act of indiscipline involved. However, the ratio decided is generally applicable to the cases of transfer.

"14.The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

9. On the issue of husband and wife where both are Government employees being posted together, the respondents have relied upon the case of **Union of India Vs. S.L.Abbas , (1993) 4 SCC 357: 1994 SCC(L&S) 230**. Here the respondent, a Garden Curator at Shillong was transferred to Pauri along with 18 others. He challenged the transfer order on the ground that his wife was also employed in an office of the Central Government at Shillong and his children were studying at Shillong. He further submitted that he had himself suffered a backbone fracture injuries some time back. The respondent referred to a guideline of the GOI to the effect that to the extent possible the husband and wife should be allowed to serve together. The respondent further complained of discriminatory behaviour and mischief on the part of the controlling officer as some others have been allowed to continue at the place. The Hon'ble Court held:

"6. 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". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by malafides on the part of the authority making the order, -- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working

at Shillong, his children are studying there and also because his health had suffered a setback some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force."

7. 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, 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. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

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9. Shri Goswami, learned counsel for the respondent relies upon the decision of this Court in *Bank of India V. Jagjit Singh Mehta*, (1992) 1 SCC 306:1992 SCC (L&S) 268 : (1992) 19 ATC 528 rendered by a Bench of which one of us (J.S.Verma, J) was a member. On a perusal of the judgment, we do not think it supports the respondent in any manner. It is observed therein: (SCC pp.308-09, para 5: ATC pp. 530-31, para 5).

"There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employee. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different

places....No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

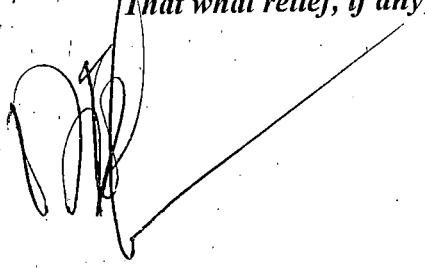
(emphasis added).

10. In a consideration of the above facts it stands conclusively decided that an order of transfer is an incident of Government service. Who should be transferred where is a matter for the appropriate authority to decide. Even the ground of husband and wife being posted together is desirable but can be disregarded on account of larger public interest.

That whether the conduct of the respondent organization has been discriminatory towards the applicant in any manner whatsoever

11. This issue has been partly dealt with in relation to the preceding issue. The respondents have submitted that admittedly they had invited applications from persons who had completed their hard postings tenure seeking their choice of posting. Further admittedly the name of the applicant figured at Sl.No.4. While some others were transferred to their desired places, the case of the applicant could not be considered on account of the fact that there was no vacancy at the place decided by the applicant. It was further assured that as and when such vacancy arises the case of the applicant will be duly considered. In order that a transfer takes place there must be a vacancy. There can be no transfer without a vacancy. The aforementioned judgments of the Apex Court have the effect that transfer to a desired place or continuation at a place of convenience is desirable but cannot be enforced as a matter of right. Here in the instant case, it is apparent that the transfer was constrained by lack of vacancy. Hence, there is no evidence of there being any discrimination on part of the respondents.

That what relief, if any, could be given to the applicant



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12. In consideration of the earlier two issues it is apparent that the OA is not served by an adequate cause of action. As such no relief can be granted by this Tribunal at the present. However, considering the fact that the applicant has undergone a hard posting and has urgent personal requirements including that of living together with his wife, also a Government Servant, it is directed that the respondents will consider the case of the applicant as and when a vacancy arises where the transfer has been desired.

13. The O.A. is disposed of accordingly with no order as to costs.

Dated the 12th day of April, 2012


(B K Sinha)
Administrative Member

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