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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No. 509/Jodhpur/2011

[Reserved on 7-9-12] Date of decision: 10.12.2012

CORAM :

HON'BLE MR. G. GEORGE PARACKEN JUDICIAL MEMBER  
HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER

Jai Kant Pandey S/o Shri Kamala Kant Pandey aged 53 years, at present posted as PGT - Hindi, Kendriya Vidhyalaya No. 1, Pratap Nagar, Udaipur (Raj).

..... Applicant.

[By. Baldev P. Goswami, Advocate]

**Versus**

1. The Kendriya Vidhyalaya Sangathan through the Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi- 16.
2. Deputy Commissioner, Kendriya Vidhyalaya Sangathan (R.O.), 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
3. Principal, Kendriya Vidhyalaya No. 1 (Air Force Station), Jodhpur.
4. Shri Mahendra Kumar Meena PGT-Hindi formerly posted as PGT-Hindi, Kendriya Vidhyalaya (Air Force Station Wadsar (Gujarat) at present new posting as PGT-Hindi Kendriya Vidhyalaya No.1 (Air Force Station), Jodhpur (Raj).)
5. Smt. Sujata Gupta, PGT-Hindi, presently posted as PGT-Hindi Kendriya Vidhyalaya Greater Noida, HS 18 Sector P-3, District Gautam Budha Nagar, UP.

..... Respondents

[By Mr. V. S. Gurjar, Advocate for Respondents No. 1 to 3 and Mr. S.P.Singh, Advocate, for Respondent No. 4]

**ORDER**

[PER HON'BLE MR. G. GEORGE PARACKEN]

The grievance of the applicant in this case is against the Annex.A/1 transfer order in respect of the 4th respondent, namely, Shri Mahendra Kumar Meena, PGT-Hindi, Kendriya Vidhyalaya (Air Force

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Station Wadsar (Gujarat) to Jodhpur Kendriya Vidhayalaya No. 1 (AFS), ignoring his claim.

2. For the redressal of the aforesaid grievance, the applicant had earlier approached this Tribunal vide OA No. 400/2011 but the same was disposed of vide order dated 26.09.2011. The stand taken by the respondents in the said OA was that the request for transfers are considered at two stages; first on the basis of the individual Kendriya Vidhayalaya-wise priority list and second on the basis of the station-wise priority list. After considering the aforesaid submissions in the light of the contents of paragraphs of 8, 9, 10 and 11 of the transfer guidelines, particularly the contents of paragraph 8 which deals with the "method for effecting administrative ground transfers" and paragraph 11 which deals with "request transfers", this Tribunal found that the procedure adopted by the respondent-authorities for considering the transfers at two stages as contended by the respondents may not perhaps flow from the aforesaid paragraphs of the guidelines. The relevant part of the said provisions reads as under :-

**"8. Method for effecting administrative ground transfers :**

***If a needy employee indicates only one choice which happens to be a KV instead of a station then an employee holding the same post in the same KV having highest displacement count subject to not being below D1 shall be likely to be displaced. On the other hand, if the choice indicated is that of a station then the employee having highest displacement count in the station subject to not being below D1 shall be likely to be displaced. While displacing an employee in such manner an effort would***

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be made to post such an employee to a least inconvenient location against a clear vacancy. In case of a tie in the displacement count of employees the male employee shall be displaced. In case of a tie between the employees of the same gender the employee with earlier date of joining in present station in present post shall be displaced and in case date of joining also coincides for two or more employees then the youngest employee shall be displaced."

(11) **Method For Request Transfer :** Request transfer for a post at a location / station shall be accommodated in decreasing order of "Transfer Count" computed on the basis of clause 10 of competing employees. In case of a tie in the transfer count of two or more employees competing for a location the female employee shall be preferred first. In case of tie in two or more employees of the same gender an employee with an earlier date of joining in present post in present station shall be accommodated and in case, if the date of joining in present post in present station also coincides then the older employee shall be first accommodated. Transfer counts of all request transfer applications shall be displayed on KVS website and the transfer count so displayed shall remain valid till 31<sup>st</sup> July of the relevant year and request transfer may be considered for vacancies arising due to retirement or any other reason during the period of validity for which no fresh application shall be invited or considered. Applications shall automatically become infructuous after the expiry of 31<sup>st</sup> July."

The aforesaid OA was, therefore, disposed of by this Tribunal vide order dated 26.09.2011 and its operative part reads as under :-

"4. It appears that the procedure adopted by the respondent authorities for considering the transfers at two stages, firstly, operating the individual Kendriya Vidyalaya Wise Priority List, and secondly the Station Wise Priority List, may not perhaps flow from the paragraphs 9, 10 and 11 of the guidelines which are applicable for transfers on request grounds. This being an entirely administrative matter, it cannot be decided judicially by this Tribunal, except for pointing out / indicating the incongruity in the application of the guidelines, which has been noticed, and mentioned above."

5. Therefore, with the consent of both the learned counsels, the whole matter is remanded back for consideration to the respondent No. 1, with a direction to treat this O.A. and its Annexure as representation of the applicant, and to decide the issue once again, by passing a speaking order. The applicant shall be at liberty to file any additional representation also within 15 days from today before respondent No. 1 for consideration, alongwith a copy

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*of the O.A. and its annexures, which he shall serve once again on the respondent No. 1 for the purpose of this consideration as directed. The respondent No. 1 is directed to decide the matter thereafter by 31<sup>st</sup> October, 2011.*

**6. With the above observations and directions, the O.A. is disposed of. No order as to costs."**

3. The respondents thereafter considered the case of the applicant once again but rejected it vide the impugned Annex.A/1 Memorandum dated 25/27.10.2011 and its relevant part reads as under:

**"Where the main submission of the applicant in OA is as under :**

**(a) That the applicant applied for transfer in terms of transfer guidelines for transfer by giving choices which are as under :-**

- 1) KV BSF Jodhpur
- 2) KV No. 1, AFS, Jodhpur.
- 3) KV No. 2, AFS, Jodhpur
- 4) KV No. 1, Army, Jodhpur.
- 5) KV No. 2, Army, Jodhpur.

**(b) That order dated 29.08.2011 issued by Kendriya Vidyalaya Sangathan, New Delhi (Respondent No.1) in the name of Shri Mahender Kumar Meena PGT (Hindi) (Respondent No.4) from KV AFS Wadsar to KV No. 1 AFS, Jodhpur. Shri Mahender Kumar Meena PGT (Hindi) has only 5 marks, whereas the applicant has 17 marks and no provision of the transfer guidelines, Shri Mahender Kumar Meena PGT (Hindi) could be transfer ignoring the claim of the applicant who stands at much hire footing then Shri Mahender Kuamr Meena.**

**Whereas to safe guard the interest of the employees as regard to getting posting to either most desirous places on transfer, provisions have been made in the new KVS Transfer Guidelines either to give choices for transfer for specific Kendriya Vidyalayas or Stations. The employees applying for transfer for specific Kendriya Vidyalayas wil be having limited choices of maximum 05 Kendriya Vidyalaya. Whereas in case the employees apply for transfer to stations he will be having wider scope for consideration to all Kendriya Vidyalayas situated on those stations. Accordingly, the annual request transfer applications for the 2011-12 were received for specific Kendriya Vidyalayas/Stations.**

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**Wheras Shri Mahender Kumar Meena PGT (Hindi) who has joined on 27.05.2009 at KV AFS Wadsar and having transfer count-07 has applied for the following stations :**

- 1) Jalipa Station
- 2) Jodhpur Station.

**Whereas KVS has operated KV-wise Priority List for effecting transfer of employee of KVS who have applied for KV(s) as a choice KV being limited choice of employee concerned. Thereafter, station-wise priority list was operated keeping in view of the wider choice of the employees.**

**Whereas KVS has developed a software programme and prepared Kendriya Vidyalaya-wise and Station-wise Priority Lists to effect transfer against available vacancies. Accordingly, transfer orders were made as per the Priority List prepared Vidyalaya-wise first then Priority List station-wise subsequently. Keeping in view the limited choice found for Kendriya Vidyalayas some employees could not get their request transfer against their choice Kendriya Vidyalayas inspite of having less Transfer Count than the employees having higher Transfer Counts for choice of stations vice-versa.**

**Whereas at the time of operation of KV-wise priority list, no vacancy of PGT (Hindi) was available at the choice place of the applicant, resultantly, the applicant could not get his transfer to his choice place(s). At the time of operation of Station-Wise Priority List, Shri Mahender Kumar Meena, PGT (Hindi) K.V. Wadsar got his request transfer against the Resultant Vacancy created by the transfer of Smt. Sujata Gupta, PGT (Hindi). Hence, there is no illegality in the transfer of Shri Mahender Kumar Meena, PGT (Hindi) from KV AFS Wadsar to KV No. 1 AFS Jodhpur".**

4. The applicant challenged the aforesaid impugned memorandum on the ground of discrimination between similarly situated employees. He has also challenged the impugned order on the ground of non-consideration, irrelevant consideration, wrong interpretation of policy provisions which does not appeal even to the consciousness to the common man. According to him, the respondents themselves have



admitted that the applicant has 17 counts and the respondent No. 4 had only 7 counts but inspite of that respondents gave the strange reason in the impugned order which is as follows :-

***"keeping in view of limited choice found for KV some employees could not get their request transfer against their choice Kendriya Vidyalayas in spite of less transfer count than the employees having higher transfer counts for choice of stations vice-versa."***

5. The applicant has also assailed the main reason given in the impugned order which is as under :-

***"Whereas at the time of KV-wise priority list, no vacancy of PGT Hindi was available at the choice place of applicant resultantly the applicant could not get his transfer to his choice places. At the time of operation of station-wise priority list Shri Mahendra Kumar Meena, PGT (Hindi) KV Wadsar, got his request transfer against the resultant vacancy created by the transfer of Smt. Slujata Gupta. Hence, no illegality in the transfer of Shri Mahendra Kumar Meena, PGT (Hindi) from KV, AFS, Wadsar to KV No.1, AFS, Jodhpur."***

According to him, the first aspect of the matter which requires consideration is that there is no rule for preparing two separate priority lists based on Vidyalaya-wise and Station-wise. Actually what Rule 11 of the transfer guidelines says is only that the request transfer for a post at a location/station shall be accommodated in decreasing order of transfer count and according to it only one combined "location/station" list is to be prepared. Instead of doing so, the aforesaid provision has been misinterpreted by the respondents by creating two separate priority lists- K.V.-wise and Station-wise.

6. The applicant has further submitted that as far as the 4<sup>th</sup> respondent Shri Mahendra Kumar Meena was concerned, his first choice was admittedly Jalipa Station whereas the applicant's first choice was one of the 5 K.Vs in Jodhpur. As per the relevant rules also, the persons having higher transfer counts should be first considered and only thereafter the other employees who have lesser transfer counts should be accommodated. But the respondents have devised their own rules of interpretation working against the very objective of the rules and detrimental to the interest of the employees. He has also stated that because of the aforesaid illegal action on the part of the respondents, he has been denied his valuable right of living with his spouse and other family members.

7. The respondents, reiterating their position in the impugned orders, have stated in their reply as under :-

"It is reiterated that vacancy arising at the time of operation of Station-wise priority list was to be filed up by the contender of Jodhpur Station but not the contender of Kendriya Vidyalaya wise choice. Hence, there is no element of any illegality in the transfer for the private respondent number 4 i.e. Shri Mahendra Kumar Meena, PGT (Hindi) from Kendriya Vidyalaya Wadsar to Kendriyan Vidyalaya Number 1 AFS, Jodhpur. The administrative skills of the administrator are to be applied in the public interest and at administrative exigencies in the interest of the institution and to strike a balance in the smooth functioning of the administration. Has the applicant laid any foundation and placed on record any material to substantiate the allegations alleged on the basis of creations of imaginations to answer the situation before labeling the Commissioner as an unjust person. The O.A. preferred by the applicant has been preferred on the basis of allegations in reference to malafides created on the basis of imaginations without there being any factual foundation to sustain the allegations therefore; the claim of the applicant in the O.A. merits rejection at the very threshold."



They have also stated that the private respondent Shri Mahendra Kumar Meena has transferred to KV, (AFS), Wadsar and he joined there on 27.5.2009 though he had only 7 transfer counts, at his credit. He made his request transfer indicating his first preference as Jaliappa Station and second preference as Jodhpur.

8. They had first operated KV-wise priority list for effecting transfers in which the applicants have got only limited choice. Thereafter, they have operated station-wise priority list having wider choice. At the time of operating the K.V-wise priority list, no vacancy of Post Graduate Teacher (Hindi) was available at the choice KVs of the applicant. Resultantly, he could not be granted any transfer as requested by him. However, by the time, the station-wise priority list was operated, the resultant vacancy occurred by the transfer of Sujata Gupta, PGT (Hindi) from Jodhpur No. 1 K.V. AFS to K.V. Greater Noida became available. Hence, according to them, there is no element of illegality in the transfer of the 4<sup>th</sup> respondent from K.V., Wadsar, AFS to KV, AFS, Jodhpur. Further, according to them, since the 4<sup>th</sup> respondent was transferred against the resultant vacancy of PGT (Hindi) occurred at KV - 1 AFS, Jodhpur due to the transfer of Sujata Gupta, PGT (Hindi) after the operation of the K.V-wise priority list, his claim is not tenable as per the transfer guidelines. They have also stated that there cannot be any comparison on the transfer count between the

employees who have applied for the specific K.Vs with those who have applied for specific stations as happened in the instant case.

9. The respondent No. 4 has also filed his reply. According to him, at the time of operating the Kendriya Vidyalaya-wise priority list, no vacancy of Post Graduate Teacher (PGT) was available at the choice places of the applicant. Therefore the applicant could not get transferred and his claim for transfer is over. However, at the time of operation of station-wise priority list, he (the respondent No.4) got his second priority request transfer against the resultant vacancy occurred due to the transfer of Smt. Sujata Gupta based on station-wise priority list. He has further submitted that transfer guidelines are very much clear that an employee cannot seek benefit of station-wise and KV-wise simultaneously. Therefore, the transfer of applicant is not in violation of statutory provision.

10. We have heard the learned counsel for the applicant, Mr. Baldev P. Goswami and the learned counsel for the official respondents, Mr. V.S.Gurjar and Mr. S.P.Singh, representing respondent No. 4. In our considered view, there is an inherent contradiction in the transfer guidelines with regard to request transfers being followed by the respondents which is evident in the present case. The respondent No. 4 who had a

comparatively low transfer count of 7 has got his transfer to K.V. No. 1, Jodhpur for which the applicant had made his request. Again, applicant with the higher transfer count could not get transfer to choice-KVS Jodhpur 1 (AFS) but the respondent No. 4 with lower transfer count, irrespective of the fact that his 1<sup>st</sup> preference was Jaliappa and only the second preference was Jodhpur, got the aforesaid choice school asked for by the applicant. The explanation given by the respondent for this paradoxical situation is that they have a software programme based on the Kendriya-Vidyalaya-wise and the Station-wise priority lists to effect transfer against available vacancies. First, they operate the Kendriya-Vidhavalaya-wise priority list and if there are no vacancies available at the choice KVs, their applications for transfer automatically get rejected. That was what happened in this case. However, immediately thereafter, a vacancy in the very same school for which the applicant had made his request transfer and got rejected in the software system, occurred on account of the transfer of Smt. Sujata Gupta, PGT (Hindi) from KV No. 1, AFS, Jodhpur to K.V., Noida. Thereafter, the respondents operated the Station-wise priority list in the software. Obviously, the system showed the availability of the said vacancy and the respondent No. 4, though having a much lower transfer count than the applicant, got it by mere chance or, one may call it, his luck.

11. From the above position, it is clear that the respondents are dealing with the transfer cases of their employees in a most mechanical manner, entirely based on their "soft-ware programme" which does not take into account the contradictions and mechanically created arbitrariness in the system where there is no scope for application of mind. The fault, of course, is not of the software but it is the manner in which it has been programmed. It is also seen that the respondents have left the transfer cases of its employees entirely to the programmer rather than to the competent authority who has to consider the requests of the employees duly applying his mind. If the competent authority who orders transfers and postings in the respondent had actually applied its mind, it could have visualized the fact that a vacancy in KV No. 1, AFS, Jodhpur, was going to arise due to the transfer of Smt. Sujata Gupta, PGT (Hindi) to K.V., Greater Noida. If there was any application of mind, the applicant could have been rightly accommodated there as he has the higher transfer count than respondent No. 4. Only a human mind can distinguish such discrepancies and not a software system which has not already been programmed to take care of such eventualities. The result is, dissatisfaction among the employees and the increasing litigation. Another important aspect is that there is no effective system to meet the grievances as the respondents hold that they are correct as software

programme has not made any mistakes. The respondents also take the stand that the grievance of the applicant is beyond the scope of the software programme followed by them.

12. In the result, we are of the considered view that the rejection of the applicant's request for transfer to K.V. No. 2, AFS, Jodhpur which was one of his choices was the result of the defective programming of the software system being followed by the respondents for the purpose of transfers and postings and its purely mechanical use. The transfer and posting of the employees of an organization is an important incident both for the organization as well as the employee and they shall not be left to chances. While the applicant who was more deserving got rejected in the system and the respondent No. 4 who had only remote chance got what the applicant should have got, by mere chance. We also notice that the respondent No. 4 got the transfer to a school for which the applicant has indicated his preference not because of arbitrariness or due to any mala fide or any officials in the respondent KVS but due to the use of a software programme which does not take care of needs of the respondent and its employees.

13. We, therefore, while not interfering with the impugned Annex.A/1 order dated 29.8.2011 transferring the respondent No. 4 to K.V. No. 1 Jodhpur (AFS), quash and set aside the reasons given by the respondents in Annex.A/1(a) order dated

25/27.10.2011 in rejecting the request of the applicant for transfer to his choice KVS in Jodhpur. We also quash and set aside the dual system of KV-wise priority list and station-wise priority list being operated by the respondents based on the present software programme. Till a software programme which takes into consideration the contradictions like the one being faced by the parties in this case, respondent may operate only the combined priority list having both KV-wise priority list and seniority-wise priority list or in the alternative only Station-wise priority list as a person is seeking a transfer to a particular place and not the units situated in that place.

However, since the process for annual request transfers for the year 2012-13 must have been over, the applicant shall be considered for transfer against the first available vacancy for the post of PGT (Hindi) in any of the K.V. of his choice in Jodhpur and on its non-availability in any of the KVs in Jodhpur Station

14. This O.A. is disposed of with the above observations/directions. There shall be no order as to costs.

(B.K.Sinha)  
Administrative Member

(G.George Paracken)  
Judicial Member

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