

1/6

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.34/2012

Date of Order : 10.05.2012

CORAM

Hon'ble Mr. B K Sinha, Administrative Member.

Mool Chand Solanki S/o Shri Chela Ram Solanki, aged 52 years, R/o Near Fakiryon Ka Kuo, Barmer, at present working on the post of TGT (Social Studies) At Kendriya Vidyalaya, Dungarpur.

....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, Gandhi 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 through Adv. Bhanwaroo Khan)

ORDER (ORAL)

The instant OA is directed against the order of Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Jaipur, communicated vide Memo No.F-230120/2010-KVS/JPR/20992 dated 30.12.2011 rejecting the representation of the applicant for non-transfer to his choice place [A-1].

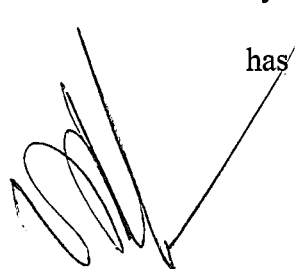
Relief Sought

2. The applicant vide this OA seeks the following relief:

- (i) That impugned order dated 30.12.2011, Annexure-A/1, may kindly be quashed and set aside.**
- (ii) That respondent department be directed to pass appropriate order in respect of application for posting him at his choice place.**
- (iii) 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 facts of the case are that the applicant was posted as TGT (Social Studies) at Kendriya Vidyalaya Jalipa Cantt (Barmer), which is considered a hard station. The respondent department has issued guidelines for transfer of employees [A-2]. These guidelines inter alia provide for transfer of employees on the basis of requests made by them, on the basis of 'Transfer Count' the mode for computation of which is also provided in the same guidelines. The applicant applied for a transfer to Kendriya Vidyalaya Uttarlai or Kendriya Vidyalaya Jaisalmer [A-3]. The applicant was transferred to KVS Uttarlai vide the order dated 03.06.2011. However, as not post was available at Uttarlai the applicant was not relieved from KV Jalipa Cantt [A-4]. The applicant, thereupon, submitted a representation on 06.06.2011 that he may be allowed to continue at Jalipa Cantt [A-5]. The applicant was transferred to AFS Jaisalmer on deputation and he joined there [A-6]. On 25.07.2011, the applicant was transferred to KV Dungarpur on the ground that he had been surplus there. The applicant was not relieved from Jaisalmer and he submitted a representation for posting at AFS Jaisalmer itself or his continuation at Jalipa Cantt [A-8]. On 09.08.2011 the deputation of the applicant at AFS Jaisalmer was cancelled and he was directed to report to Jalipa Cantt. The applicant submits that though his deputation to Jaisalmer was cancelled on the ground of non-availability of post one Salil Solanki was posted there [A-13]. In the meantime, one Rakesh Kumar Verma who has less Transfer Count has been posted to Jaisalmer [A-14]. The applicant challenged his transfer order vide OA 496/2011, which was decided vide the order dated 22.11.2011 directing the department to dispose of his representation by means of a speaking order [A-16]. Accordingly, the impugned order at A-1 has been issued, which is under challenged.



18

Case of the respondents:

4. The respondents have filed a CA contesting the OA. The respondents state that there are 1073 Kendriya Vidyalayas in India and 3 abroad. An employee is liable to be transferred anywhere in the country and cannot claim transfer as a right. The applicant had been rendered surplus as a consequence of withdrawal of two posts of TGT (SST) from Kendriya Vidyalaya, Jalipa Cantt. As per his request he was transferred to Kendriya Vidyalaya, Uttarlai vide transfer order No.F11046/C-I/TGT (SST)/2011/KVS (HQ) (Estt.II) dated 03.06.2011 but he could get relieved from Kendriya Vidyalaya, Jalipa Cantt *'due to non-availability of vacant post at Uttarlai'*. *"Shri N.S. Rathore TGT (SST) was transferred on request from Kendriya Vidyalaya, AFS Jaisalmer to Kendriya Vidyalaya, Jalipa against resultant vacancy vacated by Shri V.S. Rajpurohit TET (SST) who was transferred to KV, BSF, Jodhpur vide Kendriya Vidyalaya Sangathan Headquarter's transfer order dated 03.06.2011."*[para 4.(15) of the reply]. However, later on his place of posting was modified vide office transfer modification order dated 25.07.2011 to Kendriya Vidyalaya, Dungarpur. In the meantime, the applicant was posted at Kendriya Vidyalaya, AFS Jaisalmer on temporary duty vide office order bearing NO.230136/2010/KVS(JPR) dated 28.06.2011 and, subsequently, the place of posting to Kendriya Vidyalaya, Jaisalmer was canceled vide order bearing NO.F.23136/2010/KVS (JPR) dated 09.08.2011 of KVS (RO), Jaipur. Thus, it is apparent on the face of record that the request of the applicant for transfer to Kendriya Vidyalaya, Uttarlai had been considered but the same could not be acceded to for want of vacancy of TGT (Social Studies) at the station and eligible employee who could be displaced to accommodate the applicant. Hence, the claim of the applicant is not sustainable in the eyes of law. The respondents have further denied the charge of hostile discrimination in paragraph 4 (viii). The respondents state that the applicant could not be retained at Kendriya Vidyalaya, Jalipa Cantt as the vacancy

resulting from the transfer of the applicant had been filled up vide the order dated 06.03.2011. As a result of this, the place of posting of the applicant had to be modified vide the order dated 25.07.2011 to Kendriya Vidyalaya, Dungarpur. The respondents have further stated that the place of posting of the applicant was temporarily made vide order dated 28.06.2011 to Kendriya Vidyalaya, Jaisalmer by Regional Office, Jaipur, which was cancelled later on dated 09.08.2011 of Kendriya Vidyalaya, Sangathan, Regional Office: Jaipur, owing to the fact that the Regional Office is not empowered to make any posting permanently on transfer of any teacher. The order of the Regional Office, Jaipur was only a temporarily arrangement; it was cancelled vide the order dated 09.08.2011 by the Kendriya Vidyalaya Sangathan (HQ). *"The posting of Saleem Solanki, TGT (SST), was made at Kendriya Vidyalaya, Jaisalmer in response to his representation dated 28.08.2011 submitted by him in terms of order dated 26.09.2011 passed by this Hon'ble Tribunal, at Jodhpur Bench, Jodhpur in Original Application number 378 of 2011 filed by him"* [para 4.14 of the reply].

5. The respondents submit that they try to accommodate all requests for transfer to a place of choice. This may, however, be not possible in all situations. The directive given in the OA No.496/2010 of this Tribunal was to consider the request of the applicant :*"the respondents to consider Annexure-A/9 of the OA and pass a speaking order after affording an opportunity of being heard to the applicant, within two weeks from today."*[order dated 22.11.2011.]. The respondents state that the matter has been duly considered and disposed of vide a speaking order, that being the impugned order [A-1]. The respondents have repeatedly emphasized the limited rule of the Courts/Tribunals to interfere in matters of transfer and have cited some decisions of the Hon'ble Apex Court and other High Courts, as find mention:

Cases Cited

- (i) *State of U.P. vs. Gobardhan Lal, (2004) 11 SCC 402.*
- (ii) *Airports Authority of India Vs. Rajeev Ratan Pandey, (2009) 8 SCC 337.*
- (iii) *Union of India & Ors. Vs. S.L. Abbas (JT 1993) (3) SC 678.*
- (iv) *Union of India vs. Janardhan Debanath, (2004) 4 SCC 245.*

Facts-in-issue

6. Having gone through the pleadings of the parties, the documents submitted by them and having heard through their arguments, the following facts-in-issue emerge:-

- (i) *To what extent can this Tribunal intervene in matters of transfers/postings?*
- (ii) *Whether there has been some infringement of rules by the respondent-organisation in the instant case?*
- (iii) *What relief, if any, can be granted to the applicant?*

To what extent can this Tribunal intervene in matters of transfers/postings?

7. This is a prime issue, which has been emphasised both in the written submissions of the respondents as also in the course of oral arguments. The respondents submit that transfer is a necessary incident inherent of service, unless the post happens to be non-transferable and should be best left to the Departments/Transferring Authority. It is the Department that has to manage and deliver. Hence, the Hon'ble Apex Court has cautioned the Tribunals/ High Courts against making wanton interference in transfer matters in the case of *State of U.P. Vs. Gobardhan Lal, 2004 (3) SLJ 244 (SC)*:

Vs. Gobardhan Lal, 2004 (3) SLJ 244 (SC):

"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 mala fide exercise of power off 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 grievances 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 mala fides 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 situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

8. It is not that the Courts/Tribunals are totally excluded from interference into the process of transfer. As the Hon'ble Apex Court has provided the platform for such interference is indeed limited to few specific conditions – some malafides have to be established on part of the respondent authority indicating colourable exercise of power ; alternatively/adjacently there is infringement of some rules ; and or some discrimination has been practised against the aggrieved party. However, the degree of burden of proof required is of a high order. In **E.P.**

Royappa vs. State of Tamil Nadu, 1974 SCC (L&S) :

"85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless

egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violative its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, constitutional law and is therefore violative of Article 14, and if it affects any manner relating to public employment, it is also violative of Article 16. Articles 14 & 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice; in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

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


5

the allegations of mala fides made by the petitioner against the second respondent."

Whether there has been some infringement of rules by the respondent-organisation in the instant case?

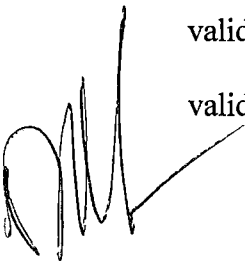
9. Thankfully, the applicant has not alleged malafides in the instant case. What he alleges, instead, is that the respondents have not been consistently uniform in their behaviour. They have alleged that while he had filed his request earlier for a transfer others were accommodated but not him. For instance, he alleges that when he found that there was no vacancy at Kendriya Vidyalaya, Uttarlai and he was not relieved for Uttarlai, he wanted to continue at Kendriya Vidyalaya, Jalipa Cantt, but he was not allowed to do so on the ground that the vacancy had been filled up. He was given a deputation to Kendriya Vidyalaya, Jaisalmer, but subsequently the order was withdrawn and another person namely one Saleem Solanki was posted there. This naturally gives rise to a sense of being injured. I start my inquiry as to what the guidelines prescribe and what the applicant should reasonably expect.

10. The transfer guidelines appear to indicate that the organisation is aware of its size and the extent of its operations. It is also conscious that when dealing with this scale anomalies are bound to come. By issuing the Transfer Guidelines for Teacher (up to PGTs) and others UP to Assistant, the organisation also affirms its determination to make the process of transfers as transparent, equitable and error free as possible. The very objective of the guidelines state : *"Kendriya Vidyalaya Sangathan shall strive to maintain equitable distribution of its employees across all locations to ensure efficient functioning of the organisation and optimize job satisfaction amongst employees. All employees are liable to be transferred anywhere in India at any point in time and transfer to a desired location can't be claimed as a matter of right. While effecting transfers the organisational interest shall be given uppermost consideration and that the problems and*



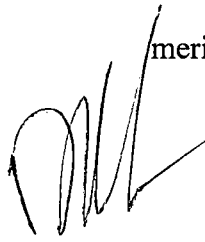
1/3

constraints of employee shall remain subservient. “ The policy, having stated the general principles, goes ahead to classify the general transfers into two types, viz, administrative transfer, which the KVS orders suo motu in the exigencies of service and administration and in public interest, and request transfer which is effected based on the request of an employee. Administrative transfers are normally effected where there is a need of redeploy surplus staff in excess of sanctioned strength at a location to other location against sanctioned vacancies; post employees in hard/very hard/ NER stations; displacement of any employee from a location to accommodate the request of a needy employees. The circular has also devised an elaborate score systems in which points are allotted on basis of rational criteria, e.g. employees below 40 years of age as on 31st March of the year, who had not completed one tenure at hard/very hard/ any stations scores + 8 points. The second category of transfers is of request transfer of employee. It is based upon the Transfer Count of an employee computed by assigning appropriate points to factors relevant for transfer. An employee is normally barred from applying for request transfer for three years in terms of the appointment orders. For instance there are + 2 points awarded for every completed year at a hard/very hard / NER stations. Request transfer for a post at locations/stations is accommodated in decreasing order of Transfer Count computed under basis of total score of all 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 a tie in two or more employees of the same gender, one having the earlier date of joining in the present post in the station shall be accommodated and in case the joining date is the same the older employee would be transfer first. The Transfer Count of all request transfer application are to be displayed of KVS website and will remain valid till July of the relevant year. The Transfer Court so displayed shall remain valid till 31st of July of the relevant year and request transfer may be considered



for vacancies arising due to retirement or any other reasons during the period of validity for which no fresh application shall be invited or considered. Applications shall automatically become infructuous after the expiry of 31st July. The Commissioner Kendriya Vidyalayas Sangathan is the authority empowered under Article 15 (a) (3) to undertake transfers or to empower others to do it or to provide relaxation in the guidelines. It is also provided in the guidelines that for each year the cut-off marks are prescribed.

11. The claim of the applicant as to be examined in light of the guidelines. The first thing that strives is that there is definite system in place for both administrative and request transfers; the accommodation is not always necessary; it is not necessary either that a person filing claim first will be accommodated first, if at all, because his accommodation would depend upon the Transfer Count scored by him and the vacancy at the place of destination. I am in agreement with the contention of the respondents that : ***“on the contrary it is evident from the facts detailed out by the applicant, further fortify that the humble answering respondents have been accommodating the employees to the place of choice posting/transfer to the extent permissible keeping in view the primary object of imparting education to the children of the Central Government Employees, who should not suffer any loss of studies. It is not the case of the applicant that his claim has been declined on account of malice or ill will, on the part of humble answering respondents”.*** [para 4 (8) of the reply]. Drawing cue from the first issue it has to be admitted that with more 1073 Kendriya Vidyalayas all over India employing teachers and others in lakhs the problem of management is a gigantic one. The transfers have been affected by a well coordinated and defined system which takes care of aberrations in course of the transfer itself. As mentioned earlier, there is competitive merit in each request which overcomes individual merits. No matter how justified a case of request transfer may look in the eyes of



the person making the request it has to yield place to a superior case. Hence, I find the explanation given in the CA and during the course of the arguments as have been discussed in paragraph 4 of this order both logical and plausible. It is, ofcourse, another thing that the Tribunal goes into the nitty-gritty of the transfers including how the Transfer Counts are arrived at and their relative merit. I am afraid that this is where the limitation of the first issue comes in. The Courts/Tribunals, it has been specified both in the citations above, are prohibited from taking the place of the transferring authority. They are to confine themselves to the three issues as have been discussed in paragraph 8 of this order.

What relief, if any, can be granted to the applicant?

12. Do the afore discussions imply that the applicant gets no relief. It is well considered that there is no case for quashing the order as provided in paragraphs 2 (i) and 2 (ii) of this order. However, the Tribunal have also take cognizance of the facts that the applicant has done a hard postings and was baulked in his attempt to get posting of his choice. In the process, he has also been put to much inconvenience. It is also expected that his Transfer Count is must have improved with the passage of last one year. The respondents are therefore, directed that they should upgrade his Transfer Court and consider him for the vacancies likely to arise in June, 2012.

13. There shall be no order as to costs.

14. With this, the OA stands disposed of.


(B K SINHA)

ADMINISTRATIVE MEMBER

RCopy
03/21/5
BWA