

CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

Original Application No. 290/00414/2014  
With MA No. 290/00437/2014

Reserved on 14.01.2015

Jodhpur, this the 27 day of January, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Omesh Paliwal s/o Shri Bhanwar Lal, B/c Brahmin, aged about 36 years, r/o F-82, Sector 14, Udaipur (Raj.) Posted as PGT (Comp. Sc.) Kendriya Vidyalaya II, Udaipur

.....Applicant

By Advocate: Mr. Jog Singh

Versus

1. Kendriya vidyalaya Sangathan through the Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi- 110 016.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan (R.O.), 92, Ganshi Nagar Marg, Bajaj Nagar, Jaipur- 302 015.
3. The Principal, Kendriya Vidyalaya, II, Udaipur (Raj.)
4. Ms. Mamta Jain, PGT (Comp.Sc.) through the Principal, Kendriya Vidyalaya, bhilwara, Distt. Bhilwara (Raj.)

.....Respondents

By Advocate : Mr. Arvind Acharya for resp. No. 1 to 3 and

Mr. Satish Pachori for respondent No.4

ORDER

This OA has been filed u/s 19 of the Administrative Tribunals Act, 1985 on 19.11.2014, challenging the transfer order dated 18<sup>th</sup> November, 2014 ( Ann.A/1) and seeking the following reliefs:-



"In view of above submissions it is most respectfully prayed that this Original Application may kindly be allowed with costs and the impugned order of transfer (annex.A/1) dated 18.11.2014 may kindly be quashed and set aside. It is further prayed that by issuance of an appropriate order or direction the respondent authorities may be directed to keep the applicant at respondent no.3 Headquarter, till his displacement counts crosses the cut off points, under the provisions of Transfer Policy (annex.A/2). Any other relief which this Hon'ble Tribunal deems just and proper in the case may also please be awarded."

2. Brief facts of the case, as averred by the applicant, are that the applicant is Post Graduate Teacher (Computer Science) and joined the service of respondent Kendriya Vidyalaya Sangathan (KVS) on 05.09.2007. The applicant is domicile of Rajasthan State, and as per policy of the respondent Sangathan, an employee joins the Sangathan will have to serve North East Region (NER) of the country at initial stage. The applicant was given initial posting at KV-Duliajan Oil, which is located in NER and comes under the category of hard station. A person who serves the Sangathan at hard station, he gets the benefit and preference of next posting of his choice and accordingly the applicant served the aforesaid KV for four years in NER, which is more than the requisite period of eligibility of preferential transfer. As per the transfer policy, he got preference of choice posting and was transferred to KV No.II Udaipur (Rajasthan). Copy of the transfer order dated 14.09.2011 has been placed at Ann.A/3 and transfer policy at Ann.A/2. The Sangathan has fixed a schedule for request transfer of



the employees and as per the policy and for request transfer, the person who has the highest marks of displacement on that station gets transferred to make vacancy for the employee. In accordance with the transfer policy Ann.A/2, it has been further submitted that the respondent authorities called the transfer application for the transfer process for academic year 2014-15. The applicant submitted the mandatory form through proper channel along with all the employees of the Sangathan including respondent No.4. Thereafter the applications were processed but the applicant got 4 points in displacement count and zero in transfer count, therefore, he was not liable to be transferred and was to be kept at the same station. The transfer process for the current year was over by 31.7.2014. Those who were entitled for benefits of transfer as per provisions of transfer policy were benefited. The respondent No.1 issued letter dated 31.7.2014 wherein it is specifically mentioned that last date of transfer orders in respect of surplus redeployment/displacement/transfer was 31.07.2014 and no representation will be entertained, if received after 31.07.2014 even through e-mail. That all of sudden, shockingly the respondent Sangathan issued transfer order dated 18.11.2014 of applicant, wherein he is transferred from KV No.II, Udaipur to KV, Bhilwara in public interest with immediate effect. Though this impugned order is not officially served as on today through office of respondent No.3 i.e. Principal, KV-II, Udaipur but applicant



subsequently came to know that the respondent Sangathan has issued reciprocal transfers, wherein respondent No.4 who was posted at KV Bhilwara is transferred on the post of the applicant on her own request. The applicant came to know that the respondent Sangathan has given her displacement count zero and transfer count 12, whereas employees with 59 and 61 transfer count were also not considered for request transfer during regular transfer process. The applicant has old parents to lookafter but the respondent authorities despite being aware of conditions of parents of the applicant, did not provide any opportunity of hearing but granted personal hearing for request transfer to respondent No.4 which is undue favouritism and discrimination between the employees of the Sangathan.

It has been further urged that transfer of respondent No.4 is barred by transfer policy because she was not considered under the provisions of the transfer policy. On the other hand, the applicant has completed hard station tenure of three years and served for one more year, and the respondents authorities gave him choice posting to Udaipur. Now he has served for three years or so, whereas normal tenure at one station goes around 4 to 5 years at a place on choice posting, but he is again posted out to a far place illegally and arbitrarily and respondent No.4 has not even served the hard station but an ordinary station and the respondent authorities had choice to replace other employees who are staying prior to the applicant in Udaipur City,



but that was not done. It has been further averred that the respondent authorities contrary to their procedure and policy without giving any opportunity of hearing transferred him in mid session, which is bad in the eyes of law. The applicant has very good Annual Confidential Report for last three years, there is no complaint against him, his result in the school is good, therefore, there is no scope of posting him on these grounds while keeping the term public interest for transfer and has, therefore, prayed for the reliefs as extracted above.

3. In the reply filed on behalf of official respondent No. 1 to 3 on 07.01.2015, it has been submitted that action of the answering respondents in transferring the applicant is in public interest and in accordance with para-13 of the KVS Transfer guidelines and, therefore, perfectly legal, valid and in consonance with the service law jurisprudence. It has been submitted that the employees appointed in KVs are liable for transfer anywhere in India at any point of time under Article 71(A) of the Education Code (Revised), and that while effecting transfers the organization interest shall be given upper most consideration and that the problems and constraints of employee shall remain subservient and transfer to a desired location cannot be claimed as a matter of right. The provisions in the transfer guidelines do not confer any right on the employees in the matter of transfer and transfer is an incident of employment, therefore, employees are bound



to undergo transfers being made by the organization at any place within the country, except in respect of certain contingencies specially visualized in the transfer guidelines. Referring to the transfer guidelines, it has been submitted that the new transfer guidelines have been framed which came into force w.e.f. 1.4.2011 and duly approved by the Board of Governors which is an apex policy making body of KVS, and para-13 of the transfer guidelines is as under:-

**Para-13:- POWER OF RELAXATION OF GUIDELINES**

“Notwithstanding anything contained in the guidelines, the Commissioner with the approval form the Chairman, KVS, shall be the sole competent authority to transfer any employee to any place in relaxation of any or all of the above provisions.”

In the instant case, the applicant has been transferred to KV Bhilwara, in public interest as per para-13 of the KVS guidelines vide order No. F.11046/13/PFT/2014/KVS(HQ)/(E-II) dated 18.11.2014 (Ann.A/1) being station senior at Udaipur station as per annual request transfer data for the year 2014-15 supplied by respondent No.2, Deputy Commissioner, Kendriya Vidyalaya Sangather (Regional Office), Jaipur to accommodate respondent No.4, Smt. Mamta Jain, PGT (Computer Science) on her request. Admittedly, the applicant being station senior working since 17.9.2011 in terms of displacement count under the above provision of para-13 of KVS transfer guidelines he has been rightly ordered to be transferred to KV, Bhilwara, and the claim of

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the applicant merits rejection at the very threshold. It has been further submitted that criteria for calculation of transfer counts and displacement counts and method of request transfer and administrative transfer are clearly defined in the existing Transfer guidelines of KVS duly approved by the Board of Governors with few amendments. It has also been submitted that there is nothing surprising or shocking in passing the transfer order since the employees of the KVS hold all India transfer liabilities and may be transferred at any point of time as per the administrative exigencies. As the transfer order dated 18.11.2014 (Ann.A/1) is as per para-13 of the Transfer guidelines which provides for relaxation of any or all of the provisions and in accordance with Article 71-A of the Education Code of KVS, the order cannot be said to be illegal and arbitrary and is perfectly legal and in accordance with the service law jurisprudence and as per the transfer policy. Accordingly, the applicant is not entitled to any relief and the OA deserves to be dismissed at the very threshold.

4. By way of reply filed by respondent No.4 on 02.12.2014, it has been submitted that Ann.A/1 has been passed by the competent authority in public interest and Ann.A/4 which is a transfer order of respondent No.4 has been passed on her own request. Ann.A/1 cannot be said to be reciprocal transfer order and there is no such measure of reciprocal transfer in the transfer guidelines. From a bare perusal of



both the orders i.e. Ann.A/1 and A/4 it is clear that two separate orders have been passed by the competent authority absolutely on distinct considerations. The applicant cannot question wisdom of Ann.A/4 which is transfer order of respondent No.4. It has also been submitted that respondent No.4 married in 2013 and she was blessed with a girl child in November, 2013 and her husband resides in Udaipur and parents of the husband are in advance age facing serious ailments and in this domestic situation, not only she was missing the company and emotional support but also there is great difficulty for respondent No.4 to take care of her young daughter as also to look after old parents-in-law while at Bhilwara. The genuine family circumstances were considered by the competent authority and on need basis her transfer was acceded to by making her transfer to Udaipur vide Ann.A/4. As per the transfer guidelines (clause 11(d) and 13) of the transfer guidelines, the competent authority is vested with discretion to relax any criteria or consideration looking to peculiar need and situation of an employee and transfer of respondent No.4 has been made under request transfer by relaxing the condition in view of her genuine need. The transfer of the applicant is administrative transfer in public interest and the applicant has no right to question transfer order Ann.A/4 for assailing his transfer order Ann.A/1. It has also been submitted that it is strange and interesting to note that though as per the applicant himself, he was transferred with immediate effect but he was not officially served the

copy of transfer order and in this contrast, he also came to be aware of order Ann.A/4 passed in respect of respondent No.4. As additional submission, it has been stated with reference to interim relief passed by this Tribunal on 19.11.2014 in the present OA that in compliance of order dated 18.11.2014 (Ann.A/4), the Principal, KV-Bhilwara relieved the respondent No.4 and she reported for duty before the Principal, KV-Udaipur on 19.11.2014, but her joining was not accepted so she tendered her joining by post and likewise she has also tendered her attendance. It has been prayed that the OA is liable to be dismissed qua respondent No.4.

5. The respondent No.4 also filed MA No.290/437/2014 in which after hearing the counsels for the parties, the following order was passed on 12.12.2014:-

“Looking to the entire facts and circumstances of the case and after perusal of the order of this Tribunal dated 19.11.2014, it is hereby ordered that the respondent No. 1 to 3 shall allow the respondent No.4, Mamta Jain, to work in KVS No.2, Udaipur till the next date of hearing. However, it is expected from the counsel for the official respondents No. 1 to 3 to file reply on or before the next date so that no further complication may arise in the matter.

Put up the matter on 07.01.2015.”

6. In the meanwhile, DB Civil Writ Petition No.9777/2014 was filed before the Hon'ble High Court by the official respondents, in which following direction was given vide order dated 06.01.2015:-

"By the order aforesaid, the learned Tribunal while accepting the application preferred by Smt. Mamta Jain (respondent No.4 in Original Application) directed the petitioner to allow Smt. Mamta Jain to work at Kendriya Vidyalaya School No.2, Udaipur till next date of hearing. The Original Application is fixed for hearing on 07.01.2015. Having considered this fact, without entering into merit of the case, we deem it appropriate to dispose of this petition of writ with a request to learned Central Administrative Tribunal, Jodhpur Bench, Jodhpur to hear the Original Application for final disposal on 07.01.2015 itself."

7. The case was taken up for hearing on 07.01.2015 and it was noted during the hearing that the official respondents had not filed reply till then and in this respect it has been recorded in the order sheet dated 07.01.2015 (in the file of MA No.437/2014) that the counsel for respondents submitted that he is filing the reply to the OA today and, therefore, hearing was continued for 08.01.2015 as a part-heard case. On 08.01.2015 after having received the reply, counsel for the applicant sought some time to file rejoinder to the reply of official respondents as well as reply of respondent No.4. On 08.01.2015, counsel for respondent No.4 also filed an additional affidavit submitting her position of joining at KV-Udaipur in pursuance of interim order dated 12.12.2014 as she was not allowed to join at KV No.II, Udaipur and, therefore, submitting attendance by post. The rejoinders were filed by the counsel for applicant in OA on 13.01.2015 and the case was heard in detail on 14.01.2015 and in view of the elaborate arguments, was reserved for orders.

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8. In the rejoinder filed by the applicant on 13.01.2015 to reply filed by official respondent Nos. 1 to 3 (on 07.01.2015) while reiterating the issues raised in the OA, it has also been submitted that the Sangathan has not mentioned an iota of word that when the respondent No.4 submitted her representation, when the Commissioner found the grounds of mid term transfer worthy for approval, thereafter when the Chairman given approval to the case of the respondent No.4 for relaxation and at the same time, whether the case of the applicant was also put up before the Chairman that while giving relief to respondent No.4, applicant will be adversely suffered and he is not liable to transfer on that date. It has also been submitted that the order has not been passed by the Commissioner but by a junior officer, who is not competent authority in terms of para-13 of the guidelines. In the rejoinder, Ann.A/6 and A/7 have also been annexed. Ann.A/6 gives the position of staff members of KV No.I Udaipur in which two other employees working in KV No.I, Udaipur Ms. Rakhi Jain and Ms. Ms. Kavita Acharya are station senior. According to letter dated 19.06.2014 (Ann.A/7) employees having 50 and above transfer counts will be considered for request transfer and to accommodate such employees 10 and above displacement counts have been fixed for displacement and it has been submitted that these provisions have been violated in the transfer of the applicant. It has been further submitted that respondent No.4 was not eligible for transfer to KV-II Udaipur as at that



time there was no vacancy in KV-Udaipur. The medical status of father of the applicant has been submitted at Ann.A/9 and it has been again prayed that the OA may kindly be allowed.

9. In rejoinder to reply filed by respondent No.4, it has been submitted by the applicant that there was no vacancy on 18.11.2014 either in KV No.II, Udaipur or in KV-Bhilwara, but only to accommodate respondent No.4 vacancy was created by passing the impugned transfer order of the applicant at Ann.A/1 and it is only camouflage behind the public interest and administrative exigency. It has also been submitted that like the case of difficulties of respondent No.4, there are more than 20% employees of the respondent department who are having small children and old age dependent parents and the applicant also comes under the same category and the respondents were duty bound to give opportunity to each and every employee to submit representations after closing of annual transfer process and after hearing and considering all the cases should have moved the transfer process in the mid sessions. But surprisingly and shockingly the respondent department did undue and discriminate favour to respondent No.4. In response to additional submissions of respondent No.4, it has been submitted that respondent No.4 never submitted any representation after completion of annual transfer process, which is as per the reply of the Sangathan. It has been further submitted that the

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applicant was relieved on 18.11.2014 for official training held at Jaipur and the e-mail of transfer order delivered afterwards, therefore, the respondent KV could not relieve the applicant on 18.11.2014 and subsequently on 19.11.2014, the applicant was on casual leave and he approached the Hon'ble Tribunal and challenged the impugned transfer order, and therefore, there is no illegality to keep the applicant at KV No.II Udaipur after passing of the interim order on 19.11.2014 in OA and accordingly has prayed to allow the OA on these grounds.

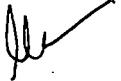
10. Heard all the parties. Counsel for the applicant submitted that the applicant was initially appointed in the year 2007 and his first posting was at Kendriya Vidyalaya (KV)-Duliajan Oil in North-East region, which is a hard station. After completion of his hard station tenure and in accordance with priority as per policy of transfer, he chose KV No.II, Udaipur and joined on 16<sup>th</sup> September, 2011 at KV No.II, Udaipur and vide Ann.A/4 Ms. Mamta Jain, respondent No.4 has been transferred from KV-Bhilwara to KV-II, Udaipur at her own request. Counsel for the applicant, in this context, contended that though two orders have been issued separately but they are in fact reciprocal transfers because respondent No.4 has taken the place of the applicant and vice-versa. He contended that the transfer of respondent No.4 is a request transfer and that of the applicant is administrative transfer in public interest made apparently as per para 5(c) of the Transfer guidelines which

provide for displacement of an employee from a location to accommodate the request of a needy employee. In this context, he referred to para-7 of the Transfer guidelines (Ann.A/2 ) which provides that as regards Transfer under para 5(c) a needy employee as defined in clause 11 (a) to a desired station mentioned in his/her request application form, an employee holding same post with the highest displacement count subject to not being below D(1), as prescribed herein below at the relevant station in the order of preference indicated by the needy employee, shall be liable to be displaced in the event there is no clear vacancy at the station. Further, as required under para 7(a), the respondents have prescribed cut off counts for the year 2014-15 in their notice dated 19.6.2014 (Ann.A/7) which says that employees having 50 and above transfer counts (C-1) with completion of one year service at the station have been considered for inter-station request transfers. To accommodate such employees 10 and above displacement counts have been fixed for displacement. As shown at Ann.A/5, the displacement count of the applicant was 4 and the transfer count of respondent No. 4 was 12 and therefore, being below the cut off marks, neither the applicant was displaced nor the respondent No.4 transferred on request basis and as a matter of fact even persons holding high request transfer count, such as Shri Pawan Tak-61 and Shri Dilip Singh-59 were not given transfer on request basis. It was further contended that as per Ann.A/3, Notice



dated 31.7.2004, it was clarified by the respondent Department itself that as per calendar of activities for annual transfers for the year 2014-15, last date for corrections/modifications in transfer orders issued in respect of surplus redeployment/transfer/displacement transfer was 31.3.2014. The representation received in this regard through g-mail upto 31.7.2013 will be considered by 8.8.2014 and no representation will be entertained, received after 31.7.2014 even through g-mail. Thus, in accordance with the policy and as per circulars issued by the respondents themselves, no transfer either of the applicant or of respondent No.4 was to be made even upto 8.8.2014. The transfer of the applicant on administrative basis and transfer of respondent No.4 on request basis were suddenly made on same date vide separate orders, even though request and displacement counts were not in accordance with Notice dated 19.6.2014 issued by the respondents as per transfer guidelines. The respondents have not disclosed the administrative exigency for transferring the applicant in mid session and replacing him with respondent No.4 and that why her transfer could not have waited for just another 6 months. Counsel for the applicant further contended that as per para-12 of the transfer guidelines, Commissioner is the competent authority to transfer an employee and he had not made any transfer upto 8.8.2014. Further, as per para 13, transfers made in relaxation of the guidelines have to be approved by the Chairman, KVS who happens to be Minister, HRD and

it is not clear by perusal of Ann.A/1 and A/4 whether approval of the Chairman, KVS was taken as per para-13 and whether the Commissioner has delegated the powers to the administrative officer to issue such orders. Counsel for the applicant further contended that as on 18.11.2014, the date of transfer, there was no vacancy in Udaipur and transfer of the applicant was made not in administrative exigency but just to accommodate respondent No.4 and in this case need of respondent No.4 is simply to take care of children and parents-in-laws as mentioned by respondent No.4 in reply at page 26-27. The counsel for the applicant further contended that there may be several other cases of women employees placed in similar circumstances, and there was no attempt to seek applications from such employees, but only her case was considered. On the other hand, the requirement of the applicant as mentioned in para 4(viii) of the OA i.e. to take care of elderly father and mother was not even touched and in the reply the official respondents have stated at para 4.6 that they have no knowledge of his problem. It is also not clear from reply of the respondents that how was case of respondent No.4 was processed under para-13 of the transfer guidelines and reached the competent authority without their being any notice for application from the employees who may be needy like respondent No.4 and there is precedent in the respondent department to call such applications for categories of persons being similarly situated in organisation and



employees interest. Counsel for the applicant, thus submitted that the applicant has been transferred by Ann.A/1 in total violation of the transfer guidelines and policy regarding transfer counts for administrative transfer and actually there is no public interest or administrative exigency and there is no adverse report about his work, but it has simply been done to accommodate respondent No.4 who also does not come within the frame work of request transfer. Thus, the applicant has been unduly harassed and discriminated against by being transferred from Udaipur to Bhilwara and as the order Ann.A/1 is illegal, therefore, he may be granted relief as prayed for. In support of his contention, counsel for the applicant referred orders of the Tribunal viz.

- i) Surya Bhan Singh vs. Kendriya Vidyalaya Sangathan, OA No.4114/2010 decided on 11<sup>th</sup> January, 2011 by CAT-PB, New Delhi.
- ii) M.A.Qureshi vs. The Commissioner, Kendriya Vidyalaya Sangathan, reported in 2007 (3) SLJ 85 CAT decided by the CAT-Jodhpur Bench.

11. Per contra, counsel for the official respondents contended that Transfer guidelines (Ann.A/2) in para-13 themselves provide for relaxation of any or all of the above provisions of transfer. Ann.A/1 has been issued in accordance with para-13 of the guidelines and orders Ann.A/1 and A/4 both mention that they have been made with the approval of the competent authority and there is no reason to doubt that approval has not been taken from the Chairman, KVS. Since the

order itself states that it has been made with the approval of the competent authority and so many transfers and postings orders are issued and, therefore, issuing of the order by the Administrative Officer in the office of the Headquarters of the KVS after approval of the competent authority is in accordance with the provisions of paras 12 and 13. Counsel for the official respondents also placed before us a chart of displacement counts and other details of employees posted in KV No.I Udaipur and KV No.II Eklinggahr, Udaipur where the applicant has highest displacement count of 4 amongst the total of 3 employees in the subject and pointed out that other 2 employees at Udaipur are also women. In sum, he contended that the transfer has been made in accordance with para-13 of the transfer guidelines and as such Ann.A/1 is legal and the OA is liable to be dismissed.

12. Counsel for respondent No.4 contended that the applicant has only challenged Ann.A/1 which is transfer order of the applicant in public interest and Ann.A/4 which is transfer of respondent No.4 on her own request has not been challenged, and both are separate orders and not reciprocal, as contended by the counsel for the applicant. He further contended that transfer cannot be interfered by the Courts or the Tribunals unless these are punitive, suffer from mala-fide or in gross violation of the guidelines. He referred to para 5(c) of the guidelines (Ann.A/2) where the provision has been made for

displacement of an employee from a location to accommodate the request of a needy employee. The respondent No.4 being a woman employee has a small girl child to lookafter and her husband and in-laws live at Udaipur and for these reasons, she sought her transfer to Udaipur. Even policy of the Govt. of India provides for preference and empowerment of women employees and referred to following judgments in this regard:-

- i) National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan, in Appeal (Civil) 1095-1096 of 2001 decided on 11.9.2001.
- ii) Union of India and Ors. H.N.Kistania reported in 1989 AIR 1774
- iii) Shanti Kumari vs. Regional Deputy Director, Health reported in AIR 1981 SC 1577
- iv) The Commissioner, Kendriya Vidyalaya Sangathan vs. V.Satya Narayan Murty, WP (C) 5280 of 2013 decided by the Hon'ble Orissa High Court, Cuttack on 22.4.2013.
- v) Yakub Bhati vs. State of Rajasthan reported in 2013 (2) CDR 904 (Raj.)
- vi) Smt. Chitra Mukundan vs. Union of India, OA No.1760/2013 decided by the CAT-Principal Bench on 8.1.2014.

13. Counsel for respondent No.4 further submitted that respondent No.4 was relieved from Bhilwara and reported for joining on 19<sup>th</sup> December, 2014 as may be seen from para 11 of the MA No.437/2014 and prayed that in view of the above position and interim order dated 12.12.2014, respondent No.4 may be allowed to continue working at KV No.II Udaipur in pursuance of transfer order Ann.A/4 and she may

be allowed salary from the date of reporting for joining at KV No.II, Udaipur.

14. In the context of the issues raised by the counsels for the official respondents and private respondent, counsel for the applicant submitted that there appears to be clear discrimination as even if it is assumed that Ann.A/1 and A/4 orders have been approved by the Chairman, KVS than it seems that no account was taken of the problems of the applicant regarding his parents, and how he came to Udaipur after completion of hard station tenure in North-East region and in fact the department has even admitted in reply to the OA in para 4.6 that they have no knowledge of his problems. He also contended that displacement counts are relevant upto 31<sup>st</sup> July and considering them beyond that or after 8.8.2013 and therefore, the chart submitted by the counsel for the respondents is not valid for transfer purposes. However, it can be seen from the chart that the applicant joined at Udaipur KV No.II on 17<sup>th</sup> September, 2011 while the other two incumbents at Udaipur KVs have joined there prior to him so he is not the station senior and therefore, not liable to be displaced. He thus reiterated his contention that Ann.A/1 is against the guidelines, discriminatory, illegal and may be quashed and set-aside.



15. Considered the rival contentions of all the parties and perused the record. From a perusal of orders at Ann.A/1 and A/4 both dated 18.11.2014 and reply of the respondents, it appears that these were issued with reference to para-13 of the Transfer guidelines (Ann.A/2) which provide for relaxation of any or all of the guidelines and are required to be issued by the competent authority after approval of the Chairman, KVS. The orders themselves state that they have been issued with the approval of the competent authority and even the number of order refers to 13, which according to the counsel for the respondents, is a practice to refer to the relevant para and as in this case it is 13, it may be presumed that it is a reference to para-13. Accordingly, in this regard there is no apparent reason to doubt that the procedure as required under para 12 and para 13 of the Transfer guidelines has not been followed or has been violated while issuing orders as at Ann.A/1 and A/4. However, the main contention of the counsel for the applicant is that the applicant has been transferred vide Ann.A/1 which is not at all in public interest, because there is no administrative exigency to transfer him and as seen from the record of the respondents themselves that his displacement count were 4 i.e. below the cut off marks which have been prescribed as 10 for the year 2014-15 vide circular dated 19.6.2014 (Ann.a/7) as required under para 11-A of the Transfer guidelines. Further as per guidelines neither the applicant came within the cut off for displacement nor respondent No.4 is in the

cut off of request transfer and there was no transfer order by the Commissioner up to 8.8.2014. Accordingly, there was no justification to accept the need of respondent No.4 in mid session exercising the powers under para 13 to relax the guidelines without taking into account needs and requirement of the applicant regarding his family matters, and in the reply the respondents have even denied having any knowledge of his family problems. Moreover, there is nothing on record in the reply of the official respondents to suggest that they had invited applications from the similarly situated women employees and had given everyone a fair chance. The applicant has been displaced without consideration of his own family matters specially when his displacement count was so low (4) and below the cut off marks of 10 and he was not even the station senior and had come to Udaipur on request after completing 4 years at a hard station. The applicant has simply been displaced in mid session to accommodate respondent No.4 who is not eligible for request transfer as per policy and guidelines but the same have been relaxed in her favour in a arbitrary manner and in the process he has suffered a lot, therefore, the order of transfer at Ann.A/1 cannot be said to be in public interest specially in view of the judgments of the Tribunals, cited by him. On the other hand, the main contention of the counsel for the official respondents has been that the orders have been issued as per provisions of Para-13 of the Transfer guidelines and in accordance with the policy and service jurisprudence

and are therefore, sustainable in the eyes of law. The main contention of the counsel for the private respondent has been that needs of respondent No.4 being a woman employee were genuine and her case has been considered and decided in accordance with para-13 of the Transfer guidelines and the judgments referred to by him show that the Government itself has laid down policies and guidelines to facilitate and empower the women employees and further contended that it is well settled principle of law that Courts and Tribunals should not ordinarily interfere in transfer matters unless there is mala-fide or colourable exercise of power and gross violation of the guidelines and none of these ingredients are there in the case of transfer of respondent No.4 at Ann.A/4.

16. In this context, it is noted that the applicant was transferred to accommodate respondent No.4 and Ann.A/1 and A/4 can be said to be on reciprocal basis because one has replaced other i.e. the applicant has been transferred from KV-II Udaipur to Bhilwara and respondent No.4 has been posted vice him, though by issuing separate orders, both orders being as per para-13 of the Transfer guidelines.

17. It is further seen that policy of the Union of India, as pointed out by the counsel for respondent No.4 with reference to various judgments, gives preference and empowerment to women employees

and the Transfer guidelines of the KVS themselves make some provisions in this regard,

18. From perusal of the record, it transpires that neither the applicant had the cut off marks to be displaced nor respondent No.4 had required transfer counts to be transferred on request basis as per policy and therefore, the official respondents have taken recourse to the provisions of para-13 of the Transfer policy which provides for relaxation of any or all of the guidelines by the competent authority. In the judgment dated 11.1.2011 in OA No.4114/2010 of the CAT-Principal Bench, New Delhi, cited by the counsel for the applicant, an adverse view has been taken when transferring a person to accommodate another and the transfer order was set-aside because the transfer was made to accommodate another person on request of 1<sup>st</sup> PA to Hon'ble Minister of HRD, but the facts of present case are distinguishable because the orders Ann.A/1 as well as A/4 have been issued with the approval of the competent authority with reference to para-13 of the Transfer guidelines.

19. As the Transfer guidelines themselves in para-13 provides for relaxation of any or all of the provisions of the Transfer guidelines, therefore, Ann.A/1 issued in accordance with para-13 of the guidelines by the competent authority cannot be said to be in violation of the

policy and as the word 'competent authority' has been used in the order itself, therefore, it cannot be said that it did not receive the due approvals. As transfer is an incident of service and it is settled principle of law that Courts and Tribunals should not ordinarily interfere in the same, unless there is clear mala-fide, arbitrariness or gross violation of guidelines and this does not appears to be the case in the present transfer. Accordingly, the transfer of the applicant made vide order dated 18.11.2014 (Ann.A/1) cannot be said to be illegal or non sustainable in the eyes of law and there is no ground to set it aside.

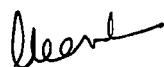
20. At the same time, it is also not evident from the pleadings and specially from reply of the official respondents that what were the factors taken into account for relaxing the conditions of the guidelines and in issuing mid-term transfer order Ann.A/1 of the applicant taking recourse to provisions of para-13 of the Transfer policy guidelines. Therefore, in view of the facts and circumstances of the case, it appears just and proper if the applicant is informed by the respondents about the issues and factors taken into consideration and reasons for his transfer in mid-session vide order dated 18.11.2014 (Ann.A/1),  
(although the same may have been made in accordance with para-13 of the Transfer guidelines and with the approval of the competent authority) within two months from the date of receipt of a copy of this

order. If the applicant has any grievance left thereafter, he may approach the appropriate forum as per law.

21. In view of the above and the interim order dated 12.12.2014 passed in MA No.437/2014 and since continued qua respondent No.4, official respondents may deal with the joining of respondent No.4 at Udaipur as per law, rules and laid down procedure, for which she may also file a separate representation, if required.

22. Interim order passed in OA No.414/2014 dated 19.11.2014 and since continued, accordingly stands vacated.

23. The OA stands disposed of in above terms with no order as to costs.

  
(MEENAKSHI HOOJA)  
Administrative Member

R/

~~3/21/15~~

PP  
Betjain and Dainger  
very few in  
for Betjain  
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