

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.425/2014
With
Misc. Application No.290/00441/2014

Jodhpur, this the 18th day of February, 2015

Reserved on 03.02.2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Suleman Khan Kayamkhani S/o Yaseen Khan Kayamkhani, B/c Muslim, aged about 55 years, R/o C-6 Staff Quarter, KV No.1, Sagar Road, Bikaner (Raj.). (Posted as PGT (History), Kendriya Vidyalaya 1, Bikaner).

.....Applicant

By Advocate: Mr. Jog Singh & Mr. K.K. Shah.

Versus

1. Kendriya Vidyalaya Sangthan through the Commissioner, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110016.
2. The Deputy Commissioner, Kendriya Vidyalaya Sangthan (RO), 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302 015.
3. The Principal, Kendriya Vidyalaya, 1, Sagar Road, Bikaner (Raj.).
4. Shri Sudhir Sharma, PGT (History) through the Principal, Kendriya Vidyalaya, Okha, District Jamnagar (Guj.).

.....Respondents

By Advocate : Mr. Avinash Achariya, counsel for respondents No.1to3.
None for respondent No.4.

ORDER

This OA has been filed on 21.11.2014 u/s 19 of the Administrative Tribunals Act, 1985 challenging the transfer order dated 18th November, 2014 (Ann.A/1) by which the applicant has been transferred from Kendriya

Vidyalaya No.1, Bikaner to Kendriya Vidyalaya Baad Mathura in public interest and praying for 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. The facts of the case, as stated by the applicant, in brief are that he joined the respondent-Kendriya Vidyalaya Sangathan as Post Graduate Teacher on 14.11.1984. Since then he was transferred to different places including hard stations and prior to his present posting, he completed the Hard Station tenure, therefore, he was posted upon his high transfer counts on his choice of Bikaner. The applicant is domicile of Rajasthan State and therefore, as per policy of the respondents, an employee having served at hard station earns maximum transfer counts and comes under the consideration zone of transfer at his place of posting. The applicant joined the KV- Bikaner on 18.5.2012 and as per transfer policy the respondents called for transfer application for the transfer process of academic year 2014-15. The applicant submitted the mandatory form through proper channel and after processing the application, the applicant scored 'two' points in displacement count and 'zero' in transfer count, therefore, he was not liable to be transferred and was to be kept in the same station. According to letter dated 19.6.2014 (Ann.A/4), the employees with below 10 counts of displacement will not be disturbed for current session. The applicant has further stated that as per transfer policy Ann.A/2, the transfer process for the

current year was over by 31.7.2014 and the respondent No.1 issued letter dated 31.7.2014 wherein it was specifically mentioned that last date of transfer orders in respect of surplus redeployment/displacement/transfer was 31.7.2014 and no representation will be entertained if received after 31.7.2014 even through gmail (Ann.A/5). But all of sudden the respondents issued transfer order dated 18.11.2014 (Annexure-A/1) by which the applicant has been transferred from KV-Bikaner to KV Baad Mathura (UP) in public interest with immediate effect. This impugned transfer order (Annexure-A/1) was served to the applicant on 20.11.2014, through office of respondent No.3. The applicant has further averred that the respondents with ulterior motives to accommodate respondent No.4, Shri Sudhir Kumar, have issued transfer order of the applicant, whereas respondent No.4 has not completed his hard station tenure at KV, Okha as he joined that station only on 24.6.2013 and his date of appointment is 12.1.2012, therefore, he was not considered in the regular process of transfer for academic session. The respondent No.4 has also not completed his first three years of service but despite these facts, the respondents considered his case and posted him at the place at which the applicant was posted on his own request. It has also been averred that the transfer order is categorized as VIP, though there is no such category in the transfer policy. The applicant, it has been further submitted is of old age, has served the KVS with efficiency and giving high results, is suffering from BP and hyper tension and needs family care and his family cannot shift in the mid session. It has also been mentioned that the applicant has not been relieved on 20.11.2014. Therefore on these grounds aggrieved

of the action of the respondent KVS, the applicant has filed this OA praying for the reliefs as extracted above.

3. The counsel for the applicant also filed MA No.290/00441/2014 on 15.12.2014 submitting that after the interim relief granted by the Tribunal on 21.11.2014, the applicant immediately informed respondent No.3 about passing of the interim relief on 21.11.2014 and immediately sent copy of the interim order with representation to respondent No.3 through speed post on 21.11.2014 itself and the respondent No.3 without relieving the applicant, illegally allowed respondent No.4 to join to the post of the applicant and further when the applicant reached Bikaner on next working day, the respondent No.3 served the applicant relieving order dated 20.11.2014 on 24.11.2014 despite communication of interim order dated 20.11.2014 passed by this Tribunal, through e-mail by the applicant.

4. With reference to the MA no.290/00441/2014, counsel for the official respondents submitted reply dated 15.01.2015 stating that the applicant was already relieved on 20.11.2014 before the interim order dated 21.11.2014 was granted by this Tribunal and respondent No.4 Shri Sudhir Sharma had already joined his duty on 21.11.2014 and marked his attendance at 10.35 AM, as can be seen from Ann.MAR/1. It has been further submitted that the applicant had sent information through e-mail on 21.11.2014 at 02.28 PM about the interim order dated 21.11.2014 but copy of the interim order was not attached. Further in his letter dated 21.11.2014 (Annexure-MAR/2) sent by the applicant through speed post, the applicant has mentioned that he sought Casual Leave for 20.11.2014 and 21.11.2014 which is far from the

per

truth as no such earlier verbal or written request for leave was ever made before respondent No.3. On the other hand, the applicant sent letter dated 24.11.2014 (Ann.MAR/3) stating that he was not well on 20.11.2014 and consulted the Doctor and submitted his medical certificate and fitness certificate from 21.11.2014 to 23.11.2014, but by his own admission as per Annexure-MAR/2, he had gone to Jodhpur to challenge the transfer order. It has been further submitted that respondent No.3, the Principal of KVS Bikaner in compliance of the transfer order dated 18.11.2014 had issued relieving order on 20.11.2014 (Annexure-MAR/4) itself and called the applicant on phone who left the school premises without information or leave application since afternoon from 12.00 PM on 20.11.2014, therefore, respondent No.3 issued letter dated 20.11.2014 (Annexure-MAR/5) regarding his unauthorised absence, and both the relieving order and letter of unauthorized absence from duty, were sent to the residence of the applicant on 20.11.2014 which was found locked and therefore, they were affixed on the door of the applicant's residence in presence of witnesses, as may be seen from Ann.MAR/4 and MAR/5. Further, the respondent No.4 had already joined at KVS Bikaner on 21.11.2014 and the applicant was informed of the position vide letter dated 25.11.2014 (Ann.MAR/6). Thus, as the applicant was already relieved on 20.11.2014 i.e. before the interim order dated 21.11.2014 for not relieving if he has not already been relieved, the official respondents prayed for dismissal of the MA No.441/2014.

5. By way of reply to the OA, filed on 15.01.2015, the respondents have denied the rights of the applicant and submitted that the applicant has been transferred to KV Baad Mathura in public interest as per Para-13 of KVS

Transfer Guidelines being station senior at Bikaner Station as per annual request data for the year 2014-15 supplied by Deputy Commissioner, KVS (Regional Office), Jaipur to accommodate respondent No.4, Shri Sudhir Sharma, PGT (History) on his request. It has been further submitted that the criteria for calculation of Transfer Counts and Displacement Counts and method of request transfer and administrative transfers are clearly defined in the existing transfer guidelines which came into force w.e.f. 1.4.2011 and all transfers are made as per the provisions contained in the said transfer guidelines. Vide order dated 18.11.2014 (Annexure-A/1) the applicant has been transferred from KV-Bikaner to KV-Baad Mathur in terms of Para-13 of the Transfer Guidelines which provides powers to the competent authority to transfer and/or grant exemption in relaxation of provisions provided under various clauses. The respondents have further submitted that letters dated 19.6.2014 (Ann.A/4) and 31.7.2014 (Ann.A/5) are not applicable in the cases where transfer orders are issued in terms of Para-13 of the Transfer Guidelines (Annexure-A/2). The employees of the KVS hold all India transfer liabilities and may be transferred at any point of time as per administrative exigencies, hence there is no discrepancy in the transfer of the applicant, which is within the purview of the existing Transfer Guidelines of KVS. Therefore, the transfer order dated 18.11.2014 (Ann.A/1) issued by the competent authority in terms of para-13 of Transfer Policy is perfectly legal, valid, justified, without perversity and thorough appreciation of facts and material available on record and issued after proper consideration of record. Hence, the claim of the applicant merits rejection. The respondents have also submitted that in view of transfer order, the applicant has been

relieved from KV-Bikaner on 20.11.2014 (A/N) and respondent No.4 has already joined his duties at KV-Bikaner on 21.11.2014, and have prayed for the rejection of the OA.

6. In rejoinder to the reply of the respondents, the applicant has submitted that there was no need of transfer of the applicant in mid-session and also of private respondent No.4. It has been further stated that considering respondent No.4 as VIP, his request was considered without looking into the hardship of the applicant and while defending the impugned transfer order, the respondents have concealed the fact as to what was the reason behind the mid-session transfer and what was the material placed before the Chairman, Board of Governors, KVS and when the powers of Commissioner was delegated after approval of the Chairman. In the absence of each and every fact, the impugned transfer order is not sustainable in the eyes of law and the same deserves to be quashed and set-aside.

7. Heard the parties. Counsel for the applicant contended that the applicant vide Annexure-A/1 has been statedly transferred in public interest from KV No.1 Bikaner to KV Baad Mathura but drew attention to the number of file which bears No.11046/2014-15/KVS(HQ)/Estt-II/VIP, which shows that this transfer has been made on some VIP basis though there is no such provision in the transfer guidelines and the reply of the respondents that it has been issued in accordance with the para No.13 of the transfer guidelines by relaxing the guidelines, cannot be *prima facie* accepted and as such the reply is misconceived. He further submitted that by a separate order dated 18.11.2014 (Annexure-A/8) the respondent No.4 has been transferred

from KV Okha Port to KV No.1 Bikaner on request in his place. The transfer of the applicant is in violation of the guidelines because as may be seen from letter dated 19.06.2014 (Annexure-A/4), the displacement counts required for displacement against request transfer had been fixed for the year 2015 as '10' and that the displacement count of the applicant are '0' as may be seen from Annexure-A/7 (at pages 27 and 28 of the OA) and he has simply been transferred and made to face great inconvenience without any justification and there being no public interest in his transfer. Counsel for applicant further contended that the powers under para 13 have to be exercised in a judicious and rational manner and not arbitrarily as has been done in this case. It is also not clear from the order Annexure-A/1 whether the Chairman KVS has approved this order and whether such order can be issued by anyone other than the Commissioner. On the above grounds, counsel for applicant prayed for allowing the OA.

8. Per contra, counsel for the respondents contended that the order at Annexure-A/1 and A/8 have been issued in accordance with the Para 13 of the Transfer guidelines and the applicant has been transferred in public interest and the respondent No.4 has been transfer on request basis. Counsel for the respondents also submitted that as may be seen from Annexure-MAR/1 annexed with reply to MA No.142/2014, respondent No.4 was relieved from KV Okha Gujrat on 19.11.2014 afternoon and he joined his duties on 21.11.2014 in the afternoon around 10.30 am at Bikaner well before the grant of the interim order on 21st November, 2014 by the Hon'ble Tribunal. Counsel for the respondents further drew attention to Annexure-

MAR/2 which is a letter submitted by the applicant himself that he received the transfer order dated 18.11.2014 on 20.11.2014 (F/N) and took casual leave for 20th and 21st November, 2014 to challenge the order of the Tribunal and since he had not been relieved, requested for consideration and compliance of the interim order of the Tribunal. However, counsel for applicant contended that as may be seen from Annexure-MAR/4, the applicant was relieved from his duties on 20.11.2014 i.e. before the interim order passed by the Hon'ble Tribunal and though the applicant claims that he had applied for leave on 20th and 21st November, 2014 (reference Annexure-MAR/2) but actually he never sent any leave application and was absent from school from 12' O clock onwards from 20.11.2014, without any information and though he was called on phone many times but he did not respond and this letter as well as the relieving orders were pasted on his residence on 20.11.2014 itself (reference Annexure-MAR/4 and MAR/5).

Counsel for respondents submitted that the transfer order at Annexure-A/8 is of 18.11.2014 and therefore the relieving of the respondent No.4 on 19.11.2014 from Okha Gujrat and his joining on the 21st November, 2014 morning at Bikaner is within reasonable time and further submitted that as the orders have been issued as per Para 13 of the Transfer guidelines, the orders at Annexure-A/1 and A/8 are sustainable in the eyes of law and applicant is not entitled to any relief as prayed for.

9. Considered the rival contentions and perused the record. It is seen that, though as per reply and contentions of the counsel for the applicant Annexure-A/1 & A/8 have been issued as per Para 13 of the Transfer

guidelines which provides for relaxation of any of the any or all of the guidelines, the reference number of the files from which the transfer orders have been made makes a reference to VIP. In some earlier cases, e.g. in OA No.414/2014 (Omesh Paliwal vs. Union of India & ors. decided on 27.01.2015), the para No.13 was included in the file number and this was a indicator that the transfer order was being issued with reference to para No.13 of the guidelines. Therefore there is some force in the contentions of the counsel for the applicant that there is no provision in the Transfer guidelines for having any VIP category. However, even if the reply and contentions of the counsel for the respondents are accepted that the transfer order Annexure-A/1 has been issued in accordance with the para 13 of the Transfer Guidelines it is a settled principle that even discretion, relaxation has to be exercised in a judicious and just manner and not in an arbitrary way. At the same time, as it is settled principle that the Courts or Tribunal should not ordinarily interfere in transfers being incidence of service unless there is a proven malafide or gross violation of guidelines and this does not appear to be so in the case because as per the reply & contentions of respondents they have issued this under para 13 of the Transfer guidelines which gives them the power to relax of any or all of the guidelines of the Transfer Policy. Para 13 reads as under:-

" PARA 13:- POWER OF RELAXATION OF GUIDELINES

"Notwithstanding anything contained in the guidelines, the Commissioner with the approval from 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."

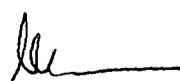
Therefore, Annexure-A/1 is not legally liable to be set aside.

10. Coming to the issue regarding relieving of the applicant and joining of respondent No.4 which have also been raised specially in MA No.441/2014, reply to the MA and the rejoinder to the reply. In this matter, it is clear from the record that so far as respondent No.4 is concerned, he was relieved on 19.11.2014 from KVS Okha Port and joined at KVS Jodhpur on 21.11.2014 as seen from Annexure-MAR/1 and MAR/6. As far as the applicant is concerned, it is seen from Annexure-MAR/4 that he was relieved on 20.11.2014 in the afternoon and the relieving order was pasted on his locked residence on 20.11.2014 itself in the presence of witnesses. Further Annexure-MAR/5 is a letter of Principal KVS Bikaner addressed to the applicant for leaving the school premises from 12 pm of 20.11.2014 without information and not responding to phone calls and this letter was also pasted outside his locked residence on 20.11.2014 itself. There also appear to be contradictions in the statement of the applicant in this regard because as per his application dated 21.11.2014 (Annexure-MAR/2) he has himself written that he took casual leave on 20 & 21.11.2014 and communicated the same in written and then left for Jodhpur on 20.11.2014 and challenged the transfer order Annexure-A/1 on 21.11.2014, but as per Annexure-MAR/3 he has said that he was not well on 20.11.2014 and consulted the Doctor and his medical certificates are from 21.11.2014 to 23.11.2014. Thus, on the one hand the applicant is claiming to have taken casual leave on 20.11.2014 and 21.11.2014 to go to Jodhpur to challenge his transfer order (though he has not furnished any copy of the leave application so submitted) and at the same he submits that he was not well on 20.11.2014 and consulted the Doctor and was advised for medical and rest from 21.11.2014 to 23.11.2014. Thus on

the above basis, it cannot be accepted that the applicant was not relieved from KVS Bikaner on 20.11.2014 in the A/N itself and as the respondent No.4 joined at 21.11.2014 at KVS Bikaner, the post KVS Bikaner no longer remained vacant. Thus, from the above position of record, emerges that the applicant was relieved from KVS Bikaner on 20.11.2014 and the respondent No. 4 joined K.V.S. Bikaner in the forenoon of 21.11.2014 i.e. before grant of the interim order.

11. In view of the aforesaid analysis while not setting aside the order at Annex. A/1, but considering the fact that the applicant has been transferred in mid-session after he had put in just two and a half years service at Bikaner (which was his choice posting after hard tenure) and that the applicant had only 2 displacement points, it is deemed just and proper to give certain directions to the respondents. Accordingly the respondents are directed to inform the applicant about the issues and facts taken into consideration and the reasons for his mid-session transfer vide order dated 18.11.2014 (Annexure-A/1) and whether the order was as per Para 13 of the Transfer guidelines with due approval of the competent authority and whether the position of the applicant was placed before the competent authority while accepting the request transfer of Shri Sudhir Sharma respondent No. 4. Further the respondents are directed to provide this information within 2 months from the date of receipt of this order and if the applicant has any grievance left thereafter, he may approach appropriate forum as per law.

The OA stands disposed of as above, with no order as to costs.


[Meenakshi Hooja]
Administrative Member

~~fuel
empty~~ 19/12/15

~~fuel
empty~~ 19/12/15