

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 290/00426/2014

Jodhpur, this the 28th day of January, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Hukmi Chand Nagda s/o Shri Chuni Lal, aged 59 years, posted as TGT (Sanskrit), KV No.2, (AFS), Jodhpur r/o C/o H.R.Bishnoi, Opposite Airforce School, Jodhpur

.....Applicant

By Advocate: Mr. K.K.Shah

Versus

1. Kendriya Vidyalaya Sangathan through the Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi- 110 016.
2. Dy. Commissioner, Kendriya Vidyalaya Sangathan (Regional Office), 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur- 302 015.
3. Shri C.P. Rajawat, TGT (Sanskrit), through Principal, KV No.1, Jaipur

.....Respondents

By Advocate : Mr. Avinash Acharya for resp. No. 1 to 2

ORDER (ORAL)

This OA has been filed u/s 19 of the Administrative Tribunals Act, 1985 challenging the transfer order dated 18th November, 2014 (Ann.A/1) by which respondent No.3 Shri C.P.Rajawat was transferred from KV No.1, Jaipur to KV No.1, Udaipur in public interest, and therefore, he has prayed that the OA may be allowed and by issuing appropriate order or direction the impugned order dated 18.11.2014

(Ann.A/1) may be quashed and set aside and the applicant be posted in place of respondent No.3.

2. Brief facts of the case, as stated by the applicant, are that the applicant was posted as TGT (Sanskrit) at Kendriya Vidyalaya (KV) Zawar Mines and due to closure of KV, Zawar Mines w.e.f. 1.4.2014, the entire staff including the applicant was posted to other KVs. Before effecting transfers, the respondent KVS asked the members of the staff to give their choices so that they could be accommodated to their choice places. The applicant submitted his choice for Udaipur. However, it was not possible to accommodate all and their cases were to be considered in future. The applicant was not accommodated at Udaipur and posted to KV No.II, AFS, Jodhpur vide order dated 3.4.2014 and he was relieved on 5.4.2014. As per Transfer guidelines, the LTR starts three years prior to retirement and the applicant had only one and half years to retire. When two and half years were left for retirement, the applicant submitted representation on 6.6.2013 to transfer him to Udaipur on LTR. The applicant came to know that during May, 2013 two postings have been effected for TGT (Sanskrit) at Udaipur ignoring the claim of the applicant to be posted to Udaipur on LTR. Therefore, he filed representation on 21.6.2013 and requested to transfer him to Udaipur in place of Shri Surendra Singh Berwa as his first choice was Jaipur and a post has become vacant at Jaipur, hence Shri Berwa could be accommodated at Jaipur and the applicant at

Udaipur. Shri Berwa also made representation that he be transferred to Jaipur in the vacancy created by selection of Shri Vijay Mathur as PGT (Hindi). The respondent No.1 conceded the request of Shri Berwa and posted him from Udaipur to Jaipur but did not consider the request of the applicant for posting at Udaipur and instead posted respondent No.3 to Udaipur in public interest. As the respondent No.3 did not apply for transfer to Udaipur, therefore, it was incumbent upon respondent No.1 to consider the request of the applicant to transfer him to Udaipur for which representation were pending and a clear vacancy was available when Shri Berwa was posted from Udaipur to Jaipur. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for quashing the impugned order of transfer of respondent No.3 and posting him to Udaipur.

3. Reply has been filed today on behalf of official respondents No.1 and 2. In the reply, the respondents have submitted that Shri Surendra Singh Berwa, TGT (Sanskrit) has been transferred from Udaipur to Jaipur vide order dated 18.11.2014 (Ann.A/8) by approval of Hon'ble Minister, HRD, being competent authority in terms of Para-13 of Transfer guidelines by replacing respondent No.3 Shri C.P.Rajawat, who has been transferred from Jaipur to Udaipur. It has been further submitted that Para-13 of the Transfer guidelines provides powers to the competent authority to transfer and/or grant exemption in relaxation of provisions provided under various clauses/besides the

entitlement points in the interest of the organization. The respondents have further submitted that the applicant was redeployed vide office order dated 3.4.2012 to KV No.II AFS, Jodhpur from KV, Zawar Mines, however, he cannot claim transfer to KV No.I Udaipur under LTR category without his name figuring in priority list for the year 2015-16. The priority list for the year 2014-15 is not in operation and, therefore, the applicant cannot claim his transfer at Udaipur. Further, the transfer order dated 18.11.2014 (Ann.A/1) issued by the competent authority in public interest is well justified and very well sustainable by law as it is well within the purview of the transfer guidelines of the KVS, therefore, the OA is liable to be dismissed.

4. Heard counsel for applicant as well as counsel for official respondents No.1 and 2.

5. Counsel for the applicant contended that vide office order dated 3.4.2014 (Ann.A/2) the applicant who is TGT (Sanskrit) was transferred and redeployed at KV No.II AFS, Jodhpur due to closure of KV, Zawar Mines and he was relieved on 5.4.2014. In this connection, he drew attention to his representation dated 6.6.2013 (Ann.A/3) in which he has submitted that under the LTR policy, he had applied for transfer to his home town, Udaipur but instead of transferring and posting him to Udaipur, the post was filled up firstly on 10th May, 2013 under the transfer list and subsequently on 3rd June, 2013, when Shri Surendra Singh Berwa was posted there from Bhuvneshwar Region but

the matter of transfer of the applicant under LTR for which he was entitled from January, 2013 was not considered. This representation dated 6.6.2013 was also forwarded by the Deputy Commissioner vide letter dated 11.6.2013 to the Headquarter office (Ann.A/4) for sympathetic consideration mentioning that his transfer counts were 54. He further submitted another representation dated 21.6.2013 (Ann.A/5) stating that since Shri Surendra Singh Berwa has given his first choice as Jaipur and if he is posted at Jaipur against the vacancy occurring on account of promotion of Shri Vijay Mathur and thereby the post of TGT (Sanskrit) falling vacant, then Shri Berwa can be adjusted to his first choice and the applicant can get his posting at Udaipur under LTR policy. This representation was also forwarded vide letter dated 21.6.2013 (Ann.A/6 and A/7) to the Headquarter office. Vide letter dated 18.11.2014 Shri Surendra Singh Berwa, TGT (Sanskrit) was transferred from Udaipur to Jaipur on request basis and instead of transferring the applicant from Jodhpur to Udaipur on the vacancy created by transfer of Shri Berwa, another persons Shri C.P Rajawat, (respondent No.3), has been transferred from Jaipur to Udaipur in public interest. As a consequence, the applicant has been deprived of his posting to his home town Udaipur under the LTR policy without any basis. Therefore, he has prayed that impugned order dated 18.11.2014 (Ann.A/1) be quashed and direction be issued to the competent authority to post the applicant at Udaipur.

6. Per contra, counsel for the official respondent Nos. 1 and 2 contended that the transfer order Ann.A/1 has been issued in public interest with the approval of the competent authority as per Para-13 of the Transfer guidelines and there is no justification to have the order quashed or set aside. It was submitted during the arguments that respondent No.3 Shri C.P.Rajawat has already joined at Udaipur.

7. Considered the rival contentions of both the parties and perused the record. It is apparent from representation dated 6.6.2013 forwarded vide letter dated 11.6.2013 and representation dated 21.6.2013 forwarded vide letters dated 21.6.2013 and 12.7.2013 that the applicant has been requesting for his transfer to his home town after coming into LTR zone from January, 2013, his date of retirement being 31st January, 2016. However, the same were not considered and the post at Udaipur was filled up on 10th May, 2013 and later on 30.6.2013 by posting Shri Surendra Singh Berwa and thereafter vide order dated 18.11.2014 (Ann.A/1) by posting Shri C.P.Rajawat, TGT (Sanskrit). The transfer order dated 18.1.2014 (Ann.A/1) posting Shri C.P. Rajawat to Udaipur in public interest has apparently been issued with reference to para-13 of the Transfer guidelines with the approval of the competent authority, as brought out by the counsel for the respondents. At the same time, it is also the fact that the applicant has been consistently requesting for his posting to his home town being under LTR zone from January, 2013 and despite his representation

being forwarded to the competent authority, he has not been able to get his home town posting in Udaipur, though when the vacancies arose after January, 2013, the same had been filled up by posting Shri Surendra Singh Berwa and later by Shri C.P.Rajawat (Ann.A/1) who has already joined at Udaipur.

8. It is a settled principle that transfer is an incidence of service and Courts and Tribunals should not ordinarily interfere in the transfer matters unless there is proven mala-fide or gross violation of the guidelines. In view of above position and the facts and circumstances of the case, while not setting aside or quashing the impugned order Ann.A/1, it is proposed to dispose of the OA with certain directions:-

(i) The applicant is directed to file a fresh representation before the respondent authority raising each and every point regarding his transfer to his home town and putting his relevant claim within 15 days from the date of receipt of a copy of this order and this OA shall also be treated as an additional representation.

(ii) Thereafter the respondents shall consider the representation filed by the applicant and decide the same keeping in view the provisions of LTR policy as well as other provisions under the Transfer guidelines including para-13, within a period of one month from the date of receipt of the representation.

9. In terms of above directions, the OA stands disposed of with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member

R/

R/O
Rajamkand
P. K. R. Shetty
2/2/15

Recd
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12/2/15