

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.430/2014

Jodhpur, this the 18th day of February, 2015

Reserved on 04.02.2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Daya Shankar Vijay S/o Shri Prabhu Dayal, aged 38 years, posted to KV No.1 (AF), Jodhpur, R/o Temp. KV (AF) Quarters, Jodhpur.

.....Applicant

By Advocate: Mr. K.K. Shah.

Versus

1. Kendriya Vidyalaya Sangthan through Commissioner, 18, Institutional Area, Saheed Jeet Singh Marg, New Delh-110016.
2. Dy. Commissioner, Kendriya Vidyalaya Sangthan (Regional Office), 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302 015.
3. Shri R.N. Malodia (PGT-History) KV No.1 (AF), Jodhpur through Principal.

.....Respondents

By Advocate : Mr. Rajendra Katariya, counsel for respondents No.1&2.
Mr. Jamil Khan, counsel for respondent No.3.

ORDER

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-

"In view of above submissions, the applicant most respectfully prays that this OA may kindly be allowed with costs and by issuance of an appropriate order or direction the impugned order dated 18.11.2014 (Annexure-A/1) may kindly be quashed and set aside and the applicant may place be directed to be posted at Jaipur."

Any other order favourable to the applicant may also kindly be passed."

2. The facts of the case as averred by the applicant are that after completion of hard area tenure at Jaisalmer he was transferred and posted to his choice place i.e. Jaipur vide order dated 10.05.2013 (Annexure-A/3) and relieved on 14.05.2013. But shockingly, after staying for about one and half years only at Jaipur, the applicant was transferred from Jaipur to Jodhpur vide order dated 18.11.2014 (Annexure-A/1) and after working hours and in his absence the applicant was relieved vide order dated 18.11.2014 (Annexure-A/2). The applicant had '0' displacement counts as on choice posting to Jaipur after hard area tenure, he had put in just about one and a half years of services at Jaipur, whereas the respondent No.3 who has been transferred in his place has six displacement count and 8 transfer counts. However, as per policy dated 19.06.2014 no one can be displaced who has 10 or less displacement counts and an employee who is transferred after completion of hard area tenure is given full tenure at choice place and only after that he may be transferred if displacement counts are 10 or more. There are more PGT (History) teachers who could have been transferred from Jaipur who have more displacement counts than the applicant. It has been further averred that from the perusal of transfer order of the applicant at Annexure-A/1 it cannot be made out as to where the applicant has been posted as there is no KV No.1 Jodhpur by itself as there are two KV No.1 at Jodhpur (one KV No.1 Army and another KV No.1 Air Force). Therefore the applicant has averred that the transfer is totally illegal and against the transfer guidelines and prayed for the reliefs as mentioned in para 1.

3. By way of reply, it has been averred that Transfer Guidelines of the organization were promulgated as part of its policy and essentially meant for

its administrative affairs. The provisions in the Transfer Guidelines do not confer any right on the employees in the matter of transfer. Transfer is an incident of employment and therefore employees are bound to undergo transfers being made by the organization at any place within the country with no option for the employees, except in respect of certain contingencies specifically visualized in the Transfer Guidelines. All transfers either on request or in public interest or on administrative grounds are made as per the Transfer Guidelines of Kendriya Vidyalaya Sangathan duly approved by Board of Governors (BOG). Accordingly, the applicant has been transferred from time to time to various places and as per the requirement of KVS as per the then Transfer Guidelines of KVS. It has also been averred that no tenure has been prescribed by KVS for teaching posts and the transfer order dated 18.11.2014 (Annex. A/1) and relieving order from KV No. 3 Jaipur to KV No. 1 (ASF) Jodhpur on 18.11.2014 (Annex. A/2) has been issued by competent authority in public interest and is well justified and wholly very well sustainable by law as it is well within the purview of the transfer guidelines of the KVS. The transfer order is perfectly legal, valid, justified, without perversity and thorough appreciation of facts and material available on record and further issued after proper consideration of record and in accordance with the law governing the field which deserved to be sustained and maintained by the Hon'ble Tribunal. The criteria for calculation of Transfer Counts & Displacement Counts and method for Request Transfer & Administrative Transfer are clearly defined in the existing transfer guidelines of KVS. It has been reiterated that the applicant was duly served with the transfer order dated 18.11.2014 (Annex. A/1) as well as relieving order dated

18.11.2014 (Annex. A/2) personally and upon the application made by the applicant for sanction for Transfer TA, an amount of Rs 30,000/- was also disbursed to him vide cheque dated 18.11.201 (Annex. R/4) and therefore the contention regarding non communication of transfer order are baseless and merits rejection. The applicant was very much aware about the place of posting as it is evident from the present OA as the applicant himself has mentioned in the address as posted to KV No. 1 (ASF) Jodhpur. Hence, from the facts, circumstances and material available on record it is evident that initiation of the litigation by way of present application by the applicant is a gross misuse of process of Court, therefore, official respondents have prayed that OA merits rejection at the very threshold with exemplary costs as being without substance and merit.

4. Counsel for the respondent No.3 did not file any reply, but submitted during the hearing that he adopts the reply of the official respondents to be his reply. He also submitted official documents relating to the Transfer of respondent No.3 and his relieving from KV No.3 Jaipur and joining at KVS 1 (Air Force) Jodhpur.

5. Heard the parties. Counsel for the applicant contended that the applicant had completed his tenure at Jaisalmer, which is a hard tenure area and was posted to Jaipur, his place of choice on 10.05.2013 (Annexure-A/3). However, just within a short period of one and a half years, the applicant has been transferred from Jaipur to Jodhpur vide order dated 18.11.2014 (Annexure-A/1). He further contended that a bare perusal of the impugned order Annexure-A/1 would clearly show that has been issued in sheer haste

because it has not been mentioned in the order as to which KVS No.1 Jodhpur the applicant has been posted as there are two KVS 1 in Jodhpur i.e. KVS No. 1 (Army) and KVS No.1 (Air Force) and further it has been strangely mentioned that the applicant is not entitled to transfer benefits though the transfer stated to have been made in public interest. However, the applicant being a disciplined soldier found out that he has been transferred to KVS 1 (AF), Jodhpur, from where the respondent No.3 is transferred vice him and fortunately TA/DA advance was given by the Principal of KVS-3 Jaipur. Counsel for the applicant contended that though the transfer is said to have been made in public interest, it is in effect a complete violation of the transfer guidelines issued in 2014-2015 wherein for a request transfer 3 conditions are required to be met i.e. there should be at least 50 transfer counts, one year of service and the person should have applied for the transfer. In this case there is nothing on record regarding fulfilment of these conditions by respondent No.3 but his request transfer has been made and he has displaced the applicant who had '0' displacement count. As per provisions of the Transfer policy, as may be seen in notice dated 19.06.2014 (submitted during the course of the arguments) for inter station request transfer, in order to accommodate a request transferee, 10 to above displacement counts have been fixed for displacement but the applicant has been displaced and transferred even though he had only '0' displacement count.

6. Counsel for the applicant further referred to the reply of the official respondents in which it has been mentioned that the transfer either on request

or public interest or administrative grounds are made as per the Transfer Guidelines of the KVS duly approved by the Board of Government and further that the transfer is perfectly legal, valid, justified, without perversity and thorough facts and material available on record and further issued after proper consideration of record. But despite the pious statement the respondents have clearly violated their own policies and guidelines by transferring the applicant within one and a half years of his joining at his choice posting, and in the reply there is no reference of exercise of powers under para 13 of the Transfer Guidelines which provides for relaxation of any of the guidelines. Counsel for applicant further contended and emphasized that in any case power under any provision, whether under Article 71 of the Education Code or the Transfer Guidelines have to be exercised in a judicious and fair way and not in any arbitrary manner. Counsel for the applicant also contended, with reference to page 19 of the reply wherein it has been mentioned "that initiation of the litigation by way of present application by the applicant is a gross misuse of process of Court" that such observations are highly objectionable, because actually it is the applicant in whose case policy guidelines have been violated and he has only taken recourse to litigation to protect his genuine case and there is no misuse of process of Court whatsoever. Counsel for the applicant also contended that the official respondents in their reply have not specifically clarified or denied that whether there were other persons at Jaipur Station in PGT (History) who had higher displacement counts than the applicant. In view of the above, counsel for the applicant prayed for allowing the OA and setting

aside Annexure-A/1 and directing the respondents that the applicant be posted at Jaipur.

7. Per contra, counsel for the official respondents submitted that though not mentioned in the written reply, the transfer has been made in accordance with Para 13 of the Transfer Guidelines and further contended that as may be seen, from Annexure-R/1 it is clear that the transfer order dated 18.11.2014 (Annexure-A/1) was served on the applicant on 18.11.2014 itself and he was relieved on the same date (Annexure-R/2) and as per Annexure-R/3, the applicant himself applied for advance of Rs.40,000/- on 18.11.2014 and a cheque for Rs.30000/- was also issued (Annexure-R/4) and the applicant has joined his duties on 28.11.2014 at KVS 1 Air Force Jodhpur. Respondent No.3 who was transferred to Jaipur joined his duty on 19.11.2014 at KV 03, Jaipur. Counsel for respondents contended that the applicant in his OA (filed on 24.11.2014) and also while seeking interim relief on 24.11.2014 did not bring to the notice of the Tribunal that the transfer order had already been served on him on 18.11.2014 and he was relieved on the same date (as clear from Annexure-R/1 & R/2) and he had even applied for TA advance on 18.11.2014 (Annexure-R/3) to join his posting KVS at Jodhpur while quoting the transfer and relieving orders dated 18.11.2014. As regards not being entitled for transfer benefits as mentioned in the transfer order Annexure-A/1 the Principal while considering the matter himself sanctioned the TA advance and the applicant himself found out that he was posted to KVS 1 (AF), Jodhpur so it cannot be accepted that he could not know where

he had been transferred. In view of the above position, counsel for the respondents prayed for dismissal of the OA.

8. Counsel for the respondent No.3 submitted that he adopts the reply filed by the official respondents and further submitted that as letter dated 28.11.2014 of KVS No.3 Jhalana Dongri, Jaipur shows that the respondent No.3 has already joined at KVS No.3 Jaipur on 19.11.2014 after being relieved on 18.11.2014 from KVS No.1 (Air Force), in pursuance of his request transfer order dated 18.11.2014 and prayed that respondent No.3 may not be disturbed (above documents submitted during the course of hearing).

9. Considered the rival contentions of the parties and perused the record. It is clear from the record that the transfer order dated 18.11.2014 of the applicant issued in public interest from KVS-03 Jaipur to Jodhpur KVS 1 (Annexure-A/1) and the transfer order of respondent No.3 from Jodhpur KVS 1 to KVS-03 Jaipur on request basis are vice-versa and reciprocal. Further, it apparently does appear that Annexure-A/1, which is the transfer order dated 18.11.2014 of the applicant has been issued in some haste and with errors because the complete address of the school to which the applicant has been transferred has not been mentioned, and though the transfer is stated to be in public interest, it has been mentioned that the applicant is not entitled to any transfer benefits as per rules; though it is also on record that subsequently the applicant was granted TA advance as per Annexure-R/4 in view of his application for advance at Annexure-A/2 and the applicant could also come to know to which KV 1 Jodhpur i.e. KV1 (Air Force) Jodhpur was

where he was posted. The respondents, however, did not issue any correction slip/ clarification in this regard.

10. It is also noted that as per transfer guidelines and letter dated 19.06.2014 that the persons to be displaced, to accommodate a request transfer, have to have a minimum of 10 displacement counts but as per the averments of the applicant he had only '0' displacement count and this has not been denied specifically by the official respondents. The respondents have also not denied or clarified whether there were any station seniors of PGT (History) at Jaipur with higher displacement counts than the applicant regarding the relieving and joining of the applicant. Further, though the counsel for the respondents contended that order has been issued with reference to para 13 of the Transfer Guidelines which provide for relaxation of any or all guidelines but there is no mention of the same in the written reply nor para 13 has been referred to in the file number in Annexure-A/1 which bears the number No.11046/2014-15/KVS9HQ)/Estt-II/VIP.

11. Regarding serving of the transfer order and relieving, it is noted that the applicant was served the transfer order dated 18.11.2014 on that day itself (Annexure-R/1) and he was also relieved on 18.11.2014 (Annexure-R/2) and he has himself recorded these facts in his application for TA advance, as at Annexure-R/3. But in this OA, filed on 24.11.2014, it has been mentioned that "the Principal KV No.3 Jaipur did not communicate the transfer and the relieving order to the applicant till he ensured that the respondent No.3 joins at Jodhpur". It is seen from letter dated 28.11.2014 of KV No.3 Jaipur that the respondent No.3 joined there on 19.11.2014 and the

applicant was served the transfer order as well as relieving order on 18.11.2014 as evident from Annexure-R/1 & R/2 and based on there he himself applied for Rs.40,000/- advance on 18.11.2014 itself (Annexure-R/3) with regard to the transfer order and the relieving order. Thus, it is clear from the record that the applicant was served the transfer and relieving orders on 18.11.2014 itself and on that basis he himself applied for advance on 18.11.2014. From the above position, it appears clear that the applicant and the respondent No.3 have joined their respective places of postings on the basis of the transfer orders made in their respective regards.

12. It is a settled principle that the transfer is an incidence of the service and Court/Tribunal should not ordinarily interfere unless there is a proven malafide or gross violation of the guidelines and this not appears to be so in the present case. Therefore, while not setting aside the Annexure-A/1 but however considering the facts and circumstances of the case that the applicant has averred that he been transferred though having '0' displacement count and that the official respondents have not submitted any position regarding displacement counts of the applicant, or whether any other PGT (History) Teacher at KVS's at Jaipur Station had higher displacement counts and that he has transferred in the mid-session barely after one and a half years of joining at Jaipur (his choice place after hard tenure) and there is no clarity about exercise of power as per Para 13 of the Transfer Guidelines, it is deemed just and proper to give certain directions to the respondents. Accordingly, respondents are directed to inform the applicant about the reasons and grounds for his transfer in mid-session, from his

choice place of posting just within one and half years, and whether the transfer order Annexure-A/1 was issued as per para 13 of the Transfer guidelines and the matter was processed after due consideration and thorough appreciation of facts and these issues were also considered while issuing the request transfer order for respondent No.3, as the two transfers are vice versa. The information with relevant details may be communicated to the applicant within 2 months of the date of receipt of a copy of this order. Thereafter, if any, grievance remains with the applicant, he may approach the appropriate forum as per law.

Accordingly, the OA is disposed of as stated above with no order as to costs.



[Meenakshi Hooja]
Administrative Member

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Copy provided by

Janet Ross

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Rogers, Kent

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