

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00120/2015

Jodhpur, this the 27th day of May, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Babita J Singh W/o Shri Jog Singh, aged 35 years, R/o Plot No.288, New BJS Colony, Jodhpur (Raj)

(Presently posted on the post of TGT Science at Kendriya Vidyalaya, BSF, Jodhpur (Raj).

.....Applicant

By Advocate: Mr. Jog Singh.

Versus

1. Kendriya Vidyalaya Sangathan, through the Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
2. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016.
3. The Deputy Commissioner, Kendriya Vidyalaya Sangathan, (R.O), 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur 302015.
4. The Principal Kendriya Vidyalaya, BSF, Jodhpur (Raj.).
5. Smt. Sushila Kala W/o Shri Ranveer Kala, posted as PGT Biology, at Kendriya Vidyalaya, BSF, Jodhpur (Raj.)

.....Respondents

By Advocate : Mr. Avinash Achariya, for respondents No.1 to 4.
Mr. D.S. Sodha, for respondent No.5.

ORDER (Oral)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 against non consideration of the representation of the applicant for request for modification of place of

"In view of above submissions it is most respectfully prayed that this Original Application may kindly be allowed and the respondent Sangathan, may kindly be directed to consider the candidature of the applicant for the vacant post available at Kendriya Vidyalaya, BSF, Jodhpur or available in any other school of Jodhpur Station.

Any other relief which this Hon'ble Tribunal deem just & proper in the case may also please be awarded.

2. Brief facts of the case as averred by the applicant are that she joined Kendriya Vidyalaya Sangathan (KVS) on the post of TGT Science upon direct recruitment after due process of selection. The applicant was initially posted at Kendriya Vidyalaya, Dwarka, Gujarat and she joined the Sangathan on 01.04.2009. Thereafter, she was posted at Kendriya Vidyalaya, Naliya, Gujarat on 15.09.2009 and she was further transferred on annual transfer to Kendriya Vidyalaya, Jaisalmer on 23.05.2011. Both Naliya and Jaisalmer come under the category of hard station of the Sangathan. It has been further averred that the applicant completed her initial tenure of hard station of three years on 15.09.2012. The respondent Sangathan initiated regular annual request tenure activity for the academic session 2013-2014, in the month of December, 2012. The applicant submitted her claim of priority of request transfer upon completion of hard station tenure and she was given request transfer to Jodhpur station, being her first priority station and applicant joined respondent No.4 i.e. KVS BSF Jodhpur on 06.06.2013. Since then the applicant is working on the post of TGT Science and during the aforesaid period she became eligible for promotion on promotional post of Post Graduate Teacher (PGT) Biology. The respondent Sangathan issued notification for selection on various posts

2013 and 2013-14 where there were 52 posts for the year 2013-2014 for PGT Biology. The applicant submitted application for the post of PGT Biology and appeared in the written examination as scheduled and had her hope of success. During the selection process on the post of PGT Biology, the respondent Sangathan also made selection on the post of PGT to Principal and PRT to TGT through Limited Departmental Examination. It has been specially averred that due to selection process of PGT to Principal, one post of PGT Biology at KVS BSF Jodhpur became vacant, due to selection of Shri V.D. Tailor PGT Biology to the post of Principal and Shri Tailor left the post of PGT Biology to join as Principal and the post became vacant at KVS BSF Jodhpur i.e. the present headquarter of the applicant. It has been further averred that in the hope of getting selection, the applicant submitted an application for consideration of her candidature on the vacant post of PGT Biology at Kendriya Vidyalaya Sangathan, BSF Jodhpur through proper channel and the same was sent to the authorities through Speed Post by respondent No.3. The respondent Sangathan subsequent thereto issued select list with place of posting bearing No.F.11055/PGT/LDE/2014-2015/KVS (HQ)/ Estt.II dated 12.03.2015 (the relevant extract is at Annexure-A/4) wherein despite clear vacancy available at respondent No.4 School the applicant was given promotion transfer to Kendriya Vidyalaya No.5, Jaipur. It has also been submitted that while other candidates were considered for posting at their current station and further the respondent Sangathan in similar matters where candidates selected on the post of Principal were given consideration and their place of

submitted that vide selection list Annexure-A/4 it was given condition to be relieved by 21.03.2015 and acceptance for post of promotion was to be submitted by 16.03.2015. The applicant submitted her willingness and submitted acceptance on 16.03.2015 with prayer to modify the place of posting. Thereafter the respondent Sangathan subsequently extended the last day of relieving from 23.03.2015 to 31.03.2015 and the plea of modification of place of posting of the applicant was not considered and due to family problems applicant had no option but to forego the promotion. The applicant has annexed the status of vacant position of respondent No.4 school KVS BSF Jodhpur as at Annexure-A/7. It has been urged in the grounds that there was vacant post of PGT Biology available at KVS BSF Jodhpur but the application of the applicant was not considered which is unjust and arbitrary and there is no policy or technical difficulty that restricts the authorities to transfer and post the applicant on promotion post to KVS BSF Jodhpur. The applicant has already completed her hard station tenure and in view of the vacancy at Jodhpur and her family problems her application for modification for her posting as PGT Biology at KVS BSF Jodhpur deserves due consideration and acceptance and it has thus been prayed that the OA be allowed.

3. By way of reply, it has been averred that services of the Kendriya Vidyalaya Sangathan employees are liable for transfer anywhere in India and in the instant case, the applicant is TGT Science KVS BSF Jodhpur, who had been given offer of promotion from TGT Science to PGT Biology

applicant did not join on promotion to KV No.5 Jaipur as PGT Biology and represented for modification of her posting to KV, BSF Jodhpur. It has been further averred that at present there is no vacancy of PGT (Biology) at KV BSF Jodhpur due to transfer of Smt. Sushila Kala, PGT Biology from KV Guna to KV BSF Jodhpur vide transfer order dated 15.04.2015. It has also been averred that the applicant had been asked to submit unconditional acceptance against offer of promotion vide memo dated 12.03.2015 but the applicant submitted her acceptance with a modification for posting. It has been averred that the orders have been issued by the respondent organization after proper consideration of record and hence it has been prayed that the claim of the applicant be rejected as being without substance and merit.

4. During the pendency of this OA No.120/2015, an MA No.90/2015 was filed by Smt. Sushila Kala posted at KV BSF Jodhpur on the post of PGT Biology for being impleaded as party and the same was allowed by this Tribunal vide order dated 29.04.2015 and amended cause title was filed by the counsel for the impleaded party. In this MA, the applicant Smt. Sushila Kala (who is now respondent No.5 in the OA) averred that upon her promotion as PGT Biology, she was given promotion posting at the same school i.e. KV, Guna (MP) on the post of PGT (Biology) (reference serial No.11) vide order dated 12.03.2015 (Annexure-R/5/1). It has been further averred that she was thereafter transferred to KV BSF Jodhpur vide transfer order dated 15.04.2015 (Annexure-R/5/2) and she joined at KV BSF

to KV No.5 Mansarovar Jaipur, which is also her home town and has submitted in the MA that if the applicant Smt. Babita J Singh is granted relief and retained at Jodhpur she may be considered for posting to KVS No.5 Jaipur, so that she can be accommodated in her home place.

5. Counsel for the applicant has filed the rejoinder to the reply filed by the official respondents No.1 to 4 and has annexed further documents as at Annexure-A/8, A/9 and A/10.

6. Heard. Counsel for the applicant contended that the applicant had been working as TGT (Science) and was posted KVS BSF Jodhpur on 06.06.2013. She appeared in the Limited Departmental Examination of KVS for the post of PGT (Biology) and anticipating her success, and having completed her hard station tenure at Jaisalmer and Naliya, requested that in case she becomes due for promotion, she may be posted as PGT Biology in KVS BSF Jodhpur itself, as the post had become vacant due to promotion of Shri V.D. Tailor, PGT Biology to the post of Principal. This application dated 25.02.2015 was addressed to Commissioner, KVS New Delhi and duly forwarded through proper channel (Annexure-A/3). However, vide Annexure-A/4 dated 12.03.2015 transfer on promotions were made in which the applicant (who is at serial No.53) was posted from KV BSF Jodhpur to KV No.5 Jaipur on promotion to the post of PGT Biology after having passed the LDE panel for the year 2013-2014. Thereafter, as required the applicant submitted her willingness to accept the offer of promotion vide letter dated 16.03.2015 (Annexure-A/5) with the

submitted, so that she could be accommodated as PGT (Biology) on promotion at KVS BSF Jodhpur itself. In the meanwhile respondents issued Annexure-A/6, dated 17.03.2015, a general letter, in which the relieving date was extended upto 31.03.2015 and teachers were directed to join the promotion post on or before 10.04.2015. The applicant approached this Tribunal and filed the present OA No.120/2015 and this Tribunal vide order dated 31.03.2015 granted stay order on the relieving of the applicant. In this regard, counsel for the applicant contended that Annexures-A/3 and A/5 which are applications/representations of the applicant have not been properly considered by the respondent authorities and though she has completed hard tenure stations at Jaisalmer and Naliya and had remained at Jodhpur only for one year and 10 months, her prayer has not been accepted, though the post of PGT (Biology) at KVS BSF, Jodhpur was vacant earlier. He further contended that during the pendency of the OA, though the applicant has not been relieved but the post of PGT (Biology) has since been filled up, by posting of respondent No.5, Smt. Sushila Kala, vide order dated 15.04.2015 and the respondent No.5 has joined on 18.04.2015 at KVS BSF Jodhpur. In this connection, counsel for the applicant also referred to MA No.90/2015 of respondent No.5, Smt. Shshila Kala, in which it has been averred that initially the respondent No.5 had been promoted from TGT (Science) to PGT Biology at Guna itself, but later transferred to KVS BSF Jodhpur. He further referred to the MA and submitted that actually the respondent No.5 has already given her preference for posting at KV No.5 Jaipur which post is presently vacant,

(Biology) will become vacant at KVS BSF Jodhpur and the applicant can easily be accommodated at Jodhpur. Counsel for the applicant also submitted that annual transfer are in process and posts will be filled up any time in the month June itself and prayed for allowing of the OA.

7. Counsel for the respondent No.5 submitted that respondent No.5 is willing to join as PGT (Biology) at Jaipur and has already submitted a representation in this regard Annexure-R/5/3 dated 21.04.2015 and presently a post is vacant at KV No.5 at Jaipur, where the applicant has been transferred and not joined as yet.

8. Counsel for the official respondents submits that transfer is an incidence of service and the transfer orders, passed in the case of applicant as well as respondent No.5 are in accordance with the policy and service jurisprudence, and as held by the Hon'ble Apex Court that the Courts or Tribunals should not ordinarily interfere with the transfer orders unless there is proven malafide, violation of rules or the same has been passed by a incompetent authority. He further contended that as conditions laid down in para 5 of Annexure-A/4, no modification will be accepted regarding either change of place of posting or for extension of time to join the post and accordingly applicant is not entitled to any relief.

9. In this context, counsel for the applicant submitted that though the conditions of the modification is there but in the case of one Shri S.S. Nahar certain modification has been made as per his request, but in the case

the same has been denied and the request of the applicant is

10. Considered the contentions of all the parties and perused the record. It is a settled principle of law that transfer is an incidence of service and no one has a right to any place of posting and the orders of transfer may not be ordinarily interfere by the Courts or Tribunals unless there is proven malafide and gross violation of violation of the policy/guidelines, which does not appear in the present case. However, after seeing the facts and circumstances of the case, it appears that both the applicant and respondent No.5 are lady Teachers, who have their genuine problems, and they have also filed their representations (the applicant has filed representation dated 25.02.2015 at Annexure-A/3 and 16.03.2015 Annexure-A/5 for KVS, BSF Jodhpur and respondent No.5 has filed her representation dated 21.04.2015 as at Annexure-R5/3 for KV No.5 Jaipur) and therefore the representations are now for mutual adjustment. It is also seen that in the case of respondent No.5 the modification order from Guna to Jodhpur has been made, and now both applicant and respondent No.5 are at Jodhpur, therefore it would be just and appropriate for the official respondents to consider their cases sympathetically so that the genuine problem of the applicant and respondent No.5 as resolved and the organization can have a suitable harmonious working environment. It is therefore proposed to dispose of this OA with certain directions:

- (i) The official respondents are directed to sympathetically consider the case of the applicant and the respondent No.5 keeping in view their representations i.e applicant for being posted as PGT (Biology) at KVS, BSF Jodhpur.

and take a suitable decision on the same at the earliest and within a month from the date of receipt of a copy of this order.

- (ii) Further the respondents are also directed to keep the post of PGT (Biology) at KV No.5 Jaipur vacant, till the decision on the representations is taken by the respondents and the IR granted to the applicant will also continue till then.

The OA is thus disposed of with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member

Rss

R/C
Pender
3/6/15

R/C
on 4/1/15
Bhale
Joylyn

R/C
Larkin
3/6/15
Fur - D. S. Lohra
Dor