

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

Original Application No.477/2007
 This the 3rd day of November 2008

HON'BLE MR. M. KANTHAIAH, MEMBER (J).
HON'BLE MR. SHALINDER PANDEY, MEMBER (A).

1. Arvind Kumar Swarankar, aged about 29 years S/o Sri Vijay Kumar Swarankar R/o 554/124, Kailashpuri, Alambagh, Lucknow.
2. Mahesh Pratap Singh, aged about 32 years S/o Late Shyam Sunder Singh R/o No-7B, Ashiana, Lucknow.

...Applicant.

By Advocate: Shri A. Moin.

Versus.

1. Kendriya Vidyalaya Sangthan 18 Institutional Area, Shahidjeet Singh Marg, New Delhi through Commission.
2. Assistant Commissioner, Kendriya Vidyalaya Sangthan, Sector -J, Aliganj, Lucknow.
3. Principal, Kendriya Vidyalaya, AMC, Lucknow.
4. Smt. Krishna Purohit aged about 40 years W/o Shri C.D. Purohit R/o D-1/65-A, Sector-'F', Jankipuram, Lucknow.

...Respondents.

By Advocate: Shri Surendran P for Official respondents.

Shri Praveen Kumar for Private Respondent No.4.

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ORDER**BY MR. M. KANTHAIAH, MEMBER JUDICIAL.**

The applicants No. 1 and 2 have filed the OA under Section-19 of Administrative Tribunal Act, 1985 with a prayer to quash para 9.1, 9.3 (ii) of the transfer guidelines (Annexure-A-2) and also to quash the transfer order Dt. 28.2.2007 (Annexure-A-1) under which they have been transferred from Lucknow to North East Region and also order Dt. 23.2.2007 with all consequential benefits including arrears of pay etc.

2. The respondent No. 1 to 3 have filed Counter Affidavit stating that the transfer guidelines covered under Annexure-A-2 has no statutory force and the transfer order Annexure-A-1 is neither against any statutory rules nor malafide and further, it has already *been* given effect to by *relieving* the applicants in compliance of the transfer order and thus, prayed for dismissal of the OA. Respondent No.4 did not file any reply/ Counter Affidavit but adopted Counter Affidavit filed by the Respondent No.1 to 3.
3. The applicants have filed Rejoinder Affidavit, denying the stand taken by the respondents and also reiterated their pleas in the OA.
4. Heard both side Advocates.
5. The point for consideration is whether the applicant is entitled for the relief as prayed for.
6. The admitted facts of the case are that the applicant no1 was initially appointed as Primary Teacher on 07.11.2003 at KVS, at Agratala i.e. North East Region and ~~worked there till~~ June, 2005. On

his personal request, he was transferred from Agratala to Lucknow by means of order Dt. 10.06.2005 (Annexure-3) and upon which, he joined in K.V.S. AMC, Lucknow on 12.07.2005 and while working there the respondent authorities have issued impugned transfer order Dt. 28.02.2007 (Annexure-A-1) transferring him from K.V.S. , AM.C. , Lucknow to North East Region at Silichar. As per records, 01.01.1978 is his date of birth.

7. In respect of applicant No.2, he was initially appointed on 25.08.2003 in KVS, Imphal, Manipur in North East Region and worked there till 09.08.2005 and thereafter, he was transferred on 28.7.2005 on his request from Imphal to KVS, AMC, Lucknow. Annexure-A-4 is the copy of his transfer order Dt. 28.7.2005 to AMC, Lucknow. As per records, his date of birth is 04.04.1974. While he has been working at KVS, AMC, Lucknow, the respondent authorities have transferred him to North East Region at Guwahati. Along with these applicants 1 and 2, eight other teachers have been affected under impugned transfer order Annexure-A-1.

8. The applicants have mainly challenged para 9.(1) and 9.3 (ii) of the transfer guidelines Dt. 14.3.2006 (Anexure-2) on the ground that *the provision that* one tenure posting of all male teachers in priority areas will be mandatory before they complete 35 years of age is in violation of Article 15 (1) and 16 (2) of the Constitution of India. They also stated that by means of impugned para in Annexure-A-2, discrimination is sought to be made out to the applicants who are below 35 years of age and male teachers in as much as both male teachers above the age of 35 years and female teachers ~~without any age bar~~ have been excluded from being transferred out to priority stations.



9. The applicants have also sought the relief to quash the transfer orders (Annexure-A-1), which the respondents have issued basing on the transfer guidelines (Annexure-A-2) and also consequential relief.

10. Admittedly, the respondents organization framed transfer guidelines(Annexure-A-2) in the year 2006 as there is no statutory provision for effecting transfer of their employees. Annexure-A-2 is the transfer guidelines/ policy adopted by the respondents , which it would endeavour to exercise in the best interest of the students, with due regard to the principles of equity and transparency vis-à-vis its employees.. The guidelines of Annexure-A-2 , which are under challenge is as follows:-

"Para 9. CRITERIA FOR EFFECTING ADMINISTRATIVE TRANSFERS INTO AND OUT OF PRIORITY AREAS:-

(1). One tenure of all male teachers/ officer and non- teaching staff in the rank of Superintendent and above in Priority Areas will be mandatory before they complete 35 years of age.

1(A). The minimum tenure which every employee, once posted in priority areas will have to complete in such areas will be as follows:-

No	Type of Station	Minimum tenure (In years)
1.	North Eastern Region (Except its Very Hard Stations and Hard Stations elsewhere)	03
2.	Very Hard Stations	02

Explanation:- Where a person has worked in stations of both the kinds mentioned above, tenure at a station of category (2), will be treated as being equivalent to $1 \frac{1}{2}$ times the tenure at a station of category (1) for purposes of determining whether he has completed the minimum prescribed tenure.

(2). -----

(3). As per the objection of the transfer policy as mentioned in para 1.3 (i), the procedure for transferring ----- to filling vacant post in Kendriya Vidyalaya Sangathan in priority areas shall be as follows:-

(i). Vacancies in KVs in Priority areas shall be published on the website of KVS and all Regional Officers, **by 31st January**, and applications of willing persons will be invited **up to 15th February**, for transfer to such vacancies. Based on applications received, orders posting teachers/ employees to vacant post in KVs, of their choice, shall be issued by the Commissioner, **by 25th February**.

(ii). In addition to (i) above, 25 % of anticipated vacancies in KVs located in Priority Areas as on 1st April of the following years will be filed up through administrative transfers. To fill up vacancies to this extent, senior most male teachers up to 35 years of age, as on 31st March of the year, based on all Indian seniority list, who have not completed prescribed minimum tenure in Priority Areas shall be transferred to such areas subject to their not belonging to MDG, DSP and Physically challenged categories. In addition , during 2006, those teachers who have completed less than one year at the present place of posting as on 31.02.2006 shall not be transferred to Priority Areas except on request.

(iii). Inter-regional Transfer of teachers as per (ii) above will be ordered by the Commissioner, specifying the region but generally without specifying the school, **by 25th February**. Posting to specific schools will be done by the Assistant Commissioner on the recommendations of the Regional Transfer Committee, **by 10th March.**"

11. It is the case of the applicants that para 9.1 , which provides that one tenure posting of all male teachers / Officers and non-teaching staff in the rank of Superintendent and above in Priority Areas will be mandatory before they complete 35 years of age, is in

violation of Article -15 (i) and 16 (ii) of the Constitution of India. There is

no dispute that the Authority ~~have formulated the~~ policy (Annexure-A-2) under para 9.1

clearly provides for shows that one tenure posting of all male teachers / Officers and non-teaching staff in the rank of Superintendent and above in Priority

Areas will be mandatory before they complete 35 years of age. From

above 35 years of age are exempt from this, it is clear that authority have made mandatory for male

his mandatory posting.

~~teachers/officers for their one tenure posting in priority area that too~~

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The policy
 before they complete 35 years of age. It also provides exemption to the lady teachers/ officers and male officers above the age group of 35 years posting.

12. The case of the applicants is that by means of restriction, discrimination is sought to be meted out to the applicants who were below 35 years of age and male teachers in as much as both male teachers above the age of 35 years and female teachers without any age bar have been excluded from being transferred out to priority stations which makes the impugned paragraph 9(1) and ((3) (ii) are of violative of Article 15 (1) and 16 (2) of the Constitution.

13. But under Article -15 (3), it is open to the State ~~for making~~ any special provision for women and children and when such relaxation is available for women, it is not open to the applicants to say that there was any discrimination on the ground of gender to the male teachers.

14. The authorities have also framed such guidelines restricting one tenure posting to all male teachers/ officers with age group i.e. before they complete 35 years of age for such compulsory working in priority areas. Priority areas defined in apra-2.XI of the transfer guidelines means the North Eastern Region (including Sikkim), A&N Islands and hard and very hard stations elsewhere. Working in priority areas either at the time of retirement or after crossing certain age, naturally causes difficulty to the employees because of their *personal* ~~personnel~~ and family problems and in such circumstances restricting the age group of all the male employees with certain age for their working in priority areas ~~will not effect any of the employees and the~~ *Cannot* ~~same will not be~~ treated as discrimination. Thus, the arguments of

the applicants that pare-9.1 of Transfer guidelines/transferring of male teachers/ officers in priority area for one tenure before the completion 35 years of age is neither against Article -15 (1) and 16 (2) of the Constitution nor in violation of the said articles.

15. The applicants have also challenged pare 9.(3) (ii) of the transfer policy Annexure-A-2, which is in respect of the procedure for transferring to fill up the vacant post in priority areas.

16. Pare-9.3 (ii) states that ~~to filing up above~~ 25 % of anticipated vacancies in KVS located in priority areas will be ^{filled} filed up through administrative transfers from senior most male teachers up to 35 years of age, as on 31st March of the year, based on all Indian seniority list, who have not completed prescribed minimum tenure in priority area. When the authorities have fixed certain age of anticipated vacancies in priority areas from senior most male teachers up to 35 years of age based on All India Seniority list and when the same is made applicable to one and all male teachers with certain age limit, it is not at all discriminatory ~~in fixing or restricting age limit.~~

17. From the above discussions, it is clear that pare-9.1 and 9.3 (ii) of the transfer guidelines (AnnexureA-2) ~~provides for transfer of male teachers below 35 years of age to the priority areas, who have not completed prescribed minimum tenure,~~ ^{are} not discriminatory and also not in violation of Article -15 (i) and 16 (2) of the Constitution and as such the said arguments of the applicants have no merits.

18. The applicants have also challenged their transfers orders (Annexure-A-1) on the ground that the authorities have not followed the procedure covered under Para-9-(3) of the transfer guidelines in

providing that these respect of the vacancies in KVS in priority areas shall be published on the website of KVS and all Regional Officers, by 31st January, and applications of willing persons will be invited up to 15th February, for transfer to such vacancies and also issuance of inter-regional transfers of the teachers by 25th February and posting to specific shall be concerned Assistant Commissioner on the recommendation of Regional Transfer Committee by 10 March as provided in para-9.(i) and (iii) of the (Annexure-A-2).

19. The respondents have filed their Counter Affidavit stating that the transfer of the applicants have been issued by Commissioner, KVS, New Delhi through Memorandum No. F.4-1 /2007-08/KVS (ESTT.II) dated 23.02.2007, which has been conveyed by the Assistant Commissioner, KVS, Lucknow Region, Lucknow by Memorandum dated 28.02.2007 Annexure-CA-1 to the Short CA is the copy of Memorandum Dt. 23.02.2007 issued by the Commissioner. They have also further stated that the applicants have been called in the chamber of Principal of KVS, AMC, Lucknow but they refused to give choice places and also refused to give their denial in writing and in support of it they have relied on such letter of the Principal, KVS, AMC, Lucknow, annexed as Annexure-CA-2. In respect of All India Seniority List, they have stated that such list is available in every library of the KVS and employees can see their names in such seniority list.

20. The applicants have not disputed in respect of the orders issued by the Commissioner Dt. 23.2.2007 (Annexure-CA-1) to the short CA but denied that they were called in the chamber of the Principal, KVS, AMC, Lucknow at any stage and stated that the letter Dt. 15.3.2007 (Annexure-CA-2) is nothing but a fabricated letter

obviously written under pressure of the Respondent NO.3. In respect of availability of All India seniority list of the teachers the library of the KVS, the applicants have denied and stated that such list has to be specially endorsed to the concerned staff.

21. Form the above pleadings of the parties, it is clear that the respondent authorities have not supplied the copy of All India Seniority List to the concerned staff and the same is available in the libraries of the concerned school. In respect of the claim of the applicants that they were called upon to submit any of the applications for transfers as provide in para-9.(3) (i) and the same is in respect of the application of willing persons from their transfers to the priority areas but in the instant case, it is not the case of either of the parties that the transfers of these applicants have been effected on obtaining the willingness as provided under para-9.(iii) and as such, the applicants are not entitled to seek any protection under para-9.(3) (1) of the transfer guidelines on the ground that no opportunity was given to them for submission of their applications for transfer for their posting in priority areas.

22. In respect of non-compliance of pare-9.(3) (ii) of the transfer guidelines (Annexure-A-2) that they have been deprived of knowing their seniority position in the All India Seniority List, it is not the case of the applicants that ignoring their seniors who are up to the age of 35, they have been shifted with this transfer order causing any prejudice to them. Further, non supply of the copy of All India /Seniority List to the applicants is not at all a valid and justified ground to question the authorities for their transfers covered under Annexure-A-1) Dt. 28.2.2007. The applicants are justified to question

the authorities, if any of their seniors are leftover without effecting transfer to priority areas but in the instant case, it is not at all their complaint and as such, applicants are not justified to seek any relief on the ground of non supply of the copy of All India Seniority List to them.

23. Though the applicants have raised objections in respect of inter regional transfer of teachers by the Commissioner as provided under para-9.(3) (iii) of the transfer guidelines but the respondents have filed the copy of such orders of Commissioners Dt. 23.2.2007 (Annexure-CA-1) to the short CA itself proved, compliance of para 9 (3) by the commissioner and thus, the applicants have not made out any case to question their transfer order even on this ground also.

24. In view of the above discussions, it is clear that the applicants have not made out any case to challenge the transfer order (Annexure-A-1) transferring them from Lucknow to Priority arrears on the ground of non-compliance of para-9. (1) and 9 (3) (ii) of Transfer guidelines Annexure-A-2 and thus, there are no merits in questioning the validity of transfer order (Annexure-1) transferring them to ^{the} North East Region.

25. The applicants have also taken a ground that the policy itself provides that those who have completed less than one year at the present place of posting as on 31.3.2006 shall not be transferred to priority areas, while the applicant No.1 and 2 have been working in the present place of posting from 12.07.2005 and 16.08.2005 and thus they stated that their transfer is against para-9.3 (ii). The respondents have denied the same stating that the provision for completion of one year as on 31.03.2006 was for the session 2006-07 which has

been extended for the session 2007-08 and hence as per para 9-(3) of transfer guidelines the cut off date for completion of one year at present station is 31.03.2007 ~~but~~ ^{and} not 31.03.2006. Admittedly, the transfer order of these applicants pertains ~~to~~ for the period of 2007-2008. No doubt there was cut off date in para-9.(3) (ii) of the transfer guidelines for completion of one year as on 31.03.2006, ~~when~~ ^{but the} cut off date as on 31.03.2006, admittedly relating to the academic year 2006-2007. Thus even for effecting the transfers for academic year 2007-2008, taking cut off date as 31.03.2006 for completion of one year in the present place of posting is not at all correct. ~~and as such, arguments of the applicants is not at all maintainable.~~

26. It is the case of the applicant that they have already spent almost 2 years at hard station at North East Region but by way of para-9.(i) of the transfer guidelines also provides that one term posting of all male teachers/ officers and non-teaching staff in the rank of Superintendent and above in priority areas will be mandatory before they complete 35 years of age. But per para-9.(1) of the transfer guidelines, the minimum tenure which every employee, once posted in priority areas has been given as three years in North East Region, where 2 years in Very Hard Stations. When once they completed working of one tenure posting in priority areas again asking them to work in priority areas basing on para-9.(1) of the transfer guidelines cannot be applied retrospectively when they have already rendered almost 2 years service in North East Region and thus, the said para-9 would not ^{be} applicable to them. Admittedly, the applicants have not completed the minimum prescribed tenure as provided in para-9.(1) and 1(A) of the transfer guidelines. The arguments of the applicant

that the transfer guidelines under Annexure-A-2 Dt. 14.02.2006 cannot be allowed retrospectively is not at justified on the ground that they worked for one tenure posting in priority areas, ~~which is~~ sufficient without completion of minimum tenure as provided in para 9.(1) of the transfer guidelines is ~~not at all justified~~.

27. The applicants have also taken a ground that they have been posted from Hard Station to Lucknow on their personal request and even without completing one and half year of service at Lucknow they ~~have~~ again ^{been} transferred to priority ~~area~~ ^{area} is not at all correct and on that ground transfer order has to be set-aside.

28. Admittedly, by virtue of this impugned transfer order (Annexure-A-1), the earlier request transfer order of the applicants have not been cancelled, as such, it is not open to the applicants to canvas that their earlier request have been cancelled by way of impugned transfer order (Annexure-A-1). After their request transfers, admittedly the applicants have worked one and half year at the request place at Lucknow and because of new transfer policy i.e. (Annexure-A-2) they are the available teachers for their shifting to priority areas and in such circumstances, the applicants are not justified ⁱⁿ ~~to seek~~ ^{for} continuances of their posting on transfer request even after new policy came into force and as such, the said claim of the applicants is not at all correct and thus not ~~maintainable~~ ^{tenable}.

29. The applicants have also challenged the transfer order (Annexure-A-1) on the ground that after announcement of Elections in the State of U.P. a model code of conduct has also come in to force and taking in to consideration that the teachers of the KVS are usually assigned election duties, the impugned transfer order is thus

patently vitiated being violative of ^{the} code of conduct. The respondents have filed Counter Affidavit stating that KVS does not come ^{under} in ^{the} control of U.P. Govt. and as such there is no violation of model code of conduct as alleged by the applicants. They further stated that as per the transfer guidelines (Annexure-A-2), calendar activities the date of issuing the transfer under para-9 by the respondents is 25th February, which the Assistant Commissioner, KVS informed the applicants by way of order Dt. 28.02.2007 (Ann-A-1). Thus, they stated that there was no violation of any code of conduct of election as contended by the applicants.

30. The applicants have filed Rejoinder Affidavit, stating as per the Pres Note Dt.21.02.2007 the model code of conduct has come in to force w.e.f. 21.02.2007 itself and the same is applicable to the State Government and the Union Government. They further stated that respondents being a Society and admittedly is governed by the Government of India as per the prescribed procedures is thus bound by the directions of the Election Commission of India. As per the model code of conduct, the Commission has directed that there shall be a total ban on the transfer of all officers/ officials connected with the conduct of the elections including but not restricted to officers drafted for election work etc. They also further stated that they have taken specific plea in the OA staging that the teachers of KVS are assigned duty in the elections and as such, keeping bar of the Election Commission prohibiting for passing any orders or transfer after 21.2.2007 and in the instant transfer order having been passed on 28.02.,2007 and 23.02.2007 is in the teeth of the Order of the Election Commission and as such the impugned transfer order merits

outright quashing alone. The applicants have also relied on the relevant extract of the Press Note dated 21.02.2007 along with code of conduct Dt. 07.01.2007 issued by the Election Commission of India as (Annexure-R-1 to the Short RA) filed to the short C.A. It is the case of the respondents ~~also pleaded~~ that the applicants were relieved before forwarding the names of the employees of KVS. AMC, Lucknow for the Election Commission for election duties and the names of the applicants have not been forwarded to the Election Commission. Thus, they stated that specific permission for transfer of the applicants is not required. They have filed copy of the letter Dt. 6.3.2007 alongwith the list of employees of K.V.S., A.M.C., Lucknow addressed to the District Magistrate as Annexure CA-1).

31. The applicants, who have filed this OA on 8.3.2007 also ~~held~~ filed copy of relieving order of the applicant No.1 and 2 as Annexure-A-7 Dt. 5.3.2007 and Dt. 6.3.2007 respectively. They have also questioned the said impugned relieving order Annexure-A-7 and Annexure-A-8.

32. From the records placed by both the parties, it is clear that Election Commission of India issued a Press Note Dt. 21.02.2007 (Annexure RA-1 to the RA to the Short CA) stating that the model code of conduct has come in to effect immediately ~~from now onwards~~. Clause 21 of Annexure-RA-1 is in respect of the said model code of conduct. The transfers of the applicants have been effected by the Respondent No.1 vide order Dt. 28.02.2007 (Annexure-CA-1) and by the Respondent No.2 vide order Dt. 28.02.2007 (Annexure-A-1). The ~~e~~ relieving order of the applicant No. 1 and 2 are dated 5.3.2007 and 6.3.2007 (Annexure-RA-7 and 8). From this it is clear that the

transfer order of the appellants have been effected after the model code of conduct came ^{into} ~~in the~~ effect from 21.02.2007. Though, the names of the applicants have not been furnished to the District Election Authority while sending the list of the employees of KVS, AMC, Lucknow but such transfer orders have been issued subsequently after the model code of conduct came into effect. Clause -21 of the Press Note issued by the Election Commission of India also clearly sows ^{The} ~~that~~ code applying within the state of UP and will be applicable to all the candidates, political parties, the State Government and the Union Government.

33. From the above circumstances, it is clear that the respondent authorities have effected the transfer of the applicant no. 1 and 2 after the Model Code of Conduct issued by the Election Commission came into force w.e.f. 21.02.2007, which is nothing but violation of ^{The} Model Code of Conduct and as such applicants are justified in challenging the impugned transfer order Dt. 28.2.2007 (Ann.A-1) relating to the applicant no.1 and 2 and as such the same is liable to be set-aside unless the same is got approved by the Election Commission. However, at this distant date when the elections have already been held, cancellation of the transfer orders would not serve the purpose for which the Model Code of Conduct is promulgated and could in fact ^{be} against the academic interest of students of the various schools under the Sangathan. We, therefore decide, ^{mark instead} ~~instant~~ of setting aside these two transfers in mid-session, to refer the matter to the Commissioner, KVS for an investigation on the

circumstances in which the transfer orders were issued in violation of the Model Code of Conduct and to take such action (including, if so desired, cancellation or modification of the transfer) as may be deemed appropriate in the matter. *and all
transfer order shall continue.*

34. In the result, the OA is partly allowed only in respect of the direction issued in the case transfer of the applicants vide transfer order vide transfer order Dt. 28.02.2007 (Ann-A-1) and in respect of the other relief questioning the validity of para-1, 9.3 (ii) of the provisions of transfer guidelines (Ann-1-2) is dismissed. No costs.



(Shailendra Pandey)
Member (A)



(M. Kanathaiah)
Member (J)

03.12.2008

Amit