

Central Administrative Tribunal , Lucknow Bench, Lucknow.

Original Application No.419/2011

Order Reserved on 24.03.2014

Pronounced on 15/5/14

Hon'ble Sri Navneet Kumar, Member (J)
HoN'BLE Ms. Jayati Chandra, Member (A)

Neena Kureel,
a/a 50 years,
W/o Sri Virendra Kumar
R/o 3/148. Vivek Khand,
Gomti Nagar,
Lucknow.

Applicant

By Advocate: A. Moin.

Versus

1. Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh, Marg,
New Delhi-16,
Through its Chairman.
2. Commissioner,
Kendriya Vidyalaya Sangathan,
18 Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-16.
3. Education Officer,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-16.
4. Principal,
Kendriya Vidyalaya,
Aliganj,
Lucknow.
5. Smt. Jyoti Srivastava,
TGT (Hindi), Posted at KV,
Aliganj, Lucknow.

Respondents

By Advocate: Surendran P.

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present O.A. is preferred by the applicant under Section 19

of the AT Act, 1985 with the following reliefs:-

(i) quash/ set aside the transfer order dated 14/16-9-2011 issued by the opposite party No. 3 and the relieving order dated 23.9.2011 passed by the opposite party No. 4 , the photo copy of which are contained in Annexure No. 1 and 2 to the original application.

(ii) extend the benefit of the judgment and order dated 12.7.2011 passed in O.A. No. 235 of 2011 (Smt. Rama) Bahaduria Vs. KVs and Others) and other connected matters, to the applicant.

(iii) direct the opposite parties to allow the applicant to work at Kendriya Vidyalaya, Aliganj, Lucknow , wherfrom the applicant has been transferred and pay her salary regularly as and when the same falls due.

(iii) (a) issue a writ order or direction in the nature of certiorari quashing thereby the order dated 30.11.2011 passed by opposite party N. 2 the photo copy of which is contained in the annexure No. 19 to the O.A.

(iv) direct the opposite parties not to implement the New Transfer Guidelines which are effective w.e.f. 1st April 2011, retrospectively and implement them prospectively only in the light of the judgment and order dated 12.7.2011 passed in O.A. No. 235/2010(Smt. Rama Bhaduria Vs. KVS and Others), the photo copy of the which is contained as annexure No. 9 to the application.

(v) pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(vi) award the cost of the application.

2. The brief facts are that the applicant was appointed as Primary Teacher in Kendriya Vidyalaya Sangathan in the year 1984 and subsequently on being promoted as Trained Graduate Teacher (Hindi), she was posted on 25.5.1996 at Kendriya Vidyalaya Gomti Nagar, Lucknow. Thereafter, she was transferred in the exigency of service for short periods to Kolkatta and Kanpur as stated in paras 4.7, 4.8 and 4.9 of the application till the impugned order of transfer dated 16.9.2011. By means of the impugned order of transfer dated 16.9.2011, she was transferred to Kendriya Vidyalaya ,Seoli, Malwa and relieved also on 23.9.2011 from Kendriya Vidyalaya, Aliganj, Lucknow. Subsequent to being relieved, she made a representation dated 24.9.2011. On the basis of direction of the Tribunal, the respondents have considered the said representation and after giving its due consideration rejected the same no merits. Not only this, another representation dated 14.1.2012 has also been decided by the

respondents on the basis of an order of this Tribunal dated 15.2.2012. On both the occasions, the respondents have considered the claim of the applicant on merits.

3. The learned counsel for the applicant also prayed in the present O.A. that the benefit of judgment and order dated 12.7.2011 passed in O.A. No. 235 of 2011 Smt. Rama Bhaduria Vs. KVS and Others be extended to the applicant and the New Transfer Guidelines, which are effective w.e.f. 1st April 2011, shall not be given effect to retrospectively and the same shall be given effect prospectively only in the light of the judgment of Smt. Rama Bhaduria Vs. KVS. Apart from this, it is also argued by the learned counsel for the applicant that the counting of the displacement count should be as per the New Transfer Guidelines and it shall not be in terms of the previous guidelines.

4. The learned counsel appearing on behalf of the respondents filed their reply and has also filed the preliminary objections and through their counter reply, it is indicated by the respondents that the KVS is an autonomous organization registered under Societies Registration Act and fully financed by the Government of India and has also pointed out that the employees appointed in KVS are liable for transfer anywhere in India. The New Transfer Guidelines came into force w.e.f. 1.4.2011 which was duly approved by the Board of Governors which is an apex policy making body of KVS. It is also pointed out by the respondents that the applicant who was working in Lucknow Station was transferred to KVS Seoli Malwa is under the provisions of KVS Transfer Guidelines. The Tribunal issued certain directions for disposal of the applicant's representations and in pursuance thereof, the respondents passed the speaking order and the representation of the applicant considered sympathetically and she could not be retained in KVS ALiganj Lucknow owing to want of vacancy but her transfer order was modified to KV Gomtinagar 2nd Shift at her own request vide modification order dated 30.3.2012.

As regard shifting her transfer in place of Smt. Jyoti Srivastava TGT Hindi is concerned, is not possible since, Smt. Jyoti Srivastava has been posted at KVS Aliganj, as per para 13 of the transfer guidelines. The learned counsel for the respondents has also categorically pointed out that on account of modification of the transfer order, the present O.A. has rendered infructuous and the same is liable to be dismissed. Undoubtedly the New Transfer Guidelines were issued and were given effect to w.e.f. 1.4.2011. The said transfer guidelines were for a non-teaching staff of KVS for smooth functioning of education activities in the interest of the students of KVS and the said transfer guidelines were approved by the Board of Governors in its 89th Meeting held on 3.11.2010 and to new Articles 71 (A) and 71 (B) are inserted in the Education Code for KVS in place of Article 71 which will remained effective till 31.3.2011 and Article 71 (A) deals with transfer guidelines for teachers up to PGT and others up to Assistants and Article 71 (B) deals with Transfer guidelines for Group 'A' and Group 'B' (Section Officers & above) employees. It is also indicated by the respondents that the transfer of the applicant was made as per Para 13 of the New Transfer policy. Not only this, it is also pointed out by the learned counsel for the respondents that since transfer order dated 14/16.9.2011 is not in existence as it has been modified vide order dated 30.3.2012 transferring the applicant to KVS Gomtinagar 2nd Shift on her own request and the applicant joined on 2.4.12, the present O.A. rendered infructuous. As such the same is liable to be dismissed.

5. The learned counsel for the respondents has also submitted that it is a matter of common knowledge that transfer is an incident of service and the decision to transfer an employee unless it proceeds on grounds of malafide or utterly arbitrary, should not be interfered with by the Courts. Kendriya Vidyalaya Sangathan is an autonomous body and its employees are liable to be transfer anywhere in India. The transfers are made generally in accordance with the transfer

guidelines. However, under para 13 of the transfer guidelines, the Commissioner with the approval of Chairman, Kendriya Vidyalaya Sangathan , is empowered to transfer any employee to any place in relaxation of all or any of the provisions provided in the guidelines.

6. The learned counsel for the parties also filed number of other documents which are also perused.

7. Heard the learned counsel for the parties and perused the record.

7. Admittedly, the applicant is an employee of KVS, and was transferred from KVS Aliganj to KVS Seoli Malwa in public interest under para 13 of the transfer guidelines of the KVS. In pursuance of the said order, the reliving order dated 23.9.2011 was issued. The applicant challenged both these orders in the present O.A. It is also submitted by the learned counsel for the applicant that for counting of displacement points the direction issued in the case of Smt. Ram Bhaduria is to be followed that as directed by the Tribunal, the amended guidelines be given effect prospectively and not retrospectively. The transfer guidelines as annexed along with the counter reply clear provides KVS shall strive to maintain equitable distribution of its employees across all locations to ensure efficient functioning of the organization and optimize job satisfaction amongst employees. Not only this, it is also categorically mentioned in the said guidelines that all employees are liable to be transferred anywhere in India at any point in time and transfer to a desired location cannot be claimed as a matter of right. While effecting transfers the organizational interest shall be given uppermost consideration and that the problems and constraints of employee shall remain subservient. Not only this , as per Clause-13 of the said guidelines, it is provided that "**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 the above provisions.” Not only this, the New Transfer Policy also provides factors, points and calculation of displacement count of an employee for requesting transfer. The applicant, who was working in the KVS made a request for modification of her transfer which was modified to KVS Gomtinagar 2nd Shift on her own request vide modification order dated 30th March 2012 the respondents have also explained the factual position in respect of the applicant and other teachers. There is no element of arbitrariness in the matter of transfer of applicant or other teachers named in the application. Above all the impugned order, or the request of the applicant has already been modified and has been transferred back to Lucknow vide order dated 30th March 2012 and also joined KVS, Gomtinagar on 2.4.12.

8. A Division Bench of the Hon’ble Mumbai High Court in **S.N. Umap v. State of Maharashtra (Bom.) reported in 1984 (2) SLR 328** has held as under:-

“It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilize the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfer, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or other purpose, that is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even the administrative actions should be just and fair. Frequent unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to the employee and drive him to desperation. It disrupts the education of the children and leads to numerous other inconveniences and problems and results in hardship and demoralization. Therefore, the policy of transfer should be reasonable and fair and should apply to everybody equally.”

9. The Hon’ble Apex Court in the case of **Union of India v. S.L. Abbas** reported in 1994 SCC(L&S) 230 observed as under:-

“An order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by *mala fides* or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The same guideline however does not confer upon the Government employee a legally enforceable right. Executive instructions are in the nature of guidelines. They do not have statutory force.”

10. The Hon’ble Supreme Court right from the case of **Shilpi Bose(Mrs.) and Others v. State of Bihar and Others** reported in **1991 Supp.(2) Supreme Court Cases-659** observed that the court should not interfere with the transfer order issued in public interest or for administrative reasons unless the transfer orders are made in violation of any mandatory/statutory rule or on the ground of malafide.

The relevant observations of the Hon’ble Apex Court is as under:-

“The courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide . A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order; instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

11. In another judgment reported in **(2001)8 SCC-574** in the case of **National Hydroelectric Power Corporation Limited v. Sri Bhagwan & Another** this was again reiterated by the Apex Court and it was further observed that scope of judicial review in transfer of an employee is not warranted and the transfer is not only an incident but

a condition of service and it should not be interfered with unless shown to be an outcome of malafide exercise of power or violative of any statutory provisions otherwise transfer order is not subject to judicial interference as a matter of routine. It is also observed by the Hon'ble Apex Court that no Government servant or employee or public undertaking has any legal right to be posted for long at any one particular place. The Apex Court has observed as under:-

“No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.”

12. Subsequently this fact was again reiterated by the Hon'ble Apex Court in the case of **State of U.P. & Others v. Gobardhan Lal** reported in **(2004)11 SCC 402** wherein it has been observed by the Hon'ble Apex Court that the transfer is prerogative of the authorities concerned and court should not normally interfere therewith except :-

- (i) Transfer order is shown to be vitiated with malafide**
- (ii) Issued in violation of any statutory provision or**
- (iii) Having been passed by an authority not competent to pass such order.**

While deciding the said case the Hon'ble Apex Court further pleased to observe as under:-

“8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations

of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

13. In another matter of transfer which came up before the Hon'ble Apex Court i.e. the case of **Rajendra Singh & Others v. State of U.P & Others** reported in (2009)15 SCC-178, it has been observed by the Apex Court that the scope of judicial review in transfer matters is very limited and the courts are always reluctant to interfere with transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from malafide. The Hon'ble Apex Court further observed as under:-

"9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar* this Court held:

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

10. In *N.K. Singh v. Union of India* this Court reiterated that:

"6.....the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined

only to the grounds of mala fides and violation of any specific provision.....”

13. Again in 2010 in the case of **State of Haryana & Ors. v. Kashmir Singh & Another**[(2010) 13 Supreme Court Cases-306] the Hon'ble Supreme Court emphasized in regard to the judicial review in transfer matters. It has been observed that it is a policy matter which is purely an administrative matter and in transfer and posting the scope of interference by the courts is very limited. The Hon'ble Apex Court further observed that the State Administration cannot function with its hands tied by judiciary behind its back. The Hon'ble Apex Court while deciding the issue of transfer has been pleased to observe as under :-

“12. Transfer ordinarily is an incidence of service, and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The administrative authorities concerned may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well settled that courts must not ordinarily interfere in administrative matters and should maintain judicial restraint, vide *Tata Cellular v. Union of India*.”

14. As observed by the Hon'ble Apex Court in the case of **High Court of Judicature of Madras Vs. R. Perachi** (2011) 12 SCC 137, the Hon'ble Apex Court has been pleased to observe as under:

“22. In the context of transfer of a government servant we may refer to the dicta of this Court in **N. K. Singh Vs. Union of India** (1994) 6 SCC 98 where this Court observed in AIR para 22 as follows:(SCC p. 108,Para 2)

“23.....Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of

the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially there are no judicially manageable standards of scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government department. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

23. In state of M.P. Vs. S.S. Kourav (1995) 3 SCC 270 the Administrative Tribunal had interfered with the transfer order of the respondent and directed him to be posted at a particular place. It is relevant to note that while setting aside the order of the Tribunal this Court observed in para 4 of its judgment as follows: (SCC p. 272)

"4.The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to indict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background for foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an office at a particular place."

24. We may mention that this Court has reiterated the legal position recently in Airports Authority of India Vs. Rajeev Ratan Pandey (2009) 8 SCC 337 that (SCC p. 339, para 10)

"10.....In a matter of transfer of a government employee ,(the) scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer."

15. Thus, we do not find any occasion to make any observation against KVS as their functioning is more or less transparent. In the facts and circumstances, we do not find any ground to interfere with the orders passed by the respondents transferring the applicant or rejecting the representation of the applicant or rejecting representation. It is also undisputed that the respondents will pass

any further orders in terms of the New Transfer Guidelines dated 1.4.2011 as such, it can not be presumed that the respondents will act upon as per the old transfer guidelines.

16. Considering the submissions made by the learned counsel for the parties, we do not find any reason to interfere in the present O.A. Accordingly, the O.A. is dismissed. No order as to costs

J. Chandra
(Ms. Jayati Chandra)
Member (A)

VR. Arora
(Navneet Kumar)
Member (J)

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