

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW**

**Original Application No.252/2011**  
This the 29<sup>th</sup> Day of September 2011

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)**

Neelam Mehrotra, aged about 55 years, Wife of Sri Anil Mehrotra, Advocate, R/o 4/63 Vipul Khand, Gomti Nagar, Lucknow.

...Applicant.

**By Advocate: Sri S.P. Singh.**

**Versus.**

1. Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. Assistant Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Aliganj, Lucknow.
4. Education Officer, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

.... Respondents.

**By Advocate: Sri Surendran P.**

**ORDER**

**By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)**

This O.A. has been filed for the following relief's:-

"a). The impugned order of transfer dated 03.06.2011 so far it relates to the applicant contained in Annexure No.1 be set aside.

That the Hon'ble Tribunal may graciously be pleased to allow all the consequential benefits after quashing the transfer order dated 03.06.2011 as well as relieving order dated 10.06.2011.

b). An order be passed in the nature of Mandamus thereby commanding the respondents not to compel the applicant to join on her transferred place.

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c). Any other order or direction, as this Hon'ble Tribunal may deem just, fit and proper under the facts and circumstances of the case.

d).i This application be allowed with costs."

2. The case of the applicant is that she was appointed as T.G.T. (WET) Kendriya Vidyalaya in the year 1983. All of sudden, she has been transferred from Gomti Nogar, Lucknow to Fatehgarh vide (Annexure-1) dated 03.06.2011. It is said that prior to this transfer she had been transferred several times as under:-

1. From K.V. Cantt Hissar to K.V. 2<sup>nd</sup> Shift Gomti Nagar Lucknow on 05<sup>th</sup> September, 2004.
2. From K.V. 2<sup>nd</sup> shift Gomti Nagar Lucknow to K.V. 1<sup>st</sup> Shift A.M.C. Lucknow joined on 4<sup>th</sup> May, 2005.
3. From K.M. 1<sup>st</sup> Shift A.M.C. Lucknow to K.V.C.R.P.F. Bijnore, Lucknow joined on 2<sup>nd</sup> April, 2008.
4. From K.V.C.R.P.F., Bijnore to K.V. No.2 Gaya (relieved on 09<sup>th</sup> May, 2008).
5. From K.V. No.2 Gaya to K.V. Naini Allahabad (joined on 1<sup>st</sup> Sep. 2009, and relieved on 1<sup>st</sup> Dec. 2010.
6. From K.V. Naini Allahabad to K.V. CRPF Bijnore, Lucknow. Joined on 2<sup>nd</sup> Dec. 2010 and relieved on 23<sup>rd</sup> May, 2011.
7. From K.V. CRPF Bijnore Lucknow to K.V. Gomti Nagar Lucknow, joined on 23<sup>rd</sup> May, 2011.
8. From K.V. Gomti Nagar Lucknow to K.V. Fatehgarh just to be relieved.

3. It is said that instant transfer order is against the transfer policy dated 3.11.2010, approved by the Board of Governors of which para-6 of the policy is applicable in her case. Though the applicant

has given her option for her transfer at Barabanki or at I.T.I., Kanpur but ignoring her request she has been transferred in most arbitrary and illegal manner against the transfer policy. The transferred place is more than 500 Kms. from Lucknow. Her mother-in-law, is aged about 90 years and she is dependent upon the applicant. Applicant's husband is a practicing lawyer in Lucknow High Court Bench, which is not a transferable post. Besides, her husband is also suffering from decease of Renal Hypertension and his kidney is also damaged. He is taking treatment from S.G.P.G.I., Lucknow. It has been further pleaded that some specific dates are relevant to be mentioned on record for proper adjudication of the matter. She was relieved by K.V. Hissar Cantt. to K.V. Gomti Nagar, Lucknow where she joined on 06.05.2005. After about one year, she was again transferred from K.V. Gomti Nagar, Lucknow to K.V. AMC, Lucknow. After less than three years, she was again transferred from K.V. AMC, Lucknow to CRPF, Bijnore on 31.03.2008. From there she was again transferred to K.V. Gaya (Bihar). From there she was transferred to K.V. Naini, Allahabad where she joined on 31.08.2008. From there she was transferred to CRPF, Bijnore on 01.12.2010. On 21.05.2011, she was again transferred from Bijnore, Lucknow to K.V. Gomti Nagar, Lucknow. But, within 15 days she was again transferred from K.V. Gomti Nagar, Lucknow to K.V., Fethgarh. It is further said that the impugned order has been passed in terms of para-9 and 11 (a) of the latest transfer guidelines. But her transfer has been made without her own request. Therefore, it is liable to be set-aside on this ground alone. The applicant has also received on



01.07.2011 a relieving order dated 10.06.2011, directing her to report at K.V., Fetehgarh as per K.V.S. Rules (Annexure-6).

4. The O.A. has been contested by opposite parties no. 1 to 4 by filing counter affidavit saying that employee appointed in KVS are liable to be transferred any where in India at any point of time and a desired location cannot be claimed as a matter of right. It is further said that as held by Hon'ble Apex Court the individual personal inconveniences have got little importance over administrative exigencies and public interest. A new transfer guideline has come in to force w.e.f. 01.04.2011 duly approved by Board of Governors. The transfer of the applicant has been done to accommodate Sri Manoj Kumar Srivastava TGT (WE) K.V. No.3, Amritsar (New Cantt.). As according to the new transfer guidelines the transfer of a teacher under para-9 and 11 can be done after a continuous stay of two years in very hard station or three years in the North East, Andaman and Nicobar Island or of a teacher having less than three years to retire. In their parawise reply, it has been said that on 04.09.2004 the applicant was transferred and relieved from K.V. Hissar to K.V., Gmoti Nagar, Lucknow on her own request. On 06.05.2005, she was transferred to K.V., AMC, Lucknow which is at the same station. Further, she was transferred from K.V., CRPF, Bijnore, Lucknow, which is also the same station. However, the transfer from K.V., CRPF, Bijnore to Gaya is a routine transfer in public interest. But, her transfer was modified from Goya to Naini, Allahabad on her own request. Again she was transferred to K.V., CRPF, Bijnore, Lucknow on her own request on 01.12.2010 and adjusted in K.V. Gomti Nagar, Lucknow. From K.V. Gomti Nagar,



Lucknow to Fatehgarh she was transferred in public interest. She has been relieved w.e.f. 10.06.2011 and in her place aforesaid Sri Manoj Kumar Srivastava, TGT (WE) has joined (Annexure-C-1 and C-2). It is further said that para-9 of the transfer policy provides that in the event of non-availability at the desired location/station in such cases an employee having highest displacement counts shall be liable to be displaced from within the choice locations/ stations in order of preference indicated by the needy employee. As far as calling for choice stations is concerned, it is said that choices were called from all the employees so that in case of their transfer efforts may be made to accommodate them at their choice station in case of their displacement subject to the availability of vacancy. But on this ground, it cannot be alleged that action of the respondents was arbitrary or illegal. At present no post of TGT (WE) is available in Lucknow or nearby places. It is further said that the averments of the applicant that she was frequently transferred is totally wrong. Some of the transfer orders are issued on her own request and rest of the transfer orders are issued as per transfer guidelines. It is further averred that since 04.09.2004, the applicant was working in different K.V. at Lucknow. Thereafter on 09.05.2008, she was transferred to Gaya in public interest. But on her request this transfer order was modified from Gaya to Naini Allahabad and she was relieved on 30.08.2008 from Gaya. She remains at Gaya for less than three months. Again on her request she was transferred to K.V. Naini, Allahabad to K.V. Bijnore on 03.11.2010. Thereafter she remained at K.V. CRPF, Lucknow and K.V., Gomti Nagar (1Ind Shift), Lucknow before her impugned transfer. It is said that from the



above, it is clear that applicant wants to remain at Lucknow and has no intention to go out of Lucknow. The transfer guidelines were framed for the welfare of all the employees of KVS and not only for the applicant.

5. The applicant has also filed rejoinder affidavit reiterating her pleadings contained in the O.A.

6. As against the rejoinder affidavit a supplementary counter affidavit has also been filed saying that in 89<sup>th</sup> meeting of Board of Governors held on 03.11.2010, a new transfer policy has been approved (Annexure-SCA-1). By means of notice dated 13.05.2011, it was notified that KVS has fixed 6 lower cut of marks i.e. C-2 on Transfer Count for the annual request transfers for the year 2011-12. It was also notified that the employees having total Transfer Counts 6 or more will be considered for request transfer against clear vacancy. A copy of the notice-dated 13.05.2011 has also been annexed as (Annexure -SCA-2). Thereafter, vide another notice dated 27.05.2011 it was notified as under:-

C-1-----Total Transfer Count 18 or more.

D-1-----Total Displacement Counts 20 or more.

7. It was also notified that the employees having total transfer counts 18 or more will be considered for request transfer against displacement. The employees having total displacement Counts below 20 will not be displaced. A copy this notice-dated 27.05.2011 is also annexed at (Annexure-SCA-3). The details of service of the applicant are as under:-

*She joined in K.V.S. on 27.06.1983. Her total service up to 30.03.2010 is 27 years 9 months 3 days.*

*Out of which she served:- ^*

*Out of Lucknow---- (a). Hissar 2 yearsrs-11 months-12 days.*

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(b). Gaya 0-1 months -23 days.

(c). Naini 2 years-3 months.

Total----05 years-04 months.

Out of her total service of 27-09-03 excluding the service rendered outside Lucknow of -5 years-04 months comes to 22 years-05 months.

That as per the provision of para-6 of the transfer guidelines the applicant's displacement counts is +2 points for each completed year. Since the applicant had completed 22 years of service in Lucknow, her Transfer Counts became 44. A women employee who is not spouse of a KVS employee will get 5 points deducted from the total Transfer Count. Thus (44-5) the applicant got 39 points as Transfer Counts.

That as per the new transfer guidelines an employee having total Transfer counts 18 or more will be considered for request transfer against displacement subject to availability of eligible displacee. Sri Manoj Kumar Srivastava who has been transferred has got 24 points against his Transfer Counts and applied for transfer to Lucknow. The applicant who has the highest point of Transfer Counts in PGT (WE) category was transferred to Fatehgarh. Thus the transfer of the applicant is in accordance with the new transfer policy, which came into effect w.e.f. 01.04.2011."

8. In the last, it is said that transfer of the applicant has been done as per paragraph 9 and 11 (a) of the new transfer guidelines, which provides to create a vacancy so as to accommodate the persons who are having highest transfer counts subject to not being below C-1. Sri Manoj Kumar Srivastava, who moved an application for his transfer to Lucknow, has got 24 points, which are more than 18. Therefore the applicant has been transferred and in her place Sri Manoj Kumar Srivastava has been posted. As per para-9 of the new transfer guidelines Sri Manoj Kumar Srivastava moved an application for his transfer to Lucknow as his total Transfer Count was more than 18 points and as per the provisions of paragraph 11 (a) there was no clear vacancy available, the applicant was displaced as per the provisions of paragraph No.5(c) of the new transfer guidelines. Moreover, it is said that Amritsar is not a place,

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which can be construed as hard/very hard/NER stations. In fact his Transfer Counts was more than 18 points and as such it was necessary to accommodate him at Lucknow after displacing a persons who is having highest Transfer Counts in the same category.

9. This supplementary counter affidavit was taken on record on 09.09.2011 and the applicant was given an opportunity to file supplementary rejoinder affidavit, if any, before the next date. The next date was fixed as 13.09.2011. No supplementary rejoinder affidavit was filed by the applicant. Thereafter, final arguments were heard and the case was reserved for orders.

10. As said above, final arguments of the learned counsel for the parties were heard and the relevant material was perused.

11. The learned counsel for the applicant has submitted that as mentioned in the caption of the impugned transfer order, it has been made in terms of para-9 and 11 (a) of the latest transfer guidelines. He further submitted that the heading of para-9 itself shows that it deals with the request transfer of an employee whereas, the applicant did not made any request. Though she has given her choice for transfer at Barabanki or at ITI, Kanpur but ignoring her choice she has been transferred from Lucknow to Fethgarh. As pointed out from the other side the impugned transfer order has been made on the request made by Sri Manoj Kumar Srivastava for transfer from Amritsar (New Cantt. to Gomti Nagar, Lucknow). This fact has been specifically pleaded by the respondents in their counter affidavit/supplementary counter affidavit. I have also perused the impugned transfer order which shows the name of Sri Manoj Kumar Srivastava at serial no.13 and in

the last column under the heading Nature of transfer words 'on request' have been mentioned against the name of Sri Manoj Kumar Srivastava. Just below the name of Sri Srivastava in a bracket words 'by displacing' has been mentioned. Thereafter the name of the applicant has been mentioned and under the column Nature of transfer words 'In public interest' have been mentioned. Further, on the top of the transfer order in the caption the following lines have been mentioned;

*"In terms of para-9 and 11 (a) of the latest transfer guidelines which inter-alia, provides to create a vacancy so as to accommodate the persons who are having highest transfer counts subject to not being below C-1, transfer of the following employees is hereby ordered on request. The displacement of employees who are having highest displacement counts subject to not below D-1 have been effected in public interest as per para-7 and paras as stated above. The employees transferred in public interest and from Hard/Very Hard/ NE Stations are entitled for all transfer benefits as per rules."*

12. Now, it would be appropriate to go through the relevant extract of para-9 and 11 of the transfer guidelines also, which are as under;

#### **"9. REQUEST TRANSFER OF EMPLOYEE**

Request transfer shall be effected as per the prescribed calendar of activities. Transfer on request shall be effected on the basis of "Transfer Count" of an employee computed by assigning appropriate points to factors considered relevant for transfer. An employee on initial posting on recruitment is normally barred from applying for request transfer for three years in terms of the appointment order. An employee will not be eligible for request transfer twice in one academic year.

#### **11. METHOD FOR REQUEST TRANSFER**

Request transfer for a post at a location/station shall be accommodated in decreasing order of "Transfer Counts" computed on the basis of clause 10 of competing employees. In case of a tie in the transfer counts of two or more employees competing for a location the female employee shall be preferred first. In case of tie in two or more employees of the same gender an employee with an

earlier date of joining in present post in present station shall be accommodated and in case, if the date of joining in present post in present station also coincides then the older employee shall be first accommodated. Transfer counts of all request transfer applications shall be displayed on KVS website and the transfer count so displayed shall remain valid till 31st of July of the relevant year and request transfer may be considered for vacancies arising due to retirement or any other reason during the period of validity for which no fresh application shall be invited or considered. Applications shall automatically become infructuous after the expiry of 31<sup>st</sup> July.

a). Provided, a cut off mark C1 on transfer count may be prescribed on year to year basis in such a way that an employee whose transfer count is equal to C1 or more may be transferred in one of the desired location(s)/station(s) even by way of displacement of an employee as per clause 5 ( c) in the event there is no clear vacancy at the desired location(s)/ station(s). In such cases an employee having the highest displacement count subject to not being below D1 shall be liable to be displaced from within the choice location(s)/ station(s) in order of preference indicated by the needy employee. If no employee holding the same post and having a displacement count D1 or more is found in all the choice location(s)/ station(s) going in order of preference indicated by the needy employee the request of such a needy employee may not be acceded to.

b). Provided, a lower cut off mark C2 on Transfer Count may be prescribed on year to year basis below which the request shall not be accommodated in the particular year. Request for transfer of an employee whose transfer count is less than C1 but grater or equal to C2 shall be considered subject to existence of a vacancy in the desired locations/stations."

13. A reference has also been made to para-6 contained in the transfer guidelines for Group-'A' and 'B' employees. The relevant para-6 is as under;

#### **"6. REQUEST TRANSFER OF EMPLOYEES**

KVS may invite request transfer from such employees at an opportune time in an academic year in such from and manner as deemed appropriate from time to time and consider such requests for transfers to desired station keeping organizational interest uppermost in consideration. Some crucial determinants for effecting such transfers shall be as follows:

- a). Request of an employee factoring in such components as : due to retirement, medical problems faced by an employee or family members, spouse working at a station etc.
- b). Suitability of an employee for the sought for station.

c). Performance of an employee against tangible parameters whenever possible for example CBSE results, APAR Grading in the last three years or such other parameters as may be prescribed from time to time for different posts.

d). Number of years spent at a station."

14. A supplementary counter affidavit has also been filed on behalf of the respondents which stands uncontroverted because no supplementary rejoinder affidavit has been filed against it. In this supplementary counter affidavit, it has been pleaded that in the 89<sup>th</sup> meeting of Board of Governors held on 03.11.2010, the new transfer policy has been approved, which has been enclosed as (Annexure-SCA-1). Attention has been drawn towards para-6 of this new transfer policy which is as under:-

**"6. FACTORS, POINTS AND CALCULATION OF DISPLACEMENT COUNT OF AN EMPLOYEE FOR DISPLACEMENT TRANSFER.**

Displacement Count of an employee shall be computed by assigning appropriate points to such appropriate factors considered material for displacement as per the following:

SN	Factors	Points
1	<p>Stay at a station in the same post as on 31<sup>st</sup> March in complete years.</p> <p><b>Clarification:</b></p> <ul style="list-style-type: none"> <li>• Period of absence on any account shall also be counted for this purpose.</li> <li>• If an employee returns to a station X on request after being transferred from X within three years (two years for very hard station), the stay of such an employee at X shall be no. of years spent at X before being transferred plus no. of years spent after coming at X. However, if an employee returns to station after a period of three years (two years for very hard station) the stay shall be counted afresh.</li> </ul>	+2 for each completed year
2.	Annual Performance Appraisal Report Grading for the last three years	+ 2 for each Below Average grading
3.	Employees below 40 years (as on 31 <sup>st</sup> March of the year) who have not completed one tenure at hard/ very hard/NE stations	- 8
4.	<p>LTS/DFP/MDG/Cases</p> <p><b>Clarification:</b></p> <ul style="list-style-type: none"> <li>• If an employee qualifies for more than</li> </ul>	20

	one the points shall be limited to a maximum of - 20 only.	
5.	Spouse, if a KVS employees and posted at the same station.	7
6.	Physically challenged employee	20
7.	Woman employee who is not spouse of a KVS employee	5
8.	Members of recognized associations of KVS staff who are also members of JCM at KVS regional officers and /or KVS headquarters.	15
9.	Award winning employees: National award given by the President of India KVS National incentive award <b>Clarification:</b> If an employee has won both the awards then the maximum concession of -5 marks shall be given	-5 -2
	<b>Displacement Count</b>	<b>Total score of all the points</b>

15. In continuation of the above the uncontroverted pleadings as contained in the aforesaid supplementary counter affidavit of the respondents are that by means of notice dated 13.05.2011, it was notified that KVS has fixed 6 lower cut of marks i.e. C-2 on Transfer Count for the annual request transfers for the year 2011-12. It was also notified that the employees having total Transfer Counts 6 or more would be considered for request transfer. A copy of the notice-dated 13.05.2011 has also been annexed as (Annexure - SCA-2). Thereafter, vide another notice dated 27.05.2011 (Annexure -SCA-3) the following was notified:-

C-1-----Total Transfer Count 18 or more.

D-1-----Total Displacement Counts 20 or more.

16. It was also notified that the employees having total transfer counts 18 or more would be considered for request transfer against displacement. The employees having total displacement Counts below 20 will not be displaced.

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17. The applicant joined in KVS on 27.06.1983. Her total service up to 30.3.2010 is 27 years 9 months. Out of this she served out of Lucknow only for 5 years 4 months i.e. at Hissar ( 2 years 11 months) at Gaya (one month23 days ) and at Naini, Allahabad ( 2 years 03 months). Thus, for the rest i.e. for 22 years 5 months the applicant remained posted at Lucknow. As per provision of para-6 of the transfer guidelines, the applicant's displacement counts is +2 points for each completed year comes to 44 (22 years x 2). The women employee who is not spouse of a KVS employee will get 5 points deducted. Thus, 44-5 comes to 39 points for the applicant as transfer counts. Further, it is also an uncontested pleading that an employee having total Transfer counts 18 or more will be considered for request transfer. Sri Manoj Kumar Srivastava, who has displaced the applicant has got 24 points against his Transfer Counts. Therefore, he applied for transfer to Lucknow displacing the applicant, who has the highest point of Transfer Counts in PGT (WE) category as said above. Therefore she was transferred to Fatehgarh. It has been further elaborated that as per provision of para-11 (a) there was no clear vacancy available for Sri Manoj Kumar Srivastava and therefore the applicant was displaced as per provision of para-5 (c ) of new transfer guidelines, which provides for displacement of the employee to accommodate the request of a needy employee. It has also been added in the uncontested pleadings that thus the transfer of the applicant is in accordance with the provision of transfer guidelines and otherwise also Amritsar is not a place, which can be construed as hard/very hard/NER stations. The aforesaid new transfer policy has come in to force

w.e.f. 01.04.2011 according to the respondents. The applicant has not challenged the transfer policies dated 03.11.2010 or the new transfer policy which has come in to force w.e.f. 01.04.2011. In fact the applicant has placed reliance on the transfer policy in vogue. The only contention of her is that the impugned transfer order has not been made in accordance with the transfer policies. But in view of the aforesaid discussions, I regret in not finding any substance in this contention.

18. It has been further submitted on behalf of the applicant that she has been subjected to frequent transfers as pleaded in para 4.02 of the O.A. i.e. from K.V. Cantt Hissar to K.V. 2<sup>nd</sup> Shift Gomti Nagar Lucknow on 05<sup>th</sup> September, 2004. From K.V. 2<sup>nd</sup> shift Gomti Nagar Lucknow to K.V. 1<sup>st</sup> Shift A.M.C. Lucknow joined on 4<sup>th</sup> May, 2005. From K.M. 1<sup>st</sup> Shift A.M.C. Lucknow to K.V.C.R.P.F. Bijnore, Lucknow joined on 2<sup>nd</sup> April, 2008. From K.V.C.R.P.F., Bijnore to K.V. No.2 Gaya (relieved on 09<sup>th</sup> May, 2008). From K.V. No.2 Gaya to K.V. Naini Allahabad (joined on 1<sup>st</sup> Sep. 2009. From K.V. Naini Allahabad to K.V. CRPF Bijnore, Lucknow in December, 2010. From K.V. CRPF Bijnore Lucknow to K.V. Gomti Nagar Lucknow in May, 2011. From K.V. Gomti Nagar Lucknow to K.V. Fatehgarh in June, 2011 (impugned order).

19. This para has been specifically replied in para-13 of the counter affidavit, according to which the following position emerges;

1. From K.V. Hissar to K.V., Gomti Nagar, Lucknow --- on her own request.

2. From K.V. Gomti Nagar, Lucknow to K.V., AMC, Lucknow---  
--same station.
3. From K.V. AMC, Lucknow to K.V., CRPF, Bijnore, Lucknow---  
same station.
4. From K.V., CRPF, Bijnore, Lucknow to Gaya --- routine  
transfer in public interest.
5. From Gaya to Naini, Allahabad ---Modified on her own  
request.
6. From Naini, Allahabad to K.V., CRPF, Bijnore, Lucknow--- on  
her own request.
7. From K.V. CRPF, Bijnore, Lucknow to K.V. Gomti Nagar,  
Lucknow---On her own request and the same station.
8. From K.V. Gomti Nagar, Lucknow to Fatehgarh---- In public  
interest.

20. The above pleading has also not been controverted by the applicant. While replying this para of the counter affidavit, it has been merely said in para-6 of the rejoinder affidavit that para-4.02 of the O.A. is reiterated as correct.

21. In view of the above, I again regret for not finding any substance in the contention that the applicant has been subjected to frequent transfers.

22. The learned counsel for the applicant also submitted that the transfer guidelines cannot have retrospective effect. In this regard, he also placed reliance on the judgment of this Tribunal in O.A.No.235/ 2010 dated 12.07.2011 in the case of Smt. Rama Bhaduria Vs. Kendriya Vidyalaya Sangathan and Another's. A copy of the judgment was also supplied for perusal. I have gone

through the judgment. It is not applicable here because the facts and circumstances are different. It is mentioned in para-5 of that judgment that the tone and tenor of the pleadings in all the connected O.As. is that giving retrospective effect to the amendment (transfer policy) is illegal and arbitrary and is violative of Article-14 of the Constitution of India as well as against the principle of natural justice. The main point involved in that case was that for the purpose of calculating the longest stayee at the station, previously the period of less than three months was to be ignored but after the amendment the period of less than three months has been enhanced to less than three years if a teacher returns to same station. Therefore it was observed that no retrospective effect should be given to any statutory provision so as to impair or take away an existing rights. But, in the present case neither there is such pleading nor there is any such situation. There is nothing on record to show that the provision of the transfer policy has been implemented retrospectively to impair or take away the existing rights of the applicant. Therefore, this judgment is not applicable in the present case.

23. The learned counsel also places reliance on another judgment dated 24.04.2006 of this Tribunal in an O.A. A.K. Munjal Vs. G.S.I and Another. In that case violation of certain guidelines of transfer policy was alleged. A typed copy of the judgment has been submitted for perusal. I have gone through this judgment. This case was decided in favour of the applicant mainly on the ground that the respondents failed to satisfy the requirements of any public interest or administrative reasons, while the applicant was found to

had succeeded in showing that transfer was done in violation of transfer policy. I am afraid that this judgment is also not applicable in the present case because of different facts and circumstances. As already observed in the present case that the applicant has failed to show that her transfer has been made in violation of transfer guidelines. Otherwise also time and again the law has been settled on the point that such transfers policies are only guidelines, which do not give an employee a vested right. Broadly speaking a Court or Tribunal can interfere in the transfer matter only if, it is without any authority or against statute or there is any malice etc. In the present case there is no such situation. A ground of serious alimenter of applicant's husband has also been raised in this case. But, it goes without saying that personal and individual inconveniences cannot be given importance over the administrative exigencies and public interest. As already mentioned out of her total service of about 28 years she remained in Lucknow for about more than 22 years. She remained out of Lucknow only for 5 years 4 months i.e. at Hissar for about 3 years and at Gaya for about 2 months only and in Naini, Allahabad for 2 years and few months. It is true that she is a lady and her husband is not on a transferable post. But on several occasions, her request was considered and she was accommodated on many times as already discussed hereinbefore. An employee appointed in KVS is liable to be transferred any where in India and a desired location cannot be claimed on very occasion as a matter of right.

24. The transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of

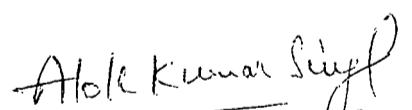
service in the absence of any specific indication to the contrary as has been observed in the case of State of U.P. And Others Vs. Gobardhan Lal reported in 2005 Supreme Court Cases (L&S)-55

cited on behalf of the respondents. It has been further held in the above case that 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 need and requirements of the situation concerned. The learned counsel for the respondents also placed reliance on another case of Tushar D.

Bhatt Vs. State of Gujarat and Another (2009) 2 Supreme Court

Cases (L&S)-668. In that case, it was found that in the entire tenure of more than 18 years, the appellant was transferred twice only. After considering the totality of facts and circumstances the Hon'ble Supreme Court declined to interfere in the matter saying that transfer is an incident of service and transfers are made according to administrative exigencies.

25. In view of the above, this O.A. deserves to be and is accordingly dismissed. No order as to costs.

  
 (Justice Alok Kumar Singh) 29.7.11  
 Member (J)