

Central Administrative Tribunal ,Lucknow Bench, Lucknow

**Transfer Application No.10 /2012
In
W.P. No 3154/2012**

Order Reserved on 30.3.2015

Order Pronounced on 24-04-2015

Hon'ble Sri Navneet Kumar, Member (J)

Smt. Surya Lata Jaiswal, aged about 51 years,
W/o Shri Sanjeev Jaiswal, R/o C-5300,
Sector 12, Rajajipuram, Lucknow.

Applicant

By Advocate: Shri 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. Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office Sector -J Aliganj,
Lucknow.
5. Sudha Chauhan, Primary Teacher,
Kendriya Vidyalaya Kanpur Chakeri No.11,
Kanpur.

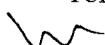
Respondents

By Advocate: Sri Rajendra Singh.

ORDER

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

The present T.A. is preferred by the applicant with the following
reliefs:-



- “(a) Issue a writ order or direction in the nature of certiorari quashing the impugned Transfer order dated 4.6.2012 so far as it pertains to the petitioner, as contained in Annexure 1 to the Writ Petition after summoning the original records.
- (b) Issue a writ order or direction in the nature of certiorari quashing the Relieving Order, if any, issued in pursuance to the impugned Transfer Order dated 4.6.2012 so far as it pertains to the petitioner, after summoning the original records.
- (bb) To quash Para 15.1 of the Transfer Policy dated 12.4.2010 so far as it pertains to changing of stay at a Station from three months to 3 years as contained in Annexure 16 to the TA.
- (bbb) To quash the Transfer Policy; dated 3.11.2010 more particularly Para 6(1) so far as it pertains to changing of stay at a Station from 3 months to 3 years as contained in Annexure 20 to the T.A.
- (bbbb) To quash the Transfer Policy dated 21.12.2011 and consolidated Transfer Policy so far as it pertains to Para 6(i) and 10(i) of the Policy so far as it pertains to changing of stay at a Station from 3 months to 3 years as contained in Annexure 21 and 22 to the TA.
- (c) Issue a writ order or direction in the nature of mandamus directing the Respondents to allow the petitioner to continue at Lucknow as PRT Teacher with all attendant benefits and pay her salary month to month.
- (d) Issue any other suitable writ order or direction which is deemed fit and proper in the circumstances of the case.
- (e) Pay the cost of this Writ Petition.

2. The brief facts of the case are that the applicant was appointed as a primary teacher in Kendriya Vidyalaya Sangathan in 1986 and joined there as per her appointment order. Subsequently, the applicant was transferred from Kanpur to Lucknow in 1994. In 2006, the respondents framed a transfer guidelines which was made applicable w.e.f. 14.3.2006. Thereafter, another guidelines were issued. It is also to be mentioned that the she was also transferred from Lucknow to Kanpur in 2007 and again the applicant was transferred from Kanpur Cantt to KVS RDSO Lucknow in July 2008 and in pursuance thereof, the applicant joined back to Lucknow. Since 2008, the applicant is working in Lucknow. The learned counsel for the applicant has also pointed out that the respondents have again issued transfer policy in 2010-11 and as per the current transfer policy, the displacement counts of the applicant are much lesser than the displacement counts of other employees, but the applicant has been transferred from Lucknow to Kanpur by means of the impugned order. The learned counsel for the applicant has also indicated that the respondents cannot give a

retrospective effect to any guidelines and cannot count the displacement counts from the date of joining of the applicant and the displacement can be counted only from the prospective effect.

3. On behalf of the respondents reply is filed as well as the supplementary reply to the amended TA was filed through which it is indicated that the KVS is an Autonomous Body and registered under Societies Registration Act 1960 and as per the Article 71 (1.1) of the Education Code an employees of the KVS is liable to be transferred anywhere in India. Not only this, it is also indicated by the respondents that the applicant is working in Lucknow since 2008. It is also argued by learned counsel for the respondents that the new transfer guidelines so issued were given effect to w.e.f. 1.4.2011 and the said transfer policy is for smooth functioning of education activities in the interest of students of KVS and has also indicated that the said transfer guidelines were approved by the Board of Governors in its 89th meeting held on 3.11.2010. Not only this, it is also argued by the respondents that it is matter of common knowledge that transfer is an incident of service and the interference of court of law is unjustified and the transfers are made generally in accordance with the transfer guidelines and in terms of Para 13 of the transfer guidelines the commissioner with the approval of Chairman KVS, is empowered to transfer an employee to any place in relaxation to any other provisions provided under the guidelines.

4. On behalf of the applicant rejoinder is filed and through rejoinder mostly the averments made in TA are reiterated and the contents of the counter reply are denied. However, it is submitted that the transfers are clarified in two types namely, administrative transfer which includes in public interest and request transfer based on request of the employee. The administrative transfer as per para 5 of the policy, shall be done in order to administrative (a) redeploy surplus staff, (b) post employees in hard/very hard station and (c) displacement of an employee in order to accommodate the request of a needy employee.

The displacement transfer is to be done on the basis of factors, points and calculation of displacement counts. It is once again reiterated by the applicant that the respondents are wrongly calculated the displacement counts of the applicant which is with retrospective effect and the same is not as per rules. Apart from this, it is also indicated and argued that though the education code indicates that the employees are liable to be transferred anywhere in India. While respondents have themselves issued the transfer policy for the purposes of effecting the transfers from one station to the other, as such any transfers made beyond the said policy is illegal. The learned counsel for the applicant has also argued and submitted that the impugned transfer order is just to accommodate other person and to harass the applicant as such it requires interference by this Tribunal.

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

6. The applicant was initially appointed in the respondents organization in the year 1986 and after serving at Kanpur and Lucknow for a short spell she joined the KVS RDSO in 2008 and since 2008, the applicant is continuing in Lucknow. It is to be indicated that the KVS is an Autonomous Body set up by the Ministry of Education, Govt. of India and registered as a Society, under the Society Registration Act 1960. The objectives of the Sangathan are to provide, education to the children. For proper functioning of the Sanathan, a Board of Governors are constituted along with education code. Not only this, the post of Officer, Staff (teaching & Non-teaching) of the Kendriya Vidyalaya Sangathan is transferrable one on All India basis. The education code provides "**that the employees of Kendriya Vidyalaya Sangathan is liable to be transferred anywhere in India.**"

7. The KVS from time to time established certain guidelines which are known as transfer guidelines for teachers up to PGT and others up to Assistants. Those guidelines were modified from time to time.

8. The learned counsel for the applicant has vehemently argued and submitted that the transfer guidelines is annexed with the TA clearly provides that the KVS to maintain equitable distribution of its employees across all locations to ensure efficient functioning of the organization and optimize job satisfaction amongst employee. It is also clearly mentioned in the 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 upper most consideration and that the problems and constraints of employee shall remain subservient.

9. The learned counsel for the applicant has also argued and submitted that those who are having longer stay at a particular place are not being transferred and has also annexed the details list indicating therein that those who have joined at present station much earlier than, the applicant are still not transferred whereas, the applicant who joined in Lucknow in 1998 is transferred.

10. In reply to the same, it is vehemently argued by the learned counsel for the respondents that the employees of the KVS are made to be transferred any wherein India as per the education code and has also indicated that guidelines of 2011 were approved by the board of governors in its 89th meeting held on 3.11.2010 and also two new articles 71(A) and 71(B) are inserted in their education code for KVS in place of Article 71 which will remain effective till 31.3.2011 and the article 71, teachers up to PGTs and others up to the Assistants whereas Article 71 (B) deals Group A (Section Officers and above employees). The learned counsel for the respondents has also relied upon the said guidelines which provides as Under:-

“2.Guiding/Basic Principles

(a) An employee on initial posting after /normal tenure at his initial place of posting.

(b) Transfer/posting to choice place/desired station shall not be claimed as a matter of right.

Some crucial determinants for such transfers are as under recruitment/promotion will not be considered for request transfer before he completes the prescribed mandatory tenure:-

(i) Availability of a clear-cut vacancy.”

11. Apart from this, the learned counsel for the applicant has also relied upon Rule 2 (k) of the said guidelines. The said rules also reads as under:-

“Transfers on request will normally be made at the commencement of academic session i.e. between April to August of the year. However, transfers on account of serious illness, when it is not practicable to defer the transfer till next year without causing serious danger to the life of the employee, his spouse or his ailing son/daughter, may be effected by competent authority at any time during the year against available vacancy.”

12. Apart from this, it is also indicated by the learned counsel for the respondents that transfer is an incident of service and the same cannot be interfered with on the vague allegations and the Hon'ble Apex Court in the case of **Union of India v. S.L. Abbas** reported in **1994 SCC(L&S) 230** pleased to observe 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.”

13. The Hon'ble Supreme Court in 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 or 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."

14. It is also to be indicated that the basic jural relationship of employer and employee is not affected in any manner by transfer. It is once again reiterated that it is settled that the Government servant is liable to be transferred to a similar post in the same cadre which is a normal feature and incident of Government service and no Government servant can claim to remain in particular place or in a particular post unless of course, his appointment itself is to a specified non-transferable post and transfer is an ordinary incident of service and therefore does not result in any alteration of any condition of service to his disadvantage. It is also to be indicated that who should be transferred and where is a matter for the appellate authority to decide, the authority must keep in mind the guidelines issued by the Government on the subject.

15. Apart from this, it is also indicated that the guidelines issued by the Government do not confer upon Govt..employee legally enforceable right. The Hon'ble Apex Court and the Hon'ble High Court have considerably pointed out that the transfer is an incident of Government Service.

16. In the case of **V. B. Laxmeshwar Vs. Deputy Chief Auditor,** 1981 (1) SLR 727(Kant), it is observed that the guidelines created no

rights in the officer and he is not entitled to rely on the guidelines to challenge the order of transfer.

17. 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.”

18. The Hon'ble Apex Court in the case of **Union of India v. S.L. Abbas** (supra) 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.”

19. 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.”

20. 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.”

21. In Shilpi Bose V. State of Bihar (Supra), their Lordships of the Hon'ble Supreme Court have clearly held that where a competent authority issues transfer order with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered with by the court merely because the transfer order was passed on the request of the employee concerned. Their Lordships have further emphasized that the courts should not interfere with transfer orders, which are 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 not vested right to remain posted at one place or the other and he is liable to be transferred from one place to other. The transfer orders issued by the competent authority do not violate any legal right of the government employee. The Apex Court has further held that even if a transfer order is passed in violation of executive

instructions or orders, the courts ordinarily should not interfere with the order, instead the affected party should approach the higher authority to the department.

22. Considering the observations made by the Hon'ble Apex Court as well as the submissions made by the learned counsel for the parties, and also perusal of the record, since applicant is in Lucknow since 2008, and is having transferable post, as such, I do not find any reason to interfere in the present O.A.

23. Accordingly, the O.A. is dismissed. No order as to costs

VR Agrawal
(Navneet Kumar)
Member (J)

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