

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE TRIBUNAL

3.7.2014

O.A. No. 291/00249/2014 with MA No.291/00314/2014

Mr. Rajendra Vaish Counsel for the applicant

Mr. Hawa Singh, Counsel for the respondent

Heard the learned counsel for parties.

Order reserved.

Anil Kumar
(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Dt. 08/07/2014

Order pronounced today in the open
Court by the aforesaid Bench.

Adm/

Anil Kumar
08/07/14
C-0

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 291/00249/2014
With
MISC. APPLICATION NO. 291/00314/2014

ORDER RESERVED ON 03.07.2014

DATE OF ORDER : 8.07.2014

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Renu Vaish wife of Rajendra Vaish aged 51 years, resident of B-1, Inderprasth Colony, Model Town, Malviya Nagar, Jaipur, Jaipur. Presently TGT (Bio) KV-3, Jaipur.

... Applicant
 (By Advocate: Mr. Rajendra Vaish)

Versus

1. Kendriya Vidyalaya Sangathan through its Commissioner 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar, Bajaj Nagar Road, Tonk Phatak, Jaipur.

... Respondents
 (By Advocate: Mr. Hawa Singh)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following reliefs:-

- "(i) By an appropriate order or direction the impugned computation of station seniority of the applicant from 1991 be declared as illegal and the respondent be directed to compute the station seniority of the applicant from 2004/2012 and accordingly the impugned representation rejection order dated 17.04.2013 (Annexure A/1) received on 25.04.2013 may kindly be declared as null and void and may kindly be quashed and set aside.
- (ii) That the respondent may be directed not to implement the transfer for applicant in view of the illegal computation of station seniority and displacement counts from 1992 and if any such order is made or

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released during the pendency of this OA, the same may kindly be taken note of and be quashed and set aside.

(iii) That any other beneficial orders or directions which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the case be kindly passed in favour of the applicant.

(iv) Costs be quantified in favour of the applicant.

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was appointed on the post of Trained Graduate Teacher (Biology), in short TGT (Bio) on 01.10.1986. That the applicant had served in many schools in many districts in preceding 27 years whose details are given below:-

a.	KV Nasirabad	:	Joined on 01.10.1986
b.	KV-2 Ajmer	:	25.08.1987 to 27.10.1991
c.	KV- Kota	:	28.10.1991 to 13.10.1992
d.	KV-3 Jaipur	:	14.10.1992 to 05.04.2003
e.	KV-1 Ajmer	:	06.04.2003 to 12.08.2004
f.	KV-4 Jaipur	:	13.08.2004 to 25.09.2006
g.	KV-3 Jaipur	:	26.09.2006 to 19.05.2010
h.	KV-1 Ajmer	:	20.05.2010 to 01.09.2012
i.	KV-1 Jaipur	:	01.09.2012 to 14.05.2013
j.	KV-3 Jaipur	:	14.05.2013 to 15.08.2013
k.	KV-2 Suratgarh	:	16.08.2013 to 10.12.2013
l.	KV-3 Jaipur	:	11.12.2013 to till date.

3. That the grievance related facts of the applicant are that she was transferred to Ajmer vide order dated 31.03.2003 (Annexure A/2) in administrative/ public interest grounds and the transfer policy existing in 2003 and 2004 clearly stated that an employee who remains outside on transfer for one year shall loose his/her station seniority and accordingly the applicant was at Ajmer for more than one year and after return to Jaipur vide order dated 09.08.2004 (Annexure A/3) (transfer on mutual basis with the employee) (sr. NO. 31), the station seniority of the applicant was treated afresh from 2004 for the purpose of future transfer.

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4. That the respondents had framed the transfer policy applicable in the entire KVS in 2001-2002. This transfer policy underwent major amendments in 2004, 2007 and 2010.

5. The learned counsel for the applicant submitted that the transfers are made on the basis of station seniority/station stay of an employee at a particular district and displacement is only in the case of two basis i.e. on the basis of station seniority and secondly displacement is only done if the person is transferred on request against the displacee and no other vacancy is available at the very station. This means that if a person coming to a particular district on request is transferred and if vacancy is available then the so called senior-most at that station would not be displaced.

6. That station seniority of the applicant from 2004 onwards was maintained on the basis of her stay at Jaipur from 2004 and also in accordance with the transfer policy existing at that point of time. Thus the vested right accrued in favour of the applicant since 2004.

7. The applicant was once again transferred to Ajmer vide order dated 17.05.2010 in public interest. The applicant completed more than two years at Ajmer and she was transferred to Jaipur on her request vide order dated 09.08.2012. The respondents have practice to get an information form filled up each year for commutation of displacement counts. The applicant also filled up the said form in February, 2013 and the applicant had filled the form with displacement count as -5 (minus five) taking her station seniority of Jaipur from 2004 and similarly on request transfer

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counts of the applicant were computed as +15 (plus fifteen) (Annexure A/6). However, the respondents at their whims had computed displacement counts as +15 instead of -5 declared by the applicant. Similarly the own request counts were taken as 45 instead of 25. The applicant was shown as senior most by this exorbitant and highest displacement counts which was computed illegally and erroneously by taking the station seniority of the applicant at Jaipur from 1992 instead of 2004.

8. The applicant made a representation to the respondents to reconsider the transfer displacement counts from 2004 instead of 1992. This representation has been rejected by Deputy Commissioner, KVS, Regional Office, Jaipur vide letter dated 17.04.2013 (Annexure A/1).

9. The learned counsel for the applicant submitted that the Deputy Commissioner is not the competent authority to decide the representation. Based on this erroneous calculation, the applicant has been transferred vide order dated 12.08.2013 (Annexure A/12) from Jaipur to Suratgarh in public interest.

10. The learned counsel for the applicant submitted that transfer guidelines were amended with effect from 12.04.2010 (Annexure A/11). The transfer guidelines effective from 14.03.2006 stood amended with immediate effect as approved by the competent authority. Therefore, these guidelines cannot be given retrospective effect.



11. He further argued that the transfer policy existed in 2004-2005 when the applicant was transferred on mutual basis from Ajmer to Jaipur clearly stated that in the administrative supplementary orders that the station seniority of an employee shall be zero/lost if the employee is transferred for one year or more and accordingly the applicant who was transferred by the KVS on displacement in 2003 and returned in 2004 back to Jaipur after completing more than one year at Ajmer and accordingly the applicant had lost her station seniority at Jaipur existing prior to 2003. As per the transfer policy 2007, the stay period outside the station was reduced to three months for the purpose of station seniority. The transfers made after 2004 upto 2010 considered the station seniority of the applicant from 2004 and not prior to it. Accordingly the seniors serving with station seniority prior to 2004 were transferred and the station seniority of the applicant at Jaipur was considered from 2004. Now the KVS have retrospectively considering the station seniority of the applicant from 1992 which by no stretch of imagination is justified.

12. That the applicant has served for more than three years outside Jaipur fortunately at the same place i.e. Ajmer. There is no provision in the transfer guidelines that three years continuous period is taken for the purpose of breaking the station seniority. It is only three years and not continuous three years. Since the applicant has completed more than three years at Ajmer, therefore, the station seniority cannot be counted from 1992 and it should be counted from 01.09.2012 or at best from September, 2004. In support of his averments, the learned counsel for the applicant

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drew my attention to lat para of 15(1) of the Amended Transfer Guidelines dated 12.04.2010, which is quoted below:-

"Station seniority of an employee, who is transferred either on displacement or on request to another station and comes back to the same previous station without completing a period of three years of service, will be counted from the date of his earlier posting excluding the period of stay outside."

13. He further argued that the amendment in the transfer guidelines is effective from 2010. Therefore, the provisions of 2010 guidelines cannot be applied from the year 1992 in the case of the applicant retrospectively as vested rights accrued in favour of the applicant prior to 2010 cannot be taken away by the amendment of 2010.

14. The learned counsel for the applicant also drew my attention to the order of the Central Administrative Tribunal, Lucknow Bench, Lucknow in OA No. 235/2010 (**Smt. Rama Bhadauria vs. KVS & Others**) and other connected matters (Annexure A/14) wherein a similar controversy was involved. The learned Tribunal vide order dated 12.07.2011 quashed the transfer of the employees and it was held that the amendment of transfer guidelines of 2010 cannot be given retrospective effect. He further submitted that similar controversy has also been decided by the Central Administrative Tribunal, Principal Bench in OA No. 1690/2010 (**Mrs. Jagwanti Tehlan vs. KVS & Others**) and other connected matters. In this order also, the Central Administrative Tribunal, Principal Bench had followed the ratio decided by the Lucknow Bench. These orders have been ignored by the respondents and the applicant had been put to hostile discrimination qua the similarly situated employees.

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15. The order of the Central Administrative Tribunal, Lucknow Bench was challenged by the respondents in the Hon'ble High Court of Allahabad, Lucknow Bench, Lucknow by way of Writ Petition, which was dismissed and the order of the Central Administrative Tribunal, Lucknow Bench was affirmed. Therefore, he argued that the OA be allowed and the letter dated 17.04.2013 (Annexure A/1) be quashed and set aside and the respondents be directed to continue the station seniority of the applicant at best from 2004. Further the respondents be directed not to implement the transfer of the applicant in view of the illegal computation of station seniority and displacement counts from 1992.

16. The respondents have filed their reply. In their reply the respondents have submitted that the transfer guidelines of the KVS was formulated as part of its policy and essentially meant for its administrative affairs. The provisions in the transfer guidelines do not confer any right on the employees in the matter of transfer. Transfer is an incident of employment and, therefore, the employees are bound to undergo transfer being made by the organization at any place within the country.

17. The respondents in Para No. 4.1 of their reply have stated that sub-paragraph (1-7) of Paragraph 4 of the OA are not disputed to the extent facts being matters of record and rest of the contents are denied for the reasons detailed out in the foregoing paras of this reply and material available on record. However, it is submitted that the transfer guidelines were duly approved by the Board of

A handwritten signature in black ink, appearing to read "Anil Kumar".

Governors and amended from time to time with the approval of Board of Governors is circulated by Kendriya Vidyalaya Sangathan (Hqrs), New Delhi from time to time and station seniority of an employee is prepared accordingly and transfers are made as per the transfer guidelines duly approved by the Board of Governors.

18. The respondents have also stated that the contents of subparagraph (8 & 9) of Paragraph 4 of the OA are admitted to the extent of the facts relating to the record and rest of the contents are emphatically denied being absolutely misconceived, misleading and being contrary to the material available on record. That during the recent amendments, it has been decided by the respondents organization to modify the method of calculation of stay of an employee at a particular station. Prior to 15.11.2007, no specific time was prescribed to determine the stay at the station for those who are transferred back/ come back to the same station. After 15.11.2007, it was fixed as three months of active service means who come back/called back to the station from where displaced before completion of three months of active service, her/her stay will remain interrupted. Now it has been remodified as station seniority of an employee who is either transferred on displacement or on request to another station and comes back to same previous station without completing a period of three years of service will be counted from the date of his/her earlier posting excluding the period of stay. This modified method of calculation of station seniority of an employee has been given prospective effect from the transfer season of 2010-11. The amendment in transfer guidelines



dated 12.04.2010 will be given prospective effect from the transfer season of 2010-11.

19. The respondents have further stated that the existing transfer guidelines of Kendriya Vidyalaya Sangathan w.e.f. 01.04.2011 was duly approved by the Board of Governors (BOG) with few amendments from time to time with the approval of BOG has been circulated by Kendriya Vidyalaya Sangathan (HQrs), New Delhi.

20. The respondents also stated that the factor, points and calculation of displacement, count of an employee for displacement transfer has been revised on 21.12.2011 and accordingly clarification has been given in Para 6 (1) of the said transfer guidelines as under:-

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."

21. The learned counsel for the respondents argued that the applicant was transferred from KV NO. 3 Jaipur to KV NO. 1 Ajmer vide transfer order dated 31.03.2003. She worked at KV No. 1 Ajmer from 06.04.2003 to 12.08.2004 and transferred back to Jaipur Station in KV No. 4 Jaipur on request without completing a period of three years of service/stay at Ajmer. The applicant was again transferred from Jaipur Station (KV No. 3 Jaipur) to KV No. 1 Ajmer vide transfer order dated 17.05.2010. She worked at KV No. 1 Ajmer from 20.05.2010 to 01.09.2012 and transferred back to

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Jaipur Station in KV No. 1 Jaipur request without completing a period of three years of service/stay at Ajmer. The applicant was again transferred from Jaipur Station (KV No. 3 Jaipur) to KV No. 2 AFS Suratgarh wherein she worked from 16.08.2013 to 10.12.2013 and transferred back to Jaipur Station in KV No. 3 Jaipur on request without completing a period of three years of service/stay at Suratgarh. Thus the applicant has not spent three years of service/stay to another station (other than hard station, two years in case of hard station) and joined/come back to present station – Jaipur and the displacement counts of the applicant for the year 2013 has been computed on the basis of earlier date of joining at the present station i.e. w.e.f. 14.10.1992 by deducting the period of stay spent at another station which is well within the purview of the transfer guidelines of the KVS applicable to all employee of KVS throughout the country. Accordingly, the applicant was allotted displacement counts for the year 2013 as per the provisions of transfer guidelines of KVS amended from time to time.

22. With regard to the judicial pronouncement, as referred to by the learned counsel for the applicant, the learned counsel for the respondents submitted that it is a matter of record. He submitted that transfer guidelines came in force w.e.f. 01.04.2011 and has been made applicable prospectively from the annual request transfer of the year 2011-12 onwards. He submitted that the OA has no merits and it should be dismissed with costs.

23. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned

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counsel for the applicant. From the perusal of the order of the Central Administrative Tribunal, Lucknow Bench, Lucknow in OA No. 235/2010 (**Smt. Rama Bhadauria vs. KVS & Others**) and other connected matters (Annexure A/14), it is clear that the facts before the Central Administrative Tribunal, Lucknow Bench and the facts of the present OA are quite similar. In brief, the facts of the OA No. 235/2010 (**Smt. Rama Bhadauria vs. KVS & Others**) which was before the Central Administrative Tribunal, Lucknow Bench, Lucknow are that in the month of January, 2010, the applicant was posted at Kanpur Station at KV NI. 2, Chakeri, Kanpur, but vide transfer order dated 7.4.2003, she was transferred from KV No. 2, Chakeri, Kanpur to KV No. 1, AFS Jodhpur. Then again on 22.06.2004, she was transferred from KV No. 1, AFS, Jodhpur to KV-IIT, Kanpur. Again she was transferred on 08.06.2005 to KV-1 Chakari, Kanpur. Then, in the month of January, 2010, the applicant was asked to verify his service details in which, her period of stay at Kanpur was shown correctly as 05 years 06 months. But all of sudden, after the amendment, the applicant was transferred on 17.05.2010 treating her period of stay at Kanpur Station from 1986.

24. The question before the Central Administrative Tribunal, Lucknow Bench was that the amendment in transfer guidelines dated 12.04.2010 is to be effective prospectively. It was stated before the Tribunal that in the amendment of the transfer guidelines, it is mentioned that it has to take immediate effect and not retrospectively. Therefore, it was emphasized that such an effect cannot be given in such an amendment which may affect a



person retrospectively. In Para 20 of the order, the Central Administrative Tribunal, Lucknow Bench has held as under:-

“20. Finally, therefore, we are not inclined to interfere with the amendment made in the transfer guidelines which was well within the powers of the institution i.e. K.V.S. as already mentioned. The learned counsel for the applicants also fairly conceded on this point during the course of arguments. The only blemish, we have found is in respect of implementation of these guidelines retrospectively. As already discussed that in the amendment guidelines itself, in the opening paragraph, it is clearly mentioned that the earlier transfer guidelines dated 14.03.2006 have been amended with immediate effect. The law is also settled on this point that no retrospective effect can be given to any provision so as impair or take away an existing right unless those provisions either expressly or by necessary implication direct that it should have any retrospective effect. Concededly, no where it is mentioned in these amended provisions that it would have retrospective effect. Whether any provision has retrospective effect or not, primarily depends upon its language and its construction from which the intention has to be ascertained. The intent is ascertained either by express provision or by necessary implication which are lacking here. Therefore, these OAs are partly allowed to the extent that the amended transfer guidelines have been wrongly implemented with retrospective effect in an arbitrary manner, impairing and taking away the existing rights of the applicants. The remaining reliefs are declined. The respondents are required to implement the amended guidelines prospectively and in furtherance thereof, they are directed to make a fresh exercise in respect of transfer of all the applicants and then to pass appropriate orders, if any. It is also desirable that such an exercise, may be concluded within a period of forty five days from today so that the confusion if any may come to an end and the students may not suffer in their studies.”

25. The Central Administrative Tribunal, Principal Bench, New Delhi while deciding the OA No. 1690/2010 (**Mrs. Jagwanti Tehlan vs. KVS & Others**) and other connected matters vide order dated 18.01.2012 (Annexure A/15) has also followed the ratio decided by the Central Administrative Tribunal, Lucknow Bench, Lucknow.

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26. The applicant has already mentioned in the OA that the order of the Central Administrative Tribunal, Lucknow Bench, Lucknow in OA No. 235/2010 (**Smt. Rama Bhadauria vs. KVS & Others**) and other connected matters (Annexure A/14) has been affirmed by the Hon'ble High Court of Allahabad at Lucknow Bench. The learned counsel for the applicant also argued that the respondents have refixed the station seniority of the applicants before the Central Administrative Tribunal, Lucknow Bench, Lucknow and the applicants before the Central Administrative Tribunal, Principal Bench, New Delhi by following the directions of the Hon'ble Tribunal in these OAs. Therefore, there cannot be any discrimination against the applicant qua the similarly situated employees.

27. Since the controversy involved in the present OA is similar to the controversy which was before the Central Administrative Tribunal, Lucknow Bench and Central Administrative Tribunal, Principal Bench, New Delhi, therefore, the present OA is also decided in terms of the decision of Central Administrative Tribunal, Lucknow Bench, Lucknow in OA No. 235/2010 (**Smt. Rama Bhadauria vs. KVS & Others**) and other connected matters (Annexure A/14). The respondents are directed to reconsider the representation of the applicant regarding station seniority and decide it expeditiously but not later than two months from the date of receipt of a copy of this order. It is further directed that no action detriment to the applicant will be taken till the respondents decide the representation of the applicant afresh.

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28. During the pendency of the OA, the applicant has been transferred to Gandhinagar vide order dated 19.06.2014 (Annexure A/13). It is made clear that if she has not been relieved so far then she would not be relieved till the disposal of her representation afresh, as directed. In that case, the respondents are at liberty to accommodate Shri Pankaj, who has been posted vice the applicant at Jaipur against the vacancy arisen due to retirement of Ms. Agarwal on 30.06.2014 so that the interests of the students do not suffer. In case Shri Pankaj has joined at Jaipur vice the applicant then the respondents may consider the applicant to adjust for the time being against that vacant post till her representation is decided, if the applicant has not joined at her new place of posting.

29. With these directions, the OA is disposed of with no order as to costs.

30. In view of the order passed in the OA, the MA No. 291/00314/2014 for grant of interim relief is disposed of accordingly.


(ANIL KUMAR)
MEMBER (A)

abdul.