

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3053 OF 2014

New Delhi, this the 28th day of September, 2015

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

..

Smt. Manju Sharma,

W/o Shri Pankaj Sharma,

(PGT Commerce, KV No.1, AFS Gurgaon, 2nd Shift),

32, Kiran Vihar (2nd Floor),

Dehi 110092

1 1 .. Applicant

(By Advocate: Mr.G.C.Sharma)

Vs.

1. Ministry of Human Resources Development,
(Through its Secretary),
Shastri Bhavan,
New Delhi.
2. Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi 110016 í í í

Respondents

(By Advocates: Dr.Ch.Shamsuddin Khan & Mr.U.N.Singh)

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ORDER

In this Original Application, the applicant has prayed for the following reliefs:

- õ(a) The Application of the Applicant may be allowed and the impugned order No.F.11046/03/PGT(SUR)2014-15/KVS/HQ/E.11 dated 26/27-05-2014 as modified by Order No.F.11046/03/PGT(SUE)2014-15/KVS/HQ/II dated 28.5.2014 be declared as arbitrary and illegal and the same be set aside qua the Applicant.

- (b) The applicant be ordered to be posted back to PGT (Commerce) in KV, New Friends Centre, Vigyan Vihar, Delhi or any other KV nearer thereto such as Hindon or Noida;
- (c) The cost of the present proceedings be ordered to be paid to the Applicant; and
- (d) Any other or further reliefs which this Honøble Tribunal may deem fit and proper in the facts and circumstances of the case.ö

2. The respondents have filed counter reply opposing the O.A.

3. I have perused the records, and have heard Mr.G.C.Sharma, learned counsel appearing for the applicant, and Dr.Ch.Shamsuddin Khan and Mr.U.N.Singh, learned counsel appearing for the respondents.

4. The applicant joined as a PGT (Commerce) on 8.2.1988. She was initially posted to Kendriya Vidyalaya (KV), Gurgaon. Thereafter, she was posted to different KVs in Delhi. She was transferred from KV, Janakpuri, Delhi, to KV, Haldwani in Uttrakhand, vide order dated 3.10.2011. From KV, Haldwani, Uttrakhand, she was posted back to KV, New Friends Centre, Delhi, vide order dated 4.3.2014.

5. Due to re-fixation of staff strength in KVs for the year 2014-15, the staff in excess of the sanctioned strength in certain KVs were required to be redeployed in terms of Clause 5(a) and 7 of the transfer guidelines effective from 1.4.2011. Therefore, KVS, vide office order dated 26/27.05.2014 (Annexure A/1), redeployed 62 PGTs, which included the applicant, in KVs shown against their names in public interest with effect from 31.5.2014. As a consequence, the applicant, who was working as PGT(Commerce) in KV, New Friends Centre, Delhi, was redeployed in KV,

Paluwas, Haryana. However, KVS, vide corrigendum dated 28.5.2014 (Annexure A/2), corrected the place of posting/redeployment of the applicant, as indicated in the order dated 26/27.5.2014 (ibid), and posted her to KV No.1, AFS, Gurgaon (2nd Shift), instead of KV, Paluwas.

6. It is contended by the applicant that her frequent displacements/transfers during the past three years are unfair and unreasonable and against the guidelines of transfer framed by the KVS. Such transfers caused extreme hardship to the applicant and her family. Fourteen PGTs were adjusted at the stations where they were working, whereas she was posted out of Delhi first to Paluwas in Bhiwani Distt. of Haryana and then to Gurgaon. KV, New Friends Centre, Delhi, has two sanctioned posts of PGT (Commerce) and, therefore, she could not have been declared surplus and posted out. If at all one post of PGT (Commerce) was declared surplus in KV, New Friends Centre, Delhi, the other PGT (Commerce) ought to have been transferred, because she joined the said school only in March 2014.

7. In **Shilpi Bose v. State of Bihar**, 1991 Supp.(2) SCC 659, the Honøble Supreme Court, at page 661, para 4, observed thus:

õ4. 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 orderí ö

8. In **Union of India v. S.L.Abbas**, (1993) 4 SCC 357, at page 359, Para 7, the Honøble Supreme Court observed thus:

õ7. 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.ö

9. A three-Judge Bench of the Honøble Supreme Court in **Major General J.K.Bansal v. Unon of India and others**, (2005) 7 SCC 227, has also adopted the aforesaid view.

10. In **State of M.P. and another v. S.S.Kourav and others**, 1995(2) SLJ 109 (SC) = (1995) 3 SCC 20, the Honøble Supreme Court observed:

õThe Courts or Tribunals are not the appellate forums to decide on transfer of officers on administrative grounds; the wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict 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 fide or by extraneous consideration without any factual background foundation.ö

11. Again, the Honøble Supreme Court in **State of U.P. and Another v. Siya Ram and another**, 2005 (1) SLJ 54 (SC): (2004) 7 SCC

405, where the respondents therein were transferred on administrative grounds, the Honøble Supreme Court observed thus:

õ5. The High Court while exercising jurisdiction under Articles 226 and 22 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No Government servant or employee of a public undertaking has any legal right to be posted for ever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to the other is not only 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 or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or Tribunals normally cannot interfere with such orders as a matter of routine, as though they were Appellate Authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. V. Shri Bhagwan*.

6. The above position was recently highlighted in *Union of India v. Janardhan Debanath*. It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest.õ

12. Again, the Honøble Supreme Court in **State of U.P. v. Gobardhan Lal**, 2004 (3) SLJ 244(SC): (2004) 11 SCC 402, in paragraphs 7 and 8 observed thus:

õ7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or

position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfer or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

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 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.ö

13. Admittedly, the applicant, who is serving as a PGT (Commerce) under the KVS, has all India transfer liability. She was posted to and worked in KV, Gurgaon, and in different KVs located in Delhi for more than twenty-two years during the period from 8.2.1988 till October 2011. Thereafter, by order dated 3.10.2011, she was transferred from KV, Janakpuri, Delhi, to KV, Haldwani in Uttarakhand, where she worked till March 2014, when she was transferred to KV, New Friends Centre, Delhi, vide order dated 4.3.2014. Because of some posts of PGT being rendered surplus, she was transferred from KV, New Friends Centre, Delhi, and posted to KV, Paluwas, Haryana, vide order dated 26/27.5.2014 (Annexure A/1). However, by issuing a corrigendum dated 28.5.2014, the KVS has already posted the applicant to KV No.1, AFS, Gurgaon (2nd Shift), where she is presently working. After having given my anxious consideration to the facts and circumstances of the case and the contentions of the applicant, in the light of the decisions referred to in the preceding paragraphs, I do not find any substance in her claim to be posted back to KV, New Friends Centre, Vigyan Vihar, Delhi, or to any other KV nearer thereto, such as Hindon or Noida.

14. In the result, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

