

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.2861 OF 2015

New Delhi, this the 30th day of November, 2015

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Ashwani, aged 36 years,
s/o Sh.R.L.Meena,
working as PGT(Computer Science),
in K.V.Karera, Bhopal Region (M.P.),
permanent resident of III/40, BSNL Colony, Manwa Khara,
Sector 6, Udaipur (Raj.) Applicant

(By Advocate: Mr.Yogesh Sharma)

Vs.

1. Kendriya Vidyalaya Sangathan,
through the Commissioner,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi
2. The Administrative Officer (Estt.),
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi

(By Advocate: Mr.K.M.Singh)

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ORDER

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

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated

21.07.2015 (Annex. A/1) only to the extent of transferring the applicant from present place of posting to KV Balasore (Orissa) and consequently, pass an order directing the respondents to consider the request transfer of the applicant at his choice place of posting at Udaipur or Dungarpur (1st and 2nd preference) as per transfer policy with all consequential benefits including treating the intervening period from the date of passing the impugned order to the date of passing fresh order as on duty for all purposes.

- (ii) Any other relief which the Honøble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.ö

2. **Brief facts:** The applicant is a Post Graduate Teacher (PGT) (Computer Science) of Kendriya Vidyalaya Sangathan (hereinafter referred to as -KVSø). On being so posted, he joined Kendriya Vidyalaya (for short, -KVø), Karera, ITBP (under Bhopal Region) on 1.11.2008. Karera is a hard station. Paragraph 9 of the transfer guidelines issued by KVS stipulates that request transfer shall be effected as per the prescribed calendar of activities. Transfer on request shall be effected on the basis of -Transfer Countsø 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 one year in terms of the appointment order. An employee will not be eligible for request transfer twice in one academic year. The factors, points, and calculation of Transfer Counts of an employee for request transfer are delineated in paragraph 10 of the transfer guidelines (Annexure A/3). The applicant claiming to have 84 Transfer Counts to his credit applied for his request transfer on 15.4.2015.

His application for request transfer was verified by the Principal, KV, Karera, and was forwarded to KVS. In column 10B of the transfer application, he indicated the following five stations in order of preference:

1. Udaipur
2. Dungarpur
3. Jaipur
4. Ajmer
5. Bhilwara

KVS, instead of acceding to his request for transferring him to any of the stations preferred by him, issued order dated 21.7.2015 (Annexure A/1) transferring him from KV, Karera, to KV, Balasore, in public interest, and transferring one Mr. Lakhan Singh Pal, PGT (Computer Science) from KV, Suratgarh Cantt., to KV, Karera, on request. Being aggrieved thereby, he made a representation dated 24.7.2015 (Annexure A/2) to the Commissioner, KVS, but to no avail. Hence, he has filed the present O.A. seeking the reliefs, as referred to earlier.

3. It is contended by the applicant that KVS, vide notice dated 21.7.2015 (Annexure A/4), stipulated that employees having 50 and above Transfer Counts (C-1) with completion of one year service at the present station were considered for Inter-Station request transfers, and to accommodate such employees, 10 and above Displacement Counts (D-1) were fixed for displacement of employees from the concerned stations. Although he had 84 Transfer Counts to his credit, KVS took 69 Transfer Counts into account, while considering his application for request transfer, but even then, his request for transfer to any of the stations preferred by him

ought to have been allowed. It is also contended by the applicant that the respondents, while disallowing his request for transfer to any of the stations preferred by him, have issued the impugned order of transfer in order to accommodate one Mr.Lakhan Singh Pal at KV, Karera, by acceding to his (Mr.Lakhan Singh Pal's case) request for transfer. Thus, according to the applicant, rejection of his request for transfer to any of the stations preferred by him is discriminatory. It is also contended by the applicant that the respondents having admittedly accommodated Shri Lakhan Singh Pal at KV, Karera, the impugned order transferring him to KV, Balasore, cannot be said to have been issued in public interest. It is also contended by the applicant that the impugned transfer order is violative of paragraph 7 of the transfer guidelines inasmuch as Balasore is far away from his home State of Rajasthan. It is further contended by the applicant that his wife is a Rajasthan State Government employee and is presently posted in Distt. Udaipur and, therefore, KVS ought not to have transferred him to KV, Balasore. In support of his case, the applicant has referred to the decisions of the Tribunal in *Smt. Rekha Pasricha v. KVS*, OA No.2099 of 2014, decided on 20.2.2015; *Smt. Luna v. UOI and others*, OA No.2022/2010, decided on 29.10.2010; and *Jitendra Kumar Saxena v. Union of India and others*, 2000(3) ATJ 657.

4. In their counter reply, the respondents have, *inter alia*, stated that as per the transfer data received from the Deputy Commissioner, KVS (RO), Bhopal, the applicant was having 69 Transfer Counts. The applicant's

request was considered, but he could not be transferred to any of the stations preferred by him, due to non-availability of eligible incumbent with 10 and above Displacement Counts for being displaced from there. The applicant has been transferred from KV, Karera, to KV, Balasore, which is nearest to Karera and where there was a clear vacancy in the post of PGT (Computer Science), in accordance with the transfer guidelines to create a vacancy to accommodate Mr. Lakhan Singh Pal, PGT (Computer Science), KV, Suratgarh Cantt., who was having 61 Transfer Counts and belonged to Tenure Completed in Priority Area, and Hard Area Category. Thus, there was no violation of any of the provisions of the transfer guidelines. Referring to the decisions of the Honøble Supreme Court in *Mrs. Shilpi Bose & others v. State of Bihar*, AIR 1991 SC 532; *Union of India v. S.L.Abbas*, (1993) 4 SCC 357; and *State of U.P. & others v. Govardhan Lal*, 2004(3) SLJ 244 (SC); and the decision of the Honøble High Court of Delhi in *Sujata Kholi v. High Court of Delhi*, 148(2008) DLT 17(DB), the respondents submit that on the facts and in the circumstances of the case, there is no scope for interference with the impugned order of transfer. Referring to the decision of the Honøble Supreme Court in *S.C.Saxena v. Union of India and another*, 2006 SCC (L&S) 1890, the respondents also submit that the applicant should have joined the new place of posting, but he failed to do so. In view of the above, the respondents pray for dismissal of the O.A.

5. No rejoinder reply has been filed by the applicant controverting the stand taken by the respondents.

6. I have carefully perused the records, and have heard Mr. Yogesh Sharma, learned counsel appearing for the applicant, and Mr. K.M. Singh, learned counsel appearing for the respondents.

7. In *Shilpi Bose's* case (supra), the Honøble Supreme Court 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 *S.L. Abbas's* case, 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. 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

10. Again, in *State of U.P. and Another v. Siya Ram and another*, 2005 (1) SLJ 54 (SC): (2004) 7 SCC 405, where the respondents 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.ö

11. Yet again, the Hon^{ble} Supreme Court in *Gobardhan Lal* case (supra) observed thus:

7. 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.

12. In *S.C.Saxena's case* (supra), it has been observed by the Hon'ble Supreme Court that a Government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and to make a representation as to what may be his personal problems.

13. Admittedly, the applicant, who is serving as a PGT (Computer Science) under KVS, has all India transfer liability. He was posted to KV, Karera, on 1.11.2008. Thus, he completed more than six years at KV, Karera, when the impugned order dated 21.7.2015 (Annexure A/1) was issued by KVS transferring him to KV, Balasore, in public interest. The assertion made by the respondents in their counter reply that the applicant's request was considered by them, but he could not be transferred to any of the stations preferred by him in his application due to non-availability of eligible incumbent with 10 and above Displacement Counts for being displaced from there, has not been refuted by the applicant. The applicant has also not placed before this Tribunal any material to show that any incumbent holding the post of PGT (Computer Science) with 10 and above Displacement Counts was continuing at any of the said stations and was liable to be displaced/transferred by KVS to accommodate the applicant in accordance with the transfer guidelines. Therefore, the applicant's plea of

discrimination, and non-consideration of his request for transfer to any of the preferred stations, is untenable.

14. It is not the case of the applicant that transfer of Mr. Lakhan Singh Pal from KV, Suratgarh Cantt., to KV, Karera, was violative of any of the provisions of the transfer guidelines issued by KVS. The applicant has not refuted the assertion made by the respondents in their counter reply that he was transferred from KV, Karera, to KV, Balasore, which is nearest to Karera and where there was a clear vacancy in the post of PGT (Computer Science). Thus, when the applicant could not be transferred to any of the stations preferred by him in his application seeking request transfer, the respondents transferred him to KV, Balasore, which is nearest to Karera and where there was a clear vacancy at the relevant point of time. Therefore, it cannot be said that the impugned order is violative of paragraph 7 of the transfer guidelines.

15. It was contended by Mr. Yogesh Sharma, learned counsel appearing for the applicant, that KVS ought to have transferred the applicant to any of the KVs located either in Delhi or in Haryana so as to enable him to look after his family members, and that consequent upon his transfer to KV, Balasore, the Transfer Counts already accrued to the applicant for the purpose of seeking request transfer would lapse and, as a result, the prospect of his transfer to any station in his home State of Rajasthan would be bleak.

15.1 The applicant has not filed a copy of his application seeking transfer from KV, Barera, ITBP (under Bhopal Region). It is not his case

that he had made a request to KVS to transfer him to any of the KVs located either in Haryana or in Delhi. He has also not placed before this Tribunal any material to show that a clear vacancy was available at any of the KVs located either in Haryana or in Delhi. As already noted, KVS transferred him to KV, Balasore, which is nearest to Karera and where there was a clear vacancy.

15.2 As already noted, the factors, points, and calculation of Transfer Counts of an employee for request transfer are delineated in paragraph 10 of the transfer guidelines, *ibid*. Thus, the Transfer Counts of the applicant will have to be determined in accordance with paragraph 10 of the transfer guidelines, *ibid*, as when request transfer will be sought by him. There appears to be no provision in the transfer guidelines, under which the Transfer Counts accrued to an employee, like the applicant, would lapse, even if his request for transfer was not earlier acceded to by KVS. Mr.Yogesh Sharma has also not drawn attention of the Tribunal to any rule or guideline/circular issued by KVS, under which the Transfer Counts already accrued to the applicant would lapse, notwithstanding the facts that he was transferred from KV, Karera, to KV, Balasore, in public interest, and that his request for transferring him to any of the preferred stations was not acceded to by KVS.

15.3 In view of the above, I am not inclined to accept the aforesaid contentions of Mr.Yogesh Sharma, learned counsel for the applicant.

16. As per the law laid down by the Hon^{ble} Apex Court, the transfer is an incidence of service. The applicant has no vested and legally enforceable right to claim posting to any particular place/station. It is a matter for the appropriate authority to decide as to who should be transferred where. The Tribunal cannot sit as an appellate court over the order of transfer made on administrative grounds and in public interest. The wheels of administration should be allowed to run smoothly, and the Tribunal is not expected to interdict the working of the administrative system by transferring the officers to proper place. The decisions cited by the applicant, being distinguishable on facts, are of no help to his case.

17. After having given my anxious consideration to the facts and circumstances of the case, and the rival contentions of the parties, in the light of the law laid down by the Hon^{ble} Supreme Court, I do not find any merit in the O.A.

18. In the result, the O.A. is dismissed. The interim order passed on 14.8.2015 stands vacated. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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