

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 3885/2015

Order reserved on 10.05.2016

New Delhi this the 7th day of June, 2016

Hon'ble Smt. Jasmine Ahmed, Member (J):

Smt. Renu Yadav,
W/o Dinesh Kumar Yadav,
R/o 435, Sector-21,
Gurqaon-122016 ... Applicant

(By Advocate Ms.Jyoti Singh, Senior counsel with
Mr. Dinesh Yadav and Mr.Amandeep Joshi)

VERSUS

1. Kendriya Vidyalaya Sangathan
Through Its Commissioner,
18, Qutab Institutional Area,
SJS Marg, New Delhi-110018
2. Deputy Commissioner, KVS
Regional Office Gurgaon
Kendriya Vidyalaya No. 1 (AFS),
Sector-14, Gurgaon.
3. Principal
Kendriya Vidyalaya No. 1 (AFS)
Sector-14, Gurgaon.

(By Advocate: Mr. U.N.Singh)

ORDER

This instant Original Application has been filed seeking the following reliefs:-

- “(a) To quash the respondent’s impugned Transfer Order dated 29.06.2015 to the effect it applies to the applicant.
- (b). To direct the respondents to repost the applicant back to KV No.1 (AFS), Gurgaon, or in the alternative execute mutual transfer with Mr.Satish Kumar, TGT (Maths) whose written willingness for mutual transfer is already submitted to respondents.
- (c). Impose exemplary cost on the respondents for violation of Articles 14 and 16, and for forcing the applicant to litigate.
- (d). Any other order that the Hon’ble Tribunal may deem fit and proper in the facts of the case.”

2. Learned counsel for the applicant states that the applicant has approached this Tribunal assailing the impugned transfer order only on the point of an unintentional mistake has occurred due to oversight of the applicant. Learned counsel also states that applicant has also made several representations in writing and also on line annexing all the necessary supported documents and requested the respondents for overlooking the mistake occurred while filling up the form of routine transfer as mandatory in KVS and cancelling the impugned transfer order of the applicant and passing an appropriate order.

3. The brief facts of the case is that applicant joined the services of Kendriya Vidyalaya (KV) in 1993 as PRT. Subsequently, she was serving as PRT at KV, AF Station Rajokri and was promoted and transferred in the year 2009 as TGT (Maths) to KV No. 1 (AFS), Sector-14, Gurgaon. It is the contention of counsel for the applicant that there are two types of transfers followed at KV viz., (i) is of administrative nature where the KV orders suo-motto transfer order in the exigencies of service and (ii) request transfers based upon the request of an employee. In this regard, there is a proper transfer guidelines prevailing at KV. As per the mandatory guidelines of filling up annual transfer application, the applicant had filled up the annual transfer application form in 2015, which is mandatory routine requirement of respondents. The applicant filled up four choices of stations in order of her preferences against column 10B of the transfer application. Giving this information is also mandatory requirement as per the respondents guidelines. In part-C of the transfer application form the applicant had to fill up '**NO**' against the box indicating whether the employee is willing to apply for request transfer as per

her/his choice. The instructions at the bottom of Part-C of the said transfer form also stipulate for striking out the entire Part-C, if the employee does not opt for request transfer. In this context, counsel for the applicant submitted that the applicant did not strike out the Part-C of the said transfer application form due to oversight. She also admits that this was a procedural lapse on the part of the applicant. The transfer application form is obviously has to be vetted and verified at the level of KV and Regional Office. However, the unintentional anomaly which occurred due to oversight of the applicant was overlooked at the level of KV and Regional Office also and the outcome of that impugned transfer order dated 29.06.2015 has been issued by the respondents wherein the applicant has transferred to KV Jharoda Kalan, CRPF as a request transfer. After coming to know the applicant being shocked immediately submitted her application dated 30.06.2015 to respondent No. 3 against the unintentional mistake. The applicant again submitted an application dated 1.07.2015 to respondents against the impugned transfer order enclosing her transfer application form. It is contended that the applicant's applications were duly recommended and forwarded to respondent No. 2. She also states that as she being a diligent and law abiding employee, accepted her relieving orders from KV Gurgaon and reported for duty to KV Jharoda Kalan.

4. Counsel for the applicant states that she never wanted request transfer but unintentionally an inadvertent mistake occurred while filling up the form and the procedural lapse has taken place due to oversight while filling up the form. She states that while submitting her representation she has also stated the case of one Shri Satish Kumar,

TGT (Maths) who is very much willing to be posted at KV Jharoda Kalan in the preferred representation by the applicant. Counsel further states that an inadvertent mistake which has occurred can very well be resolved by accepting the request of Mr. Satish Kumar, which will solve not only his problem but the applicant's problem as well to serve KV in a better way as she is diligently serving the KV as a very conscientious and assiduous teacher. In this regard, she states that this fact can be proved by her APAR for the last year wherein it can be seen that the overall numerical grading of the applicant is 9.6, hence she states and prays that error which took inadvertently be rectified by the respondents accepting the request of Mr. Satish Kumar posting him at KV Jharoda Kalan and transferring back the applicant to KV Gurgaon where she was working very diligently and with full satisfaction of the respondents. Counsel for the applicant also placed reliance on similar matter of one Shri Ajay Kumar (OA No. 2491/2015) decided on 14.07.2015 wherein also the same mistake occurred by the said Mr. Ajay Kumar not striking out Part-C of the form and was transferred out from where he was working. While the OA filed by Shri Ajay Kumar came before this Tribunal, the Tribunal directed the respondents to examine his representation and pass appropriate order and communicate the same to applicant within one month from the date of receipt of certified copy of that order. After receiving the order of this Tribunal, the respondents cancelled the transfer order of Shri Ajay Kumar, which is quoted below.

"Accordingly, his transfer from KV No.1, AFS Gurgaon (2nd shift) to KV No. 2, Sohna Road, Gurgaon ordered vide KVS (HQ)'s transfer order dated 29.06.2015 is hereby cancelled

at his own request with immediate effect in compliance with the order dated 14.07.2015 in OA no. 2491/2015 of the Hon'ble CAT Principal Bench, New Delhi.

This issue with the approval of the competent authority."

Counsel for the applicant states that the respondents can very well take the same decision taking into consideration the applicant's plea and pass similar order in her case also.

4. Counsel for the respondents objects the contention of the counsel for applicant and states that transfer is an incidence of service, hence the Tribunal may not interfere in the transfer order as there is nothing arbitrary, illegal or against the statutory rules and it is the applicant who filled up the form and did not strike down the Part-C of the form, hence there is no wrong on the part of the respondents transferring him from KV, Gurgaon to KV, Jharoda Kalan. In this regard, counsel for respondents has placed reliance on various judgments where it has been shown that the Tribunals or any Courts generally should not interfere in transfer orders unless found arbitrary, in violation of statutory rules, mala fide or under the garb of colourable exercise of power or issued by incompetent authority.

5. Heard the counsel for the parties and perused the documents on record, seen the form filled up by the applicant. It is seen that in the form there is a part C which is page no 27 of the paper book and under the heading note, there are three directions have been given to the employee, which is quoted below:-

- "(i) Whether the employee is willing to apply for request transfer as per choice KVs/Stations filled in Col.10A/10B of Part A of application form (Write Yes/No)
- (ii). If yes, then fill-up the relevant columns above PART-C.
- (iii). If no, then strike-out the above entire PART-C."

It was contended by the learned counsel for the applicant that the instruction at note (iii) inadvertently not strike out by applicant due to oversight and she has been transferred on request to KV Jharoda Kalan. After hearing the counsel for parties and perusing the documents on record, it is felt that if any bona fide mistake has occurred by any employee it is better to find out an amicable solution for any problem/ situation. The motive is to take best service from an employee and not to ponder on any mistake occurred inadvertently. If adhering/accepting a solution does not cause any loss to the employer or employee side, that can be termed as the best solution in the interest of employer or employee both. It is seen that Mr.Satish Kumar who is also KV employee is very much willing to work at KV Jharoda Kalan where the applicant has been transferred, hence accepting the request of Mr. Satish Kumar and cancelling the transfer order of the applicant and transferring her back to Gurgaon will not cause any loss or difficulty in the smooth functioning of KVS. The respondents can very well allow Mr. Satish Kumar at KV Jharoda Kalan and transfer back the applicant to Gurgaon accepting not striking out Part-C as unintentional/inadvertent mistake or human error caused by the applicant, as the inference can be drawn by the entire filled up form that she has never meant/ applied for any request transfer. Service jurisprudence is merely based on principles of natural justice and if accommodating or adjusting gives fruitful result and opportunity to an employee to give his/ her best, there is no harm in that adjustment or accommodation. Accordingly, the respondents are directed to take a decision on the representations of the applicant dated 30.06.2015, 01.07.2015, 08.08.2015 and pass an appropriate order taking into

consideration the observations made above within one month from the date of receipt of certified copy of this order. It is made clear nothing has been commented on the merits of the case. OA disposed of accordingly. No costs.

(Jasmine Ahmed)
Member(J)

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