

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00056/2019

Reserved on : 08.04.2019
Pronounced on : 16.04.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

Lata Choudhary W/o Sandeep Kumar, aged about 37 years, R/o Near PNB Basni, 1-J-15, Madhuban Housing Board, Jodhpur, Rajasthan. Presently posted as TGT (P&HE) at Kendriya Vidhyalaya, Air Force Station, Jaisalmer , Raj.

...Applicant

(By Advocate: Shri Jitendra Choudhary)

Versus

1. The Union of India through the Secretary, Ministry of Human Resource Development, Government of India, Shastri Bhawan, New Delhi.
2. The Commissioner, Kendriya Vidhyalaya Sangthan, Sahid Jeet Singh Marg, New Delhi.
3. Deputy Commissioner, Kendriya Vidhyalaya Sangthan, Jaipur Region, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur
4. Assistant Commissioner, Kendriya Vidhyalaya Sangathan through, Regional Office, Jaipur
5. Principal, Kendriya Vidhyalaya, Air Force Station, Jaisalmer, Rajasthan

...Respondents

(By Advocate: Shri Avinash Acharya)

ORDER

Per Mrs. Hina P.Shah

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant prays for the following reliefs:-

- i) Issue an appropriate order or direction in the nature thereof whereby the order dated 11.02.2019 (Annexure /A 01) may be quashed and set-aside.
- ii) Pass any other appropriate order which this Hon'ble Tribunal may deem fit, just and proper in the facts and circumstances of the case in favour of the present applicant.
- iii) Cost of the Original Application may also be awarded in favour of the applicant

2. The brief facts of the case, as stated by the applicant, are that she is Physical Teacher at Kendriya Vidyalaya (KV), Air Force Station, Jaisalmer. She was appointed as TGT (P&HE) vide order dated 25.11.2010 passed by respondent No.4 and since then she is continuously in service and posted at KV, Air Force Station, Jaisalmer. It is the submission of the applicant that order of transfer of the applicant was passed by the respondents, but the same was cancelled vide order dated 5.2.2019 even though, the respondent No.5 illegally acted upon the said transfer and relieved her from service at KV, Air Force Station, Jaisalmer vide order dated 11.02.2019 (Ann.A/1). Since her joining at KV, Air Force, Jaisalmer, she is facing continuous harassment and due to which she had to file a complaint against respondent No.5. In response to the said complaint, a departmental inquiry was conducted and report was submitted by Internal Complaint Committee on 18.9.2018. After that respondent No.5 being Principal of the school

started misusing her position by passing random orders against the applicant.

On 13.1.2019, the applicant wrote a letter to respondent No.4 wherein she has submitted that earlier she applied for No Taker Vacancy of 2017-18, but she was not transferred in that period and now the academic year 2017-18 has come to end so her application filed under No Taker Vacancy may be cancelled. In that letter she has also submitted that she is on maternity leave and at present she is not in a position to join at the transferred place, but she may be transferred to her new place of choice at KV No.7, Amer, Jaipur against the fresh vacancy of 2019 (Ann.A/3). It is the case of the applicant that in terms of Para 9, 11 and 11 (g) of KVS Transfer Guidelines present applicant was transferred from KV, Air force Station, Jaisalmer to KV, BSF, Khajuwala vide order dated 5.2.2019 (Ann.A/4). In all 39 employees were transferred at difference places and name of the applicant was shown at Sl.No.25 of the order Ann.A/4. Initially, her request for transfer was considered by the respondents in the general transfer wherein there were 96 candidates and according to the said letter of 5.2.2019 (Ann.A/5) her request for transfer had been considered, but the same could not be acceded to. It is

clear that the respondents had cancelled her transfer order vide order Ann.A/5 dated 5.2.2019. It is the claim of the applicant that though order of transfer dated 5.2.2019 was cancelled but the applicant was relieved from her posting vide order dated 11.2.2019 by respondent No.5. Therefore, the applicant states that respondent No.5 is arbitrarily and discriminatorily carrying out the order dated 11.2.2019, which is illegal, erroneous, perverse and passed due to the harassment by respondent No.5, who is misusing her position against the applicant. Therefore, the applicant prays that the order dated 11.2.2019 be quashed and set-aside.

3. The applicant has filed a Misc. Application No.290/00064/2019 praying for stay of transfer of one Shri Vinod Kumar Rathore, who is transferred to KV, Air Force Station, Jaisalmer. This Tribunal considered the Misc. Application and vide order dated 14.3.2019 dismissed the same as being not maintainable.

4. After issuing notices in this matter, the respondents appeared but reply has not been filed. Today, Mr. Avinash Acharya, appeared on behalf of the respondents and contended that he is ready to argue the matter as he has

taken instructions and comments from the respondents on the stay matter. We find that since the scope of judicial interference in transfer matters is limited and the applicant is pressing for grant of interim relief, therefore, the parties are heard finally in the matter.

5. It is the submission of the learned counsel for the respondents that the impugned order dated 11.2.2019 has been passed by respondent No.5 in compliance of the order dated 5.2.2019 (Ann.A/4) which fact is also mentioned in the order dated 11.2.2019 itself. It is clear that as per Para 9, 11, and 11(g) of the KVS Transfer Guidelines, the employees were transferred at their own request against available vacancies. The applicant being at Sl.No.25 is posted from KV, Air Force Station, Jaisalmer to KV, BSF, Khajuwala. As per his application dated 13.1.2019, it is clear that she has applied for KV, BSF, Khajuwala as her choice station against No Taker vacancies of the year 2017-18. In that letter she has stated that there is a likelihood of a vacancy being created at KV No.7, Amer, Jaipur in April, 2019 and, therefore, requested for her transfer to the said place. The respondents have therefore, stated that the respondents have passed the transfer order in administrative exigency which is also a choice place of the

applicant and accordingly relieving order dated 11.2.2019 has been passed in compliance of the transfer order passed by the competent authority. Therefore, there is no arbitrariness or malafide intention of respondent No.5 in relieving the applicant to enable her to join at KV, BSF, Khajuwala. The another order dated 5.2.2019 (Ann.A/5) is passed considering the request of the applicant for posting her at KV No.7, Amer, Jaipur, but her request for such transfer could not be acceded to.

6. The applicant by way of rejoinder to the contentions of the respondents has stated that as the request of the applicant was considered and order dated 5.2.2019 (Ann.A/5) was passed stating that request of the could not be acceded to, but as per separate order dated 5.2.2019 (Ann.A/4), the respondents have transferred the applicant to KV BSF, Khajuwala. Therefore, since request of the applicant was already cancelled, the respondent No.5 ought not to have relieved the applicant vide order dated 11.2.2019 and therefore, the applicant requested that the relieving order be stayed as the applicant is not able to join at the new place of posting and also that a post is likely to be created in April, 2019 in KV No.7,Amer, Jaipur, where the applicant can be adjusted.

7. Heard Shri Jitendra Choudhary, learned counsel for the applicant and Shri Avinash Acharya, learned counsel for the respondents and perused the material available on record.

8. In this OA, the limited prayer of the applicant is with regard to quashing and setting aside the relieving order dated 11.02.2019 (Ann.A/1), which is passed in compliance of the transfer order dated 5.2.2019 (Ann.A/4). The applicant has neither challenged the transfer order which is passed as per Para 9, 11 and 11(g) of the KVS Transfer Guidelines nor the Transfer Guidelines. She has alleged that respondent No.5 is misusing her position to harass the applicant as she has filed a complaint against respondent No.5. She has further contended that the Internal Complaint Committee had recommended to transfer the applicant as a sort of redressal of her grievance and to that the applicant submitted her representation on 13.1.2019, when it came into her knowledge that transfer order was cancelled vide order dated 5.2.2019.

9. At this stage, it would be relevant to refer to some of the pronouncements of the Hon'ble Apex Court in this regard. The Hon'ble Apex Court in the case of **Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey &**

Ors., (2004) 12 SCC 299 held that transfer is in incidence of service. Who should be transferred and posted where, is a matter for administrative authority to decide. Unless the order or transfer is shown to be clearly arbitrary or is vitiated by mala fides or is made in violation of any operative guidelines or rules governing the transfer, the courts should not ordinarily interfere with it.

In the case of **State of U.P. and Ors. vs. Gobardhan Lal**, (2004) 11 SCC 402, the Hon'ble Apex Court held that transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when transfer order shown to be vitiated by mala fide, or in violation of any statutory provisions or having been passed by an authority not competent to pass such an order. It is further held that allegation of mala fides must be based on concrete material and must inspire confidence of the court.

10. In the present case, the relieving order dated 11.02.2019 is passed in compliance of the transfer order dated 5.2.2019, which has been passed by the competent authority. The respondent No.5 has no reason to retain the applicant, but to relive her in compliance of the order of the competent authority. In such circumstances, it cannot be

said that respondent No.5 acted arbitrarily, malafidely or beyond her powers. The allegation of arbitrariness or malafide made by the applicant against respondent no.5, therefore, cannot be accepted. With regard to the contention of the applicant that she has made a complaint against respondent No.5 and in order to harass her, the relieving order has been passed, also does not merit consideration because for dealing such type of complaints, there is a separate mechanism and accordingly, the Internal Complaint Committee after inquiring into the matter has submitted its report. The applicant cannot link the matter of such complaint as a consequence of her transfer or relieving.

11. In view of above facts and circumstances, we find no merit in this OA and the same is liable to be dismissed, which is accordingly dismissed. No order as to costs.

(ARCHANA NIGAM)
Administrative Member

(HINA P.SHAH)
Judicial Member

R/