

(2023) 05 CAT CK 0021

In the Central Administrative Tribunal

Case No : Original Application No. 3745 Of 2022

Brijesh Kumar Chaubey

APPELLANT

Vs

Kendriya Vidyalaya Sangathan, Through Its Commissioner,
Kendriya Vidyalaya Sangathan (Under Ministry Of Education,
Government Of India), 18, Institutional Area, Shaheed Jeet
Singh Marg, New Delhi-110016 & Ors

RESPONDENT

Date of Decision : 10-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 05 CAT CK 0021

Hon'ble Judges : Dr.Chhabilendra Roul, Member (A)

Bench : Single Bench

Advocate : Saurabh Kumar, S. Rajappa, R.Gowrishankar

Final Decision : Dismissed

Judgement

Dr. Chhabilendra Roul, Member (A)

1. The present OA has been filed by the applicant against the impugned notice/order No.11-E-11019/34/2022-Estt-II/2431 (Annexure A-1) dated 12.9.2022 passed by the respondents-department by which the Competent Authority has suspended the Annual Transfer Process of KVS for the Current Academic Session (2022-23). And secondly, the impugned transfer order No.11-E019/34/2022-Estt-II/ 1798-2430 dated 12.09.2022 whereby they have transferred a large number of employees of the KVS on administrative ground for the purpose of rationalization and redistribution of existing teaching staff wherein the name of the applicant is show at Sr. No. 69 and in order to ensure that at least 50 % of regular teaching staff are available in all KVs across the country. And thirdly, the impugned relieving order No.F26046/2022-23/KVIITKANPUR/302 dated 13.09.2022 passed by the respondent No. 3, whereby he has been relieved to report to join his duties in Kenderiya Vidyalaya Gopal Pur Military Station Orissa. Though, he has made representation through proper channel on 07.10.2022

requesting for cancellation/ or transferring him to KV. Mancherial Telangana (wife's place of posting) or transferring both of them (Husband & Wife) to Jhansi station where both PGT(Chemistry) and TGT (SST) both vacancies are available.

2. Being aggrieved, the applicant has come to this Tribunal in the present OA seeking for the following relief:-

(a) .To quash and set aside the impugned order dated 13.09.2022 (The name of applicant is at No.69) in respect of applicant, order dated 12.9.2022 and impugned relieving order dated 13.09.2022 whereby the applicant is relieved from Kendriya Vidyalaya IIT, Kanpur, Kanpur Nagar UP 208016 w.e.f. 13.09.2022 be quashed.

(b) .Or in alternate to transfer the applicant and his wife at the same station.

(C). Pass an order to release /compensate litigation expenses in favour of the applicant and against the respondent, and Pass such order and further orders as this Hon'ble Tribunal may deem fit and proper.

5. The matter was listed for admission on 21.12.2022 with the others matters and the Tribunal has issued notice to the respondents on that date. On 24.1.2023, the respondents sought time for filing their reply and finally they filed reply on 31.01.2023 and thereafter on 09.02.2023 the matter was adjourned to 12.4.2023 as the counsel for the applicant was not well. On 12.04.2023, the matter was reserved for final orders.

6. The applicant has taken the following grounds in his OA. The grounds are further substantiated by the counsel for the Applicant, Shri Saurav Kumar.

i) That the transfer order dated 12.9.2022 and the relieving order dt 13.09.2023 are against the Transfer Guidelines, 2021. These guidelines were formulated to maintain transparency and to avoid arbitrariness and discrimination. The Order date 12.9.2021 suspending Clause-6 of the said guidelines defeats the very objective of ensuring transparency and fair play. There is no cogent reason given as to why this clause has been suspended.

(ii) The transfer Order dt 12.9.2022 violates the Clauses 6,7,9 and 16 of the Transfer Guidelines. Clause-5 talks about the Administrative Transfers, Clause -6 assigns Displacement Count and the higher the displacement count, the more likely the employee will get transferred. Clause -7 stipulates the modes of Administrative Transfers and Clause -16 deals with request Transfers. None of these processes are followed while effecting the transfers on 12.9.2022. In view of this the transfers are arbitrary and smacks non-application of mind.

(iii) The impugned suspension of Clause -6 of the Transfer Guidelines was issued in violation by the Education Code issued the BOG of Kendriya Vidyalay Sangathan on 28.12.2012. The BOG is competent to modify the Transfer Guidelines, where as the suspension of Clause -6 and Annual Transfers was issued by an executive order without taking approval of the BOG. Hence the

impugned orders are issued without competency.

(iv) The transfer order dated 12.9.2022 is against DOPT OM's dated 30.9.2009 and 23.8.2004 which state that as far as possible the husband and wife will be posted at the same station. The applicant's wife is serving in KV, Kanpur, Kanpur. The applicant should not have been transferred on account of a couple case.

(v) The present applicant has been transferred to another state where she has to teach in their mother tongue. The applicant is not conversant with the local language of Oriya

(vi) Moreover, the transfer order is violative of the National Education Policy 2020, framed by Government of India.

Para 5.3 of this policy (NEP 2020) says that, "the harmful practice of excessive teacher transfers will be halted, so that students have continuity in their role models and educational environments."

(vii) The transfer order Dt 12.9.2022 is discriminatory and arbitrary as the applicant has been transferred despite the fact that he has a low Displacement count as compared to others in the KVs. The applicant has mentioned specific cases in para 4.19 of the OA how the respondents have adopted pick and choose method.

7. The counsel for the applicant has further averred that the coordinated bench of this Tribunal at Ahmedabad has adjudicated the matter in OA No. 347 of 2022 and other 13 tagged OAs passing the following orders on 16.1.2023:

"13. In view of the above circumstances, we are of the view that if the impugned transfer order qua the applicants are not quashed, it will create more inconvenience to all the concerned than to serve the purpose behind effecting the impugned transfer . It will not be in the interest of the students for which the teachers are meant. As stated earlier the academic session is going to complete soon and status quo is already in existence regarding posting place of the present applicants. In the facts and circumstances of the case discussed above, we set aside the transfer order dated 16.09.2022 qua the applicants. However, it is made clear that after completion of the current academic session, the respondents are at liberty to pass fresh transfer order in accordance with the latest transfer guidelines and Government Order as also principles of natural justice."

The counsel for the applicant argued that the Transfer order qua the applicants in said OAs was quashed because it would create more inconvenient to the applicants and an the said transfer orders are not in the interest of students as these orders were issued in the middle of the academic session. Drawing parallel with these OAs, the counsel for the applicant argued that the transfers in the instant case have been effected in the middle of the academic session and the applicant has all the personal and family issues to attend. Being transferred to a far off place, he would face grave personal difficulty. The Transfer Guidelines of

2021 have provision to look into such eventualities to consider the personal and family problems of employees of KVS. However, the respondents have not accepted his request to cancel the impugned orders dt 12.9.2022 and relieving order dated 13.9.2022. The counsel for the applicant cited the judgment of the Apex Court in the matter of Director of School Education Vs. O. Kuruppa Thevan, 1944 supp(2) SCC 666, and in Din Menaka Gandhi vs. Union of India (1978) 1 SCC 168 and orders of Cordinated Benche of Chandigarh (order dated 16.9.2022) in OA No. 861/2022, Bangalore (Order dated 16.9.2022) in OA No. 391/2022 Jaipur (dt. 16.9.2022) in OA No. 391/2022, Jodhpur (19.9.2022) in OA No. 149/2022, Principal Bench (dt. 16.09.2022) in OA No. 2588/2022, and OA No. 2673/2022 judgment of the Apex Court in Kumari Shrilekha Vidyarthi etc. Vs. State of UP & Ors in 1990 SCR(Supl(1) 625 and the judgment of Allahabad High Court in Servive Bench in 3537 of 2018 in Raj Kumar and others vs. Union of India dated 30.1.2019 to substantiate his averment that the transfer policy of KVS is a guideline which should be followed to provide transparency in transfer matters. Violation or suspension of the transfer policy would lead to violation of Articles 14 & 16 of the Constitution of India.

8. The counsel for the respondents argued that the Transfer orders are not merely transfers. He argued that the suspension of Clause-6 and the Annual Transfers has effectively taken away the provisions under Clauses 5, 7 and 9. Moreover, the order dated 12.9.2022 has also mentioned that the said orders are not only transfer orders; these are also redistribution of the teaching staff for effecting rationalization of the deployment of teaching staff in various Kendriya Vidyalays in the country. The rationale for the rationalization and redistribution comes from a detailed exercise undertaken by the KVS authorities to access the staff strength, existing deployment and vacancies in various KVS. It was a massive exercise to find out the KVS having less than 50% of sanctioned strength and KVs having 80% or more regular teaching staff. As per station seniority, the staff having longest stay at a particular station having existing staff to the tune of 80% or more of regular vacancies were transferred out to locations having 50% or less regular staff. He further stated that the Transfer guidelines allow the KVS Authorities to transfer any employee on administrative Exigencies. These transfers are called Administrative Transfers which are defined as "those transfers which KVS orders suomotu in the exigencies of service and administration and public interest."

9. The counsel for the respondents further argued that The Transfer Guidelines of 2021 have the following objectives:

"Kendriya Vidyalaya Sangthan (KVS) shall strive to maintain equitable distribution of its employees across all locations to ensure efficient functioning of the organization and optimize job satisfaction amongst employees. All employees are liable to be transferred anywhere in India at any point of time and transfer to a desired location cannot be claimed as a matter of right. While effecting transfers the organizational interest shall be given uppermost consideration and

that the problems and constraints of employee shall remain subservient.”

The rationalization exercise and the redeployment of teachers vide the order dated 12.9.2022 serve the above objective of the Transfer Guidelines, 2021.

10. The counsel for the Respondents cited the Order dated 24.2.2023 of the Coordinated Bench of the CAT at Jabalpur in OA No.200/00809 of 2022 and a bunch of 73 other OAs. The order dated 24.2.2023 states that:

“After perusal of the Minutes of the Review Meeting presided by Hon’ble Education Minister on 19.07.2022, we have reached on the conclusion that the decision on suspension of Para 6 of the Transfer Guidelines was taken in meeting by all Senior Officers of department and KVS including Education Minister which was Presided over by Education Minister. So allegations regarding decision for keeping in abeyance Para 6 of the Transfer Guidelines was taken subsequently by the competent authority after issuing of transfer orders in not true, as decision for suspension of Para 6 of the Transfer Guidelines was taken on 19.07.2022 in a meeting presided by the Education Minister.”

“16. Since there is no allegation of mala fide against any officers of the respondents nor any allegation with regard to competency of the officer, who has passed the impugned orders of transfer, we do not find any ground to interfere with the impugned orders of transfer.”

11. The counsel for the Respondents also cited 3rd March 2023 of the High Court of Madhya Pradesh at Jabalpur in Misc. Petition No.1262 of 2023 in which the applicants in OA No 200/809 of 2022 and together OAs challenged the order of the Jabalpur Bench of CAT. The Hon’ble High court vide order date 3.3.2023 had ordered that the interim order of the Tribunal will remain in operation till 10.4.2023. In other words, the counsel for the respondents stated that, at the admission stage, the Hon’ble high court did not find reason to stay the order of the Jabalpur Bench of CAT, as an interim measure.

12. The counsel for the Respondent cited the Judgments of the Apex Court in Gujarat electricity Board vs Atmaram Sungomal Poshani (CA No 3561 Of 1986 decided on 31.3.1989) wherein it has been held that:

“4.Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the Public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the

order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.”

13. The counsel for the respondents countered the argument that the Order dated 12.9.2022 suspending Clause 6 was ultra vires because of lack of competency. The decision to suspend clause 6 of the Transfer Guidelines, 2021 was taken in a meeting chaired by the Union Education Minister (who is Chairman of BOG) wherein senior Officers of the Education department and KVS (who are ex-officio member of BOG) were present . Hence, the assertion that the order is ultra vires of the Education Code 2012 falls flat. As the annual transfers were suspended and the transfers vide order dt. 12.9.2022 effected for administrative exigencies, other clauses of the Transfer guidelines are not attracted in such exigencies.

14. The counsel for the respondent further averred that in pursuance of the order dated 23.9.2022, of this Tribunal, the representation of the applicant was duly considered. Her personal and family problems were also considered. Because of administrative exigencies, the personal discomfort of the present applicant was considered subservient to the public interest of providing adequate teaching staff at KVS having 50% or less of the sanctioned strength of teaching staff .In view of this, the applicant has no valid cause of action to agitate. He averred that the OA lacks merit and pleaded that it should be dismissed.

15. I have gone through the records of the case thoroughly and heard the arguments carefully. It has been held in several judgments by the Apex court that transferring an employee and reassigning duties and responsibilities at the same place of posting or at a new location is the prerogative of the competent authorities.

16. Transfers, deployments, redeployment or placement of organizational human resources are essential components of Human Resources Management Strategies of any organization, be it in private sector or in the Government or Public sector. These strategies are aimed at realizing the organizational goals for furtherance of mission objectives of the organization. For a government department or autonomous organization or Public Sector Undertaking, Public Interest in the form of discharging the assigned responsibilities to these entities by the Constitution, statutory provisions subordinate legislation or delegated competencies is the charter for mission objectives.

17. Deployment or transfer is also the process of providing sub-entities and subordinate offices with the required human resources and support they need to be successful in their roles. This is akin to allocation of organizational resources

to achieve organizational goals. Modern governments and organizations begin the process prior to adopting transfers as a redeployment tool by assessing the organization's current and future human resources needs. Following these assessments, the competent authority makes decisions how best to deploy the human resources to meet the identified needs. These include the type of human resources required, the number of human resources required, the location of the human resources, and the timing of the deployment. In Government, generally this task is assigned to an Administrative/ Establishment/ Placement/Transfer Committee.

18. Effective utilization of service of an employee is in the very core of administrative exigency. It is the prerogative of the employer to transfer his employee at any point of time and to any work station based on administrative exigencies. Deployment of staff in the form of transfers enables realignment of human resources to new work assignments or job responsibilities to meet organizational needs or to provide opportunities to the employees gain skills and experience. Such activities are aimed at supporting employee's engagement, employee motivation and increased productivity and leadership development across all level of employees within the organization.

19. The position that the competent administrative authorities have a prerogative to redeploy or transfer an employee for better utilization of human resources of the organization for furtherance of organizational mission objectives have been well settles in several case laws by the Apex court. The employee in a transferable job does not have any vested right to remain at a particular place or post. The counsel for the respondents has cited the judgments in *Gujrat electricity Board vs Atmaram Sungomal Poshani* (CA No 3561 Of 1986 decided on 31.3.1989). This judgment of the Apex court has been reiterated in a series of judgments by the Apex Court.

20. The Apex court in *Union of India vs S.L. Abbas* CA no 2348 of 1993 decided on 27.4.1993 has again reiterated similar position as under:-

"6. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute."

"He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force."

21. Again in *Public Services Tribunal Bar vs State Of U.P. & Another* on 29 January, 2003 [Appeal (civil) 3946 of 2001 Date of Judgment: 29/01/2003] it was held :-

"Transfer is an incident of service and is made in administrative exigencies. Normally it is not to be interfered with by the courts. This Court consistently has been taken a view that orders of transfer should not be interfered with except in rare cases where the transfer has been made in a vindictive manner.

From the above quoted decisions, it is evident that this Court has consistently been of the view that by way of interim order the order of suspension, termination, dismissal and transfer etc. should not be stayed during the pendency of the proceedings in the Court."

The transfer policies are in the form of executive guidelines. And hence, these have no statutory force. The aforementioned case laws affirm the prerogative of the government to transfer its employees to any place of posting for administrative exigencies. The transfer guidelines are subservient to public interest.

22. In State of UP & Ors Vs Govardhan Lal CA 408 of 2004 decided 23.3. 2004, the Apex Court held that:

"6. Even administrative guidelines for regulating transfers 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 such 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."

23. Here, even the transgression of the transfer guidelines has not been allowed to be interfered with by the court. This has been further reiterated by the Apex Court in Airport Authority of India Vs Rajeev Ratan Pandey and Ors CA No 5550 of 2009. Para 10 of the judgment states that even if the transfer order is violative

of transfer policy, the court should not interfere. It has been held that:

"In the writ petition, the transfer order has been assailed by the present Respondent No. 1 on the sole ground that it was violative of transfer policy framed by the appellant. The High Court, did not, even find any contravention of transfer policy in transferring the Respondent No. 1 from Lucknow to Calicut"

24. Similar view has been echoed in *Rajendra Singh &Ors Vs State of Uttar Pradesh &Ors* CA No.4975 of 2009 decided on 31.7.2009.

25. When the courts interfere in the administrative functioning of a department by entertaining the petitions against transfer orders, it creates administrative complexities for the authorities. The Apex court in *State Of Haryana &Ors Vs Kashmir Singh &Ors* on 6 October, 2010[CIVIL APPEAL NOS. 8690-8701 OF 2010] has clearly advised the courts /tribunals to desist from interfering in those matters. It has been held as under:-

"16. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Justice Holmes of the US Supreme Court pointed out, there must be some free-play of the joints provided to the executive authorities.

18. For the foregoing reasons, these appeals succeed and are hereby allowed. The impugned judgment of the High court is set aside and the writ petitions before the High Court stand dismissed. No costs."

26. The view that the transfer guidelines /circulars may not in itself confer a vested right which can be enforceable by a writ of mandamus was reiterated and highlighted by the Apex Court in *Punjab and Sind Bank &Ors. vs. Durgesh Kuwar*, 2020 SCC OnLine SC 774. It was held that:

"17.An employee cannot have a choice of postings.

Administrative circulars and guidelines are indicators of the manner in which the transfer policy has to be implemented. However, an administrative circular may not in itself confer a vested right which can be enforceable by a writ of mandamus."

27. Even the Supreme Court in *Union of India and Others Vs. Ganesh Dass Singh* Civil Appeal No. 1358 of 1994, Decided on 25 February 1994 held that there is hardly any scope of judicial review of administrative action in the form of transfer orders. It has been held as under:-

"4. In our opinion, in the present case there is no material to justify interference with the mere order of transfer made by the competent authority for administrative reasons particularly when the Tribunal had rejected the respondent's assertion that the transfer had been made on account of certain complaints he had made regarding the functioning of the Dept. We have no doubt that the view taken by the Tribunal is not justified on the facts found by it. It is also not within the scope of permissible judicial review in such matters relating to mere transfer made by the competent authority for administrative reasons."

28. Personal hardships, family circumstances, education of children, health issues of self and dependant family members are matters for consideration for the competent authority but not for the courts/ tribunals to decide the matter as an Appellate Authority. The decision of the Administrative Authorities after considering these personal difficulties is considered final. The Apex court in *State of MP and Ors Vs S.S. Kourav & Ors* [CA No. 1285 of 1995 decided on 19.1.1995] held that:

"It is further contended that in an unfortunate situation the respondent's wife committed suicide leaving three children and he would suffer extreme hardship if he has to work in the tribal area. This court cannot go into that question of relative hardship. It would be for the administration to consider the facts of the given case and mitigate the real hardship in the interest of good and efficient administration. If there is any such hardship, it would be open to make a representation to the government and it is for the government to consider and take appropriate decision in that behalf."

29. Sometimes, employees or employee groups assail the transfer policy or suspension of any particular clause or clauses of the transfer policy as it may create difficulties for individual or group of employees. As the transfer policies/ circulars are only guidelines for the administrative Authorities, these cannot be enforceable by the courts [*Punjab and Sind Bank & Ors. Vs. Durgesh Kuwar*, 2020 (supra)]. Whether, the transfer policy or suspension of particular clause of transfer policy is good or bad, it is for the administrative authorities to consider the grievances of the employees in respect of a particular issue regarding transfer policy. In *Kumari Shrivlekha Vidyarthi and others Vs State of UP and Others* [1991 AIR 537, 1990 SCR Supl. (1) 625], the Apex Court held that:

"The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case.

As indicated by Diplock, L.J., in *Council of Civil Service Unions v. Minister for the Civil Service* [(1984) 3 All ER 935] the power of judicial review is limited to the

grounds of illegality, irrationality and procedural impropriety.”

30. The aforementioned judgments of the Apex Court have given upper hand to the administrative authorities or the Government in matters of Transfers. However, transfers may affect negatively the level of productivity, motivation, innovation quality, relations, and participation and communication patterns among other core human resources activities. When handled well and in accordance with the employees’ circumstances, deployment increase employee performance through increased innovation, creativity, quality, productivity, profitability, loyalty flexibility, efficiency, effectiveness, and low levels of discontents, dysfunctional conflicts. In other words, employee welfare is also in the interest of the organizations. The principles of effectiveness, efficiency and economy in matters of deployment of human resources are sought to be aligned with organizational mission goals.

31. While effecting redeployment through transfers, the organizations should also treat all such employees fairly and without any bias or malafide or discrimination. Moreover, a model employer like the government also treats its employees far more transparently and it is expected that the government ensures that there is no violation of Articles 14 and 16 Indian Constitution. Based on the twin objectives of satisfying organizational goals (public interest and better governance for delivery of public services) and employee welfare, growth and development, organizations including government departments formulate transfer /placement policies. These policies ensure transparency and also provide better opportunities to officers for excellence and more planned approach to cadre planning. Such transfer policies develop some sort of reasonable employee expectations to be treated fairly while effective redeployment through transfers. Similarly, the government departments also have reasonable expectations from its employees to cooperate in such deployment to achieve mission goals of departments and other entities.

32. Redeployment in the form of transfers inter alia should also satisfy the test of reasonable expectations of the employees to be treated fairly and such administrative action should not be based on malafide, bias and unreasonable factors. There are several judgments of the Apex court which have moderated the absolute power of the government/ administrative authorities in the matters of transfer. The earliest of this genre is the judgment of the Apex court in E.P. Royappa Vs State of Tamil Nadu & Anr [1974 AIR 555, 1974 SCR (2) 348; Dated 23/11/1973]. The Apex court has held that:

“It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilize the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide

and colorable exercise of power. Frequent transfers, without sufficient reasons to justify such; transfers, cannot, but be held as mala fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration that even administrative actions should be just and fair.”

33. Subsequently, a series of judgments by the Apex court have reiterated and substantiated this view. These judgments are:-

(i) Food Corporation of India vs. M/s Kamdhenu Cattle Feed Industries: Civil Appeal No. 4731 of 1992.

(ii) Kumari Shrilekha Vidyarthi and others vs State of UP and Others [1991 AIR 537, 1990 SCR Supl. (1) 625]

(iii) Somesh Tiwari Vs. Union of India and Others: (2009) 2 SCC 592

(iv) Shilpi Bose Vs State of Bihar AIR 1991 SC532

(v) National Hydroelectric Power Corporation Ltd Vs Shiv Bhagwan & Anr CA no. 1095-96 Of 2001 decided 11.9.2001

(vi) Mohd Masood Ahmad Vs State of UP & others CA 4360 of 2007 decided on 18.9.2007

(vii) E. P. Royappa Vs State Of Tamil Nadu &Anr on 23 November, 1973 Equivalent citations: 1974 AIR 555, 1974 SCR (2) 348

(viii) Varadha Rao Vs State Of Karnataka And Ors. on 26 August, 1986 Equivalent citations: AIR 1986 SC 1955,

(ix) Union Of India &Ors Vs H.N. Kirtania on 12 July, 1989; Equivalent citations: 1989 AIR 1774, Date Of Judgment12/07/1989

(x) Punjab and Sind Bank &Ors. Vs. Durgesh Kuwar, 2020 SCC Online SC 774, the Supreme Court summarized the principles applicable to transfer orders, as under:

(xi) Chief General Manager (Telecom) ... Vs Shri Rajendra Ch. Bhattacharjee ... on 18 January, 1995

(xii) Union Of India And Ors Vs Sri Janardhan Debanath And Anr on 13 February, 2004 Appeal (civil) 1010-1011 of 2004; Date Of Judgment: 13/02/2004

(xiii) Mrs X Vs Regisrar General , High Court of Madhya Pradesh &Anr, WP No 1137 of 2018, decided on 10.2.2022.

34. Earlier, Delhi High Court, based on the judgments in Shilpi Bose case (supra) and Gujarat Electricity Board Vs. Atmaram Sungomal Poshani, 1989 (2) SLR 684 (SC), has summarized the scope of judicial review in transfer matters under

certain circumstances: It was held that a judicial review of an administrative action is of course permissible, but orders of transfer are interfered when:-

- "(a) the transfer is malafide or arbitrary or perverse;
- (b) when it adversely alters the service conditions in terms of rank, pay and emoluments;
- (c) when guidelines laid down by the department are infringed;
- (d) when it is frequently done and lastly;
- (e) if there is a statutory infraction."

35. In the instant case, the applicant has failed to assert that the transfer order dt 12.9.2022 and impugned order dated 13.1.2023 are based on non-application of mind and these order suffer from malafide or bias on the part of the competent authority. The assertion that the order dated 12.9.2022 suffers from competency has been squarely rebutted by the counsel for the respondent. The BOG Chairman, i.e. the Union Education Minister held meeting of senior officers of the education department and the KVS, who are ex-officio Members of the BOG. Hence, it has the equivalent competency of the BOG. A formal meeting of BOG would not have taken any different decision as most of the members of BOG were present in the meeting chaired by the Education minister, the chairperson of BOG.

36. In the instant case, the applicant has failed to assert any arbitrariness, malafide or bias in the suspension of the Clause-6 of the Transfer Guidelines and also ordering the transfer in three tranches. The transfers are part of rationalization and redistribution of the human resources following a well-thought-out exercise to find out KVs having 50% or less staff compared to their sanctioned strength and also KVs having 80% or more staff. As it has been stated in the impugned order dated 13.01.2023, most of the teachers, who were transferred out, were based on the seniority roster maintained at each station and most of the transferred teachers had a stay of more than 10 years at their respective previous KVs. In view of this well thought out exercise, the suspension of clause-6 of the Transfer guidelines and non-operationaliation of other clauses of the transfer guidelines applicable for annual transfers and request transfers cannot be said arbitrary or non-application of mind.

37. The Apex Court in series of judgments like Gujarat Electricity Board Vs Atmaram Sungomal Poshani (Supra), Union of India Vs S.L. Abbas (supra), Public Services Tribunal Bar ... Vs State Of U.P. & Another (Supra), State of UP & Ors Vs Govardhan Lal (supra), Airport Authority of India Vs Rajeev Ratan Pandey and Ors (supra), Rajendra Singh & Ors Vs State of Uttar Pradesh & Ors (Supra) , State Of Haryana & Ors Vs Kashmir Singh & Ors (supra), Punjab and Sind Bank & Ors. Vs. Durgesh Kuwar (supra), Union of India and Others Vs. Ganesh Dass Singh (supra), has given upper hand to the administrative authorities or the Government in matters of Transfers. In all those judgments, the Apex Court held

that the Public Interest is paramount in such administrative exercises and there is very limited scope for judicial review in the matters of transfer. As it has been held in the other set of judgments cited in paragraph 36 above, unless there is malafide, bias, infringement of statutory provisions, lack of competency, non-application of mind, etc, the courts and tribunals should not interfere in the administrative decision in respect of transfers. In the instant case, as we have already discussed above, we do not find any such bias or non-application of mind in the present case.

38. As regards the personal hardship of the applicant is concerned, we agree that the Apex Court in *State of MP and Ors Vs S.S. Kourav & Ors* [CA No. 1285 of 1995 decided 19.1.1995] held that the administrative Authority is best judge to consider such hardships and take appropriate decision keeping balance between personal hardship of employee and public interest . The apex court in this judgment held that :

“It is further contended that in an unfortunate situation the respondent’s wife committed suicide leaving three children and he would suffer extreme hardship if he has to work in the tribal area. This court cannot go into that question of relative hardship. It would be for the administration to consider the facts of the given case and mitigate the real hardship in the interest of good and efficient administration. If there is any such hardship, it would be open to make a representation to the government and it is for the government to consider and take appropriate decision in that behalf.”

The respondents have considered the eventuality of occurrence of personal and family discomfort of the applicant and similarly placed employees. They have given priority to public interest i.e. interest of the students of the Kendriya Vidyalay Schools over the private interest- comfort of the KVS teaching staff while suspending clause 6 of Transfer Policy guidelines of 2021. The suspension of Clause-6 of the Transfer Guidelines of 2021 is equally applicable all the employees of Kendriya Vidyalay Sangathan. Hence, there is no violation of Article 14 and 16 of the Constitution of India.

39. In view of the above, the OA lacks merit and hence dismissed. There shall be no order as to costs.

All pending MAs are also disposed of accordingly.