
(2022) 08 UK CK 0075

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 485 Of 2022

Commissioner Kendriya Vidyalaya Sangathan And Another

APPELLANT

Vs

Sushma And Another

RESPONDENT

Date of Decision : 23-08-2022

Acts Referred:

Citation : (2022) 08 UK CK 0075

Hon'ble Judges : Vipin Sanghi, CJ;Ramesh Chandra Khulbe, J

Bench : Division Bench

Advocate : Syed Nadim

Final Decision : Dismissed

Judgement

Vipin Sanghi, CJ

1. The petitioner-Kendriya Vidyalaya Sangathan has preferred the present writ petition to assail the order dated 28.04.2022 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application No.331/00181 of 2022 in the Original Application preferred by the respondent no.1- Ms. Sushma. The Tribunal has allowed the said original application and issued the following directions:-

"In view of the situation detailed above, we have no hesitation in deciding this OA at this stage. Learned counsel for the applicant once again draws attention to the transfer policy highlighting that the policy contains a clear provision that an employee who has completed three years or more years in a hard station has to be necessarily given the posting at his/her choice of station. Therefore, we settle this matter by deciding the original application, which is allowed. The order dated 22.04.2022 is hereby quashed. The competent authority amongst the respondents is directed to forthwith post the applicant to one of the three stations of her choice. However, the applicant, in case she so wishes, in the spirit of cooperation and accommodation, may indicate some other place of her choice too since at present vacancy is said to be not available at her initial choices. She

shall be at liberty to give an alternative choice of a place of posting to the competent authority so that the matter is finally settled. However, this is the liberty given to the applicant and she is not under an obligation to exercise it. Therefore, it shall not be held as an excuse by the respondents not to give a posting to her at the place of choice already conveyed by her. The aforesaid direction shall be complied with within a period of two weeks from the date of this order. The liberty offered to the applicant to submit a fresh choice, only if she wishes, is for a period of one week only. The OA stands disposed of with the aforesaid directions. No order as to costs."

2. The case of the respondent no.1-Ms. Sushma was that the petitioner-Kendriya Vidyalaya Sangathan has its policy for transfer and posting of employees of the Kendriya Vidyalaya Sangathan. Under the said Policy, the employees are assigned weightage marks on several parameters. The respondent no.1 had been awarded 85 marks. She had been posted for three years in a hard posting. In terms of the policy, she had indicated her choice for her next posting at Subathu. The Petitioner-Kendriya Vidyalaya Sangathan, however, disregarded her request and, instead, posted respondent no.3-Ms. Neha Sharma at Subathu. Respondent no.1 was aggrieved by the said action of the respondents and preferred the original application seeking the following reliefs:-

"(a) Set aside the order F.No. 11-E-11046/2/2021-ESTT-II/UNDER-40 REQUEST, Dated 08/10/2021 to the extent of transfer of respondent number 3.

(b) Direct the concerned authority to grant me transfer to the requested station i.e. station code 541 with all the transfer benefits, station seniority and all the other consequential benefit from the date of 08/10/2021.

(c) If there is actual public interest in proven to be involved in awarding transfer order to respondent number 3, kindly direct the respondent number 1 & 2 to grant me an opportunity to amend my request and grant me transfer to the requested station in terms of the KVS transfer guidelines 2021 as it would have been processed originally during normal transfer process with all the consequential benefits including and transfer benefits, station seniority etc. from the date of 08/10/2021."

3. A perusal of the impugned order shows that even though the matter was part heard on 27.04.2022, and it was adjourned to 28.04.2022, the counsel for the petitioner- Kendriya Vidyalaya Sangathan chose to remain absent when the matter was called out even after a pass over/revised call. The impugned order also shows that during pendency of the original application, the representation of the respondent/applicant was rejected on 22.04.2022.

4. The Tribunal found merit in the grievance of the respondent no.1, and consequently, issued the direction as aforesaid. Pertinently, the posting of respondent no.3 Ms. Neha Sharma at Subathu was not disturbed. Instead, the respondent/applicant was directed to be posted at one of the three stations of her choice, and she was also permitted to give yet another choice if she so

desired.

5. The submission of learned counsel for the petitioner- Kendriya Vidyalaya Sangathan is that no relief had been sought by the respondent in her original application qua order dated 22.04.2022, and the Tribunal could not have quashed the said order rejecting representation of the respondent no.1.

6. We do not find any merit in the submission for the reason that the order dated 22.04.2022, rejecting the representation, was issued during pendency of the original application. The real issue before the Tribunal was whether the petitioner-Kendriya Vidyalaya Sangathan could have ignored the request for choice posting made by the respondent-original applicant and, instead, posted respondent no.3- Ms. Neha Sharma to the place of her choice. Even if the order dated 22.04.2022 had not been quashed, the Tribunal was empowered to issue the directions as issued by it.

7. The next submission of learned counsel for the petitioner is that the posting of Ms. Neha Sharma to Subathu has been made, as she was under 40 years of age and therefore, she could not have been posted to a place of her choice. In this regard, learned counsel for the petitioner- Kendriya Vidyalaya Sangathan has drawn the attention of the Court to the Transfer Guidelines-2021 issued by the petitioner-Kendriya Vidyalaya Sangathan, and in particular, Clause 8 thereof, which inter alia states that employees below 40 years of age, who have not completed one tenure at hard/very hard/NER stations in continuous span in service and not presently posted to such stations and have completed one year stay at present station in the present post, in their decreasing order of displacement count can be posted in Hard/NER stations. Choice stations, if any, for posting in Hard/NER station may be indicated in regular annual transfer application.

8. The submission of learned counsel for the petitioner is that choice stations could be opted for by employees below 40 years of age, and on that basis, respondent no.3- Ms. Neha Sharma had been posted to Subathu.

9. In response to our query, whether Subathu is a hard/very hard/NER posting, the counsel for the petitioner states that the same is not one such place. That being the situation, reliance placed on Clause 8 of the Transfer Guidelines-2021 is completely misplaced.

10. In any event, the Tribunal has not disturbed the posting of respondent no.3- Ms. Neha Sharma.

11. For the aforesaid reasons, we do not find any merit in this petition. The same is, accordingly, dismissed.

12. Pending application, if any, stands disposed of.