

(2019) 08 RAJ CK 0214

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12236 Of 2019

Mohan Lal Atwal

APPELLANT

Vs

Kendriya Vidyalaya Sangathan And Ors

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Citation : (2019) 08 RAJ CK 0214

Hon'ble Judges : Sangeet Lodha, J;P.K. Lohra, J

Bench : Division Bench

Advocate : Jog Singh Bhati

Final Decision : Allowed

Judgement

1. This writ petition is directed against order dated 2.8.19 passed by the Central Administrative Tribunal, Jodhpur Bench ('the Tribunal'), whereby the original application preferred by the petitioner seeking directions to the respondent authorities to consider his case of highest score of transfer count for the post of TGT (Social Science) available at Kendriya Vidhyalaya (KV) No.2, Ajmer Station, has been dismissed.

2. The petitioner holding the post of TGT (Social Science) was transferred from KV, Lalgah Jatan to KV Bandar Sindari as per transfer guidelines against his second choice. However, the said transfer order was modified subsequently and vide order dated 14.9.18 on his own request, the petitioner was transferred from KV, Bandar Sindari to KV No.2, Suratgarh. The petitioner preferred an Original Application No.290/00038/2019 seeking directions to the respondents to issue the posting order for Ajmer where post was lying vacant. It was further prayed that the said post lying vacant at Ajmer should not be filled up by other employee of the respondent. The original application preferred was dismissed by the Tribunal vide order dated 18.7.19.

3. The petitioner preferred yet another original application seeking the directions as aforesaid stating that his date of birth being 29th June, 1963, he will be

retiring on 30th June, 2023 and thus, will come under Last Terms to Retire (LTR) entitling him to be transferred to a place of his choice to settle his family and life after retirement. According to the petitioner, he had scored 59 marks for consideration of request transfer and thus, being meritorious employee for consideration of request on the ground of completion of tenure at station and outstanding grade in Annual Performance Appraisal Report, he was entitled to be posted as TGT (Social Science) at Ajmer.

4. The petitioner had preferred the original application before the Tribunal as aforesaid, apprehending that the respondents will issue appointment letter to the new recruits and his request for choice posting shall not be considered.

5. The original application has been dismissed by the Tribunal observing that no person has right to claim posting at a particular place of his choice. The Tribunal observed that the earlier original application preferred by the petitioner for posting at Ajmer has already been dismissed and if he had any further grievance, he should have waited for the decision on his representation and if aggrieved by the said decision, should have challenged the same. The Tribunal observed that the original application preferred by the petitioner herein merely on apprehension is pre mature and cannot be entertained. Hence, this petition.

6. Learned counsel appearing for the petitioner contended that the petitioner had filed the original application raising a legal ground that the annual transfer process-2019 is governed by transfer guidelines and notification issued by the respondent and thus, the petitioner having scored highest count for consideration of request of transfer to Ajmer Station among all employees of the Sangathan, non consideration of his request for transfer to Ajmer against the post available is per se illegal, unjust and arbitrary. Learned counsel submitted that if the vacant post is filled up by appointing a new recruit, the petitioner's right of consideration for being transferred on the said post shall stand frustrated.

7. Indisputably, earlier original application preferred by the petitioner seeking transfer to Ajmer Station where post was lying vacant was dismissed by the Tribunal vide order dated 18.7.19, which has attained finality. Immediately after the rejection of the original application by the Tribunal as aforesaid, the petitioner just after a few days again made representations dated 27.7.19 and 29.7.19 stating that his case be considered for Ajmer, as he having highest transfer counts, he deserves to be considered for posting on the post of TGT (Social Science) at KV No.2, Ajmer against the vacant post.

8. It is pertinent to note that the claim of the petitioner for the choice posting as aforesaid on the basis of any subsequent event is yet to be considered by the respondent and thus, without there being a decision of the respondents in this regard, the original application preferred by the petitioner has rightly been dismissed by the Tribunal as pre mature.

9. The transfer is incidence of service and an employee holding a transferable post can always be transferred from one place to another for administrative

exigency. Admittedly, the petitioner's request for posting at KV No.2, Ajmer was not acceded to by the respondent and later, he was transferred on his own request from KV, Bandar Sindari to KV No.2, Suratgarh. In any case, if the petitioner has any claim for transfer to the place of his choice, he should have waited for disposal of the representation by the respondent in accordance with the transfer policy.

10. In the considered opinion of this court, keeping in view the earlier order passed by the Tribunal declining the prayer of the petitioner for transfer to Ajmer Station, without there being any fresh cause of action, the original application filed merely on the apprehension, has rightly not been entertained.

11. In view of the discussion above, the order impugned passed by the Tribunal does not warrant any interference by us in exercise of the writ jurisdiction.

12. The writ petition is therefore, dismissed in limine.