

(2022) 08 CAT CK 0030

In the Central Administrative Tribunal

Case No : Original Application No. 2252 Of 2022

Vipin Kumar Tyagi

APPELLANT

Vs

Kendriya Vidyalaya Sangathan & Others

RESPONDENT

Date of Decision : 23-08-2022

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2022) 08 CAT CK 0030

Hon'ble Judges : Manish Garg, Member (J)

Bench : Single Bench

Advocate : Setu Niket, S. Rajappa, R. Gowrishankar

Final Decision : Disposed Of

Judgement

Manish Garg, Member (J)

1. In the instant O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks to challenge the impugned order of transfer dated 18.08.2022, wherein the applicant Mr. V. K. Tyagi has been transferred from Dehradun region to Chandigarh region (KVS No. 1, Pathankot) and seeks the following relief(s):-

"A. Call for records of the case;

B. Quash and set aside the order dated 18.08.2022 to the extent of transferring the Applicant from KV No. Roorkee to KV No. Pathankot;

C. Quash and set aside KVS Transfer Guidelines for Group A & Group B (SO and above) employees;

D. Pass an order directing the Respondents to formulate detailed transfer guidelines for Group A & Group B (SO and above) employees;

E. Award cost of the proceedings; and

F. Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and

proper in the interest of justice in favour of the Applicant.”

2. At the outset the learned counsel for the applicant concedes that he is not pressing the prayer 'C' & 'D' of the relief clause in the OA and he is confining his arguments to the extent of impugned order dated 18.08.2022. Prayer 'C' and 'D' of the relief clause reads as under:-

C. Quash and set aside KVS Transfer Guidelines for Group A & Group B (SO and above) employees;

D. Pass an order directing the Respondents to formulate detailed transfer guidelines for Group A & Group B (SO and above) employees;

3. Pursuant to the same, the applicant has already preferred a representation immediately on 19.08.2022 inter-alia seeking cancellation of transfer order on following grounds:-

“With due regards, wish to inform you that vide transfer order F.11048/1-1/2021/KVS/Estt-1/4128-4158 Dated 18/08/2022, have been transferred from K V NO 1 ROORKEE TO K V NO 1 PATHANKOT. I hereby request you to cancel my Transfer on the following ground:

1. I am in LTR and my retirement is in June 2024 (30 June 2024). As per Central Govt Policy and Also as per KVS Transfer Policy, Every employee is preferred for Transfer near to his/her Home Town or at the Home Town in LTR. My Home Town is Roorkee but I have been transferred 435 Km away from my Home Town during my LTR and I am having 01 years 10 months' time in my retirement.

2. My spouse is an employee of Govt of Uttarakhand and as Govt Policy and KVS policy every employee is preferred to Transfer near to Spouse Station or at the Spouse Station. My spouse is working at Roorkee and but I have been Transferred 435 km away from my spouse's Station.

3. I have not completed 5 years of my normal Stay at Roorkee as on 31.03.2021 even than I have been Transferred from KV No 1 Roorkee to KV No 1 Pathankot.

4. During my tenure at Roorkee, My school has shown great Progress in all areas even though I have been transferred from Roorkee. My achievement file is attached.

5. My wife is sick and My daughter is at the age of 28 years. I am having my family responsibilities i.e the marriage of my daughter and to see my Sick wife.

1, hereby request you ma'am to cancel my Transfer order F.11048/1-1/2021/KVS/Estt-1/4128-4158 Dated 18/8/2022 on the above ground and allow me to stay at Roorkee.”

4. During the course of arguments, it is seen from the records that impugned judgment is based on Annual Transfer Application for Principal 2021-22, whereby as per the policy guidelines, it is mandatory to all employees to fill the form seeking transfer. On perusal of the said application dated 31.05.2021 it has been

noticed as under:-

"12. Details of last 03 transfers, if any.

Sl.

Post Held

Name of KV

Period (Date)

(dd.mm.yyyy)

Reason(s) for

transfer out of the mentioned KV

From

To

1

PGT

K.V. AFS SARSAWA

13.09.2004

31.08.2011

Request

2

PGT

K.V. No.1 ROORKEE

01.09.2011

16.10.2012

Promotion

3

PRINCIPAL

K.V. MUSSOORIE

17.10.2012

25.08.2016

Request

Note: To be filled in Chronolgical order. Details of present posting not be filled in

this table.”

5. Further at page 33, a declaration has also been given by the applicant alongwith the application that his wife is working in Govt. Sector as Asstt. Teacher, Govt. Primary School, Khanjarpur, Roorkee- 247667. He further states that a period of five years for transfer is not over yet from the last date, i.e., w.e.f. 25.08.2016. He further relies on clause 4 at page 21, factors such as: due for retirement, medical problems faced by an employee or family member, spouse working at a station etc.

6. Learned counsel for the applicant further submits that though he has not taken any such ground in his representation dated 19.08.2022 as well as in the OA, however, vide ground (J) the applicant has urged that the transfer orders were issued despite being aware of the fact that the applicant was appointed as Centre Superintendent for conducting CBSE SSE(X)/SSCE(XII) Compartment Examinations which are scheduled w.e.f. 23.08.2022. It is further the case of the applicant as per the Last term to retire (LTR), he is supposed to retire after one year and 10 months, i.e., on 30.06.2024, therefore, he ought to be kept at Roorkee or some nearby region.

7. On the contrary, learned counsel for the respondents urged that the present OA is liable to be dismissed as transfer cannot be claimed as a matter of right. He further relies upon the transfer policy (page-21). He further states that the transfer order is neither punitive nor malafide or arbitrary and passed on the administrative reasons which have already been dealt with. He further contest that beside the applicant, five other employees have also been transferred to different locations, who have not approached this Tribunal till date. He further contest that since the conduct of examination is prerogative of the CBSE and is likely to be conducted w.e.f. 23.08.2022, therefore, much reliance cannot be placed upon the same.

8. Learned counsel for the applicant concedes to the fact that the present OA can be disposed of if the representation dated 19.08.2022 and grounds urged in the present OA are disposed of within a reasonable period of time, with a liberty to move a detailed representation within a period of two days from today.

9. It is well settled law that even though the matter of transfer policy, is a policy matter where the Hon'ble Courts should not interfere based on the administrative exigency. It is also equally settled law that in such transfer there is no ground of malafide, arbitrariness or irrational point of view in transferring the applicant to some other locations. Keeping in view the law laid down by the Hon'ble Apex Court in S K Naushad Rahaman & Ors. Vs. Union of India & ors. dated 10.03.2022 in Civil Appeal 1243/2022 and connected matters, the Hon'ble Apex Court has observed that ;

“52. The circular dated 20 September 2018 has taken into account, what it describes “exceptional circumstances” such as “extreme compassionate grounds”. Leaving these categories undefined, the circular allows for individual

cases to be determined on their merits on a case by case basis, while prescribing that transfers on a "loan basis" may be allowed subject to administrative requirements with a tenure of three years, extendable by a further period of two years. While proscribing ICTs which envisage absorption into a cadre of a person from a distinct cadre, the circular permits a transfer for a stipulated period on a loan basis. Whether such a provision should be suitably enhanced to specifically include cases involving

(i) postings of spouses;

(ii) disabled persons; or

(iii) compassionate transfers, is a matter which should be considered at a policy level by the Board."

In the light of above settled provision of law, KVS follows its own transfer policy dealing with similar factors such as;

"4. ADMINISTRATIVE TRANSFER OF EMPLOYEES

After the completion of tenure an employee shall be liable for transfer except where an employee's retention after the completion of tenure or an employees exit before the completion of the tenure is necessary in the organizational interest. Efforts will be made to consider bulk of such transfer post wise at an opportune time during an academic year. Transfer/posting to a desired station shall not be claimed as a matter of right. Some crucial determinants for such transfers are as under:-

a) Inherent strength/weakness of an employee to cope with the supervisory responsibility

b) Domain expertise of an employee

c) Performance of an employee against tangible parameters wherever possible, for example CBSE results, APAR Grading in the last three years or such other parameters as may be prescribed from time to time for different posts.

d) Factors such as: due for retirement, medical problems faced by an employee or family member, spouse working at a station etc."

10. The grounds urged in the present OA as represented in the similar lines which needs to be considered by the competent authority thereby deciding his representation on priority basis, at this stage. Learned counsel for the respondents, on instructions, states that limited time be given to the respondents to dispose of the representation in light of the present policy and the view taken by the Hon'ble Apex Court as highlighted above with an opportunity of affording a personal hearing to the applicant.

11. In light of the above, following directions are passed:-

(a) It is directed that the applicant shall make a detailed representation within a

period of two days either by mail or by hand to the competent authority urging the grounds taken herein.

(b) On receipt of such representation, the department shall dispose of the representation following the principle of natural justice as stated above within a period of ten days, thereafter. Till the final disposal of the representation the order of transfer shall be kept in abeyance.

6. The OA stands disposed of in the aforesaid terms. There shall be no order as to costs.