

**Jaya Purwar Vs Kendriya Vidyala Sangathan, Through Its Commissioner  
Kendriya Vidyaya Sangathan (Under Ministry Of Education, Government  
Of India), 18 Institutional Area Shaheed Jeet Singh Marg, New  
Delhi-110016 & Ors**

**Court:** Central Administrative Tribunal Principal Bench, New Delhi

**Date of Decision:** March 27, 2023

**Acts Referred:** Constitution Of India, 1950 " Article 14, 16

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

**Bench:** Single Bench

**Advocate:** Saurabh Kumar, Sudhanshu S.Singh, K.V. Singh, S. Rajappa, R. Gaurishankar

**Final Decision:** Dismissed

## Judgement

Dr. Chhabilendra Roul, Member (A)

1. The present OA has been filed by the applicant against the order dated 20.12.2022 and 13.01.2023 rejecting the representation of the applicant who

prayed for cancellation of the transfer order dated 12.09.2022 and reliving order dated 06.02.2023.

2. Brief facts of the case is that the present applicant was posted as TGT (Economics) in Kendriya Vidyalaya Punjab Lines, Meerut., Uttar Pradesh.

Vide order dated 12.09.2022 the applicant was transferred alongwith several other teaching staff of KVS. She was transferred to KVS, Gopalpur

Military Station, Orissa.

3. Being aggrieved, the applicant filed OA No. 2692/2022 before this Tribunal. The Tribunal vide its order dated 23.9.2022 stayed the impugned

transfer order dated 12.09.2022 as well as any likely reliving order in pursuance of the said impugned transfer order for a period of two months. The

respondents were directed to afford an opportunity of personal hearing to the applicant and pass a reasoned and speaking order within a period of two

months. The respondent No.2 vide order dated 13.1.2023 considered the representation dated 23.12.2022 of the applicant rejecting the request of the

applicant for modification or cancellation of the impugned transfer order. Subsequently, she was relieved from the place of posting vide order dated

6.2.2023.

4. Being aggrieved, the applicant has come before this Tribunal in the present Original Application, seeking the following relief (s):-

(a) To quash and set aside the impugned order dated 12.09.2022( The name of applicant is at Sr. No. 23) in respect of applicant, order dated

12.09.2022 and impugned order dated 20.12.2022, 13.01.203 and impugned order dated 06.02.2023 whereby the applicant is relieved from Kendirya

Vidyalaya Punjab Lines, Meerut., Uttar Pradesh w.e.f. 06.02.2023 be quashed.

(b) Pass an order to release/ compensate litigation expenses in favour of the applicant and against the respondent, and Pass such other and further

orders as this Hon'ble Tribunal may deem fit and proper.

5. The matter was listed on 28.02.2023 for admission and after hearing of both sides the matter was reserved for final orders, and thereafter it was

listed on 22.03.2023 along with others as "For Being Spoken To" for further clarification from both the parties and reserved for final order.

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

Kumar alongwith Ors. that:-

i) That the transfer order dated 12.9.2022 and the relieving order dt. 6.2.2023 are against the Transfer Guidelines, 2021. These guidelines were

formulated to maintain transparency and to avoid arbitrariness and discrimination. The Order date 12.9.2022 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 were followed while effecting the

transfers on 12.9.2022. In view of this the transfers are arbitrary and smacks of non-application of mind.

(iii) The transfer order dated 12.9.2022 is against DOPT OM dated 23.8.2004 which states that, as far as possible, the husband and wife will be

posted at the same station. The applicant's husband is serving in IPL and posted in UP. She should not have been transferred on account of

couple case.

(iv) The impugned orders rejecting the representation of the applicant (Annexure-A 10), in which she had mentioned various reasons such as the old

parents-in-law who require nursing and personal care; the college education of her daughter studying in Bennet University, Greater Noida; she being a

54 year old woman; she was not allowed to fill up any transfer options as a female KVS teacher she was supposed to be transferred within 500 kms

of her present place of working; etc.

(v) The present applicant has been discriminated because despite having a low displacement score, she has been transferred.

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 another 13 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 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 transfer in the instant case has been effected in the middle of the

academic session and she has all the personal and family issues to attend. Being transferred to a far off place, she would face grave personal

difficulty. The Transfer Guidelines of 2021 have provision to look into such eventualities to consider the personal and family of employees of KVS.

However, the respondents have squarely rejected her request to cancel the impugned orders dt.12.9.2022. Vide order dated 13.1.2023, the respondent

Commissioner has rejected her prayers of personal difficulties in pursuance of the order of CAT Principal Bench dated 23.9.2022 in OA no.

2692/2022. The rejection of her prayers is not accompanied by a reasoned and speaking order.

8. The counsel for the applicant further argued that the suspension of Clause 6 of the Transfer Guidelines suffers from want of competency. The

Transfer Guidelines, 2021 were issued after being approved by the Board of Governor of KVS but the suspension order has been issued in pursuance

to the minutes of meeting of senior officials of Ministry of Education and KVS under the Chairmanship of the Union Education minister. Article 11(ii)

(c) of the Education Code of KVS 2012 provides that the BOG of the KVS shall have the power to determine, inter alia, the conditions of service

including terms and tenure of appointment and transfers. Hence, the order dt 12.9.2022 suspending clause 6 of transfer guidelines is defective and

ultra vires since it has been issued by Respondent No.2 without any reference, to authorization or approval from the BOG. He cited the order of the

coordinated bench of CAT at Lucknow which has taken serious note of this violation of the provision of the Education Code. The Coordinated Bench

at Lucknow vide order dated 26.09.2022 in OA no. 417 of 2022 held :-

On the issue of suspension of operation of Para-6, the Id applicant counsel argued that the same cannot be done by the Commissioner, Kendriya

Vidyalaya and has to have the approval of the Board of Governors of the Kendriya Vidyalaya Sangathan per the Education Code of the Kendriya

Vidyalaya Sangathan. The Id. respondents counsel could not argue against and was not able to show any provision which could effectively contradict

the oral submission of the applicant counsel. What is off course known is that the Kendriya Vidyalaya as an organization under the Ministry of

Education per the National Education Policy 2020 [formerly Ministry of Human Resource Development] is governed by Board of Governors and the

same is provided for in the Kendriya Vidyalaya Sangathan Education Code

9. 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 assess 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 existing staff 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 suo motu in the

exigencies of service and administration and public interest.

10. The counsel for the Respondent quoted the following Order Dated 20.12.2022 (Annexure A-1) [in respect of the representation of the present

applicant, which reads as follows:-

Whereas the above transfers have been effected recently in KVS for reasons that due to disruption in normal schooling for past two years owing to

the pandemic situation, there has been significant learning loss amongst students due to online blended mode of teaching. According to the mental

health and well being of school students 2022 report published by NCERT in the chapter relating to KVS, it has been stated that during COVID-19, as

classes were taking place in online mode, 54% of the students who participated in the survey reported facing difficulties in understanding and learning

of content through online mode. Hence the need was felt to address on priority, the learning challenges being faced by the students for the past two

years due to pandemic through administrative means. The rationalization of teachers & redistribution of the existing teaching staff have been effected

to address the above core challenges after the pandemic so that at least 50% of regular teaching staff (inclusive of all cadres) are available in all KVs.

Whereas, KVS has identified around 237 KVs having less than 50% of regular teaching staff on its rolls and about 481 KVs having 80% or more

regular teaching staff on its rolls in all over India on the basis of available vacancy. As per Station Seniority (All India /cadre/subject wise), who has

the longest stay in a station, as per date of joining at the station was taken as the criteria for transfer. Most of the teachers who have been transferred

have had a stay in a particular station for more than 10 years. Out of the total teaching staffs in position, only 1455 transfers have been effected which

is less than 4 % of the total teaching strength in position.

11. 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.

12. 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.

13. 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.

14. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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 settled 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 Gujarat 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.

21. 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.

¶7. 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.

22. 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.

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

“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.”

24. Here, even the transgression of the transfer guidelines has not been allowed to be interfered 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.”

25. 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.

26. 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.”

27. 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.Ã¢â€â€

28. 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:-

Ã¢â€â€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.Ã¢â€â€

29. 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:

Ã¢â€â€It is further contended that in an unfortunate situation the respondentÃ¢â€â€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.Ã¢â€â€

30. 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 Shrilekha Vidyarthi and others Vs Sate 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.

31. 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.

32. 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.

33. 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.

34. 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 Shreelkha 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 Judgment 12/07/1989

(x) Punjab and Sind Bank & Ors. Vs. Durgesh Kuwar, 2020 SCC Online SC 77, 4th 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 Registrar General , High Court of Madhya Pradesh &Anr, WP No 1137 of 2018, decided on 10.2.2022.

35. 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.

36. In the instant case, the applicant has failed to assert that the transfer order dt 12.9.2022 is based on non-application of mind and it suffers 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.

37. 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.

38. The last averment by the applicant that she deserves sympathetic consideration on account of the impending hardship she would face because of

her transfer beyond 500 kms from the existing place of posting, daughter's education, husband's employment in IPL (a non-government/non-

PSU organization in UP), old parents-in-law, etc. have been duly considered by the Respondents in the impugned order dated 13.1.2023. Moreover, 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 34 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.

39. 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 personal and family circumstances of the applicant and passed a reasoned and speaking order. In view of this, I

find no reason to interfere in respect of the impugned orders.

40. 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.