

(2024) 10 CAT CK 0014

Central Administrative Tribunal Principal Bench, New Delhi

Case No: Original Application No. 4195 Of 2024, Miscellaneous Application No. 3975 Of 2024

Mahesh Chand Meena & Ors

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: Oct. 25, 2024

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- Constitution Of India, 1950 - Article 14, 15, 15(3), 16, 21

Hon'ble Judges: Ajay Pratap Singh, Member (J)

Bench: Single Bench

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

Final Decision: Disposed Of

Judgement

Ajay Pratap Singh, Member (J)

1. By way of present Original Application filed under Section 19 of Administrative Tribunals Act, 1985 by the applicants are claiming following relief(s) :-

• Issue an order to annul the transfers dated order dated 25.10.2023. (Only to the extent that the applicant has been transferred from KV Janakpuri to KV Malleshwaram, Karnataka), and

relieving order dated 08.11.2023 whereby the applicant was relieved from K.V Janakpuri.

- ii. Issue an order to modify the transfer of the applicant and assign both applicants to KV Tezpur (Guwahati) where post of PGT Hindi and PGT Geography are vacant.
- iii. In the alternate issue an order to modify the transfer of the applicant and assign both applicants to positions near each other at any available locations in 1. Bangaluru, 2. Jaipur, 3. Alwar 4. Sikar, 5.

Gurugram.â€

2. The grievance of the applicants as raised by Shri Saurabh Kumar, learned counsel appearing for the applicants that applicant no.1 is working as PGT (Hindi) at KV Malleshwaram (Karnataka)

(shift no.1) and applicant no.2 is wife, posted at K.V. Janakpuri (2nd shift) Delhi. The respondents have invited applications for annual transfer process for 2023 with preferences and applicants have

given preferences (1) Bengaluru, (2) Jaipur, (3) Alwar, (4) Sikar (5) Gurugram. The applicant no.2 possesses transfer count of 27 and same has not been considered to secure a transfer to any choice

stations and only three Kendriya Vidyalaya (ASC Centre, MEG Centre and AFS Yelahanka) offer Geography and applicant no.2 has not been assigned any of the above places of choice furnished

by her.

3. The transfer order dated 25.10.2023 to the extent of applicant no.1 transferring from K V Janakpuri, Delhi to K V Malleshwaram (Karnataka) at the distance of 2,750 kilometers is in flagrant

violation of clause 3 (i) of KVS Transfer Policy of year 2023 and clause 4 (iii) of DOP&T, OM dated 30.09.2009.

4. Learned counsel appearing for the applicants, after arguing for some time, submits that applicants would be satisfied if a direction is issued to the respondents to consider the pending

representations (Annexure A-4).

5. Issue notices to respondents. Mr. S. Rajappa, learned counsel appearing for the respondent-KVS appears on advance service and accepts notice and service of notice is waived off.

6. Mr. Rajappa, learned counsel appearing for the respondents, at the Bar, fairly submits that pending representations (Annexure A-4) of the applicants shall be considered in accordance with law.

7. Heard the learned counsel for the parties with consent. The applicants are husband and wife working in the Kendriya Vidyalaya, K.V. Malleshwaram, Karnataka

and K.V., Janakpuri, Delhi and

praying for considerations of their pending representations to modify the transfer order dated 25.10.2023 whereby applicant no.1 has been transferred from K.V. Janakpuri to K.V. Malleshwaram

and also relieving order dated 08.11.2023 to the extent to consider both the applicants to K.V. Tezpur (Guwahati) where post of PGT Hindi and PGT Geography are lying vacant or in alternate to

modify the impugned orders to the extent to assign both the applicants to positions each other at any available locations in 1. Bengaluru 2. Jaipur 3. Alwar 4. Sikar or 5. Gurugram accordance with

Clause 4 (iii) of O.M. No.F.No.28034/9/2009-Estt.(A) dated 30.09.2009 "Posting of husband and wife at the same station", where the spouses belong to the same Central service. So also

Clause 3(i) of KVS Transfer Policy allows transfers to be considered on spouse grounds to promote family unity and two minor children are not deprived of the due care and affection.

8. Hon"ble Supreme Court in case of S.K. Naushad Rahman & Ors. In Civil Appeal No.1243/2022 vide judgment dated 10.3.2020. Relevant paragraphs 48 & 53 read as under :-

"48 This Court has spoken about the systemic discrimination on account of gender at the workplace which encapsulates the patriarchal construction that permeates all aspects of a woman's being

from the outset, including reproduction, sexuality and private choices, within an unjust structure. The OMs which have been issued by DoPT from time to time recognized that in providing equality and

equal opportunity to women in the workplace of the State, it becomes necessary for the Government to adopt policies through which it produces substantive equality of opportunity as distinct from a

formal equality for women in the workplace. Women are subject to a patriarchal mindset that regards them as primary caregivers and homemakers and thus, they are burdened with an unequal share

of family responsibilities. Measures to ensure substantive equality for women factor in not only those disadvantages which operate to restrict access to the workplace but equally those which continue

to operate once a woman has gained access to the workplace. The impact of gender in producing unequal outcomes continues to operate beyond the point of access. The true aim of achieving

substantive equality must be fulfilled by the State in recognizing the persistent patterns of discrimination against women once they are in the work place. The DoPT OM dated 3 April 1986, 23

August 2004, 8 July 2009 and 30 September 2009 recognised the impact of underlying social structures which bear upon the lives of women in the work place and produce

disparate outcomes coupled with or even without an intent to discriminate. The provision which has been made for spousal posting is in that sense fundamentally

grounded on the need to adopt special provisions for women which are recognized by Article 15(3) of the Constitution. The manner in which a special provision should be adopted

by the State is a policy choice which has to be exercised after balancing out constitutional values and the needs of the administration. But there can be no manner of doubt that the

State, both in its role as a model employer as well as an institution which is subject to constitutional norms, must bear in mind the fundamental right to substantive equality when it

crafts the policy even for its own employees.

53. In considering whether any modification of the policy is necessary, they must bear in mind the need for a proportional relationship between the objects of the policy and the means which are

adopted to implement it. The policy above all has to fulfill the test of legitimacy, suitability, necessity and of balancing the values which underlie a decision making process informed by constitutional

values. Hence while we uphold the judgment of the Division Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting of spouses, the needs of

the disabled and compassionate grounds. Such an exercise has to be left within the domain of the executive, ensuring in the process that constitutional values which underlie Articles 14, 15 and 16 and

Article 21 of the Constitution are duly protected. The appeals shall be disposed of in the above terms.â€

[Emphasis

Supplied]

9. Hon^{ble} High Court of M.P. in case of R.S. Chaudhary Versus State of M.P. and Others, 2007 SCC Online MP 762: ILR 2007 MP 1329, their Lordships held as :-

“35. Fulcrum of the matter is whether the decision in T.N. Bhardwaj (supra) govern the field and would be the binding precedent or that of the decision rendered in J.K. Bansal (supra) would be

binding or both can simultaneously be valid. In the case of J.K. Bansal (supra) a three-Judge Bench of the Apex Court has referred to the decisions in Mrs. Shilpi Boss (supra) and National

Hydroelectric Power Corporation Ltd. v. Bhagwan (supra). Their Lordships have not only noticed but have quoted exhaustively the ratio laid down in the said decisions. Thus, the said decisions have

been approved by the three-Judge Bench. In T.N. Bharadwaj (supra) what their Lordships have stated that the guidelines are binding on the Government. The binding nature of the guidelines, in our

humble view, has to be understood in the context of Mrs. Shilpi Bose (supra), S.L. Abbas (supra), Jagjit Singh Mehta (supra) and S.S. Kaurav (supra). To elaborate the instructions or the guidelines

do not confer any enforceable right on an employee. He has no vested right to remain at one post or the other. However, while ordering a transfer the authority must keep in mind the guidelines

issued by the Government whether an order of transfer is passed in violation of the guidelines or the executive instructions. The action of the State Government should not be mala fide or malicious

and should be tested on the anvil and touchstone of acceptable reasonableness. In view of the aforesaid pronouncement of law by the Apex Court in several cases, which we have referred

hereinabove, we are of the considered opinion that the transfer policy formulated by the State is not enforceable as the employee does have a right and the Courts have limited jurisdiction to interfere

in the order of transfer. The Court can interfere if there is violation of mandatory statutory rule or if the action of the Government is capricious, malicious, cavalier and fanciful. What would constitute

these components that would depend on facts of each case as the same can be neither illustratively or exhaustively stated. In fact, that is not warrantable to be stated. We proceed to hold that in

case an order of transfer is assailed on the ground that there has been violation of the policy, the proper remedy is to approach the authorities by pointing out the

violation and it is

expected of the authorities to deal with the same keeping in mind the policy guidelines with utmost objectivity.â€

[illegible]

10. The case on hand, whereby both the applicants assailed the impugned transfer and relieving orders based on the violation of the KVS Transfer Policy and in view of law laid down by Hon^{ble}

Courts, cited hereinabove, the proper remedy is to approach the authorities by pointing out the violation and it is expected of the authorities to deal with the same keeping in mind the policy guidelines

with utmost objectivity.

11. The Tribunal has considered the matter. In view of above submissions, this Tribunal feels it deem and proper that principles of natural justice will be met. The respondents/competent authority is

directed to consider the pending representations (Annexure A-4) by passing a reasoned and speaking order within a period of six weeks from the production/receipt of certified copy of order passed

today and same shall be communicated to the applicants at the earliest.

12. Needless to say this Tribunal has not expressed any opinion on the merits of the case and competent authority/respondent is free to take a decision in accordance with law, keeping in mind the

KVS Transfer Policy and O.M. dated 30.09.2009 relating to posting of husband and wife at the same station as applicants are claiming at KV Tezpur (Guwahati) posts are vacant for PGT Hindi and

PGT-Geography, with utmost objectivity.

13. In view whereof, the present Original Application stands disposed of at admission stage itself in the above indicated terms.

14. There shall be no order as to costs.

15. Pending Misc. Application(s), if any, stands closed.