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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00551/2019**

**Friday, this the 20<sup>th</sup> day of December, 2019**

**C O R A M :**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER  
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Anney Miny Jose,  
Aged 52 years,  
W/o.Charly Kattakayam,  
Kattakayam House, Devagiri,  
Medical College P.O., Kozhikode – 673 008.  
Now working as Post Graduate Teacher (Physics),  
Kendriya Vidyalaya, Port Trust, Kochi – 682 003, Kerala. ....Applicant

**(By Advocate M/s.P.R.Jayakrishnan & Dr.R.Reji Kumar)**

**v e r s u s**

1. The Deputy Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office, Ernakulam,  
KV Kadavanthra Campus,  
Kadavanthra P.O, Ernakulam – 682 020.
2. The Assistant Commissioner (Estt.II/III),  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi – 110 016.
3. Additional Commissioner (Administration),  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi – 110 016.
4. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi – 110 016.

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5. Sreeranjini.K.P.,  
PGT (Physics),  
Kendriya Vidyalaya,  
NIT Silchar, Silchar,  
Assam – 788 010. ...Respondents

**(By Advocates Mr.K.I.Mayankutty Mather [R1-4] & Mr.P.Babu [R5])**

This application having been heard on 10<sup>th</sup> December, 2019, the Tribunal on 20<sup>th</sup> December 2019 delivered the following :

**O R D E R**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

The Original Application is filed by Smt.Anney Miny Jose aggrieved by Annexure A-17 transfer order dated 22.7.2019 by which the 5<sup>th</sup> respondent was transferred to the vacancy in K.V., Kannur in preference to her claim. The reliefs sought by the applicant in the O.A are as follows :

1. Call for the records leading to the issuance of Annexure A-17 transfer order and quash the same to the extent it relates to the posting of the 5<sup>th</sup> respondent at KV Cannanore No.1 (Kannur).
2. Declare that the applicant is entitled to get transfer to Cannanore No.1 (Kannur).
3. Declare that Annexure A-17 transfer order to the extent of transferring 5<sup>th</sup> respondent junior PGT (Physics) teacher is null and void.
4. Direct the 4<sup>th</sup> respondent to transfer the petitioner to Cannanore No.1 (Kannur) by adjusting the 5<sup>th</sup> respondent in K.V.Port Trust, Kochi.
5. Direct the 4<sup>th</sup> respondent to keep the vacancy in K.V.Kannur as vacant till the disposal of this Original Application.
6. To grant any other relief the Tribunal may deem fit and proper in the interest of justice.

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2. The brief facts of the case are as follows : The applicant is presently working as Post Graduate Teacher in Physics, K.V., Port Trust and had completed three years minimum tenure in the present station. Since her husband is employed as Assistant Professor in Kozhikode, she seeks transfer either to Kannur or Kozhikode under spouse ground.

3. It is submitted that the applicant had started her career from K.V.No.1, Kozhikode. Thereafter she had served under various schools like KV AFS Sambra, KV No.2 Kozhikode and KV Port Trust, Kochi. The applicant had returned to her home town from KV AFS, Sambra in the year 2004. But the transfer count for effecting displacement transfer is taken as effective from 19.8.1995 instead of 19.8.2004 holding that she has not completed the minimum tenure of three years at KV AFS Sambra. Taking into account the same she has been displaced and transferred to KV Port Trust, Kochi on 21.7.2015. While continuing so, the applicant has filed a representation dated 3.6.2019, a copy of the representation is available at Annexure A-1, wherein apart from highlighting her personal difficulties, she points out a clear vacancy of PGT in Physics due to retirement of the incumbent at KV Calicut No.1. However, the respondents ignoring the request of the applicant filled the post by selecting a newly promoted PGT (Physics) at KV No.1, Calicut. The said person was working as TGT in Okha and was promoted as PGT (Physics) and posted at the same station. Later he was transferred to Calicut No.1 vide modified order dated 26.6.2019 violating the transfer guidelines.

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4. It is pertinent to note that as per the notification it is mandatory to submit applications for transfer through online mode only. It is further submitted that the applicant could not register her application due to technical snag of the online platform. Though it has been brought to the notice of the respondents through repeated representations, she was unable to submit her application for transfer through online mode on or before 4.7.2019, the last date for submitting the applications for transfer. Consequently she preferred an application on manual mode on 4.7.2019 before the 2<sup>nd</sup> respondent through proper channel seeking transfer either to KV Kannur or KV Kozhikode pointing out the clear vacancy in KV No.1, Kannur on account of resignation of a PGT (Physics).

5. Aggrieved by the non consideration of her request for transfer, the applicant has earlier filed O.A.No.180/485/2019 before this Tribunal which was disposed of vide order dated 8.7.2019 directing the 4<sup>th</sup> respondent to consider her request of having registered manually in view of her inability to register online for a posting to Kannur and come to a decision at the earliest considering the personal difficulties she has pointed out.

6. The applicant has further pointed out that the final transfer and displacement count published by the 4<sup>th</sup> respondents shows her total transfer count as thirty whereas the 5<sup>th</sup> respondent is having transfer count of zero and that the 5<sup>th</sup> respondent is not eligible for a transfer to KV Kannur under any category including 'posting with spouse'.

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7. As grounds the applicant submitted that the Government of India policy mandates that “in view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children, husband and wife shall be posted at same station. She has relied on the Hon'ble Supreme Court judgment in **Ram Ganesh Tripathi v. State of U.P (AIR) 1997 SC 1446** wherein it has been held that any executive instruction/order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be quashed as having no force of law.

8. In addition, the applicant has filed two rejoinders in this O.A. It is stated therein that the 5<sup>th</sup> respondent was appointed as PGT (Physics) under Zonal system on 17.10.2017 in North Eastern Zone and the minimum tenure required for applying for a transfer as per transfer guidelines 2018 is three years. Therefore as per the extant transfer guidelines in force the 5<sup>th</sup> respondent is not eligible even for submitting an application for transfer without completing the minimum tenure of three years under spouse category, which fact has been admitted by the 5<sup>th</sup> respondent herself in Annexure R-5(1) transfer application. In the second rejoinder filed by the applicant it is stated that the BOG has not taken any decision to modify the place of transfer of any teacher recruited in the year 2017 and its true intention was to accommodate all newly recruited teachers at their choice stations as far as possible subject to availability of vacancies and 5<sup>th</sup> respondent will not come in that category.

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9. The respondents have filed their reply statement wherein they have stated that as per Article 71 of Education Code, which is a documentary text for governance of Kendriya Vidyalayas, the employees of KVS are to be transferred to any Kendriya Vidyalaya of the Sangathan at any time on short notice on organizational reasons/administrative exigencies. As per the transfer guidelines the applicant had to complete three years tenure outside station for breaking her seniority of the present station whereas she has returned back after completion of only 2 years and 4 months. Hence her claim to reckon displacement count prospectively from 2004 instead of 1995 cannot be acceded to as the station seniority is to be breaking only on completion of 3 years and reckoning of displacement count retrospectively from 1995 is as per the transfer guidelines. Moreover, the respondents submitted that the applicant has no right to remain at one station for whole of her career. The management has also to take into account the interest of the organization as well as the interest of the students who are waiting for teachers at present KV, for their future betterment. Further mere availability of vacancy at the requested place is not sufficient as other teacher is available in the queue as right/eligible contender as per the transfer guidelines and accordingly the vacant post of KV Kannur was given to 5<sup>th</sup> respondents who is a direct recruitee of 2017 by modifying her place of posting from KV, NIT Silchar, Assam to KV No.1, Kannur in terms of 109<sup>th</sup> BOG meeting held on 6.3.2018.

10. The respondents have also filed an additional reply statement reiterating their contentions in the reply statement. With regard to the contention of the applicant that she has thirty transfer counts and 5<sup>th</sup> respondent having only zero transfer counts, it is made clear that transfer was ordered purely on administrative reasons. It is submitted that transfer is a part and parcel of the service condition in an all India transferable job. The 5<sup>th</sup> respondent was transferred only to accommodate the employees who were posted on direct recruitment during 2017 zone wise and their place of posting near to their spouse place was not possible without taking decisions by the BOG on administrative grounds. The transfer order was issued invoking para 9 of the transfer guidelines which reads as under :

(i) Request transfer shall be effected as per the prescribed calendar of activities. Transfer on request shall be effected on the basis of "Transfer Count" of an employee computed by assigning appropriate points to factors considered relevant for transfer. An employee who is appointed on the basis of zonal system, on initial appointment, is normally barred from applying for request transfer for a period of three years in terms of the appointment order. Existing employees who have completed 1 year stay at the present place of posting as on 30<sup>th</sup> June of the relevant year are eligible to apply for Request Transfer. An employee will not be eligible for request transfer twice in an academic year.

(ii) An employee who gets choice station transfer in 2017 and onwards shall not be considered again for request transfer before elapsing a period of 10 years at the choice station except 3 years for Hard Station. However, this condition shall not be applicable in the cases of those employees whose spouses are working in KVS or other departments/organization of Govt. of India or State Governments.

(iii) Those employees who are appointed on direct recruitment in KVS on the basis of Choice of Zones shall only be considered for request transfer within the same zone on completion of 3 years stay at the place of initial posting on appointment except the cases mentioned at para 9 (ii) regarding cases of those employees whose spouses are working in KVS or other departments/organisation of Govt. of India or State Governments. Such employees may seek their request transfer to their choice places during annual transfer on the basis of posting of their spouses.

(iv) An employee posted in a double shift Kendriya Vidyalaya if wants to change his/her shift in the same Vidyalaya against a vacancy, he/she can apply for the same during the annual transfer.

11. The Party Respondent No.5 has filed a reply statement wherein it has been stated that the guidelines issued by the Kendriya Vidyalaya Sangathan for transfer by request on the ground of spouse category clearly stipulate that the spouse must be a Government employee either serving with the State Government or with the Central Government. The applicant is not eligible to apply on the ground of spouse category as her spouse is not a Government employee whereas her husband is working as Civil Police Officer in Kerala Police Department in Kasaragod District under Government of Kerala. She submitted that she has nothing to do with regard to the request of the applicant for transfer to K.V.No.1, Kozhikode. She pointed out that going through Annexure A-2 order, it is clear that one Shri.Randheer Vannery, who was posted at Okha, was transferred and posted as PGT (Physics) in K.V.Calicut No.1 and that she was neither employed at Okha as TGT or as PGT nor transferred to K.V.Calicut No.1 by virtue of any order. Admittedly there was no challenge against Annexure A-2 as there was no grievances against the filling of vacancy by transfer availed at Kozhikode, the place which the applicant claimed to be her native place. With regard to the contention of the applicant about technical snag in online mode, it is submitted that there was no such complaint from any quarters and all others had duly submitted their applications for transfer except the applicant. With regard to displacement count it is submitted that

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she has no displacement count at present to secure as it will be counted after her displacement from the present place of employment. It is submitted that since there is some restriction as per rules for her as well as other similarly situated employees all over, who have been appointed in service after March 2017 in submitting the application through online, she preferred Annexure R5(1) transfer application apart from Annexure R-5(2). Since on account of the restriction imposed by rules, her transfer counts were not recorded in Annexure A-16. And finally she submitted that the transfer order is in accordance with the transfer guidelines and prayed for dismissal of the O.A.

12. We have heard Dr.R.Reji Kumar on behalf of the applicant, Shri.Vineeth Komalachandran representing Shri.K.I.Mayankutty Mather on behalf of Kendriya Vidyalaya Sangathan Respondent Nos.1-4 and Shri.P.Babu on behalf of Party Respondent No.5. The applicant has 25 years of service as PGT (Physics). The applicant has produced Annexure A-16 transfer/displacement count to show her as well as the 5<sup>th</sup> respondent counts. On going through Annexure A-16 the factors which are noticeable are as follows :

	Applicant	5 <sup>th</sup> respondent
Date of joining	1. August 1994	17. October 2017
Date of joining in the present post	28. September 2015	17. October 2017
Displacement choice station	Kannur, Calicut	Mangalore, Kannur
Total transfer count	30	0

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13. From the above, it can be seen that the applicant is much senior to the 5<sup>th</sup> respondent and had served under various schools including at KV AFS Sambra where she had served for two years and four months. As on today the applicant has completed more than four years and three months in the present station (KV Port Trust, Ernakulam) whereas the 5<sup>th</sup> respondent has completed two years and two months in the present station (NIT Silchar, Assam). As per the transfer guidelines, an employee has to complete three years minimum tenure outside station for making application for request transfer. If the respondents can take into account the two years and odd service rendered by the 5<sup>th</sup> respondent, they shall also not ignore the service of the applicant.

14. With regard to transfer count, it can be seen that the applicant has been awarded 30 counts whereas the 5<sup>th</sup> respondent has been awarded 0. Even if we go by the submission of the 5<sup>th</sup> respondent in her reply statement she can at best be awarded 24 counts which is still much less than what the applicant has secured.

15. Further, the 5<sup>th</sup> respondent, as per her own submission in her transfer application, a copy of which is available at Annexure R-5(1), is not eligible for transfer through online mode according to the transfer guidelines and hence she has preferred offline mode for request transfer on spouse ground. As per the transfer guidelines it has been clearly stipulated that *as far as possible KVS will invite Annual Transfer Applications through an ONLINE*

*process. Annual Transfers will also be operated on the basis of computerized database.* The applicant was unable to submit transfer application through online mode due to technical snag which fact she had brought to the notice of the competent authority on time. The competent authority has also endorsed the technical snag issue while forwarding her application for transfer (offline) and requested to consider the same along with the online applications. Whereas in the case of 5<sup>th</sup> respondents, she knowing well that she is ineligible to apply through online mode, submitted the application for transfer on spouse ground (offline). The Principal, KV NIT Silchar on receipt of the same forwarded the application without citing any reason why she has not applied online.

16. Lastly, the respondents have relied on 109<sup>th</sup> Meeting of the BOG of KVS for justifying their action to transfer the 5<sup>th</sup> respondent under spouse ground. The minutes of the said BOG Meeting held on 6.3.2018 has been produced by the applicant along with the rejoinder. Item No.15 refers to changes proposed in existing transfer guidelines and criteria for posting of newly recruited teachers. It reads as under :

The issue was discussed quite in detail and the Hon'ble Chairman directed KVS to see that not only those employees whose spouses are working in KVS or other departments/organisations of Government of India or State Governments but also suggested to explore ways to accommodate those spouses who are working in private sectors, as far as possible.

(emphasis supplied)

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17. The decision at the above meeting had been to “explore ways to accommodate those spouses who are working in private sectors” which includes the applicant's spouse.

18. In the light of what is stated above, we quash and set aside Annexure A-17 transfer order to the extent it relates to the posting of the 5<sup>th</sup> respondent at KV Cannanore No.1 and direct the respondent to consider the applicant for transfer to KV Cannanore No.1. And in the case of 5<sup>th</sup> respondent we direct that she may be adjusted against any of her choice stations except Cannanore as per rules.

19. The O.A is accordingly allowed. The above exercise shall be completed within a period of one month from the date of receipt of a copy of this order. No order as to costs.

(Dated this the 20<sup>th</sup> day of December 2019)

**ASHISH KALIA**  
**JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN**  
**ADMINISTRATIVE MEMBER**

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**List of Annexures in O.A.No.180/00551/2019**

1. **Annexure A1** – A copy of applicant's representation dated 3.6.2019.
2. **Annexure A2** – A copy of transfer order No.11055/LDCE/2018-19 dated 26.6.2019 issued by the 2<sup>nd</sup> respondent.
3. **Annexure A3** – A copy of relevant pages of tentative vacancy position published by 3<sup>rd</sup> respondent.
4. **Annexure A4** – A copy of order No.F.1-1/2019/KVS(HQ)/ESTT-II dated 14.6.2019 issued by 3<sup>rd</sup> respondent.
5. **Annexure A4A** – A copy of transfer guidelines of the Kendriya Vidyalaya Sangathan 2018.
6. **Annexure A5** – A copy of applicant's representation dated 29.6.2019.
7. **Annexure A6** – A copy of letter No.3.05/KVPT/2018-19 dated 29.6.2019 issued by Principal, KV Port Trust.
8. **Annexure A7** – A copy of order dated 1.7.2019 issued by 2<sup>nd</sup> respondent.
9. **Annexure A8** – A copy of letter No.3/35/KVPT/2019-20 dated 1.7.2019 issued by Principal, KV Port Trust, Kochi.
10. **Annexure A9** – A copy of applicant's representation dated 2.7.2019.
11. **Annexure A10** – A copy of email communication dated 3.7.2019 sent by Principal, KV Port Trust.
12. **Annexure A11** – A copy of applicant's representation dated 4.7.2019 addressed to the 3<sup>rd</sup> respondent.
13. **Annexure A12** – A copy of forwarding letter No.3/35/KVPT/2019-20 dated 4.7.2019 of Principal, KV Port Trust.
14. **Annexure A13** – A copy of application dated 4.7.2019 for transfer submitted through manual mode by the applicant.
15. **Annexure A14** – A copy of forwarding letter No.310-46/2018-19/KVSRO(EKM)/ROSO dated 4.7.2019 of 1<sup>st</sup> respondent.
16. **Annexure A15** – A copy of order dated 8.7.2019 in O.A.No.485/2019 of Hon'ble CAT, Ernakulam Bench.

- 17. Annexure A16** – A copy of the relevant pages of transfer/displacement count of the applicant as well as the 5<sup>th</sup> respondent.
- 18. Annexure A17** – A copy of the transfer order No.FNo.1-1/2019/KVS(HQ) Estt. II dated 22.7.2019.
- 19. Annexure A18** – A copy of the minutes of the BOG meeting of the KVS held on 6.3.2018.
- 20. Annexure R5(1)** – A copy of the transfer request preferred by the 5<sup>th</sup> respondent, dated 4.7.2019.
- 21. Annexure R5(2)** – A copy of the transfer application submitted through on line.
- 22. Annexure R5(3)** – A copy of the letter issued by the Principal addressed to the Deputy Commissioner, NIT Silchar, Regional Office dated 4.7.2019.
- 23. Annexure R5(4)** – A copy of the letter issued by the Principal KV NIT, Silchar addressed to the 2<sup>nd</sup> respondent dated 9.7.2019.
- 24. Annexure R5(5)** – A copy of the transfer order issued by the 2<sup>nd</sup> respondent dated 22.7.2019.
- 25. Annexure R5(6)** – A copy of the letter issued by this respondent addressed to 2<sup>nd</sup> respondent dated 24.7.2019.
- 26. Annexure R5(7)** – A copy of the letter issued by the Principal KV NIT Silchar addressed to Deputy Commissioner, Silchar, Regional Office, dated 24.7.2019.
- 27. Annexure R5(8)** – A copy of the letter issued by the Deputy Commissioner, Silchar Region to the 2<sup>nd</sup> respondent dated 26.7.2019.
- 28. Annexure R5(9)** – A copy of the modification order issued by the 2<sup>nd</sup> respondent dated 10.8.2019.

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