

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00426/2020

Wednesday, this the 6th day of January, 2021

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member
Hon'ble Mr. K.V. Eapen, Administrative Member

Kavita, aged 35 years, W/o. Surender Kumar,
Post Graduate Teacher (English), Kendriya Vidyalaya No. 1,
Palakkad, Pin – 678 009, Permanent Address : Panchal Niwas,
KP-IX/784, Menamkulam, Kazhakuttam,
Thiruvananthapuram, Pin – 695 582. **Applicant**

(By Advocate : Mrs. Sreekala T.N.)

V e r s u s

1. The Commissioner, Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi – 110 016.
2. The Assistant Commissioner (Estt. II & III),
Kendriya Vidyalaya Sangathan, 18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi – 110 016.
3. The Deputy Commissioner, Kendriya Vidyalaya Sangathan,
Ernakulam Region, Kochi – 682 020.
4. The Principal, Kendriya Vidyalaya No. 1, Palakkad,
Pin – 678 009.
5. Smt. Jaya P., Post Graduate Teacher (English),
Kendriya Vidyalaya No.1, Naval Base,
Kochi – 682 004. **Respondents**

**[By Advocates : Mr. K.I. Mayankutty Mather (R1-4) &
Mr. T.C. Govindaswamy (R5)]**

This application having been heard on 09.12.2020 through video conferencing, the Tribunal on 06.01.2021 delivered the following:

ORDER

Hon'ble Mr. P. Madhavan, Judicial Member –

The applicant is aggrieved by the non-feasance on the part of the respondents in considering her application for transfer to Kendriya Vidyalaya, Peroorkada on the ground of spouse working there.

2. The applicant was promoted as Trained Graduate Teacher and posted at Kendriya Vidyalaya, Dhamtari in Chattisgarh on 5.2.2019. The applicant's husband is working in Vikram Sarabhai Space Centre, Thiruvananthapuram which is non-transferable. The applicant submitted a representation for modification of posting as per Annexure A1. There was no response and she joined at Kendriya Vidyalaya, Dhamtari on 23.2.2019. While working there, one leave vacancy arose at Kendriya Vidyalaya, Pattom. She gave Annexure A2 representation for a transfer. There was no response. She gave a representation for reversion to the earlier post as she was unable to look after her family and children (Annexure A3). But there was no response. Then she filed OA No. 180/167/2020 before the Central Administrative Tribunal Bench at Jabalpur. While this OA was pending, the respondents issued an order transferring her to Kendriya Vidyalaya, Palakkad as per order dated 18.3.2020 (vide Annexure A4). Then COVID-19 broke out and a nationwide lockdown was declared and hence she could not join at Palakkad immediately. In the mean while another vacancy arose at Kendriya Vidyalaya, SAP, Peroorkada and she immediately submitted a representation on 20.5.2020 to respondent No. 2 through proper channel for modification of her posting to Kendriya Vidyalaya, SAP, Peroorkada (Annexure A5).

There was no reply and hence she was compelled to join at Kendriya Vidyalaya, Palakkad on 6.6.2020. She sought permission to withdraw OA No. 180/167/2020 with liberty to pursue the matter before this Tribunal.

3. Now she came to understand that the respondents had offered Kendriya Vidyalaya, SAP, Peroorkada to respondent No. 5 as per letter dated 9.9.2020 (Annexure A6). This is done when her request for transfer to Kendriya Vidyalaya, SAP, Peroorkada, Trivandrum is pending before the respondents. According to the applicant, the action of the respondents in not considering her request for transfer to Kendriya Vidyalaya, SAP, Peroorkada on spouse ground is illegal and arbitrary.

4. The respondents Nos. 1-4 filed reply admitting the service particulars stated in the OA. According to the respondents, transfer and postings are the prerogative of the Kendriya Vidyalaya and there is no illegality done. According to them, the applicant was granted a transfer to Kendriya Vidyalaya, Palakkad. The applicant thereafter came to know that a vacancy had arisen at Kendriya Vidyalaya, SAP, Peroorkada, Trivandrum, and she again submitted a representation to modify her posting as Annexure A5. When the applicant was given a transfer to Palakkad there was no vacancy at Kendriya Vidyalaya, SAP, Peroorkada. The applicant had joined Kendriya Vidyalaya, Palakkad and had accepted the offer. Kendriya Vidyalaya Sangathan cannot keep on modifying the orders according to the convenience of the applicant. Annexure A6 was issued to respondent No. 5 for complying with the direction of CAT, Ernakulam Bench.

5. The applicant filed a rejoinder stating that she had submitted her representation for posting at Kendriya Vidyalaya, SAP, Peroorkada even before joining at Kendriya Vidyalaya, Palakkad.

6. Respondent No. 5 entered appearance and filed a detailed reply regarding various facts which led to her filing OA No. 180/603/2019 and obtaining the order of this Tribunal dated 6.9.2019. According to her, she had submitted an option for a transfer to Kendriya Vidyalaya, Palakkad since the applicant in this case had requested for a transfer to Kendriya Vidyalaya, SAP, Peroorkada. A copy of her reply is produced as Annexure R5(c). Respondent No. 5 had also produced the order of this Tribunal as Annexure R5(a).

7. We had perused the pleadings and various documents produced by both sides. We had also heard the counsels appearing for the applicant, respondents Nos. 1-4 and respondent No. 5 in this case. On, going through the records, it can be seen that the applicant had sought for transfer to Kendriya Vidyalaya, SAP, Peroorkada as Annexure A5 before joining at Kendriya Vidyalaya, Palakkad. As per guidelines of transfer, spouse has to be accommodated in the nearest vacancy with an intent to unify the family. The applicant had sought a transfer to Kendriya Vidyalaya, SAP, Peroorkada, Trivandrum since her husband is working in a non-transferrable job at Vikram Sarabhai Space Centre at Trivandrum. We are unable to understand any difficulty in doing the same. On a perusal of Annexure R5(a) order of this Tribunal in OA No. 180/603/2019, it can be seen that this Tribunal had directed to consider the case of respondent No. 5 as follows:

“2. Shri.K.I.Mayankutty Mather put appearance and apprise this Tribunal that he has discussed with the Central Office with regard to the case of the applicant. He submitted that in the middle of the academic session the department feels not to transfer anyone. But, at the same time, they are not averse to consider the request of the applicant for transfer even on mutual ground or otherwise in case of existence of vacancy within Kerala along with others.

3. Taking note of the above observations, the respondents are directed that while making transfers after the completion of this academic session the applicant's request for transfer to Kendriya Vidyalaya, Palakkad or Thrissur or anywhere in Kerala may be considered even if she has not applied for the same online due to technical software difficulty stated by her and if possible the respondents may consider the mutual transfer request of the applicant in accordance with the rules.”

8. This shows that we had in fact directed the respondents to give respondent No. 5 a transfer to Kendriya Vidyalaya, Palakkad or Thrissur if vacancy arises or even by giving mutual transfer. The respondents had transferred the applicant to Kendriya Vidyalaya, Palakkad when the direction of the Tribunal was pending without implementation. The main objection raised by the respondents in giving applicant a transfer to Kendriya Vidyalaya, SAP, Peroorkada was that Kendriya Vidyalaya Sangathan cannot frequently modify its own orders. This situation was created by the respondents themselves. We see that the posting of the applicant to Kendriya Vidyalaya, Palakkad without considering her request for transfer to Kendriya Vidyalaya, SAP, Peroorkada is arbitrary and cannot be sustained. This dispute could have been avoided if the respondents had implemented the order of this Tribunal in OA No. 180/603/2019 dated 6.9.2019 in time.

9. In the result the respondents Nos. 1-4 are directed to consider giving mutual transfer to the applicant to Kendriya Vidyalaya, SAP, Peroorkada and respondent No. 5 to Kendriya Vidyalaya, Palakkad within a period of three months from the date of receipt of a copy of this order or before the beginning of the next academic year whichever is earlier.

10. The Original Application is disposed of as above. No order as to costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00426/2020

APPLICANT'S ANNEXURES

Annexure A1 – True copy of the representation dated 11.2.2019 submitted to the 1st respondent.

Annexure A2 – True copy of the representation dated nil, submitted to the 2nd respondent.

Annexure A3 – True copy of the representation dated 5.7.2019 submitted to 2nd respondent.

Annexure A4 – True copy of the order bearing F. No. 11-E-11065/PGT/3/2020/ESTT.-II/2226-29, dated 18.3.2020 issued by the 2nd respondent.

Annexure A5 – True copy of the representation dated 20.5.2020 addressed to the 2nd respondent.

Annexure A6 – True copy of the communication bearing No. F. 31065/2020-21/KVS(EKMR), dated 9.9.2020 from the 3rd respondent.

Annexure A7 – True copy of the relevant pages of the said order No. F. 11055/PGT/LDCE/2018-19/KVS(HQ)/Estt-II, dated 5.2.2019 issued by the 2nd respondent.

Annexure A8 – True copy of the modification order F. No. 11055/PGT/LDCE/2018-19/KVS(HQ)/Estt-II, dated 25.2.2019 issued by the 2nd respondent.

Annexure A9 – True copy of the said letter F. No. 11055/TGT/LDCE/2018-19/KVS(HQ)/Estt-II, dated 7.6.2019 issued the 2nd respondent.

Annexure A10 – True copy of the relevant pages of order F. No. 11055/PGT/LDCE/2018-19/KVS(HQ)/Estt-II, dated 26.6.2019 issued by the 2nd respondent.

Annexure A10(a) – True translation of Annexure A10.

RESPONDENT No. 5's ANNEXURES

Annexure A5(A) – True copy of the order of this Hon'ble Tribunal in OA No. 180/00603/2019 dated 6th September, 2019.

Annexure A5(B) – True copy of a communication bearing No. F. 31065/2020-21/KVS(EKMR) dated 9.9.2020.

Annexure A5(C)—True copy of the reply submitted by this respondent
dated 14.9.2020.

-X-X-X-X-X-X-X-X-