

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00548/2020

Monday, this the 15th day of March, 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Sri Sandeep Kanta Biswas,
aged 49 years, S/o. Late Shri
Sukumar Kanta Biswas,
Assistant Section Officer (Group B),
Kendriya Vidyalaya,
Keltron Nagar, Kannur, Kerala,
residing at Staff Quarter No. B5,
KV Keltron Nagar, Kannur – 670567,
Mobile No. 9883151555.

... **Applicant**

(By Advocate Mrs. Shameena Salahudheen)

v e r s u s

1. The Commissioner,
Kendriya Vidyalaya Sangathan, 18,
Institutional Area Shaheed Jeet Singh Marg,
New Delhi – 110016.
2. The Assistant Commissioner (Esst-II/III),
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi – 110 016.
3. The Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Ernakulam.
4. The Principal,
Kendriya Vidyalaya, Keltron Nagar,
Kannur, University PO,
Kannur – 670 567.
5. The Secretary,
Ministry of Education, Department of School
Education and Literary,
Shastri Bhavan, Dr. Rajendra Prasad Road,
New Delhi – 110001. ... **Respondents**

[By Advocate Mr. C. Rajendran, SCGC (R1-5)]

This application having been heard on 3rd March, 2021, the Tribunal on 15.03.2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant was selected for the post of Assistant Section Officer (ASO) through direct recruitment during the year 2019 in Kendriya Vidyalaya Sangathan (KVS). He was allotted the Ernakulam Region in South Zone on merit cum choice basis. He was issued an offer of appointment to the post of ASO with posting at KV, Keltron Nagar, Kannur vide memo dated 19.8.2019. Accordingly, he joined at KV, Keltron Nagar, Kannur on 3.9.2019 in the post of ASO. He submits that his wife is also a regular employee of KV No. 2, Ishapore, West Bengal and that his children are also studying in West Bengal. He too belongs to West Bengal. He submits that Kannur is 2,500 Kms. away from his native place. He seeks transfer back to West Bengal.

2. However, it appears that as per the policy (brought out by the respondents in their reply statement), the applicant is required to serve in the South Zone only. Further he cannot be transferred before completing three years of initial appointment even within the zone. A copy of the offer of appointment dated 19.8.2019 has been produced by the respondents at Annexure R4. The points relating to transfer and his allotment to South Zone are indicated at points Nos. 13 & 14 of the same. Certain exceptions were made however, under specific conditions, as the KVS, Headquarters had issued a letter dated 17.10.2019 to all the KVS Regional Offices in which it was stated that, the candidates, recruited and who have joined under the

zonal policy in 2017, 2018 and 2019 and who intend to get their place of posting modified on spouse grounds or being physically handicapped, should apply in a prescribed proforma along with the supporting documents, through the proper channel. A photo copy of the proforma for application for modification of place of posting in respect of newly appointed Teachers and non-teaching staff for the year 2019 on spouse grounds has been produced by the respondents at Annexure R1 [also produced by the applicant at Annexure A5(3)]. As per the letter produced in Annexure A5, along with the application for modification of place of posting, an employee cannot be transferred out of the allotted zone and he can only apply for a request transfer within the allotted zone only after completion of 3 years of service from the date of initial appointment. However, the letter also states that the Board of Governors of the KVS relaxed the conditions for inter-zonal transfer in respect of those KVS employees, whose spouses are working in Government sector and are posted away from the place of posting of KVS employees. It has been noted in the same letter that the KVS had adopted zonal appointment policy w.e.f. 2017 and that many of the employees recruited in 2017-2018 have been considered for modification of their place of posting on spouse grounds. It is also noted that the KVS intend to consider the legitimate interest of the employees but at the same time the employees should be aware that posting and transfer to a place of their choice cannot be claimed as a matter of right. As regards the offer of appointment in March and August, 2019 made to different categories of employees, it has been indicated in the letter that the process of issuing of appointment letters and the joining of candidates may take a few months to complete, and therefore, requests for modification of place of posting on

spouse grounds or physically handicapped grounds cannot be considered simultaneously, due to administrative reasons. In light of these issues it has been directed that any employee who wants to get his place of posting modified on spouse grounds or on being physically challenged should apply in the prescribed format along with the supporting documents through proper channel. This request should be submitted by 31.1.2020 to their KV/office. The KVS will scrutinise the requests as per the availability of vacancy at the desired place and other administrative factors and then issue modification orders towards the end of academic session 2019-2020. It is also clarified that no direct requests will be entertained by the KVS, Headquarters.

3. In consonance with Annexure A5 letter/proforma; the applicant submitted a request in the prescribed format [Annexure R1/Annexure A5(3)] before the 4th respondent. The same was duly forwarded to the 3rd respondent being the Deputy Commissioner, KVS Regional Office, Ernakulam. The applicant has furnished a true copy of his request along with the forwarding letter dated 7.11.2019 at Annexure A6. It is indicated in the letter that the applicant had joined KV, Keltron Nagar, Kannur on 3.9.2019 and that his spouse is presently working at KV No. 2, Ishapore, West Bengal under the Kolkata station. As per the application he has requested posting at 1276 – KV No. 2, Ishapore or 1275 – KV No. 1, Ishapore. The applicant submits that no action was taken on Annexure A6 and, thus, he along with similarly situated employees filed individual representations to the 2nd respondent, being the Assistant Commissioner, KVS, New Delhi pointing out that clear vacancies are available. The representation dated 20.8.2020 requesting the

KVS Headquarters New Delhi to allow 'modification of his transfer' to KV No. 2, Ishapore or KV No. 1, Ishapore in the post of ASO from KV, Keltron Nagar, Kannur has been produced as Annexure A7. As no further action was taken, the applicant along with others represented by the Association approached the Principal Bench of the Central Administrative Tribunal in OA No. 1171 of 2020. The OA was disposed of vide Annexure A8 order at the admission stage itself, without going into the merits, with a direction to the respondents to decide the pending representation of the four individual applicants in the OA, if the same had been received before the due date on 31.1.2020, within a period of 12 weeks. In compliance with these directions, the KVS has passed the impugned order at Annexure A9, where they have disposed of the representation dated 7.11.2019 given by the applicant, stating as follows:

“Keeping in view of the above, the case of the applicant for modification in place of posting on appointment to the post of ASO from KV, Keltron Nagar to Kolkata has been considered sympathetically by the competent authority, KVS but could not be acceded to, since due to the prevailing situation of Covid-19 as all types of transfer/modifications are on hold. However, his request for transfer/modification in place of posting on spouse ground will be given due consideration along with all other similar cases as per rules.”

This memorandum dated 19.10.2020 produced as Annexure A9 (also produced by respondents at Annexure R3) is attacked in this OA with the relief prayed to set aside Annexure A9 and to reconsider Annexures A6 and A7 applications for transfer and representation on spouse grounds, respectively, in a favourable manner.

4. The applicant submits that the Annexure A9 order is unreasonable and arbitrary especially when a clear vacancy of ASO is available at the KV's at Ishapore as pointed out in Annexures A6 and A7. He submits that the

respondents have deliberately refused to issue an order of transfer for reasons best known to them. He submits that similar requests of other employees like Teachers, are being considered and granted favourable orders and thus all the reasoning stated in Annexure A9 is just an eyewash. The applicant has produced copy of one of such order issued to a teacher, granting her request on spouse grounds, at Annexure A10. Further, he has also produced copies of promotion orders and subsequent postings in the officer cadres at Annexure A11 series. These, according to him, prove that there is a double standard adopted by the respondents which is not correct for a model employer like the KVS. He submits that his wife is presently employed as Librarian at KV No. 2, Ishapore and there is an open vacancy of ASO in KV No. 2, Ishapore, West Bengal as well as in KV No. 1, Ishapore also. On the request of the learned counsel for the applicant Smt. Shameena Salahudheen, this Tribunal passed an interim order on 11.12.2020 to protect the interest of the applicant by granting a stay on filling up of the vacancies pointed out by him in Annexures A6 and A7 at KV No. 1, Ishapore and KV No. 2, Ishapore, West Bengal. The interim order is continuing till this time.

5. The respondents represented by Shri C. Rajendran, SCGC filed a reply statement stating that contentions of the applicant are baseless. His case for modification of place of posting has been considered sympathetically by the competent authority, but could not be accepted due to the prevailing Covid-19 situation as all types of transfer/modifications are on hold. The request for transfer/modification in place of posting on spouse grounds will be given due consideration along with all other similar cases as

per rules. The representation dated 7.11.2019 of the applicant has been disposed of vide KVS, Headquarters memorandum dated 19.10.2020 which have been produced at Annexure R3. As per the policy he is required to serve in South Zone only and he cannot be transferred before completing 3 years of initial appointment and only within the zone. The KVS has allowed modification on spouse grounds, but so far the case of the applicant has not been processed for modification due to the prevailing situation of Covid-19 as all types of transfers and modifications have been kept on hold. The respondents do not rule out his request being considered along with similar cases as per rules in due course. As such, there is nothing arbitrary or unreasonable in the Annexuer A9/Annexure R3 order issued to the applicant.

6. Further, the case pointed out by the applicant at Annexure A10, wherein a lady teacher was transferred from KV, ONGC, Jorhat, to KV No. 1, Indore, has been done on the basis of the KV, Headquarters memo dated 27.10.2020. This was done on completion of her tenure in the north eastern region, under paragraph 11(g)(iii) of the Transfer Guidelines and in view of her transfer counts which are found to be 71 points. The concerned paragraph is relating to the 'No Taker Vacancy'/North Eastern States, etc. The applicant cannot compare his case with this teacher, being a case of completion of tenure in north eastern region. In addition, it is also submitted by the respondents that there are only 3 posts in the office at KV, Keltron Nagar, Kannur namely (i) Junior Secretariat Assistant, (ii) Senior Secretariat Assistant and (iii) Assistant Section Officer. The applicant is working as Assistant Section Officer and the other two posts are lying vacant. The Vidyalaya is having a strength of approximately 1,665 students and 51 in-

position staff. It is submitted that the service of the applicant is very much required for assisting the Principal in the office work especially the accounts work, as the applicant is the only member of the office staff available at KV, Keltron Nagar, Kannur.

7. In his rejoinder, the applicant has reiterated his contentions. He submits that his request has been brushed aside and many others who are more influential have been given transfer to their requested stations, especially on spouse grounds. He has once again reiterated the case of the teacher who was posted in Jorhat and who has been transferred to Indore and that his request on the same parameters has been denied. He submits that the contention of the respondents that all transfers and postings are put on hold is incorrect as is evident from the action of the respondents. The respondents have granted promotions to 53 teachers and other officers during the pandemic period. In this regard the applicant has produced a series of orders annexed as Annexure A12 series relating to promotions and postings granted to teachers of KVS. Hence, it is submitted that non-consideration of his request is in violation of Article 14 of the Constitution of India and is unreasonable and arbitrary. One section of employees is being given benefits which are being denied to another. The respondents are estopped from taking the contention regarding completion of tenure for transfer. Moreover, there is no meaning in saying that transfer on spouse ground can be granted only on completion of tenure. It is submitted that the applicant should get preference as he is posted 2,500 Kms. away from his home town and there is no fixed tenure for transfer on spouse grounds in KVS.

8. We have heard Smt. Shameena Salahudheen, learned counsel appearing for the applicant, Shri C. Rajendran, SCGC, learned counsel appearing for the respondents. We have examined the papers provided along with the guidelines and letters of the KVS. As per the letter/proformas at Annexure A5, basically relating to modification in place of posting of newly appointed employees on spouse grounds, it appears that the Board of Governors of KVS has allowed inter-zonal transfer in respect of employees, whose spouses are working in the Government sector and are posted away from the place of posting of KVS employees. The Board of Governors has allowed such employees to seek transfer/modification to a place where the spouse is working. The applicant seems to be covered under this situation. His request at Annexure A6 seems to have been considered by the authorities but has been not acceded too, for the time being. Normally, in such cases, especially since the respondents say that they will consider his request in due course, we would be hesitant to interfere by giving any directions to the respondents in this regard. This is particularly so when the respondents have stated that the applicant is the only staff member at KV, Keltron Nagar, Kannur to assist the Principal in the office works, especially works relating to accounts. Further, it is also seen that he has been posted at Kannur only w.e.f. 3.9.2019 and thus has completed only around 1½ years of initial service. At the same time we note that the Annexure A5 letter does mention that the KVS was scrutinizing requests for place of posting being modified on spouse grounds and that orders would be issued during the end of the academic session 2019-2020. It is acceptable that the prevailing situation of Covid-19 may have affected all types of transfers/modifications including this one. However, the situation at this stage as compared to October, 2020

when Annexure A9 order was passed is perhaps not the same.

9. In the light of the above, we direct the concerned authorities, i.e. respondents Nos. 1 and 2 to once again re-consider the request of the applicant as provided by him at Annexures A6 and A7 of the OA. They may take into account the present situation along with all the relevant circumstances at this stage and pass appropriate written orders in his case after dealing with his request. This may be done within a period of three months with effect from the date of receipt of a copy of this order. Till that time the posts of Assistant Section Officer at KV No. 1, Ishapore and at KV No. 2, Ishapore, West Bengal shall be kept vacant, as already allowed vide our interim order dated 11.12.2020.

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

(Dated this the 15th day of March, 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in Original Application No.180/00548/2020

1. **Annexure A1** – True copy of the advertisement No. 13 dated nil issued by the 1st respondent.
2. **Annexure A2** – True copy of the offer of appointment dated 19.8.2019 issued by the 3rd respondent.
3. **Annexure A3** – True copy of the Office Memorandum F. No. 28034/9/2009/Estt.(A) dated 30.9.2009.
4. **Annexure A4** – True copy of the transfer guidelines for Kendriya Vidyalaya Sangathan 2018.
5. **Annexure A5** – True copy of the Communication No. F.1-1/2019/KVSHQ/Estt.II dated 17.10.2019 issued by the 2nd respondent.
6. **Annexure A6** – True copy of the request submitted by the applicant along with the forwarding letter dated 7.11.2019.
7. **Annexure A7** – True copy of the representation submitted by the applicant dated 20.8.2020.
8. **Annexure A8** – True copy of the order dated 27.8.2020 in OA 1171/2020 of the CAT, Principal Bench.
9. **Annexure A9** – True copy of the memorandum No. F.1.1-E-3013(42)/2/2020-Estt.II/2324-28 dated 19.10.2020 issued by the 2nd respondent.
10. **Annexure A10** – True copy of the order No. 11-E-11065(PGT) 24/2020/Estt-II/4503/07 dated 27.10.20.
11. **Annexure A11** – True copy of the letter F. No. 11044/3/(AC/PR)/2020-KVS(Estt-I)/2011/2017 dated 20.10.2020.
12. **Annexure A11(a)** – True copy of the letter F. No. 11044/3/(AC/PR)/2020-KVS(Estt-I)/2011/2017 dated 20.10.2020.
13. **Annexure A11(b)** – True copy of the letter F. No. 11044/3/(AC/PR)/2020-KVS(Estt-I)/2004/20110 dated 20.10.2020.
14. **Annexure A11(c)** – True copy of the letter F. No. 11044/3/(AC/PR)/2020-KVS(Estt-I)/1997-2003 dated 20.10.2020.
15. **Annexure A11(d)** – True copy of the letter F. No. 11044/3/(AC/PR)/2020-KVS(Estt-I)/1990-1996 dated 20.10.2020.
16. **Annexure R1** – True copy of the prescribed proforma.
17. **Annexure R2** – True copy of the prescribed proforma.

18. **Annexure R3** – True copy of the KVS (HQ) New Delhi Memorandum No. F.11-E-3013(42)/2/2020-Estt.II/2324-28 dated 19.10.2020.
19. **Annexure R4** – True copy of the appointment letter dated 19.8.2019.
20. **Annexure A12(a)** – True copy of the memorandum No. F.11055/PGT/LDCE/2018-19/KVS(HQ)/Estt-II/3571-3643 dated 24.7.20.
21. **Annexure A12(b)** – True copy of the memorandum No. F.11055/PGT/LDCE/2018-19/KVS(HQ)/Estt-II/3690-3730 dated 24.7.20.
22. **Annexure A12(c)** – True copy of the memorandum No. F.11044/3(1)PR-VP/2019/2020/KVS/Estt.I/2535-2564, dated 24.9.20.
