

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 419 of 2008

*Wednesday...*, this the 1<sup>st</sup> day of April, 2009

**C O R A M :**

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

Madhusudhanan Nair V.M.  
S/o. N. Madhavan Pillai  
Post Graduate Teacher (Mathematics)  
Kendriya Vidyalaya, Pangode, Trivandrum,  
Residing at : Sudarsanam, TC 37/843,  
TV Nagar, Thirumala, Trivandrum : 695015

... Applicant

(By Advocate Mr. T.C.Govindaswamy)

v e r s u s

1. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area, Shahid Jeet Singh Marg,  
New Delhi : 110 016
2. The Education Officer,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area, Shaeed Jeet Singh Marg,  
New Delhi : 110 016
3. The Assistant Commissioner,  
Kendriya Vidyalaya Sngathan,  
Regional Office, I.I.T. Campus,  
Chennai : 600 006
4. The Principal,  
Kendriya Vidyalaya,  
Pangode, Trivandrum District
5. M. Preetha,  
Post Graduate Teacher (Maths),  
C/o. The Principal,  
Kendriya Vidyalaya, Pangode,  
Trivandrum District.

... Respondents.

 (By Advocate Mr. Thomas Mathew Nellimoottil) (R1-4)  
Mr. Manzoor Ali K.A. (R5)

The Original Application having been heard on 11.03.09, this Tribunal on 1.4.09 delivered the following:

**O R D E R**  
**HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER**

Challenge against transfer and relieving orders at Annexure MA-1 and MA-2 has been made in this O.A.

2. A thumbnail sketch of the facts of the case is as hereinafter mentioned.

3. The applicant, a PGT (Maths) serving in Kendriya Vidyalaya, has rendered his services since the time of his initial appointment in 1987 only in the North, save for a very short span in 2000, when he was posted to Ottapalayam, Kerala. from where he was posted to Dabla, a hard station at Rajasthan Desert in 2001. At Dabla, the applicant spent about four years during which period he had various health problems including loss of left eye vision. Later, vide Annexure A-1 order dated 30-05-2005 he was transferred from Kendriya Vidyalaya Dabla (BSF) to Kendriya Vidyalaya, Trivandrum, Pangode. At Trivandrum he joined during the first week of June 2005, where his elder daughter studied 12<sup>th</sup> standard and younger son entered tenth standard. In view of his major part of service career having been at the North India, he was under the genuine impression that he would not be transferred immediately. However, by an order dated 02-05-2008, the applicant was transferred to Bilaspur in public interest with immediate effect, vide Annexure

A-2. The above transfer order was served during vacation, when the

applicant casually visited the school. The applicant filed OA No. 242/2008 challenging the same, and the same was disposed of at the admission stage itself, vide Annexure A-3 order dated 13<sup>th</sup> May 2008, with liberty to the applicant to move a representation to the concerned authority against the transfer and with a direction to the authorities to consider the same and pass a reasoned and speaking order. Annexure A-3 refers. The applicant accordingly moved a representation. His transfer order was cancelled, vide order dated 23/24<sup>th</sup> June 2008 at Annexure A-5.

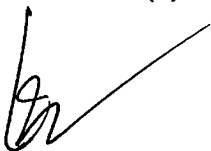
4. According to the applicant, one Ms. Latha Kumari, belonging to a PCGR category, (Priority Category for grant of Request Transfer) as per the extant guidelines specified her choice stations for transfer, which are Kayankulam, Adoor, Kochi, Pallipuram and Trivandrum. Her priority No. is 1 for this purpose. However, the said individual could not be transferred to Trivandrum since at Trivandrum there was no PGT with three years service. Hence, she was posted to KV Port Trust (Kochi) under para 15.4 of the guidelines, which provides that a PCGR category teacher could be accommodated in a particular station, by displacing another who would have rendered not less than three years in that station. However, before the said Latha Kumari could join the said place, one Shri R. Ramachandran Nair was transferred to the said post invoking the provisions of para 17.4 of the guidelines, which provides, "*Commissioner will be competent to make such departure from the Transfer Guidelines as he may consider necessary, with the approval of the Chairman, KVS.*" Thus, when Ms. Latha Kumari could not



be accommodated at KV Port Trust, she was posted to KV Pangode, by displacing the applicant to Bilaspur, against which the applicant moved the Tribunal in OA No. 242/08 as aforesaid and the transfer order was later on cancelled. It was understood that the said Latha Kumari was adjusted in KV NAD, Alwaye, by displacing one Ms. Preetha M, the fifth respondent herein. Latha Kumari joined KV/NAD displacing the fifth respondent, who in turn was relieved to join her new place of posting at Bilaspur. The fifth respondent did not, however, join the said place.

5. It was on 25<sup>th</sup> July 2008 when the applicant was on duty that he could spot respondent No. 5 at the school. Least could the applicant imagine that he would again be served with a transfer order. However, on 27<sup>th</sup> July 2008, the applicant came to know that the second respondent passed an order transferring him to Bilaspur, vide order dated 23<sup>rd</sup> July 2008, which was not by then served upon him. Thus, the applicant on the apprehension that he would be served with the order of transfer and relieving order, moved the Tribunal through this O.A. on the following grounds:-

- (a) The transfer order is arbitrary, illegal and violative of professed norms contained in the guidelines.
- (b) The transfer order was issued for extraneous considerations and due to extreme favouritism shown to respondent No. 5.
- (c) The entire action is accentuated by Malafide.




(d) The fifth respondent being a close relative of Shri Karunakaran, a leading political functionary of the ruling Government, and she being influential, could be able to manage her transfer to K.V. Pangode, at the cost of the applicant's stay here.

(e) No public interest is served in moving the applicant under the above circumstances.

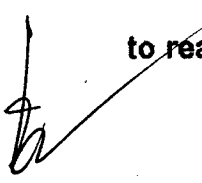
6. The applicant prayed for interim order, but by order dated 1<sup>st</sup> August, 2008, the same was rejected as the compelling reason, which prompted the authorities to accommodate the fifth respondent, was not known to the Tribunal, but priority was accorded to the case for hearing.

7. Official respondents filed their counter, wherein it has been stated that the fifth respondent had been transferred under the provisions of para 15.1 of the guidelines from KV NAD to KV Bilaspur in public interest, which was later modified invoking the provisions of para 17.4 of the guidelines to the effect that instead of Bilaspur, her posting has been made to KV Pangode, as a result of which, the applicant was shifted from Pangode to Bilaspur. The orders passed are perfectly legal as the guidelines had been strictly followed in such cases. It has been stated in the counter that as per para 1.1. of the guidelines, all employees of KVS are liable to be transferred and posted anywhere in India at any time and for any period as requirements of public service and as the Sangathan dictates.



8. Respondent No. 5 filed her counter stating that for invoking the provisions of 17.4, the minimum service of three years is not a pre-requisite. Again, para 17.4 provides for full power to the Commissioner to make departure from the transfer guidelines as he may consider necessary with the approval of the chairman KVS. It is unfortunate to drag the name of Shri K. Karunakaran in this matter to get favourable order in favour of the applicant. The respondent is not a close relative of Shri K. Karunakaran as alleged nor did she approach him for a transfer in her favour.

9. Counsel for the applicant argued that the records would speak, as to the reason for transfer of the fifth respondent to Pangode by displacing him. It has been submitted by the counsel that vesting of power is one thing and invoking of the same justifiably is another. In the instant case, in the first place, the respondents have not come up with the real reason for accommodating R. Ramachandran as well as the fifth respondent. Had Shri Ramachandran been not posted under the provisions of para 17.4 of the guidelines at KV Port Trust, Ms. Latha Kumari who was entitled to a transfer to any of her choice place could have been duly accommodated, which would have avoided the shifting of the fifth respondent and in turn the applicant's move would have also been avoided. Invoking the provisions of 17.4 of the guidelines in the case of Shri R. Ramachandran, the respondents have given a complete go bye to the general guidelines. And, now again, the fifth respondent, whose transfer was under para 15.1 initially, had been modified to read as under 17.4 and the applicant has become the casualty due to this



arbitrary decision. There is no administrative or public interest in the transfer of the applicant.

10. Counsel for the respondents submitted that transfer is an incidence of service and when the same is effected by the competent authority, there is very little scope of judicial interference. Records relating to the transfer of the fifth respondent have been furnished for scrutiny.

11. Counsel for the Fifth respondent filed his written submission, in which he had stated that there is no illegality in the transfer order. He has stated that now that the person has already moved to Bilaspur, he cannot challenge the transfer. He has referred to a decision by the Apex Court in the case of ***Mohd. Masoor Ahmed vs State of UP (2007) 4 KLT 457*** wherein it has been held that transfer at the instant of an MLA cannot by itself be declared as illegal.

12. Arguments were heard and documents perused. First the contentions of the fifth respondent should be dealt with. The counsel has stated that as the applicant has already joined the post, he cannot challenge the transfer. In fact, the Apex Court has held in the case of ***S.C. Saxena v. Union of India, (2006) 9 SCC 583*** as under:-

"In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and makes a representation as to what may be his personal problems."



13. Thus, the move of the applicant cannot be a reason to reject his application. Again, his move is after his interim prayer was rejected. As regards involvement of political leaders for effecting transfer, the judgment cited by the fifth respondent i.e. *Mohd. Masood Ahmad v. State of U.P.*, (2007) 8 SCC 160 is on an entirely different concept. Public interest is involved in that case. The Apex Court has held in that case as under:-

*"... it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case."*

14. In the instant case, a perusal of the records reflect that it was to facilitate the respondent No. 5 concerned that there has been the involvement of political person. No public interest is involved in this case. Hence, the citation relied upon by the counsel is misplaced and in now way it is of any assistance to the case of the fifth respondent.

15. The records furnished by the respondents have also been scanned through. The written submission of the respondent No. 5 also was taken into consideration.

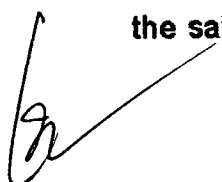
16. Respondents have made available two folders, one relating to the transfer of the applicant (to accommodate one Latha kumari) and the other of Ms. Preetha. In so far as the applicant's initial transfer, it contained the details



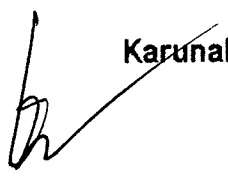


that earlier, Latha Kumari was transferred to Pangode, displacing the applicant whose seniority was 13-06-2005, whereas, a senior most teacher i.e. Smt. Preetha M.PGT(Maths) KV NAD, Alwaye (fifth respondent herein) is available at one of the choice stations of Smt. P. Latha Kumari PGT (Maths) who has displaced the applicant. It was therefore, suggested that the transfer of the applicant to Bilaspur initially ordered in May 2008 be cancelled and Smt. P. Latha Kumari PGT (Maths) be posted to KV NAD Alwaye instead of K.V. Pangode, and displace Smt. Preetha from Alwaye to be posted to Bilaspur. In so far as the records relating to the transfer of Preetha is concerned, though the fifth respondent has contended that she is not a close relative of Shri K. Karunakaran, nor did she approach the person for transfer in her favour, the records do confirm about reference from Shri Karunakaran. No further elaboration is needed in this regard. But the records do indicate that before invoking the powers under para 17.4, the approval of the Hon'ble HRM had been obtained.

17. Now as to the merit of the matter in question. It is the admitted fact that the applicant was transferred to Pangode, Trivandrum in June 2005. He had all along been serving in North India, such as Jamnagar, Dabla etc., and the period he spent earlier in Kerala was only for a year in 2000 at Ottappalam. The applicant had penned a representation dated 14<sup>th</sup> May 2008 in regard to cancellation of his transfer to Bilaspur, when earlier he was posted there to accommodate Latha Kumari. It was on receipt of the order of the Tribunal that the said order was cancelled. If the cancellation order earlier passed was on



consideration of the same, then there is absolutely no justification in transferring the applicant vide the impugned orders. The order of cancellation does not give any inkling that the grounds for retention as contained in the representation of the applicant have been considered. It appears that the same is independent of the same. In that event, the respondents ought to have considered the same before effecting the present transfer order. At the time when the case of fifth respondent was considered for modification of her transfer order, this representation was very much available with the concerned respondent. Comparative hardships ought to have been contrasted in order to arrive at a decision to shift any one to accommodate another. Unmindful of the above, the respondents have acted on the communication received at the office of the Hon'ble Minister for Human Resources Development and the request of the fifth respondent acceded to. Sure enough, there should be a free play at the joint to administrative machinery. And accommodating an individual under the discretionary power of the highest authority should not be normally questioned. In the instant case, however, possibility of accommodating the fifth respondent, without disturbing any other individual could have been explored first. There appears to be a possibility of having one more post of Maths PGT at KV Pangode, as is seen at page 2 of the records (File No. F 11046/64/(17.4) 2008/KVSHQ (Estt II). This document, of course, is unsigned and source of information contained in it is unknown. Perhaps, it may be part of the communication that the office of H.R.D. would have received from Shri Karunakaran, in which event, the same would mean that the fifth respondent



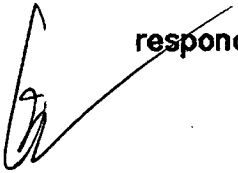
did not feel it proper to dislodge the applicant but she may be accommodated against another post that may be created. None of these aspects has been considered by the Headquarters. Invoking para 17.4 of the guidelines, a suggestion to post the fifth respondent to Pangode by dislodging the applicant was given by the dealing hand and the same is stated to have been approved by the higher authorities.

18. The question is whether the power under para 17.4 has been invoked with all fairness. True, para 17.4 does not provide for any fetter in invoking the said provisions. But the general rule, where power is vested with the authority is brought out in the judgment of the Apex Court in the case of **Bangalore Medical Trust v. B.S. Muddappa, (1991) 4 SCC 54**, wherein the Apex Court has held as under:-

*"Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly."*

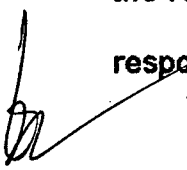
19. Para 17.4 is certainly a discretionary power. As held by the Apex Court in para 33 of the judgment in **R.S. Garg v. State of U.P., (2006) 6 SCC 430**, *"A discretionary power as is well known cannot be exercised in an arbitrary manner"*.

20. From the facts of the case it is evident that the only reason for transfer of the applicant from Pangode to Bilaspur is to accommodate the fifth respondent and the lone reason to accommodate the fifth respondent in the



place of her choice is a communication from a political leader. The reasons (children education) given in the communication do not fit in any of the exceptional category as contained in the guidelines. Persons in their late thirties or early forties would in majority of the cases, be having school going children or of college going level. If the said reason becomes sufficient for issue of transfer orders, then perhaps, there would be hundreds of transfers every year! If the very same reasons given in the communication addressed to the Hon'ble Minister for H.R.D. had been given by the very same fifth respondent, sure enough, the said request for respondent would have been out-rightly rejected or the rejection would have been with the reason that to accommodate the said respondent, the applicant who has equal or better justification for retention at Pangode cannot be dislodged.

21. Thus, the transfer order posting the applicant from Pangode to Bilaspur has been made without considering the representation of the applicant much less contrasting the same with the reasons given for transfer of the fifth respondent to his place. The transfer order is manifestly illegal and unjust. The same is, therefore, **quashed and set aside**. The applicant shall be brought back to his original place of posting. It is for the respondents to accommodate fifth respondent either in the same school or elsewhere. If there is a possibility of having one more post of PGT (Maths) at Pangode, as indicated in one of the documents contained in the records made available by the respondents (about which reference has been made earlier in this order), respondents may try to accommodate respondent No. 5 against the second



post. During the ensuing vacation such a posting could be possible so that education of the students in either school is not hampered.

22. In view of the above, the **OA is allowed**. Respondents are directed to pass suitable orders posting the applicant back to Pangode as PGT (Maths) within a period of four weeks from the date of communication of this order.

23. Under the circumstances, there shall be no orders as to costs.

(Dated, the 1<sup>st</sup> April, 2009)

  
(Dr. K B S RAJAN)  
JUDICIAL MEMBER

cvr.