

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.422/2004

Wednesday this the 14th day of July, 2004.

C O R A M

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

I.V.Prasada
Trained Graduate Teacher (Kannada)
Jawahar Navodaya Vidyalaya
Periya, Kasargode District : Applicant

[By Advocate Mrs. N.Sobha]

Vs.

1. The Union of India represented by the Secretary, Ministry of Human Resources Development, Department of Education, New Delhi.
2. The Director, Navodaya Vidyalaya Samithi, New Delhi.
3. The Deputy Director, Navodaya Vidyalaya Samithi, Hyderabad Region, Padmaraonagar, Secondarabad - 25
4. The Principal, Jawahar Navodaya Vidyalaya, Periya, Kasargode District : Respondents

[By Advocate Mr.M.K.Damodaran]

The application having been heard on 22.06.2004, the Tribunal on 14.07.2004 delivered the following :

O R D E R

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant presently working as Trained Graduate Teacher in regional language (Kannada) is working under the 4th respondent at Kasargode. The applicant is governed by Navodaya Vidyalaya Samithi Recruitment Rules, 1995. The applicant averred in the O.A that all Group 'A' and 'B' will be borne on respective All India cadres and the seniority of

the employees borne on Regional cadre will be maintained at the regional basis. The applicant's appointment as Trained Graduate Teacher (Kannada) is only on regional basis and it is totally against the rules transferring the applicant from Hyderabad Region to Bhopal Region. By impugned order the applicant has been transferred from one region to another by Annexure A-1 order dated 18.05.2004. Earlier also the applicant was transferred to Bihar and the applicant approached the Hon'ble High Court by filing O.P.No.12244/98 and the Hon'ble High Court stayed the operation of the transfer order in view of the fact that the applicant's appointment is in Hyderabad Region. As per the directions of the Hon'ble High Court the 2nd respondent cancelled the transfer and allowed him to continue at Kasargode. The 2nd respondent issued circular dated 25.02.2000 (Annexure A-2) regarding annual transfers drive on request basis. By going through Annexure A-2 it is evident that any transfer as per Annexure A-2 is only on the basis of request. Applicant had not given any request for a transfer from Hyderabad to any other region. These were challenged in different O.A.s by the affected parties and this Court in O.A. 532/2000 stayed the impugned order by a common order upholding that the Trained Graduate Teachers are not taken out of the regional cadre and placed in the All India cadre as provided for in sub-rule (v) of Rule 2 by a general or specific order of the Director. Any order outside is made unavoidable in the exigencies of service which is not the case in these cases. Aggrieved by the impugned transfer order from Kasargode to

Jabalpur (Hyderabad region to Bhopal region), this O.A is filed seeking the following reliefs:-

- i, Call for the entire records leading to Annexure A-1 and set aside the same to the extent to which it affect the applicant.
- ii, Declare that the applicant is entitled to continue as Trained Graduate Teacher (Kannada) at the 4th respondent school.
- iii, Pass such others as deemed fit in the facts and circumstances of the case.
- iv, Grant the applicant the costs of the O.A.

2. The respondents had filed a detailed reply statement contending that in the earlier proceedings this Tribunal set aside the transfer which was confirmed by the Hon'ble High Court. The Division Bench directed that by issuing appropriate notification bringing the Regional Language Teachers in the All India Cadre or by framing suitable transfer policy the Samiti can transfer the Regional Language Teachers. Accordingly, the Commissioner had issued Notification No.15-18/2000-NVS-Estt dated 25.02.2003 bringing of Third Language (Regional Language) Teachers on All India cadre and shall have all India transfer liability vide Annexure R-2(a) notification. It is, therefore, submitted that the Navodaya Vidyalaya follows a three language policy and the above policy is for attaining the objective of the National Integration by introducing Regional Language of the linked migrated States. In order to achieve the laudable objectives, language teachers of South Indian languages like Malayalam, Tamil, Kannada and Telegu are recruited from Hyderabad Region and posted to States like Uttar Pradesh,

Madhya Pradesh, Chathisghar, Bihar, Rajasthan, Utharanchal etc. All the students of the Jawahar Navodaya Vidyalayas in the Hindi speaking States have to compulsorily learn any one of the South Indian Languages including Kannada as Third Language right from Class VI to X. It is, therefore administrative exigency in posting the Regional Language Teachers of the Southern Regional Language in other regions to cater the needs of the students in the Vidyalayas of Hindi speaking States.

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3. The Navodaya Samiti has revised the transfer policy in this regard providing the transfer of Regional Language teachers on completion of 5 years of service in the Region of their original posting to a different region on a rotational basis. The applicant is transferred in terms of the revised transfer policy (Annexure R-2(b) dated 12.11.1999. The contention of the applicant that he is transferred to accommodate a Malayalam Language Teacher is absolutely without any merits. The inter regional rotational transfer policy for the Regional Language Teachers have a clear nexus with those objects of the Navodaya Vidyalaya Samiti to be achieved by the establishment of the Navodaya Vidyalaya at the national level spread over the entire length and breadth of the country. The formulation of transfer policy suitable for administration lies within the ambit of executive decision making and not upto the Courts or Tribunals to decide whether or not for administrative reasons and to serve certain clearly stated set of objectives. Since Annexure R-2 (a) notification bringing the Regional Language Teachers on respective All India Cadre.

with All India transfer liability and Annexure R-2 (b) transfer policy sanctions the Samiti to transfer the Regional Language Teachers, there is no discrimination and is in exigencies of the administration and in public interest.

4. I have heard Mrs.N.Sobha, learned counsel for applicant and Mr.M.K.Damodaran, learned counsel for respondents. I have gone through the pleadings, materials placed on record and given due consideration for the same. Learned counsel for applicant submitted that the inter regional transfer of an employee/teacher could be made only on request. The applicant's family consists of his wife and 8 month old daughter and therefore much prejudice will be caused in case the applicant is transferred to a different place. Learned counsel for respondents on the other hand argued that the applicant has suppressed the material facts and he is relying on old transfer policy Annexure A-2, which is not in existence. Even in an earlier occasion, when the applicant came challenging the earlier transfer the Hon'ble High Court has made it clear that by issuing appropriate notification bringing the Regional Language Teachers in All India cadre or by suitably framing the transfer policy will make it possible the transfer of Regional Language Teachers.

5. I heard the learned counsel for both the parties and the applicant has not filed rejoinder to rebut the averments in the reply statement. It is true that the Hon'ble High Court in O.P.No.12244/98 upholding the decision of this Tribunal staying the operation of transfer order to a

different region. In furtherance of Annexure A-2 this transfer policy was not effected. In the stay order of the Hon'ble High Court it is averred that there was a specific direction that by issuing appropriate notification bringing the Regional Language Teachers in All India cadre the Samiti can transfer the Regional Language Teachers. Therefore, I am of the view that the earlier order of this Court and that of High Court is not effective in view of the fact that as per directions of the Hon'ble High Court, Annexure R-2 (a) and R-2(b) has been notified. This a revised policy on transfer matters of Regional Language Teachers and in conformity with the orders of the Hon'ble High Court. In fact, these two orders has not been mentioned by the applicant in the O.A.. On the other hand, the applicant relied on a stale notification Annexure A-2, which is the transfer guidelines on request transfer which is not in existence. Annexure R-2 (b) dated 12.11.1999 which governs Clause 8 is as under :-

" Third Language (Regional Language) Teachers on completion of five years of service in the region of their initial posting may be transferred to a different region on a rotational basis."

This is fortified by Annexure R-2 (a) notification dated 25.02.2003 which reads as follows :-

" In exercise of powers conferred under Clause 2 (v) of the Navodaya Vidyalaya Samiti's notification No.F.2-29/94-NVS(Admn) dated 22.06.1995, it is hereby ordered that all Third Language (Regional Language) Teachers shall henceforth be borne on respective all India cadres and shall have all India transfer liability."

6. On perusal of the said Rules, memorandum I am of the view that these transfer policy for the Regional Language Teachers have a clear nexus with those objects of the Navodaya Vidyalaya Samiti at the national level spread over the entire length and breadth of the country. The objects for which these notifications are issued is based on a revised transfer policy providing that the Regional Language Teachers on completion of five years of service in the region of their initial posting may be transferred to a different region on a rotational basis. Based on the facts that all the students of the Jawahar Navodaya Vidyalayas in the Hindi speaking States have to compulsorily learn any one of the South Indian Languages including Kannada as Third Language right from Class VI to X. This is based on the laudable objective of National Integration by introducing Regional Language of the linked migrated States. Since the cadre of language teachers has made all India transfer liability as per the policy, I am of the considered view that the transfer order of the applicant cannot be held as violative of the constitutional guarantee of equal treatment subject to reasonableness or can it be held by any malafide consideration. To fortify the above finding I rely on the decision of the Hon'ble Supreme Court/ⁱⁿ State Bank of India Vs. Anjan Sanyal & Ors, (2001) 5 SCC 508 and Public Services Tribunal Bar Association Vs. State of U.P. and another, (2003) 4 SCC 104 which lays down the above dictum. Apart from that, it is clear that the transfer has been affected in public interest. The Hon'ble High Court in Rajan Vs. Directorate General of Police, 1999 (2) KLT 673 has made clear that such transfers cannot be interfered by Courts/Tribunals. Apart from that, the Hon'ble Supreme Court

in Union of India Vs. S.L.Abbas reported in 1993 (2) LLJ 626 has laid down the dictum that " who and where should be transferred is a matter of the appropriate authority to decide." Since no malafides has been pleaded nor any violation of guidelines could be seen, I am of the view that the impugned order cannot be interfered with.

7. In the circumstances, the Original Application deserves no merit and it is to be dismissed. Accordingly, I dismiss the Original Application with no order as to costs. The interim order passed on 09.06.2004 will automatically be vacated.

Dated, the 14th July, 2004.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

VS