CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A Nos.425/2005, 420/2005, 432/2005 & 467/2005

FRIDAY..THE..31st.... March 2006

C O R A M:

HON'BLE SMT SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

OA 425/2005

G.R.Valsala Kumari, Post Graduate Teacher
(Mathematics) Kendriya Vidyalaya No.1, Palghat
Door No.306, B.P.Nagar, Peyad P.O, Trivandrum.

Applicant

(By Advocate Mr.T.C.Govind Swamy)

Vs.

1 The Commissioner, Kendriya Vidyalaya Sangathan
No.18,Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016 – through its Secretary

2 The Educational Officer, Kendriya Vidyalaya Sangathan
No.18,Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016.

3 The Board of Governors, Kendriya Vidyalaya Sangathan
No.18,Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016.

4 The Principal
Kendriya Vidyalaya No.1, Palghat.

5 Ms Sophia, PGT (Maths)
Kendriya Vidyalaya, Jabalpur.

Respondents

(By Advocate M/s Iyer & Iyer R1-4)
(By Advocate Mr.Joshi N.Thomas R-5)

OA 420/2005

D.Meena, Post Graduate Teacher (Chemistry)
Kendriya Vidyalaya, Pattom, Trivandrum.

Applicant.

(By Advocates M/s Sudhakara Prasad & PN Santhosh)

Vs.

1 The Chairman, Kendriya Vidyalaya Sangathan
No.18,Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016

2 The Commissioner, Kendriya Vidyalaya Sangathan
No.18,Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016 – through its Secretary

3 The Educational Officer, Kendriya Vidyalaya Sangathan
No.18,Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016.

4 Pameela Pavithran PGT (Chemistry)
Kendriya Vidyalaya, Thrissur.

(By Advocate M/s Iyer & Iyer R1-3)

OA 432/2005

M.Parameswaran, S/o M Vasudevan Namboodiri
PGT (Maths), Kendriya Vidyalaya No.1,
Palghat, R/o Mozhikunnath, P.O Cheruppulassery
Palghat District.

Applicant

(By Advocate Mr.T.C.Govindaswamy)

Vs.

1 The Commissioner, Kendriya Vidyalaya Sangathan
No.18,Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016 – through its Secretary

2 The Educational Officer, Kendriya Vidyalaya Sangathan
No.18,Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016.

3 The Chairman, The Board of Governors
Kendriya Vidyalaya Sangathan
No.18,Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016

4 The Principal, Kendriya Vidyalaya No.1
Hemambika Nagar, Palghat.

5 Smt P.G.Sreedevi, W/o Sri R.Sreekumar, PGT (Maths)
Relieved from Kendriya Vidyalaya, Bilaspur, Chattisgarh
on orders of transfer to Kendriya Vidyalaya No.1, Palakkad.

Respondents.

(By Advocate M/s Iyer & Iyer R1-4)
(By Advocate Mr.R.Sreeraj, R-5)

OA 467/2005

Sona Rani, W/o Haridas K, TGT (English)
K.V.Ottapalam, R/o Opp. Kalalayam,
Palat Road, Ottapalam.

Applicant

(By Advocate Mr.K.P.Dandapani)

Vs.

1 The Commissioner, Kendriya Vidyalaya Sangathan
No.18,Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016 – through its Secretary

2 The Assistant Commissioner, Kendriya Vidyalaya
Sangathan Chennai Region, I.I.T Campus, Chennai.

3 The Principal,Kendriya Vidyalaya
Ottapalam.

4 The Principal, Kendriya Vidyalaya
Satna, Madhya Pradesh.

5 Smt Seema Pareth, W/o Sri Prabhipthlal, TGT (English)
Relieved from Kendriya Vidyalaya, Nasirabad, Rajasthan
on orders of transfer to Kendriya Vidyalaya Ottapalam..

Respondents.

(By Advocate M/s Iyer & Iyer R1-4)
(By Advocate Mr.R.Sreeraj, R-5)

HON'BLE SMT SATHI NAIR, VICE CHAIRMAN

Applicants in all these cases are Post Graduate Teachers belonging to Kendriya Vidyalaya Sangathan (for short KVS) and have approached this Tribunal aggrieved by their orders of transfer invoking para 18(b) of the Transfer Guidelines of the said Sangathan. Since the facts and grounds urged by the applicants are similar, these applications were heard together and are being disposed of by this common order.

2 Briefly the factual position can be narrated as under.

O.A 425/2005

The applicant was working as PG Teacher of Mathematics in Kendriya Vidyalaya No.1, Palghat. She was transferred to the above station on 20.7.2004 on the basis of her request as her husband is presently employed in the Central Excise Department at Trivandrum.

The 5th respondent who was transferred in place of the applicant was serving at Kendriya Vidyalaya, GCF, Jabalpur since 8.4.2003 and had requested for a transfer to Kerala in any School at Trichur, Cochin, Palghat, Coimbatore, or Trivandrum on medical grounds as she had undergone a major operation of left hip joint replacement on 7.5.02.

3 O.A 420/05. The applicant in this case had been transferred to Kendriya Vidyalaya, Pattom, Trivandrum on 31.8.2004 and she had joined at the place on request as her husband is employed as a Panchayat Secretary under the State Government and her two small children were studying in Schools at Trivandrum. The 4th respondent who has been transferred in place of the applicant came on transfer at Kendriya Vidyalaya, Thrissur on request in 2003 and is alleged to have directly approached the Chairman and obtained the order displacing the applicant.

4 O.A 432/05. The applicant in this O.A after a series of posting out side the State where he remained till October 2004 was transferred to Kendriya Vidyalaya No.1 Palghat on request and joined on 16.10.2004. He had worked North Eastern Region, West Bengal and Andhra Pradesh for a total period of 19 years before his transfer. The 5th respondent who has been transferred in place of the applicant was transferred from Kendriya Vidyalaya, Bilaspur, Chattisgarh. Prior to that she had been working at Kendriya Vidyalaya, Kottayam and had made several representations requesting for a posting in Kerala.

5 OA 467/05. Applicant in this O.A has been transferred to Kendriya Vidyalaya, Ottapalam after serving for 3 years in Andaman and Nichobar Islands where she joined on 21.10.2000. She is undergoing medical treatment for infertility and is under intensive treatment when she has been transferred to Kendriya Vidyalaya Satna in Madhya Pradesh. The 5th respondent who has been transferred in her place was working at Kendriya Vidyalaya, Nasirabad, Rajasthan and has been transferred to Kerala on a request made by her husband as she could not continue at Nasirabad since she had a new born child to lookafter.

6 In all the O.As the respondents have filed a common reply statement contending

that the impugned orders are only orders of transfer and the same are not assailable on casual and vague statements. The Hon'ble Supreme Court has reiterated the principles on the scope of interference in transfer matters and that unless the transfer order is an out come of a malafide exercise of power or violative of any statutory provision or passed by an authority not competent to do so, shall not be interfered with. The employees appointed in KVS are liable to be transferred to anywhere in India and Clause 3 of the Transfer Guidelines clearly envisages all India Transfer liability to the employees of KVS. The new Transfer Guidelines have been ratified by the Board of Governors in the 72nd meeting held on 22.2.2005 w.e.f. 19.1.2005 and those making requests cannot claim transfer as of right nor the guidelines are intended to confer any right. According to Clause 18(b) of the present Transfer Guidelines, The Commissioner, KVS, is competent to make such departure as necessary from the guidelines with the prior approval of the Chairman, KVS. A mechanism has been provided in the Transfer Guidelines by evolving a methodology to displace a person from one place who has stayed for 2 years in a very hard station or 3 years in the North East, Andaman & Nicobar Islands and other declared hard stations by creating a vacancy in the place of their choice and this method cannot be questioned. The KVS takes into account various factors while framing the policies and identifying junior most teacher for displacement is one such policy by which a large number of persons who suffer in hard stations are given choice posting. This cannot be said to be bad in law. Administrative exigencies arises as a continuous process and the applicants have been the beneficiaries of the transfer guidelines at same time and cannot now turn around and complain that their rights have been infringed upon. The transfers have been made after due consideration and approval of Chairman, who is the Human Resource Development Minister under clause 18(b) of the Guidelines and it was necessary to create vacancies after considering all the factors following the principles of displacing the junior-most in service and then transferring them out. The respondents submit that they have acted in accordance with law.

7. The private respondents in the O.As have also filed separate reply statements on

the lines that the transfers are not open to challenge unless they are in malafide exercise of powers and since the applicants have at one time or the other benefited by the said guide lines they cannot stand in the way of the respondents in enjoying such benefits.

8 The applicants have rebutted the contentions in their rejoinder by submitting that liability for transfer in any where in India does not empower the respondents to transfer their employees of their will and pleasure. They have also questioned the claim of the respondents that the transfers made in their places of the teachers having worked at declared hard stations and that the respondents have not made out a case for departure from the guidelines for any reasons and therefore the orders of transfer are discriminatory and in excess of jurisdiction.

9 The matter was heard at length. The counsel for the applicants in OAs 425/05 and 432/05 contended that the transfers have been made under clause 18(b) of the Transfer Guidelines and are bereft of any application of mind and to their knowledge no approval of the Chairman has been taken in these cases. The Tribunal had already gone through the legality of the transfer guidelines in O.A 426/2005 and directed the KVS to consider and prescribe a minimum period of stay so that a teacher who came on transfer after a long stay at a far off place may not be disturbed at least till such time. They also cited the report of the 5th Pay Commission as contained in para 25.5 of the recommendations of the Commission on transfers. In para 25.7, the Commission observed as follows:

> To ensure administrative continuity and stability to incumbents, frequent transfers should be discouraged and a minimum tenure for each posting of officers should be predetermined and it should normally be 3 to 5 years, except in cases where longer tenures are justified on functional requirements like continued availability of certain specialised skills. In the case of sensitive posts, where opportunities exist for developing vested interests, the tenure of posting should be defined for a shorter period which may be 2 to 3 years.

They also relied on a judgment of the Hon'ble Supreme Court, 1993 SCC(L&S) 922, Jagtar Singh Vs. Director, Central Bureau of Investigation & Ors. The counsel for the applicant in OAs 420/05 and 467/05 also made similar mentions and contended that

the transfers have been made within the State and involved no public interest and there are no grounds for invoking para 18(b) of the Transfer Guidelines.

10 In reply, the counsel for the respondents relied on the following judgments AIR 2004 SC 2165, State of U.P & Ors. Vs. Gobardhan Lal, (2004) 12 SCC 299, Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey & Ors and AIR 1995 SC 1056, State of Madhya Pradesh & Anr. Vs. S.S.Kourav & Ors and contended that by virtue of these pronouncements the Hon'ble Supreme Court has unequivocally laid down the law that Courts and Tribunal cannot sit as appellate authority over transfer orders and interference with such orders on disputed questions of facts is unwarranted.

11 We have heard the learned counsel and perused the records and judgments referred to on both sides.

12 It is not disputed that the KVS is a registered Society wholly financed by the Govt of India is an Autonomous Body charged with the responsibility of developing a model schools in the context of the national goal for providing a common programme of education all over the country. It is fully competent to determine the terms and conditions and other service conditions of the Teachers in these Schools in accordance with the power vested with them and had formulated the above mentioned Transfer Guidelines which have come into effect on 19.1.05. It is also an admitted fact that the employees according to these guidelines are liable to be transferred anywhere in India and no employee has any inherent right to stick to a particular place of posting. In the said Guidelines, para 18(b) empowers the Commissioner to depart from these guidelines in the context stipulated therein. All the transfer orders impugned before us have been issued under the above category and the only question for consideration before us here is whether this power vested with the Commissioner was exercised properly in accordance with the law. While deciding the question we are very much aware of the dictum of the Hon'ble Supreme Court reiterated in the above quoted judgments and strongly argued by the counsel for the respondents, that the Courts/Tribunals' interference with transfer matters are not called for unless shown to be vitiated by malafides or made in violation

of the statutory provisions. The transfer guidelines of KVS are not statutory provisions but they have the status of administrative instructions/guidelines and since they are being followed and approved by the highest body of the Organisation they have to be seen as having force of rules if not statutes and the administration is bound to follow the procedures laid down by the above provisions. The guidelines themselves confer the power on the Commissioner KVS to depart from it in certain contexts. The challenge in these O.As is against the exercise of that power alleging it to be arbitrary. We are of the view, therefore that it would be perfectly in order for the Tribunal to examine whether the above power vested in the Commissioner has been exercised in accordance with the method prescribed therein. For facility of reference Clause 18 is reproduced as under:

18 Notwithstanding anything contained in these guidelines

> a) A teacher or an employee is liable to be transferred to any Kendriya Vidyalaya or office of the Sangathan at any time on grounds mentioned in clauses 5,6(a)and 6(b) of these guidelines.
>
> b) The commissioner will be competent to make such a departure from the guidelines as he may consider necessary, with the prior approval of the Chairman, KVS. However, such departure will be considered only after the disposal of the cases en-bloc categories specified under clause-7. Moreover such departures will not be made for the cases covered under Clause 17(iv) and 17(v).
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> c) the request of a teacher may be considered for transfer to a station in respect of which no other person has made a claim or request even if such teacher has not submitted the application in the prescribed proforma at the time of annual transfer or within the time limit prescribed for the purpose. This will be applicable only for transfer to Kendriya Vidyalayas in the North Eastern Region and other Kendriya Vidyalayas declared as very hard and hard station.

A reading of the above clause shows that a minimum of two conditions have to be satisfied for making a departure from such guidelines, (i) the Commissioner must consider when such departure is required and (ii) the same must have the prior approval of the Chairman, i.e. The Hon'ble Minister for Human Resources. The respondents have stated in the reply that they have taken prior approval of the Chairman though the applicants have denied the same. Even accepting the statement of the respondents that prior approval has been taken, there is nothing in the order or in the reply statement of the

respondents to show that the Commissioner have due application of mind and by recording reasons that such departure from guidelines was considered necessary. In fact para 18 enjoins the Commissioner to satisfy himself that such departures will be considered only after disposal of the cases of en-block categories specified under clause-7 and that such departure will not be made for cases covered under clause 17(iv) and 17(v). This would take us to the provisions of clauses 7 & 17(iv) & (v) which are reproduced as under:

> 7 The transfers shall largely be done against vacancies on the basis of requests received for the same, provided that,
>
> a) In the event of there being more than one request for the same vacancy, priority for transfers on request against vacancies shall follow the descending order of combined weightage. It is to be calculated in terms of entitlement points for organisational reasons/interests as also the individual needs and request of the teachers seeking transfers in accordance with clause 8 below.
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> b) Transfers sought on account of medical grounds shall continue to be evaluated in accordance with the type of diseases prescribed as valid for transfer on medical grounds. He will be placed en-bloc higher, than the others listed in cluase 8 of these guidelines.
>
> c) Transfers sought on account of death of spouse within a period of two years and transfers sought by employees who have less than 3 years to retire, will be placed en bloc higher in the above sequence than the others listed in clause 8 of these guidelines but below those covered under clause 7(b).
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> d) Joining of spouse – As far as possible and also subject to the provisions contained in clause 10(2) such cases will be considered. Wherever transfers were made in the past for lady teachers to more than 500 Kms from respective home towns, choice will be given to them to come back to any position within 500 Kms, provided there is a vacancy for the same. This category of staff members will also be placed en-bloc higher in the above sequence than the others listed in clause 8 of these guidelines, just below the staff members listed in clause 7(b) & 7(c).
>
> 17 Following cases shall not be considered for transfer
>
> i) .....
>
> iv) In cases of fresh posting on direct recruitment, unless they complete a period of stay of three years and in case of female employees, one year of stay at the place of posting, their request for posting to choice place will not be considered.
>
> v) In cases of promotion, unless he completes one year of stay at his place of posting, request for posting to his choice place will not be considered.

13 It can be seen from Clause 7 deals with transfers against vacancies on the basis of

request received for the same and for determining the order of preference of request thus received, priority has been laid down which include medical grounds and joining of spouse, where spouse is a Sangathan employee, Central Govt employee, State Govt employee or PSU employee. Therefore, all these categories form an en-bloc category which can be considered on priority basis against vacancies on the basis of request. From the analysis of the reply statement filed by the private respondents, it becomes obvious that the transfers had been considered on requests either on medical grounds or for joining of spouse which is very much a condition covered under clause 7 of the Guidelines. The respondents have not stated any rationale for considering these requests of those who are transferred in the place of the applicants but it is seen from the record that their transfers are also made under para 18(b) of the Guidelines. The respondents have averred in their reply statement that displacement policy as contained in clause 10(2) of the Transfer Guidelines provides a mechanism by which vacancies can be created at the choice station to accommodate those who have worked in hard stations like North Eastern Region, Andaman & Nicobar Islands, etc. Evidently, the transfers of the private respondents in these O.As are not motivated by clause 10(2) and as admitted by the respondents themselves the transfers have been made on request which had been considered at the level of the Commissioner approved by the Chairman and in order to give effect to these transfers the applicants in these O.As have been displaced. In effect the respondents have imported the policy of creating vacancies which is embodied in clause 10(2) of the Guidelines for invoking the powers of departure under clause 18(b). This is in our view is not acceptable. According to clause 18(b), the Commissioner before exercising the power of such departure from the Guidelines should have satisfied himself that the requests for transfer are arranged on priority basis and after exhausting the en-bloc categories if still he have come to the conclusion that these cases were of such emergent nature that they could not have waited for the next round of transfers only and after weighing the pros and corns of the transfers by evaluating the status of the teacher sought to be transferred in their places also and thus only on a comparative merit should

have made the proposal to the Chairman for approval. No such evaluation of comparative merit of the request seems to have been done as it is seen from the record that these private respondents involved in these O.As have not made request for a particular place but only wanted a placement in Kerala and to accommodate their request it was not necessary to displace the applicants who had been earlier transferred on their own request and had hardly completed seven months to one year in their respective places of posting. Obviously these transfers were effected under clause 18(b) of the Guidelines because these transfers could not be accommodated either Clause 7 or Clause 10(2) of the Guidelines. Clause 18(b) is not an omnibus provision for making transfers which could not be done under the Guidelines. It does not confer any such unbridled power on the Commissioner.

14 Moreover the impugned orders stipulate that the orders are made under clause 18 (b) and are done in public interest. This makes the case all the more indefensible as para 18(b) is not to be invoked in matters under public interest. As discussed, we could not find any element of public interest, as the transfers have been made purely to concede the request of the employees and not in public interest or in the interest of the Sangathan. There is no whisper of any such public interest in the reply statement of the respondents. In fact the reply statement is only in the nature of a theoretical essay and does not meet any of the individual grounds raised in the applications. The mere mention of the words "public interest" would not give the orders, the character of a public interest case. We have already observed that the action of the respondents in exercising the power of departure from guidelines defeats the very purpose of other provisions of the guidelines and it amounts to taking away with the left hand what the right hand had given. The respondents have a responsibility to see that the guidelines that they themselves had made and perhaps in consultation with the employees organisation are adhered to, both in letter and spirit and not utilised to further the private interests of either the employees or the Sangathan. In this context, arguments of the respondents that the applicants themselves have been the beneficiaries of the same provisions of the guidelines and therefore they

should not resent the same benefit given to others is not at all acceptable as such an argument would only perpetuate the misuse and violation of the guidelines.

15 We have already directed in our detailed judgment in OA 426/05 that the KVS shall have a re-look into the guidelines and its manner of implementation and plug the loopholes so that spate of such litigation can be avoided. We hope that it would be done expeditiously.

16 In the result, the impugned orders are quashed and the O.As are allowed. No order as to costs.

Dated 31.3.2006.

(George Paracken)
Judicial Member
kkj

(Sathi Nair)
Vice Chairman