

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 426 OF 2005

Friday, this the 29th day of July, 2005

CORAM:

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER**

Agimon A. Chellamcott,
Post Graduate Teacher (Mathematics),
Kendriya Vidyalaya, Kadavanthara,
Ernakulam - Residing at
Chellamcott, Amalagiri P.O.,
Kottayam - 36

.... Applicant.

(By Advocates Mr. TCG Govindaswamy & Ms. Sumy P. Baby)

Versus

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 006 - through its Secretary
2. The Education Officer,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 006
3. The Chairman,
The Board of Governors,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area
Shaheed Jeet Singh Marg,
New Delhi - 110 006
4. The Principal,
Kendriya Vidyalaya,
Kadavanthara, Ernakulam

5. Smt. Eliyamma Idicula,
Post Graduate Teacher (Maths);
Kendriya Vidyalaya, Jamuna Colliery,
Shahdol District,
Chattisgarh.

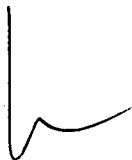
... Respondents.

(By Advocates Mr. Sunil Shanker (M/s. Iyer & Iyer) for R-1 to 4 and Mr. R. Sreeeraj and Mr. P.A. Kumaran for R-5)


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

The applicant is a Post Graduate Teacher of Mathematics in Kendriya Vidyalaya (KV, for short), Kadavanthara. Aggrieved by the impugned order (A/3) transferring him to Jamuna Colliery (SECL), Shahdol District, Chattisgarh, the applicant has filed this O.A. mainly praying for call for the records leading to issue of Transfer Order No. F.8-1(D)PGT (Maths)2005-KVS(Estt.II) dated 30.05.2005 issued by the second respondent and quash the same and direct the respondents to grant consequential benefits thereof as if the said order has not been issued.


2. The case of the applicant in short is that he was appointed initially on 22.1.2000 and posted at KV, Bokajan, Assam State in North Eastern Region. While working there, the applicant was transferred to KV, Ranga Pahar, Nagaland on 31.3.2000 due to closure of KV, Bokajan, and then again he has been transferred back to KV, Bokajan on reopening of the said School. Thereafter, on account of certain posts being declared



surplus, the applicant was once again transferred to KV, Loktak, Manipur. In short, the applicant has had three transfers within a short period of two years to difficult areas / hard stations in the North Eastern Region as per the revised transfer guidelines. Having worked for three years at the hard stations, he requested for his transfer as per the then transfer guidelines and accordingly, he was transferred to KV No.2, Kasargod. But when he reported there on 15.4.2003, he was not allowed to join on the ground that a stay has been granted by this Tribunal in OA No. 282/2003 filed by one B. Saradamani. Against this, the applicant made representations to the respondents. Since nothing was forthcoming, the applicant approached this Tribunal in OA No. 547/03, which was disposed by this Tribunal in its order dated 21.7.2003 directing the respondents to consider the A6 representation of the applicant and take a decision of his posting as PGT (Maths) in KV, Kadavanthra. The applicant was accordingly permitted to join KV, Kadavanthara, Ernakulam, on 24.9.2003 in pursuance of the A/1 order dated 17/18.9.2003 issued by the first respondent. It is urged on behalf of the applicant that on 8.6.2005, he came to know that he has been transferred to KV, Jamuna Colliery, Shadhol District, Chattisgarh, vide order dated 30.5.2005 issued by the second respondent. When this OA was taken up, this Tribunal on 8.6.2005 granted interim relief not to disturb him from present place of posting, i.e. KV, Kadavanthara, Ernakulam, which is still in operation.



3. On behalf of the contesting respondents, a statement was filed by the learned counsel, contending that the clause 3 of the transfer guidelines (A/2) clearly envisages all India transfer liability to the employees of the KVS. Further, in terms of clause 5(i), a teacher is liable to be transferred to accommodate another teacher, who has completed his/her tenure in declared hard station. As per clause 10(2) of the transfer guidelines, the applicant being the juniormost is liable to be displaced to accommodate the request transferee. The applicant has not challenged the clause 10(2) of the guidelines, therefore, he is not justified in attacking an order passed under the said clause. They further contended that the Clause 10(2) did not contemplate any minimum stay for a teacher being displaced to accommodate a request transferee. The respondent No.5, a transferee, has also filed a statement justifying the genuineness of clause 10(2) of transfer guidelines. Since no malafide has been alleged, the applicant is not justified in challenging the transfer order. She was working outside Kerala for over 11 and a half years in Jabalpur Region. It is submitted that her (5th respondent) husband is employed under the Government of Kerala and her daughter aged 11 years and son aged 5 years have been with her since their birth and after a long time, now only she got an opportunity to unite with her husband. It also gives their children the chance of enjoying love and care of their father. It is also urged that the applicant's wife is unemployed, therefore, he is not entitled to get any favour on "spouse ground". The 5th respondent also took us through the




detailed pleadings as to the relative inconvenience and hardship caused by her vis-a-vis the applicant.

4. The applicant has filed a rejoinder reiterating the contentions made in the OA and challenging the rules position contained in clause 5(i) and 10(2) of transfer guidelines and also questioning the authority of procedure irregularities in filing the counsel statement on behalf of the respondents.

5. The 5th respondent has filed additional reply statement contending that as per the present transfer guidelines, it is not a prior service of a teacher but it is his/her service at the present station which is significant for effecting transfers. As such the applicant is not right in giving emphasis to his service in North Eastern Region. She also submitted that she had shifted all household articles to Kerala and the transfer certificates of both the children have also been obtained, but so far they could not be admitted to any School. The uncertainty that hangs around the 5th respondent causes serious prejudice to her contrary to what the applicant says in the rejoinder.

6. We have heard Shri T.C.Govinda Swamy and Ms. Sumy P. Baby, learned counsel for the applicants and Shri Sunil Shanker (M/s. Iyer & Iyer) for respondents No. 1 to 4 and Shri R. Sreeraj and P.A. Kumaran, learned



counsel for respondent No. 5.

7. We have given due consideration to the pleadings, arguments and the material placed on record. Learned counsel for the applicant argued that having worked for more than the tenure period of 3 years at a distant place in North Eastern Region, the applicant was transferred to KV, Kadavanthara, Ernakulam, only on 18.9.2003, that too after a direction dated 21.7.2003 by this Tribunal in OA No. 547/2003. Hardly having worked at the present place for about one and a half years, the action of the respondents in placing the applicant again at a far of place by the recent order dt. 30.5.2005, is not justified and is illegal. The applicant has already suffered a lot and again he cannot be put to agony and hardship. The official respondents and the the 5th respondent, on the other hand, persuasively argued that as per the new transfer guidelines, the applicant being the juniormost in the Station was to be transferred, and therefore, the action of the respondents is correct and justified. They contended that the averment of the applicant that the impugned transfer order is arbitrary and discriminatory, is absolutely incorrect.

8. On going through the case pleadings, we find that the applicant was working at the hard stations in the North Eastern Region for over three years and came to Ernakulam only in the year 2003. His specific



case is that even assuming that the 5th respondent is transferred to Kerala under clause 10(2) of the transfer guidelines, the impugned order A/3 specifically states that the displacement of the employees have been effected as per clause 10(3) of latest transfer guidelines. In this context, it is profitable to quote clause 10(2) and 10(3) of the said guidelines, as follows:

"10(2). Where transfer is sought by a teacher under clause 8 of the transfer guidelines after a continuous stay of 02 years in the VERY HARD STATION or 3 years in the North East, A&N Islands and other declared hard stations or by a teacher falling under grounds of medical/death of spouse/less than three years to retire or very hard case involving human compassion, in the event of non-availability of vacancy at his choice station, the vacancy shall be created to accommodate him by transferring the juniormost teacher in the service of KVS in the said Station of the same category (Post/Subject). However, the Principals who have been retained under clause 4 to promote excellence would not be displaced under this clause.

Note: Date of appointment on regular basis will be the criteria to decide service in KVS in the said post. While displacing teachers, immunity shall be granted to the teachers, as applicable, for identifying and redeploying excess to the requirement of teacher. Apart from them, President/General Secretary of the recognised service associations of KVS, who are also the members of J.C.M. will also be granted immunity. This facility is applicable for regional level also.

10(3). While displacing teachers efforts will be made to accommodate them in the nearest KV against clear vacancy."

9. From the above, as per Clause 10(2) a teacher who put on service



continuously for two years in the very hard station or three years in the North East, is entitled for a transfer to his choice station and a vacancy shall be created to accommodate him by transferring the juniormost teacher in the service of KVS in the said Station of the same category. Admittedly, the 5th respondent had eleven and a half years of stay, though the applicant has disputed the same, and is entitled for a transfer to her choice station. But the contention of the applicant is that even if the 5th respondent is eligible and entitled for a transfer to her choice station, he is not a person to be picked up again and transferred to a hard station. No safeguard has been granted to a transferee to have his choice station and a term of stay in a particular station has also not been contemplated while adopting clause 10(2) transfer guidelines. It is submitted that in the earlier guidelines (prior to A/2 guidelines) maximum protection has been given by allowing three years/five years period of service at a station. A similar clause has been found in the latest guidelines in clause 4 in the case of Assistant Commissioners/ Principals and Education Officers. Clause 4 of the said guidelines is as follows:

"4. The maximum period of three years at a station shall generally not exceed three years in the case of Assistant Commissioners and five years in case of Principals / Education Officers. In case of Principal, the Commissioner may extend the period of service beyond five years at a Vidyalaya in order to promote academic excellence."



10. From the above, it is seen that the period of retention at a particular station as far as the teachers are concerned, is conspicuously absent in the guidelines. Though the counsel for the official respondents contended that such a clause has been consciously omitted from the guidelines with an intention that "one can continue as much as they want unless they are disturbed by Clause 10(2) or 18 (b) and other clause contemplated in the guidelines." This embargo if stipulates, will put the teachers to great hardship. We are unable to accept this contention of the learned counsel for the respondents since the stipulation of a tenure period at a particular station for the teachers should, in fact, will safeguard the interest of the teachers atleast for such a period, whereby making an assurance of continuity till such period at a station by which they would be able to adjust and settle their family, education of their children etc.. The exclusion of tenure stay clause in the guidelines gives an unhappy situation to the teachers, the threat of transfer at any time like a democles sword. For e.g., in the present case, the applicant after working more than three years at the hard stations in the North Eastern Region has been transferred to Kerala just one and a half years back and now he has again been abruptly transferred to a far off place without any logic or reason. Therefore, so far as the non-stipulation of minimum period of service at a particular station of his/her choice in the guidelines, there is definitely a culpable omission in the guidelines which amounts to commission.



11. In catena of decisions of Hon'ble Supreme Court, the jurisdiction of Courts/Tribunals in interfering with the transfer matter has been settled in favour of the administration. Some of them are as follows:

Union of India and Ors. vs. S.L. Abbas 1993 (2) SLR 585.
: Transfer - Couple Case - Guidelines issued by the Government in regard to transfer of employees does not confer upon the Government employee a legally enforceable right - Court not to interfere in the order of transfer.


Not following instructions/guidelines not sufficient to quash order as being malafide - Guidelines requiring husband and wife to be posted in the same station, not mandatory.

It is not an appellate authority which can substitute its own judgement - Interference with an intra vires bonafide order of transfer, therefore, was in excess of its jurisdiction.

National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan, (2001) 8 SCC 574 : Transfer of employee - Nature of, Scope of judicial review of such transfer - Transfer of an employee, held, is not only an incident but a condition of service - Unless shown to be an outcome of malafide exercise of power or violative of any statutory provision, held not subject to judicial interference as a matter of routine - Courts or Tribunals cannot substitute their own decision in the matter of transfer for that of the management.


State of UP and Anr. vs. Siyaram and Another, 2004 SCC (L&S) 1009 - Transfer on Administrative Grounds / Public Interest - Held, is not only an incident of service, but a condition of service as well and is necessary in public interest and efficiency in public administration - No Government servant or employee of a public undertaking has any legal right to be posted for ever any any one particular place or place of his choice.

Transfer/Judicial Review - Transfer unless shown to be malafide or in violation of statutory provisions, held, not open to interfere by Court.



12. In a decision reported in (1988) 7 ATC 253, Kamlesh Trivedi vs. Indian Council of Agricultural Research and Another, referring to various judgements of Hon'ble Supreme Court, the Principal Bench of the C.A.T., observed that an innocuous transfer order may be penal in nature, may be arbitrary, may be actuated by mala fides or may be as a result of colourable exercise of power. It may also be ordered to favour someone else or teach the appellant a lesson. But a finding is arrived at without observing the natural justice and that is the "operative reason" for transfer, it is liable to be quashed. Further referring to the nature and effect or norms or policy of transfer enunciated by the Government, the Hon'ble Supreme Court approved the observations of the Karnataka High Court in Vardha Rao vs. State of Karnataka (1986) 4 SCC 131 that "the norms enunciated by the Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants". Even while so approving, Hon'ble Supreme Court observed :

"One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should



apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It created vested interest and, therefore, we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the Government will keep these considerations in view while making an order of transfer."


13. While endorsing the view that the guidelines probably may not be a binding effect, but once the guideline is adopted/accepted, it must be uniformly applied to all. There cannot be any discrimination or arbitrariness in applying the same with reference to certain employees.

14. From the legal principles laid down by Hon'ble Apex Court, our jurisdiction in interfering with the matter is very limited. But when we look at the hardship/agonny that has been caused to the teachers on account of frequent transfers due to frequent changes in the transfer guidelines, we could find unreasonableness/arbitrariness in the action of the respondents. In the earlier guidelines, there was a benevolent clause of 'tenure' / minimum stay at a particular station of teachers which was consciously and arbitrarily withdrawn in the latest transfer guidelines. Therefore, we observe that it is a culpable omission which amounts to commission. While making our disagreement/dissatisfaction on this point, we direct the Registry to send a copy of this order to the



Chairman/ Board of Governors, Kendriya Vidyalaya Sangathan, New Delhi, for appropriate action/rectification/ modification after due review in the Board's level regarding clause of tenure stay. If this is not done, we are afraid that the person who came on transfer very recently from a far off place may even be retransferred at the next moment without any breathing/curing time as has happened in this case. In all fairness, we are hopeful that the respondents will not make any transfer in future under Clause 10 (2) until a decision is taken on the point by the Board in participation of teachers' representatives. The said omission makes the guidelines counterproductive and stand as a threat and nightmare to the teachers.

15. Now we examine Clause 10(3) of the guidelines. It clearly states that "while displacing teachers, efforts will be made to accommodate them in the nearest KV against clear vacancy. The embargo attached to this clause is that such a consideration can only be possible if a clear vacancy exists. It may be pertinent to mention that a clear vacancy will only be arisen on account of anyone's promotion or retirement or any change in the cadre strength etc. etc. So the chances are very rare and even if there is any vacancy, there may be number of aspirants for such vacancy under Clause 12 (mutual transfer), Clause 13 (promotion) and 18 (b) etc. After the adjustment of posts under the Clauses referred to above, it will be very difficult to accommodate the displaced teachers



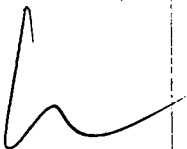
against a clear vacancy. There is no safeguard stipulated in the guidelines that such transfers (request transfer) under Clause 10(2) will be made effective to a displaced post only after accommodating such teachers to a vacancy at the nearby station. For e.g., in this case, the fallacy of the rule is very demonstrative as we could find that a teacher who had come to this place after having worked at the hard stations in North Eastern Region for more than three years, has again been displaced to a far off place by the impugned order. This action of the respondents cannot be justified. Therefore, we are of the view that as far as the Clause 10(3) is concerned, the word "clear vacancy" is loosely interpreted and become very artificial and an empty formality. 'Clear Vacancy' could only mean a vacancy arises out of retirement/ new post / death / promotion and not by displacing a juniormost in a station.

16. On going through the impugned A/3 order, we find that though the Clauses 10(2) and 10(3) of the guidelines are said to be invoked in the said transfer, it seems to be only an exchange transfer without application of mind. We are very conscious about our limitation in interfering with the transfer matter. In a catena of decisions, Hon'ble Supreme Court observed that the Courts not to interfere in the matter of transfer unless it is made with mala fide intent or is in violation of the statutory rules. It follows that if the transfer is made without following the proper procedure/guidelines, the Court can interfere.



17. It is also brought to our notice that the respondents are altering the guidelines very frequently which cannot be said to be a healthy practice in the service jurisprudence. For e.g., in the earlier guidelines, the seniormost teacher was liable to be transferred whereas, as per the latest guidelines, the juniormost teacher in the service of KVS in the said Station of the same category is liable to be displaced. In the clarificatory note, it has been clarified that the date of appointment on regular basis will be the criteria to decide service in KVS in the said post.

18. In the new guidelines dated 19.01.2005, the 'station' is defined in Clause 2(v), i.e., "Station" means any place or group of places as notified by the KVS for the purpose of transfers from time to time. As per the latest guidelines above, juniormost teacher in the service of KVS in the station is liable to be transferred. If there is only one teacher in the said station of the same category who could neither be termed as a senior nor a junior teacher and if there is only one School either he alone can be transferred or he cannot be transferred against an incumbent at any time in the event of any request transfer under clause 10(2). It may be mentioned that a teacher who had come from far off place after having worked for more than a tenure period, he/she may happen to be junior to others in a particular station based on station seniority and when someone else makes a request for transfer from hard station to this



place, this teacher who joined the station as back as one or one and a half year, will have to be again displaced under the said clause, since he happens to be junior on station seniority. The inter se seniority in the station may also be a slight different. In the absence of any stipulation for a minimum period of stay in a particular station, the same teacher may have to be taken pillar to post, which cannot be termed as done in public interest. We suggest that a minimum period of stay must be stipulated so that a teacher who came on transfer after a long stay at a far off place may stay at his/her choice station atleast till such time.

19. As per the transfer guidelines adopted by other Central Government establishments and the earlier guidelines of KV, the accepted criteria was 'the seniormost teacher was eligible to be transferred'. But as per the new guidelines issued by KVS, the juniormost teacher in the KVS 'in the station' is liable to be transferred. This will entail a particular person taking pillar to post in all occasions when such contingency arises and that is why we are pointing out for the need of stipulation of a tenure posting in the guidelines for the teachers to avoid the 'musical chair' contest.

20. In the result, we are of the considered view that in so far as the transfer of the applicant is concerned, his transfer from the present station {Kadavanthara, Ernakulam} to Jamuna Colliery (SECL) after hardly putting



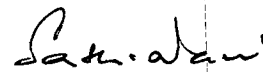
in one and half years of service cannot be termed as done in public interest. Therefore, the impugned order A/3 is bereft of application of mind and it reflects the unhelpful/negative attitude and an intention not to give proper consideration to the issue and accordingly, we set aside and quash the impugned order Annexure A/3 dt. 30.5.2005 to the extent it relates to the transfer of the applicant. We also make it clear that the 5th respondent is also eligible to be transferred to her choice station as per the guidelines and for that reason her transfer also cannot be said to be faulted. In this peculiar circumstances, we direct the respondents to find out a suitable posting for the 5th respondent either in Ernakulam or in a nearby place and issue order accordingly. This exercise shall be completed as expeditiously as possible. Till then, the respondents shall create a supernumerary post for the 5th respondent and accommodate her at Ernakulam itself.

21. The O.A. is allowed as indicated above. No costs. A copy of this order be sent to the Chairman/ Board of Governors as stated in para 14 above.

(Dated, the 29th July, 2005)



K.V.SACHIDANANDAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

cvr.