

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 430/2005

THURSDAY THIS THE 8th DAY OF SEPTEMBER, 2005

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HONBLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Bindu C.
Post Graduate Teacher (Biology)
Kendriya Vidyalaya, Payyannur, Kannur
residing at Dharmashala, Kannur.

Applicant

By Advocate Mr. TC Govindaswamy

Vs.

- 1 The Commissioner
Kendriya Vidyalaya Sangathan
No.18, Institutional Area,
Shaheed Jeet Singh Marg
New Delhi-110 016 through its Secretary
2. The Education Officers
Kendriya Vidyalaya Sangathan
No.18 Institutional Area,
Shaheed Jeet Singh Marg
New Delhi-110 016
3. Chairman
The Board of Governors
Kendriya Vidyalaya Sangathan
No.18 Institutional Area
Shaheed Jeet Singh Marg
New Delhi.-110 016
4. The Principal
Kendriya Vidyalaya
Payyannur, Kannur
5. Smt. Betsy K. Mathai
PGT(Biology),
Kendriya Vidyalaya No.II
Suratgarh (Rajasthan).

..... Respondents

By Advocate Mr. Elvin Peter For R 1-4
Advocate Mrs. Sumathi Dandapani for R-5

ORDER

HONBLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a Post Graduate Teacher in Biology presently working in Kendriya Vidyalaya, Payyanur, Kannur. She is aggrieved by the transfer order

in Annexure A1 transferring her to Suratgarh NO.II(Cantt.) Rajasthan. The brief facts submitted by the applicant are as follows. She is working in the post from 9.9.2002 and the transfer is being made as per clause 10(2) of the transfer guidelines displacing her for posting the 5th respondent who has sought the transfer on account of having worked in a hard station for more than 3 years. According to the applicant the transfer order is arbitrary and discriminatory and no public interest is involved and the respondents are not clear whether the transfer is made under clause 10(2) or under the general clause.

2. The respondents initially filed a statement by the learned Standing Counsel and then filed an additional reply statement. It is their contention that unless the order of transfer is shown as an outcome of malafide exercise of power or violative of statutory provisions it cannot be interfered with. In the present case the applicant had come on request transfer to Kendriya Vidyalaya, Keltron Nagar, Kannur on 10.9.1996 and later sought for another transfer to K.V. Payyanur, Kannur which she got on 9.9.2002. The 5th respondent has been working at KV NO.2, Suratgarh and is entitled to be considered under clause 10 (2) of the transfer guidelines. The applicant being the juniormost in the station is liable to be displaced under the same clause on the request of the transferee.

3. A reply statement is filed by the 5th respondent averring that she and her husband are permanent residents of Kannur District and she had been working in KV No.2, Suratgarh, a hard station which has an extreme climate not conducive to the health of her children. Since she has completed three years in a hard station she made a request for transfer to her home town. Her request was considered and was granted a posting at K.V. Payyannur and she was relieved from Suratgarh on 8.6.2005. She reported for joining KV Payyannur on 9.6.2005, was permitted to join and is continuing in the same school. Her husband has also joined KV, Payyanur. On the other hand the applicant has not worked in any hard station so far and has been in the same district i.e. Kannur District from 1996. Since she has already joined the post she may be allowed to



continue at K.V. Payyannur itself.

4. The applicant has filed a rejoinder alleging that transfer is made only to accommodate the 5th respondent and has reiterated the original averments in the O.A. to the effect that clause 10(2) of the guidelines is arbitrary and discriminatory.

5. When the matter came up for hearing the learned counsel for the applicant submitted that the case is covered by the orders of this Tribunal in O.A. NO.426/2005 and the applicant is entitled to same reliefs. This was strongly refuted by the learned counsel for the respondents stating that the factual situation in the present case is totally different from that in O.A. 426/05 as the applicant therein had not completed three years in the post before he had been displaced by a clause 10(2) transfer whereas in this case the applicant has been working in the same district since 1996 and hence has completed 8-9 years in the same district and cannot plead any protection from the guidelines. Besides she is also the juniormost as far as service is considered and has therefore no case to challenge the transfer of the 5th respondent. Besides the 5th respondent has already joined the post and a peculiar situation has arisen now that two persons are continuing against the same post. This is not conducive to public interest. The students of the school in the place to which the applicant has been transferred have also been affected causing great prejudice to their studies. In a similar case the Hon'ble High Court in W.P.No. 18864/2005 has suspended the interim direction of this Tribunal and allowed the transferee teacher to join duty permitting the applicant therein to point out vacancies that may arise. Since there is no legal infirmity in the transfer order it was prayed that the interim order granted in favour of the applicant may be vacated and the Original Application dismissed.

6 We have heard learned counsel appearing for both sides and perused the records. The applicant seeks the reliefs mainly on the basis of the decision

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rendered in O.A. 426/2005 of this Tribunal in which one of us was a party. As pointed out by the respondents the factual situation in that case is different from the present one and therefore need to be distinguished on the following grounds. In O.A 426/2005 we had given detailed consideration to the transfer guidelines under clauses 10(2) and 10(3) in the context of their implementation in the absence of any minimum tenure prescribed for retention at a particular station and had come to the conclusion that the absence of such a minimum period in the guidelines is a culpable omission in the guidelines which had created situations wherein transferees who came on transfer recently from a far off place were re-transferred without giving any breathing time and in some cases, the same person had got transferred again and again. The applicant in that OA had hardly completed two years of service and therefore we came to the conclusion that the above guidelines were arbitrary. The applicant in the present OA does not deserve any such consideration as she had been continuing in the same district namely Kannur from 1996 though in two different schools. On the other hand, the 5th respondent has completed a stipulated period of two years in a hard station and is therefore entitled to be considered under clause 10(2) of the guidelines. We are here not going into the rationale or logic behind clause 10(2) of the guidelines. It has not been specifically challenged by the applicant in this OA. The applicant is also stated to be the juniormost in the station as far as service is concerned and therefore we do not find any administrative grounds warranting consideration of retention of the applicant in the present post.

7 The next point is regarding the piquant situation created by the applicant and the 5th respondent occupying the same post. This has occurred because the 5th respondent had already been relieved by the time the interim order was granted by this Tribunal on 9.6.2005 and service of notice on the 5th respondent had also taken time. We are in agreement with the averment of the 5th respondent that this situation is not in public interest or in the interest of the quality of instruction to be provided by the respondent organisation. The 5th respondent has already joined the post before the interim injunction to continue

the applicant was granted by the Tribunal and it is also noted that her husband has already joined the same place and in view of the finding that there is no illegality in the transfer order, we vacate the interim order dated 9.6.2005 and the 5th respondent is hereby allowed to continue in the post . The prayer of the applicant is without any merit. The Original Application is accordingly dismissed.

No costs.

Dated 8.9.2005.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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