

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 431 OF 2005

Monday, this the 8th day of August, 2005

C O R A M:

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

**T.P. Varughese,
TGT (Biology),
Kendriya Vidyalaya No. II,
Naval Base, Kochi -
Residing at Thiruvanvandoor
Chengannur (Alleppey District)** Applicant.

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

V e r s u s

1. **The Commissioner,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016 - through its Secretary**
2. **The Education Officer,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016**
3. **The 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 No. II,
Naval Base, Kochi**

5. **Smt. M. Amminikutty,
T G T (Biology),
Kendriya Vidyalaya No.11,
Kanjikode,
Palghat District** ... Respondents.

[By Advocate Mr. Sunil Shanker (M/s. Iyer & Iyer)]

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant is a Trained Graduate Teacher (Biology) in Kendriya Vidyalaya (KV, for short) No. II, Naval Base, Kochi. Aggrieved by the impugned orders A/1 dated 30.05.2005 transferring him to KV, Army Area, Pune and A/2 dated 6.6.2005 relieving him from KV No. II, Naval Base, Kochi, in absentia, the applicant has filed this O.A. mainly praying for call for the records leading to issue of A/1 Transfer Order No. F.7-1(D) TGT(BIOL)/2005-KVS(Estt.II) dated 30.05.2005 issued by the second respondent and A/2 relieving order issued by the fourth respondent and quash the same to the extent it relates to the applicant with a direction to the respondents to grant consequential benefits thereof as if the said orders have not been issued.

2. The case of the applicant in short is that he was initially appointed as Primary Teacher on 11.8.1988 and posted at KV, Aruvankadu (Tamil Nadu). While working in the aforesaid hill station, the applicant was

promoted to the post of Trained Graduate Teacher (Biology) and posted at KV, Malanjikhand (a Difficult Area) in Madhya Pradesh with effect from 4.1.1990. Thereafter, on his request, the applicant was transferred to KV, Newsprint Nagar, Kottayam on 25.11.2000 and then due to surplussage, he was transferred to KV, INS Dhronacharya, Kochi with effect from 6.7.1992. The applicant was transferred again back to KV, Newsprint Nagar, Kottayam on 25.11.2000. Thereafter, the applicant was transferred to Island Grounds, Chennai, Tamil Nadu, with effect from 22.4.2003 on closure of KV, Newsprint Nagar, Kottayam. The applicant again made a request and accordingly, he was transferred to KV No.2, Naval Base Kochi with effect from 16.8.2004. In toto, the applicant has had seven transfers (including three request transfers) during his service period. Now hardly working about ten months in KV No.2, Naval Base, Kochi, the applicant was again served with the A/1 impugned order transferring him to KV, Army Area, Pune and A/2 order relieving him, in absentia, from the present place of posting, which are under challenge in this Original Application. The applicant contends that he gave an application for transfer advance of Rs. 10000/- under compulsion, but the same has been denied on the ground that he is no longer in the rolls of the KV No. 2, Naval Base, Kochi or even in the Chennai Region. Since the transfer is illegal, he himself is not interested in receiving the advance. The applicant was on vacation for the period 8.5.2005 to 26.6.2005. The applicant has not yet been relieved, though he is said to



have been relieved vide A/2 order, in absentia. It is urged on behalf of the applicant that there is a procedure of handing over/taking over of the charge before an employee is relieved. In his case, no such formalities have been adopted. There is no provision under the rules to relieve an employee in absentia. Applicant further submitted that his family consisting of his wife, two children and aged parents is wholly dependent upon him. His mother is a diabetic/heart patient and is in ailment. His wife is also working in an aided School at Eruvallipra, which is a non-transferable post. The applicant has been displaced to accommodate the 5th respondent. Even such transfers are necessitated to accommodate a person on request, the junior most with reference to the date of appointment would only be displaced. In terms of clause 7, the transfer shall largely be done only against the vacancies on the basis of requests received for the same. There was no involvement of public interest. The applicant submits that the transfer order is arbitrary, discriminatory and illegal. In case the transfer order is enforced, substantial prejudice and loss will be caused to the applicant and his family.

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/5) clearly envisages all India transfer liability to the employees of the KVS. Also, in the light of Article 49(k) of the Education Code, employees appointed in KVS are liable to be transferred anywhere in



India. The present transfer was ordered on acceding to the request made by the 5th respondent. Since the 5th respondent is due to retire in December, 2007, transfer order in her case is perfectly valid and in accordance with the rules/guidelines. 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. On a casual and vague statements, he is not justified in attacking an order passed under the said clause. They further contended that the interim order passed by this Tribunal is causing great prejudice to the Organisation. The applicant has already been relieved from the School on 6.6.2005 and the 5th respondent was permitted to join in his place. Now both these teachers are continuing in KV II, Naval Base, Kochi, in view of the interim order dt. 9.6.05 granted in favour of the applicant.

4. The applicant has filed a rejoinder rebutting the contentions made by the respondents in the reply statement and further stating that the administrative ground referred to in 5(i) of the guidelines for transfer is 'on grounds of misconduct or unsatisfactory academic performance'. It does not enable transfer of a person to accommodate another teacher who has allegedly completed his/her tenure in a declared hard station. 5th respondent was transferred from Palghat to Kochi by displacing the

applicant. Palghat cannot be said to be a hard station. It is stated that the question of displacement under 10(2) guidelines would arise only in the event of non-availability of vacancy at his choice station. The respondents have neither stated the choice stations given by the 5th respondent nor averred that there were no vacancies in order to accommodate the 5th respondent. The transfer of the applicant is, therefore, arbitrary and unconstitutional. It is urged that several persons junior to the applicant, are working in various KVs in Kochi and the contention of the respondents that the applicant is juniormost, is incorrect. It was also stated that one Satheesha Kumar is even interested in his transfer to Pune since his spouse is posted at Ahmedabad. He submits that the OA deserves to be allowed.

5. An additional statement has been filed by the learned counsel appearing for KVS opposing the averments made by the applicant in the rejoinder. As per the respondents, the persons mentioned by applicant as junior to him are exempted from being displaced as their respective spouses are KVS employees. As regards the contention that one Satheesa Kumar is willing to be transferred to Pune, the respondents confirmed that he declinded to go to Pune on transfer. They submitted that the OA lacks merit and therefore, the interim stay granted is liable to be vacated by dismissing the O.A.



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

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 at the present place hardly for about ten months, the action of the respondents in placing the applicant again at a hard station by the impugned 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, 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 has had seven transfers, which includes three request transfers and he had worked in difficult/hard stations and came to Kochi only in the middle of August, 2004. It was urged on behalf of the applicant that the impugned order A/1 clearly states that the displacement of the

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employees has 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/her choice station and a vacancy shall be created to accommodate him/her by transferring the



juniormost teacher in the service of KVS in the said Station of the same category. As averred by the official respondents, the 5th respondent is due to retire in December, 2007, and, therefore, she is very much 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/difficult area. No safeguard has been granted to a transferee to have his/her 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/3 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 new 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 official respondents since the stipulation of a tenure period at a particular station for the teachers should, in fact, safeguard the interest of the teachers 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 got his transfer to Kerala just in the middle of August, 2004 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 stay at a particular station of his/her choice in the guidelines, there is definitely a culpable omission in the guidelines which amounts to commission.

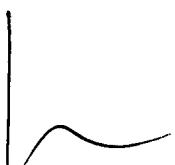
11. Having examined the facts in the instant case, we are of the view that the ratio laid down in an identical matter in O.A. No. 426/2005, Agimon A. Chellamcott, is attracted. In the said case, this Bench of the

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Tribunal has passed a detailed order dated 29.07.2005, the relevant portions of which are as follows:

"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/agony 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.

12. From the above, it is seen that in para 14 of the order above, we have already directed the Chairman/Board of Governors, KVS, New Delhi, to take appropriate action/modification in the guidelines in the matter of 'tenure stay' so as to avoid any further litigations / problems being faced by the teachers. Having regard to the aforesaid observation, we hold that the applicant in the instant case is similarly situated as that of the applicant in OA No. 426/05 and he is entitled to the reliefs as prayed for. Accordingly, we set aside and quash the impugned orders A/1 dated 30.5.2005 and A/2 dated 6.6.2005 to the extent it relates to the transfer and relieve of the applicant.



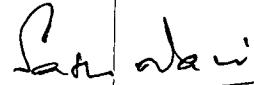
13. In so far as the transfer of 5th respondent is concerned, since we have granted the reliefs to the applicant, the respondents are directed to take appropriate action in adjusting/modifying 5th respondent's transfer suitably keeping in mind the directions given in OA No. 426/2005 (supra), and pass a fresh order, if need be.

14. The O.A. is allowed as indicated above leaving the parties to bear their own costs.

(Dated, the 8th August, 2005)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CVR.