

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.434 and 641 of 2011

Wednesday, this the 27th day of July, 2011

CORAM:

Hon'ble Dr. K.B.S Rajan, Judicial Member

O.A 434/11 & O.A 641/11

**Sreekumar U, aged 48 years
 S/o Unnikrishnan Panicker
 Post Graduate Teacher (Maths)
 Kendriya Vidyalaya, Kochi No.III
 Port Trust – 682 003
 (under orders of posting)
 Presently residing at : Karattu House
 Vandanan P.O, Alappuzha – 5**

..... **Applicant**

(By Advocate – Mr.T.C Govindaswamy)

V e r s u s

1. The Commissioner, Kendriya Vidyalaya Sangathan
 18 – Institutional Area, Shaheed Jeet Singh Marg
 New Delhi – 110 016
2. The Education Officer
 Kendriya Vidyalaya Sangathan
 18 – Institutional Area, Shaheed Jeet Singh Marg
 New Delhi – 110 016
3. The Principal
 Kendriya Vidyalaya, Kochi No.III
 Port Trust
 Kochi – 682 003

..... **Respondents**

(Bt advocate – Mr.V.V Asokan for M/s Iyer & Iyer)

This Original Application having been heard on 21.07.2011, the

Tribunal on 27.07.2011 delivered the following:

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ORDER

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. As these two Original Applications are inter-twined, these are dealt with and disposed of by this common Order.

2. The challenge in this case is transfer of the applicant after his tenure in priority area. The applicant had given five choice stations in Kerala and though initially he was posted to the first choice station viz; KV No.III Kochi, Port Trust, he was not permitted to join there on the ground that there was no vacancy. This has forced the applicant to move O.A 434/11 whereby he has prayed for a declaration that the third respondent has no authority to refuse to allow the applicant to join duty at K.V No.III, Port Trust, Kochi and to pass such orders as deemed fit. Meanwhile, he has also prayed for an interim relief to direct the third respondent to allow the applicant to join duty at K.V No.III, Port Trust, Kochi. On 27.05.2011, when the applicant's case was taken up for admission, counsel for the respondents submitted that there was certain mistake in the order of transfer and the mistake would be rectified and the applicant would be accommodated in a suitable vacancy and provisionally he would be accommodated in the K.V No.III, Port Trust, Kochi till rectification orders are issued. Accordingly, the applicant is functioning at K.V No.III, Port Trust (at present the applicant is on medical leave as he is stated to have met with an accident).

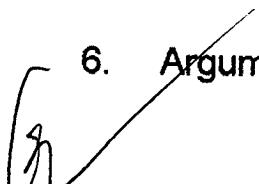
3. During the pendency of this O.A, the respondents have issued another order dated Nil whereby they have posted the applicant to K.V Idukki instead of K.V Port Trust, Kochi and the third respondent relieved the applicant in-absentia when he was on sanctioned leave. The applicant has challenged this order dated Nil along with the relieving order dated 12.07.2011 in O.A 641/11.

4. Counsel for the applicant, in his usual polite, yet firm and vehement way, contested that the applicant has a vested right to be posted to choice station after he completed his tenure in priority area. Accordingly, he was posted to K.V, Port Trust, Kochi in place of one Ms.Kunjamma Pius who stood transferred to Calicut. The stand taken by the respondents at a later stage was that the said vacancy caused by the movement of Ms.Kunjamma Pius could not be filled up as she was rendered surplus earlier. Counsel for the applicant submits that there is no indication in the order of transfer vide Annexure A-1 (O.A 434/11) that the transfer of Ms.Kunjamma Pius was on surplus ground. The counsel argued that his being posted to Idukki is not on the basis of his choice and thus when provision exists for posting at choice station vide para 15 of the guidelines read with para 2 (XI&XII) thereon, his posting to Idukki cannot be taken as one for choice station. The counsel submitted that as per the new guidelines, various points allocated for certain situations like stay in a station, cases where spouse is employed in the government sector,

completion of tenure in her stations etc and in case he accepts Idukki posting such points would come down when his case for transfer to a place of his choice is considered. As such, the counsel made a suggestion that in case actually K.V Port Trust, Kochi does not have a vacancy, instead of disturbing any of the existing individuals in the choice stations, he is prepared to serve Idukki provided that the next available vacancy in any of the choice stations is offered to him.

5. Counsel for the respondents, in his usual fairness, has stated that the entire confusion was caused on ground of a mistake that has crept inadvertently in bringing the vacancy caused by the move of Ms.Kunjamma Pius as one of a permanent nature whereas the said individual was retained as a surplus and having brought the applicant from North East area to Kerala, the authorities could find only Idukki where the applicant could be accommodated as a vacancy is available. Perhaps had the respondents verified the nature of vacancy caused by move of Ms.Kunjamma Pius, there being no vacancy in the choice stations of the applicant, the respondents would have retained the applicant at the North East area itself which the applicant cannot challenge, as the same is within the power of the respondents and no legal or other rights of the applicant get hampered. Provisions exist for the same. It is only to assist the applicant that the applicant has been posted to Idukki.

6. Arguments were heard and documents perused. The ground



reality is that there has been an inadvertant mistake that has crept in. The authorities have certainly acted fairly in a manner which would be convenient both to the administration as well as the applicant. True, the applicant could not be posted to his choice station. Under these circumstances the only possible solution could be that the transfer of the applicant from North East to Idukki may be treated as a stop gap arrangement whereby the points that he has gained would not be got depleted and the next available vacancy at any of the five choice stations given by the applicant namely Kochi, Kottayam, Kollam, Kayamkulam and Adoor may be reserved for the applicant. Needless to mention that the applicant would be entitled to his normal TA/DA for his posting to Kochi and from Kochi to Idukki and from Idukki to any other place in future, as stated above. With the above directions two Original Applications are disposed of.

(Dated this the 27th day of July, 2011)



(Dr.K.B.S Rajan)
Judicial Member

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