

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 434 OF 2005

Friday, this the 5th day of August, 2005

CORAM:

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

**Swapna Sathees,
D/o. Sathesan Nair,
Post Graduate Teacher (Maths),
Kendriya Vidyalaya, Port Trust,
Kochi - Permanent Resident of
Kailas, Pakkil 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,
Port Trust, Kochi**

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5. Smt. Kunjamma Mathews,
TGT (Maths),
Kendriya Vidyalaya, Khamaria No.1,
Shahdol District,
Jabalpur (Madhya Pradesh).

... Respondents.


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

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

The applicant is a Trained Graduate Teacher of Mathematics in Kendriya Vidyalaya (KV, for short), Port Trust. Aggrieved by the impugned order (A/4) dated 30.05.2005 transferring her to Donimalai (NDMC) in Bangalore Region, the applicant has filed this O.A. mainly praying for call for the records leading to issue of A/4 Transfer Order No. F.7-1(D)TGT (Math)/2005-KVS(Estt.II) dated 30.05.2005 issued by the second respondent and quash the same to the extent it relates to the applicant and the fifth respondent 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 she was appointed initially on 2.3.2001 and posted at KV, O.N.G.C, Agarthala, Tripura State in North Eastern Region. While working there in the hard Station for about four years, the applicant had made a request to the respondent No.1 for transfer to her home State at any of the choice stations mentioned

therein. In pursuance of her request, the applicant was transferred to KV, N.T.P.C., Kayamkulam vide A/1 order dated 20.10.2004. Finding that the order A/1 was issued erroneously as there was no vacancy at K.V., NTPC, Kayamkulam, the Assistant Commissioner of Chennai Region issued A/2 letter to the first respondent stating that consequent upon superannuation, a clear vacancy has arisen at KV, Port Trust, Kochi, and against that vacancy the applicant could be accommodated. A/1 order was modified accordingly vide A/3 order transferring the applicant to KV, Port Trust, Kochi. The applicant joined there on 9.11.2004 on the said clear vacancy. Hardly working about seven months, now the applicant was again served with the A/4 impugned order transferring her to Donimalai (NDMC), a hard station in Bangalore Region, which is under challenge in this OA. The applicant contends that the respondents have been adopting double standards in the sense, in the case of applicant the respondents wanted a clear vacancy to arise for considering her transfer when she had to be posted after completing her tenure at the hard stations, whereas when it came to the fifth respondent, the respondents were least bothered about a clear vacancy and even prepared to displace a person like the applicant who had joined hardly seven months ago. The applicant has been displaced to accommodate the 5th respondent. In terms of clause 7, the transfer shall largely be done 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.

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 she has less than three years of service to retire, her transfer order 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, she is not justified in attacking an order passed under the said clause. They further contended that there is no provision that the lady teachers should be accommodated within a radius of 500 Kms. of their home station. Such a claim can be made by a lady teacher only in clear vacancies.



4. From the material placed on record, we find that the notice issued to the respondent No.5 was returned unserved. No reply has been filed on behalf of the 5th respondent.

5. The applicant has filed a statement in pursuance of the directions of this Tribunal showing the vacancies in existence and urging that the 5th respondent can very well be accommodated in any of the posts mentioned below without displacing the applicant if she deserves special consideration under clause 10(2) of the guidelines.

(a) There is one vacancy of TGT (Maths) for KV, AFS, Akkula, Trivandrum since April, 2005 as per the latest staff sanction orders of the KVS;

(b) One more vacancy of TGT (Maths) has arisen in KV, Pattom, Trivandrum, with effect from 1.7.2005 due to retirement on superannuation of Mrs. Mary Alexander on 30.6.2005.

(c) One more vacancy is said to be available in KV, INS Dhronacharya, Fort Kochi since December, 2004.

6. In the reply statement filed by the learned counsel appearing for the KVS, it was stated that in so far as the vacancies pointed out by the applicant are concerned, the applicant cannot be adjusted against such vacancies in violation of priority list in which there are contenders as per priority.



7. 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.

8. 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 4 years at a distant place in North Eastern Region, the applicant was transferred to KV, Port Trust, Kochi, only on 9.11.2004. Hardly having worked at the present place for about seven 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 she 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.

9. On going through the case pleadings, we find that the applicant was working at the hard stations in the North Eastern Region for over four years and came to Kochi only in the end of 2004. It was urged on behalf of the applicant that the impugned order A/4 clearly states that




the displacement of the 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."

10. 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



junior most teacher in the service of KVS in the said Station of the same category. As averred by the official respondents, the 5th respondent has less than three years of service to retire 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, she 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/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/5 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."

11. 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 her transfer to Kerala just in the end of 2004 after having worked more than four years at the hard stations in the North Eastern Region and now she has again been abruptly transferred to hard station 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.

12. 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,

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Agimon A. Chellamcott, is attracted. In the said case, this Bench of the 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.

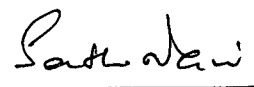
13. From the above, it is seen that in para 14 of the order above, we have already directed the Chairman/Board of Governors, KVS, New Delhi, to take appropriate action/modification in the guidelines in the matter of 'tenure stay' so as to avoid any further litigations / problems being faced by the teachers. 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 she is entitled to the reliefs as prayed for. Accordingly, we set aside and quash the impugned order A/4 dated 30.5.2005 to the extent it relates to the transfer of the applicant.



14. In so far as the 5th respondent is concerned, we find from the records that the notice issued to her was returned unserved, therefore, she did not contest her case effectively by way of filing any reply or engaging a counsel on her behalf. In these circumstances, the respondents are directed to take appropriate action in the case of 5th respondent's transfer keeping in mind the directions given in OA No. 426/2005 (supra), and pass a fresh order, if need be.

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

(Dated, the 5th August, 2005)


K.V. SACHIDANANDAN
JUDICIAL MEMBER
SATHI NAIR
VICE CHAIRMAN

CVR.