

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 443/2005

Thursday, this the 18th day of August, 2005.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Abraham Mathew,
PGT(Maths),
Kendriya Vidyalaya,
Pallipuram, Trivandrum. - - - - - 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 Officer,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.
3. Chairman,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.
4. Principal,
Pallipuram,
Trivandrum – 16.
5. Shri Vijaya Kumar, PGT (Maths),
Kendriya Vidyalaya, Digaru,
Kamrup District, Assam. - - - - - Respondents

By Advocate M/s Iyer & Iyer (for respondents 1 to 4)

By Advocate Mr Sreeraj (for respondent 5)



O R D E R

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

The applicant is presently working as P.G. Teacher, K.V., Pallipuram. Aggrieved by A-1 order by which he was transferred to Digaru, Assam where he had been working as PGT (Maths) for 7 years from 1994 to 2000, the applicant has filed this O.A. According to the applicant, in terms of clause 10(3) of the transfer guidelines, the displaced person, i.e, the applicant needs to be accommodated in the nearest K.V. The transfer of the applicant from Pallipuram, Trivandrum to Digaru, Assam is arbitrary and illegal, the applicant pleads. The applicant has prayed for the following reliefs:

- i) Call for the records leading to the issue of A-1 and A2 and quash the same to the extent they relate to the applicant and direct the respondents to grant the consequential benefits thereof.
- ii) Award costs of and incidental to this application.
- iii) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicant joined in service on 31.1.94 at K.V., Digaru in Assam State and continued upto 2000. Thereafter he was transferred to Pallipuram, Trivandrum where he joined on 10.1.2001. By A-1 impugned order dated 3.5.2005, the applicant was again transferred to Digaru and he also received A-2 relieving order dated 7.6.2005. The applicant had worked for a full period of 7 years at Digaru. He has his family and wife is presently in the family way. Therefore he is not in a position either to leave his family alone or to take her to Digaru which is a hard and difficult station. Clause 3 of A-3 provides that no transfers should be made other than on administrative grounds or on request made by the Teachers outside the region identified for this purpose by the KVS, except for the reasons and circumstances explained under clause 10(2). The juniormost with reference to the date of appointment would only be displaced to accommodate the person who has requested for transfer. According to the applicant, in the instant case, he

has been displaced to accommodate the request of the 5th respondent, who has been transferred from K.V. Digaru to applicant's place. The applicant has not made any request for transfer to Digaru and he had put nearly 7 years at Digaru and then only he has been transferred to the present place of posting. The impugned order has been issued under clause 10(3) of A-3. In the instant case, there is no exigency or necessity warranting applicant's transfer.

3. The official respondents have filed a counsel statement contending that the Hon'ble Supreme Court has reiterated the principles on the scope of interference in transfer matters. Transfer of an employee is not only an incident inherent in terms of appointment, but also implicit as an essential condition of service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory or passed by an authority not competent to do so, an order of transfer cannot be lightly interfered with. Employees appointed in KVS are liable to be transferred anywhere in India under Article 49(k) of the Education Code which contains the service conditions of its employees. Further, clause 3 of the transfer guidelines clearly envisages all India transfer liability to the employees of the KVS. The order of transfer has been issued on the request made by the 5th respondent as is eligible under clause 10(2) of the transfer guidelines. The 5th respondent joined the service of KVS on 26.9.88. He was posted at AFS, Digaru on 25.1.2001 under the displacement policy and has completed 4 years in the North East and hence entitled to seek request transfer under clause 10(2) of the guidelines. Clause 5(1) of the transfer guideline does not envisage that a teacher is liable to be transferred to accommodate another teacher who had completed his/her tenure in a declared hard station. The applicant being the juniormost in the station is liable to be transferred to accommodate the request transferee. The applicant has not challenged clause 10(2) of the guidelines which do not speak or contemplate any

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minimum stay for a teacher being displaced to accommodate a request transferee.

4. The 5th respondent has also filed a reply statement supporting the contention of the official respondents and further stating that the 5th respondent joined KVS on 26.9.88 and his first posting was at KVS, ONGC Cambay, Gujarat where he served till 3.10.92. He was transferred to KV, Pallipuram in 1992 where he worked upto 9.1.2001. Again he was transferred to KV, Digaru on 25.1.2001 and now on completion of 4 years in the North East, he sought a transfer to Trivandrum. In exercise of the powers under clause 10(2) of the transfer guidelines, the impugned order was issued displacing the juniormost at the station, contend the 5th respondent. He was relieved from KV., Digaru on 13.6.2005 and handed over charge, vacated his quarters, shifted his family to Kerala, closed his bank account, surrendered the gas connection and his wife resigned her job in the Air Force School at Digaru and also transfer certificate of his daughter, a class III student obtained from KV, Digaru. Thereafter, when he was reported for duty at KV, Pallipuram, he was not permitted to join duty on the ground the applicant had obtained an interim stay order of this Tribunal on the basis of which he was permitted to rejoin duty. The 5th respondent is in a dilemma. If he is not permitted to join duty at Kendriya Vidyalaya Pallipuram, serious and irreparable injury will be caused to him. The applicant has not sought to quash A-1 order to the extent it relates to the 5th respondent and not sought to keep in abeyance A-1 order to the extent it relates to the 5th respondent. The contention of the applicant that there are other juniors now working at Pattom is not correct in view of the definition of the term station in A-3 guidelines read with notification by K.V. In that regard.



5. The applicant has filed rejoinder contending that clause 10(2) does not envisage a transfer by exchange, that too a person who had been transferred from the same place. The applicant had been working at Digaru and it is from there he was transferred to his present place of posting. According to the applicant, the 5th respondent had sought for a transfer to Trivandrum and 4 other stations since many of his juniors are working at Trivandrum.

6. Heard Shri TC Govindaswamy, learned counsel for the applicant, Shri Sankar Raju for respondents 1-4 and Shri Sreeraj for respondent-5.

7. We have given due consideration to the arguments, pleadings and other material. Counsel for the applicant argued that the true spirit in Clause 10(2) does not envisage a transfer by exchange. While his juniors are available as pointed out in the rejoinder, the respondents are not justified in transferring the applicant. Counsel for the respondents on the other hand strenuously argued that transfer is an incident of service and only as per the new guidelines A-3, the transfer was effected.

8. Admittedly the impugned A-1 order transferring the applicant from Pallipuram, Trivandrum to Digaru has been made in the following manner:

"In terms of clause 10(2) of the latest transfer guidelines which inter-alia provides to create a vacancy so as to accommodate the persons who are figuring in priority list II, as per their priority position, transfer of the following employees is hereby ordered on request/in public interest. The displacement of employees have been effected as per clause 10(3) of latest transfer guidelines..."

The applicant joined service in 1994 and was working at Digaru, Assam State upto 2000 and thereafter he was transferred to Pattom, Trivandrum and eversince from 10.1.2001 he is continuing there. He also claimed a



transfer under clause 10(2) in 2001 displacing the 5th respondent who has been transferred to Digaru. This Tribunal in O.A.No. 426/2005 had occasion to consider the very same transfer guidelines wherein it gave more emphasis to include a clause of minimum stay/tenure in the guidelines, at a particular station. For better elucidation, the relevant portions of the said order is reproduced below:

"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

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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 vacany 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."

9. In the instant case, the fact is little different than that of the applicant in O.A.No.426/2005. The applicant in this case was working in the present station, i.e. ~~at~~ Pallipuram, Trivandrum for more than 4 1/2 years and, therefore, he is not justified in seeking to set aside the impugned order A-1.

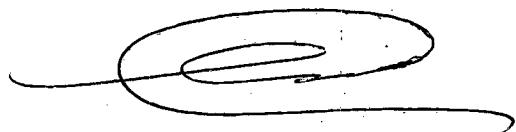


Having examined the facts in the instant case and also considering the conclusion arrived at by this Tribunal in O.A.NO. 426/2005, we are of the view that the applicant has not made out a case and the O.A. deserves to be dismissed.

The O.A. is accordingly dismissed with no order as to costs.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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