

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A No. 473 / 2008

Friday, this the 20<sup>th</sup> day of March, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

M.Divakaran,  
Post Graduate Teacher (English),  
Kendriya Vidyalaya No.2,  
Kozhikode. ....Applicant

(By Advocate Mr TC Govindaswamy )

v.

1. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18 -Institutional Area,  
Shahid Jeet Singh Marg,  
New Delhi-110 016.
2. The Education Officer,  
Kendriya Vidyalaya Sangathan,  
18 -Institutional Area,  
Shahid Jeet Singh Marg,  
New Delhi-110 016.
3. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office, IIT Campus,  
Chennai-600 006.
4. The Principal,  
Kendriya Vidyalaya No.2,  
Calicut.
5. Smt A.N.Mahita,  
Post Graduate Teacher (English),  
Now C/o the Principal,  
Kendriya Vidyalaya No.2,  
Calicut. ....Respondents

(By Advocate Mr Thomas Mathew Nellimoottil for R.1 to 4 )

(None present on behalf of respondent No.5 )

This application having been finally heard on 4.2.2009, the Tribunal on 20.3.2009 delivered the following:

**ORDER****HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Applicant is a Post Graduate Teacher (English) presently working under Kendriya Vidyalaya No.2 at Calicut. He is aggrieved by the Annexure A-1 order dated 11/12.2.2008 posting Smt A.N.Mahita (the 5<sup>th</sup> respondent) from K.V., Alipurduar to K.V.No.1, Calicut on her request with immediate effect under Para 17.4 of the transfer guidelines of KVS, Annexure A-8 order of transfer dated 27/28.2.2008 transferring him from K.V.No.2, Calicut to K.V., Alipurduar in public interest with immediate effect, again under Para 17.4 of the transfer guidelines of KVS and Annexure A-10 memorandum dated 7.8.2008 by which his representation dated 25.2.2008 made by him pursuant to the direction of this Tribunal dated 30.6.2008 in O.A.126/2008 against the aforesaid Annexure A-8 transfer order was rejected by the respondents and directed him to get him relieved within 15 days and joined the K.V. Alipurduar immediately.

2. The brief facts of the case are that the applicant joined the K.V., Calicut on 25.8.2005 after he had served in Kunjaban – Agarthala for over 5 ½ years with effect from 25.1.2000. While he was so working at K.V., Calicut, vide Annexure A-1 order dated 11/12.2.2008, the 5<sup>th</sup> respondent Smt A.N.Mahita was posted there as PGT (English). In order to accommodate the 5<sup>th</sup> respondent, one Shri Gopalan, PGT (English) at K.V.No.1, Calicut was displaced and posted to Alipurduar in West Bengal. Shri Gopalan challenged his transfer before this Tribunal in O.A.95/2008 stating that he had hardly 2 years to retire from service. During the pendency of the aforesaid O.A., the respondents themselves vide Annexure A-3 letter dated 19.2.2008 withdrew the transfer order of Shri Gopalan stating that he was coming under the LTR category and decided to transfer the next station senior in his place to accommodate Smt A.N.Mahita. When the applicant came to know about the said Annexure A-3 letter, he being the next station senior made Annexure A-4 representation dated 21.2.2008

stating that he had joined the present K.V only on 29.8.2005. not even completed his tenure of 3 years. He has also explained his personal difficulties that he is the only male member of his family and his 82 year old mother is bedridden. He has, therefore, requested the respondents not to shift him from the present station. He has also submitted that since the 5<sup>th</sup> respondent's husband is working at Chennai, she could very well be accommodated in K.V., Mandapam, Chennai Region where there is a vacancy of TGT (English). It was also submitted that 3 more vacancies of PGT(English) in K.V., Ernakulam, K.V.No.1, Cochin and K.V.No.2, Cochin under the Chennai Region would arise by 1<sup>st</sup> April, 2008 and if it is necessary that he should be shifted from his present place of posting, he could be accommodated against any one of those vacancies. As the respondents did not respond to his aforesaid representation and apprehending his relieving from the present post, he approached this Tribunal in O.A.105/2008 and it was disposed of vide Annexure A-5 order dated 22.2.2008 directing the applicant to make a detailed representation to the 1<sup>st</sup> respondent for its consideration and to keep the proposal for his transfer to K.V., Alipurduar in abeyance till a decision is taken in the matter. The applicant made the Annexure A-6 representation duly forwarded by the 4<sup>th</sup> respondent (Annexure A-7). But his request was ignored and the respondents transferred him to K.V., Alipurduar in West Bengal vide the Annexure A-8 order dated 27/28.2.2008 stating that it was a transfer on public interest. Aggrieved by the aforesaid order, he approached this Tribunal again vide O.A.126/2008. In reply to the aforesaid O.A, the respondents have admitted that the applicant's Annexure A-6 representation was not considered or disposed of before the Annexure A-8 transfer order was issued. This Tribunal vide Annexure A-9 order dated 30.6.2008 disposed of the said O.A with the direction to the 1<sup>st</sup> respondent to consider the representation of the applicant dated 25.2.2008 and to take a judicious decision in the matter. In terms of the directions contained in the said order in O.A.126/2008, the respondents issued the impugned Annexure A-10

memorandum rejecting his request for cancellation of his transfer order to K.V., Alipurduar and directing him to join there after giving himself relieved within 15 days. While taking such a decision, the respondent No.1 made the following observations:

"(i) The applicant has been transferred from KV, No.2 Calicut to KV Alipurduar as per para 17.4 of the transfer guidelines vide order dated 27/28.2.2008. Hence there is no relevance of submissions made by the applicant in para (i) above to avoid his displacement transfer.

(ii) That as per para 1.1 of the KVS transfer guidelines effective from 14.3.2006, all employees of KVS are liable to be transferred and posted anywhere in India, at any time, and for any period, as requirements of public service and of the Sangathan may dictate. Transfers and postings are a right of the Sangathan which it would endeavour to exercise in the best interest of the students, with due regard to the principles of equity and transparency vis-a-vis its employees.

(iii) That Smt A.N.Mahita does not belong to any priority category. However, the order of transfer has been effected by KVS Hqrs invoking the provision under para 17.4 of the transfer guidelines which clearly states that "Commissioner will be competent to make such departure from the transfer guidelines, as he may consider necessary with the approval of the Chairman, KVS." Since Commissioner has powers to make departure from the transfer guidelines, he has effected the order of transfer in respect of Smt.A.N.Mahita to KV No.2 Calicut by way of modification of transfer order. Therefore, the transfer order issued to Smt A.N.Mahita is strictly in terms of the transfer guidelines.

(iv & v): That the personal convenience are secondary to public interest. The KVS, keeping view the larger interest of administration and interest of the students has to make the best possible choice. A transfer in almost all cases involves some amount of inconvenience. Transfer from one KV to another is a part of service conditions and unavoidable in the service career. The personal problems expressed by the applicant should not come in the way of service conditions and public interest. It is the prerogative of the respondent organization that how and where the services of its employees may be better utilized in the larger interest of organization."

3. In the above back ground, the applicant has filed the present O.A seeking the following reliefs and interim relief:

Reliefs:

- (i) Call for the records leading to the issue of Annexure A-1, A-8 and A-10 and quash the same;
- (ii) Direct the respondents to allow the applicant to continue at KV No.2, Calicut, as if Annexures A-1, A-8 and A-10 had not been issued at all;

(iii) Award costs of and incidental to this application.

Interim relief:

To ~~say~~ the operation of Annexure A-8 till the final outcome of the O.A.

4. When the O.A was heard on 14.8.2008, considering the aforesaid facts and circumstances of the case, this Tribunal allowed the interim relief prayed for and directed the respondents not to relieve the applicant from his present place of posting even if the respondent No.5 has assumed duties in the same school.

5. According to the applicant, the impugned Annexure A-1, A-8 and A-10 are totally arbitrary, discriminatory, contrary to law and hence violative of the constitutional guarantees enshrined under Article 14 and 16. He has further submitted that though it has been stated in the Annexure A-8 transfer order that he was being transferred to K.V., Alipurduar in public interest, actually there was no public interest involved and it was purely to accommodate the interest of the 5<sup>th</sup> respondent, that too before completion of the minimum tenure of 3 years by him. The other submission of the applicant is that the order of transfer in his case and in the case of the 5<sup>th</sup> respondent were made under para 17.4 of the new transfer guidelines which came into effect from 14.3.2006 and before invoking the provisions contained in the said para, the Commissioner of K.V ought to have recorded the reasons for his transfer in writing as to why a departure from the general transfer guidelines is warranted in the facts and circumstances of each case. Moreover, the 5<sup>th</sup> respondent does not come under any of the priority categories and her husband being employed in Chennai, her transfer to K.V., Calicut was purely arbitrary and discriminatory. Further, though this Tribunal, vide Annexure A-9 order dated 30.6.2008, directed the respondents to take a judicious decision in the matter yet the Annexure A-10 impugned memorandum does not indicate that the decision of the Commissioner, K.V is in any way judicious. As regards the power of the

Commissioner under Para 17.4 of the guidelines, it is submitted that it has been used in an arbitrary manner as is evident from the fact that 200 transfers of Teaching Staff were ordered from January 2008 and June 2008 invoking the aforesaid provisions.

6. In the reply statement, the respondents have submitted that there are as many as 979 KVs situated all over India including 3 abroad, and the employees of the KVs are liable to be transferred to anywhere in India in terms of Para 1.1 of Article 71 of the Education Code which has been reiterated in Para 1.1 of Annexure A-2 new transfer guidelines also and according to it, *"all employees of the KVS are liable to be transferred and posted anywhere in India, at any time, and for any period, as requirements of public service and of the Sangathan may dictate. Transfers and posting are a right of the Sangathan, which it would endeavour to exercise in the best interest of the students, with due regard to the principles of equity and transparency vis-a-vis its employees."* Further, they have submitted that Para 17.4 of the said Guidelines, Government has got the competence to depart from the transfer guidelines with the approval of the Chairman, KVS and to transfer any employee of the KVS from one place to another. Again they have submitted that on the directions of this Tribunal dated 30.6.2008 in O.A.126/2008 (supra) they have considered the applicant's representation dated 25.2.2008 and took a judicious decision in the matter. As regards the 5<sup>th</sup> respondent is concerned, she has already been transferred from K.V. Alipurduar to K.V.No.1 Calicut in terms of Para 17.4 of the transfer guidelines, as per the directions issued by the Chairman, KVS, keeping in view the merit of the case and the applicant has been transferred from K.V.No.2 Calicut to K.V. Alipurduar to accommodate the 5<sup>th</sup> respondent after cancelling the transfer order of Shri K.Gopalan, PGT (English) who was wrongly transferred to K.V.No.1 Calicut to K.V.Alipurduar as he was under the LTR category. Since the applicant was the station senior at Calicut, he was eligible for displacement and

there was no illegality, malafide intention, injustice, ulterior motive or extraneous factors in his transfer but it was totally in public interest.

7. In the rejoinder, the applicant has reiterated his submission that the discretion cannot be invoked without any rhyme or reason. The power vested in the Commissioner under Para 17.4 of the guidelines is to be used in public interest and not to serve any private interest that too under political pressure or influence. According to the learned counsel for the applicant, the applicant was made a scape goat only to favour the 5<sup>th</sup> respondent and it cannot be treated as a public interest at all. He has also stated that the power under Para 17.4 has exercised out of extreme favouritism and with malafide intention as there was no administrative exigencies existed warranting transfer of the 5<sup>th</sup> respondent, Smt A.N.Mahita, that too, by displacing the applicant. According to the applicant, the question as to why one should be displaced so as to accommodate another person, if other person does not belong to PCGR category. As the order of the 5<sup>th</sup> respondent is not under Clause 15.1, dislocation/displacement of the applicant cannot be sustained. Moreover, neither the applicant nor the 5<sup>th</sup> respondent was transferred in terms of clause 15.1 but in terms of clause 17.4.

8. I have heard Shri TC Govindaswamy, counsel for applicant and Shri Thomas Mathew Nellimoottil, counsel for respondents 1 to 4. Even though notice in this case was issued to respondent No.5, none was present on his behalf. The main question involved in this case is regarding the propriety of invoking para 17.4 of the new transfer guidelines by which a teacher is accommodated in the place of another Teacher by displacing him. The other question is whether accommodating a Teacher in such a manner is in the public interest or not. Para 4 of the guidelines talks about 2 types of transfers (i) "Administrative Transfers" which the KVS orders suo-moto and (ii) "Request transfers" which are ordered by the KVS on the basis of the request made by the employee.

According to Para 7, administrative transfers are made essentially to eliminate staff surplus. The administrative transfers are also made:

- (i) due to completion of maximum tenure prescribed for certain posts like the Assistant Commissioner, Education Officer and the Principal. The maximum prescribed tenure of an Assistant Commissioner is 3 years and that of Education Officer and Principal is 5 years.
- (ii) To fill up the vacancies in priority areas.
- (iii) To accommodate requests of teachers belonging to PCGR category for a place where no vacancy is available.
- (iv) On grounds of misconduct or unsatisfactory performance.
- (v) Closure of a Kendriya Vidyalaya.
- (vi) Other administrative exigencies.

The PCGR (priority category for grant of request transfers) has been defined in para 12.1 of the transfer guidelines. In order to include in the priority category for granting request transfer, a person shall fall in any one of the categories such as MDG which means an employee seeking transfer on the basis of one or more of the medical conditions listed in Annexure A-1 of the transfer policy, affecting himself/herself, spouse or dependent son/daughter, DSP means, an employee whose spouse has died within two years as on 31<sup>st</sup> March of the year, LTR means an employee who has less than three years to retire, as on 31<sup>st</sup> March of the year and Priority Areas means the North Eastern Region (including Sikkim) A&N Islands and Hard and Very Hard Stations elsewhere.

9. In the case of request transfers, there are cases where request for transfer shall not be considered at all as enumerated in para 12.1 of the transfer guidelines. If a request is received from PCGR category in the first instance it has to be accommodated against available vacancies. If there are no available vacancies, it has to be accommodated by way of displacement as per Para 15 of



the transfer guidelines. According to Para 15.1, when a transfer is sought by a teacher coming under PCGR and no vacancy is available at the station of his choice, required vacancy will be created by displacing a teacher of the same category (post/subject) with longest stay at the said Station and not belonging to CDA. However, nobody shall be displaced in this manner, as far as possible, before completing a tenure of three years. If non-CDA category employee with more than 3 years' tenure is not available at the station of first choice of a PCGR category employee, the exercise will be done for locating such a person at stations of his second, third and lower choices, in that order. If non-CDA employee with more than 3 years tenure is available at any of the stations of choice, the non-CDA employee with longest tenure out of all the preferred stations taken together, will be displaced. However, the displaced teacher will be accommodated against available nearby vacancy as far as possible within the region. The resultant vacancies arising out of transfer orders as per first priority list, will be used to accommodate non-PCGR category requests, who could not be accommodated in the first priority list, to the extent possible. Para 17 deals with "Transfers under special circumstances" Under Para 17.2 the KVS reserves the right to transfer any teacher to any place at any time due to administrative exigencies and the Commissioner can pass orders in such cases. Under Para 17.3, transfers on account of serious illness, when it is not practicable to defer the transfer till next year without causing serious danger to the life of the teacher, his spouse or ailing son/daughter, as well as the cases covered under DSP ground may be effected by Commissioner at any time during the year. Under Para 17.4, Commissioner will be competent to make such departure from the Transfer Guidelines, as he may consider necessary with the approval of the Chairman, KVS. There are also provisions of mutual transfer as given in Para 18 of the Transfer Guidelines.

10. The main contention of the applicant's counsel is that the provisions

contained in Para 17.4 of the new Transfer Guidelines has been exercised by respondent No.1 in his case in an illegal, arbitrary, unjust and unreasonable manner and the resultant impugned Annexure A-1, A-8 and A-18 orders are totally arbitrary, discriminatory, contrary to law and hence violative of the constitutional guarantees enshrined under Articles 14 and 16. The said contention has already been considered by this Tribunal in the O.A.No.126/2008 filed earlier by the applicant and held that the powers of the Commissioner under Para 17.4(ibid) are not arbitrary. Paras 14 and 15 of the said order (Annexure A-9) are relevant and they are extracted below:

"14. Para 17.4 no doubt, provides wide powers to the Commissioner. Can the same be held to be arbitrary. Answer to this question is perhaps in negative, for, a look at the provisions would go to show that the power vested with the Commissioner is not that absolute under this para, for, Commissioner will be competent to make such departure from the transfer guidelines as he may consider necessary with the approval of the Chairman, KVS. Thus, para 17.4 ipso fact does not give absolute power to the Commissioner. When there is a check provided by conferment of the discretionary authority not to one individual but to a body of men, requiring final action to be taken, the absoluteness of the discretion suffers a dent. In this connection, it is worth referring to a decision by the Apex Court, which, while discussing about administrative action with reference to absolute authority, in the case of Supreme Court Advocates-on-Record Assn. v. Union of India, (1993) 4 SCC 441, held as under:

"427. ... A further check in that limited sphere is provided by the conferment of the discretionary authority not to one individual but to a body of men, requiring the final decision to be taken after full interaction and effective consultation between themselves, to ensure projection of all likely points of view and procuring the element of plurality in the final decision with the benefit of the collective wisdom of all those involved in the process. The conferment of this discretionary authority in the highest functionaries is a further check in the same direction. The constitutional scheme excludes the scope of absolute power in any one individual. Such a construction of the provisions also, therefore, matches the constitutional scheme and the constitutional purpose for which these provisions were enacted."

15. To reiterate, Chairman of KVS is the highest authority and the Commissioner, the next highest. If the latter, in respect of any case, wants to deviate from the guidelines of transfer, he has no independent authority, as he has to have the approval of the Chairman. The concentration of absolute power and consequent discretion of the Commissioner, by virtue of the above condition of approval by the Chairman, here gets thoroughly diluted. Thus, any decision taken would be as a result of collective wisdom. Thus, the powers under para 17.4 cannot be branded as an absolute power vested in the

Commissioner, in its strict sense."

12. The only direction of this Tribunal in the O.A.126/2008 (supra) was to consider the applicant's representation dated 25.2.2008 (Annexure A-6 in this O.A) and to take a judicious decision on it. By the Annexure A-10 Memorandum dated 7.8.2008 the respondents held that even though the 5<sup>th</sup> respondent does not belong to any priority category, the order of transfer in her case was under Para 17.4 of the transfer guidelines and, therefore, it is in order. They have also considered his personal inconvenience but informed him that they can only be secondary to the public interest. So long as the powers exercised by the respondents under Para 17.4 of the guidelines are not arbitrary, the impugned order of transfer of the applicant cannot be held as illegal. The respondents have also stated that the 5<sup>th</sup> respondent was transferred from K.V.Alipurduar to K.V.No.1, Calicut with the prior approval of the Chairman, KVS under Para 17.4 of the transfer guidelines keeping the merit of her case and the applicant was displaced, there is no other Teacher with longer seniority belonging to non-CDA category available in the Calicut station.

13. I, therefore, do not intend to interfere with the impugned orders. Resultantly the O.A is dismissed. There shall be no order as to costs.

14. However, since the current academic year is coming to an end very soon and it is followed by vacation, the applicant may be relieved from the present place of posting only from a convenient date so that he can join the new place of posting on or before the beginning of the new academic session there. The respondents shall issue revised relieving order accordingly.

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**