

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 480/2009

Dated this the 12th day of March, 2010

C O R A M

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Beena V W/o Chandrasenan Nair
Post Graduate Teacher (Mathematics)
Kendriya Vidyalaya, Kayamkulam
residing at Kochayithirickal House
Thonmalloor, Pandalam
Pathanamthitta District.

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

- 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
Kayamkulam (NTPC)
Kayamkulam

5 Sri Abraham Mathew
Post Graduate Teacher (Maths)
Kendriya Vidyalaya
Digaru (AFS) Assam.

Respondents.

By Advocate Mr. Thomas Mathew Nellimootttil for R 1 to 4

The Application having been heard on 2.3.2010 the Tribunal delivered the following:

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a PG Teacher, Kendriya Vidyalaya, Kayamkulam (NTPC), aggrieved by her transfer to Mumbai before completion of the tenure is approaching the Tribunal for the second time challenging the transfer order.

2 The applicant joined service as PGT on 14.2.1994 at Devlali (Maharashtra). She was transferred to Lonavala from where she was transferred to Kochi. Ultimately, she joined the present post at Kayamkulam on 20.11.2006. She seeks to quash Annexures A-1, A-9 and A-10 to the extent it relates to her as she has not completed the minimum tenure of three years at the station. She is also challenging Para 15.1 of Annexure A-2 transfer guidelines, being arbitrary, discriminatory and unconstitutional.

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3 The respondents 1 to 4 filed reply statement denying the averments in the O.A. They stated that all employees of KVS are liable to be transferred and posted anywhere in India at any time and for any period according to requirement of public service. The KVS has framed its own policy of transfer and that administrative exigency is a continuous process by which the organisation tries to provide continuous and uninterrupted teaching to the students. The applicant has been transferred under para 15.1 of the transfer guidelines, being the seniormost teacher. They submitted that the personal problems have little importance over administrative exigencies and public interest and shall not come in the way of service conditions.

4 We have heard learned counsel for the parties and have gone through the pleadings carefully. The respondent NO. 5 who has been issued notice has not filed any reply statement or appeared in person or represented by counsel.

5 In a catena of decisions the Apex Court has held that that transfer is an incident of service. No Government servant has any legal right to be posted at any place of his choice. It is also held that guidelines issued by the Government in regard to transfer does not confer upon the employee a legally enforceable right and that unless it is shown to be malafide or in violation of statutory provisions, the Court/Tribunal shall not interfere with the transfer order. However, in this case the employee is challenging the transfer order and particular para in the guidelines under which her transfer has been ordered as arbitrary, discriminatory and unconstitutional.

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6 There is no dispute that the applicant is transferred under para 15 of the guidelines. Para 15 .1 of the new transfer guidelines w.e.f. 14.3.2006 amended till 15.11.2007 produced as Annexure A-2 reads as follows:

15.1 Where 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 no 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 no 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. The displaced teacher will be accommodated against available nearby vacancy as far as possible within the region. The resultant vacancies arising out of transfers 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.

Further, a teacher who has completed tenure in priority area and wants to come to his/her choice place in the priority area, may be transferred on request by displacing the senior most teacher (in the manner as stated above) at the station in case of non-availability of vacancy at his/her choice station. This will be applicable to both intra and inter region transfers. The request of the displaced for modification to the choice places will be considered against the vacancies arising upto 30th November of the year (Amended on 24.11.2006). However, the stay of displaced who comes back/called back to the station from where displaced before completion of three months of active service will remain uninterrupted (Amended on 15.11.2007).

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15.2 Second priority list prepared as per para 15.1 above, shall be displayed on KVS website by 5th April, and representations against it will be received upto 15th April. Final transfer orders, after taking representations into consideration, shall be issued by 20th April.

(emphasis added)

16.2 Transfer of persons in PCGR category by displacement of others by Regional Offices.

Where intra region transfer is sought by a teacher coming under PCGR category and no vacancy is available at the station of his choice, required vacancy will be created as per provision of para 15.1. The teachers so identified for displacement shall be called for counseling by the RTC by 28th May.

Thereafter, second transfer list shall be displayed on RO website by 31st May, representations, if any, against transfers proposed therein shall be received upto 10th June, and final transfer orders shall be issued by 15th June.

Teachers who are transferred on request through operation of priority lists (inter Regional Transfer) shall not be displaced in Intra Regional Transfer of person in PCGR category under para 16.2 during the same year, in which they have got request transfer. Further the teachers coming under PCGR category except MDG/DSPL(Amended on 15.11.2007) shall have to indicate five choices of different stations for request transfer as prescribed in transfer application (Amended on 4.12.2006).

7 The fact profile of the applicant shows that she was initially posted in Maharashtra, coming under the MumbaiRegion, in 1994. Only after 7 long years she could get a transfer to Kerala, under the Chennai Region and she could get choice station only in November, 2006. The main ground raised by the applicant is that she has not completed the

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tenure period of three years at the KV Kayamkulam when the transfer order was issued. She joined the KV Kayamkulam on 20.11.2006, she would have completed 3 years on 20.11.2009 whereas the transfer order was issued on 14.5.2009.

In the reply statement, it is stated that the applicant is displaced as she is the seniormost teacher. Para 15.1 of the transfer policy supra states that a non-CDA employee with the longest tenure will be displaced. No material is produced before us to show that the applicant has the longest stay at the Station where the 5th respondent had requested for a posting. The choice stations given by the 5th respondent had not been mentioned in the reply statement, to affirm, whether it was the 4th or 5th choice, where the administration was compelled by a process of elimination as laid down in Para 15.1 supra, to displace an employee with less than three years tenure.

The second ground taken up by the applicant is as stated in 15.1 supra the displaced employee will be accommodated, against available nearby vacancy as far as possible within the Region.

The third ground put forward by the applicant is violation of 16.2 supra in so far as she has not been called for counselling so far, by the RTC.

The applicant also brought to our notice that the suggestion given in the Tribunal's order in O.A. 426/2005 dated 29.7.2005, to prescribe a minimum period of tenure has not been acted upon.

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Also there appears to be an ambiguity in the usage of the words about "employee with longest tenure" and "seniormost employee". Para 15.1 says in the first para that the employee with longest tenure will be displaced. The second para says the seniormost employee will be displaced. The seniormost employee need not necessarily be the one with the longest tenure. Better clarity is called for.

8 The respondents in the reply statement submitted that she is liable to be displaced by any PCGR person even before completion of 3 years tenure as per the transfer guidelines`.

9 We have carefully gone through the pleadings and are of the opinion that the new transfer guidelines introduced w.e.f. 14.3.2006 amended from time to time, needs reconsideration. As per 15.1 where transfer is sought by a teacher coming under PCGR and if no vacancy is available at the station of his choice, the required vacancy will be created by displacing a teacher of the same category with longest tenure at the said station and not belonging to CDA. In the earlier guidelines, the juniormost teacher in the station was liable to be transferred. Now it has been changed to the station senior.

10 We find that there are more than 979 Schools under 18 Regions situated all over India. It is gathered that recruitment is done centrally by KVS at New Delhi and the candidates allotted to various Regions. Generally, the allotment is done based on the merit of the candidate in the rank list. If so, those who get allotted to very hard and hard stations, may figure in the bottom of the list which necessitates their waiting for a while to get their home State/Region.

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To facilitate the employees of KV to understand the need, if necessary, for All India transfer, there has to be a well enunciated policy, one which has to start from the recruitment and placement level. So, to give equal importance to the educational needs of the students as well as the welfare of the staff, the initial posting to the Region can be made on the basis of merit by giving the home/request region, subject to availability of vacancies. Secondly, for purpose of rotational transfer, the very hard and hard stations need to be listed out. It has to be made clear that to maintain the cosmopolitan character of KV and practice the principle of national integration 2,3 or 4 tenures as decided by the respondents outside one's region are mandatory in the employees entire career span, not taking into account transfer by virtue of promotion. Minimum period of tenure in normal areas need to be fixed as 3 or 4 years preferably and very hard stations as 2 years. Hard and Very hard stations are to be listed out and options called for from employees to work in these areas for one tenure. Once a tenure in very hard station is made compulsory, it gives a certain freedom to the employees to choose a time when his family commitments are the least especially when it helps the employee in his mid thirties or forties to avoid displacement transfer as a bolt from the blue. A tenure at very hard and hard stations can be linked to a transfer back to one's choice station, subject again to the availability of vacancies. Therefore, posting to very hard/hard stations has to be so managed so as to allow the employee to get back to his choice station or Region, on completion of the prescribed tenure. Transfer to Regions outside the home region of the employees for the prescribed mandatory tenure need not have an element of a promise to get a choice station. Such inter-regional transfer to neighboring/ distant regions arising out of administrative

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exigencies is to be treated as incidental to service. But under no circumstances, a policy of granting request by displacing an employee, who has not finished the normal tenure can be countenanced. The management, has a responsibility to come up with a better method to effect transfer, of an employee coming from a far away station to his choice station. We however, appreciate that sincere and strenuous attempts are made by respondents to make the transfer policy transparent. Para 13 of Annexure A-2 policy guidelines prescribing entitlement points for rival claimants warrants commendation. Still, prescribing a minimum period of tenure is of prime importance, to give a sense of security and mental peace to teachers who are expected to impart Gyan to their students and develop them to a responsible Indian citizen with a high degree of IQ and EQ.

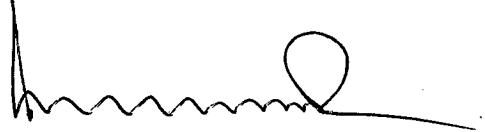
11 In this view of the matter, we hold that Para 15.1 of the transfer guidelines is arbitrary, discriminatory and unconstitutional to the extent it does not prescribe a minimum tenure at the place of posting and the criterion for choice of employees for displacement to far away Regions to accommodate request transfers are not spelt out specifically. The mere factor of being the juniormost or seniormost at the place of posting cannot be the only deciding factor for displacement. Other parameters like the period one had to wait to get the choice station and the duration one has spent in the choice station/home region, total number of transfers in service etc. need to be laid down. Therefore, revised transfer policy guidelines to grant inter region request transfers may be framed keeping in view the suggestion given in para 10 supra. This shall be done within three months from the date of receipt of a copy of this order. Accordingly,



we quash Annexure A-1 order transferring the applicant from KV Kayamkulam to KV Mumbai Colaba No.II, A-9 relieving order and A-10 rejection of her representation. The O.A is allowed. No costs.

Dated ^{12th March, 2010}


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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