

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Dated this the 16th day of May, 2011
C O R A M

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

O. A. NO. 536/2010

Kunjamma Pius, W/o Pius C Paul,
Post Graduate Teacher (Mathematics)
Kendriya Vidyalaya No.3, Cochin Port Trust,
Cochin-682009, R/o F-4, Travancore Enclave
Perumanoor, Thevara, Cochin-682015.

Applicant

(By Advocate Mr. TC Govindaswamy)

Vs.

- 1 The Commissioner, Kendriya Vidyalaya Sangathan
18 Institutional Area, Shahid Jeet Singh Marg
New Delhi - 110016.
- 2 The Education Officer, Kendriya Vidyalaya Sangathan
18 Institutional Area, Shahid Jeet Singh Marg
New Delhi - 110016.
- 3 The Assistant Commissioner
Kendriya Vidyalaya Sangathan,
Regional Office, I.I.T Campus, Chennai-600006.
- 4 The Principal, Kendriya Vidyalaya No.3
Cochin Port Trust, Cochin-682009.
- 5 Ms Beena Prince, Post Graduate Teacher(Maths)
Kendriya Vidyalaya, Dantewada (Beladilla)
Chattisgarh.

Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil for R1-4
Mr. Vishnu Chempazhanthiyil for R-5).

O. A No. 540/2010

Madhusudhanan Nair V.M, S/o N.Madhavan Pillai,
Post Graduate Teacher (Mathematics)
Kendriya Vidyalaya, Pangode, Trivandrum,
R/o Sudarsanam, TC 37/843, TV Nagar
Thirumala, Trivandrum - 695015.

Applicant

(By Advocate Mr. TC Govindaswamy)

Vs.

- 1 The Commissioner, Kendriya Vidyalaya Sangathan
18 Institutional Area, Shahid Jeet Singh Marg
New Delhi - 110016.
- 2 The Education Officer, Kendriya Vidyalaya Sangathan
18 Institutional Area, Shahid Jeet Singh Marg
New Delhi - 110016.
- 3 The Assistant Commissioner
Kendriya Vidyalaya Sangathan,
Regional Office, I.I.T Campus, Chennai-600006.
- 4 The Principal, Kendriya Vidyalaya,
Pangode, Trivandrum Distt.
- 5 Smt Sunitha Sanal Kumar, Post Graduate Teacher(Maths).
C/o The Principal, Kendriya Vidyalaya-II
Srinagar (AFS), Jammu & Kashmir.

Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil for R1-4

These applications having been heard on 14.3.2011, the Tribunal delivered the following:

ORDER

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

These two applications involve common questions of

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facts and law and are, therefore, disposed of by this common order.

2 In OA 536/2010, the applicant, a Post Graduate Teacher (Maths) at Kendriya Vidyalaya Cochin Port Trust has challenged the transfer order dated 21.6.2010 (Annx.A1) transferring her to Mumbai, as illegal and arbitrary. She submits that after rendering more than 7 years service at K.V Rajgarh (A.P.) she was transferred to Trivandrum on 9.7.2001. Ultimately she was transferred to Ernakulam on 18.11.2006. By this application she seeks to quash Annx.A1 transfer order to the extent it relates to her. She has also challenged Para 15.1 of Annx.A-2, transfer guidelines as arbitrary, discriminatory and unconstitutional. In support of her contention she has referred to O.A 480 of 2009 which was disposed of by this Tribunal on 12.3.210 wherein Para 15 of the transfer guidelines was under challenge. The applicant has challenged the transfer order and the relieving order on many grounds but the main ground is malafides on the part of the official respondents and 5th respondent, whom the applicant has impleaded by name. The applicant further stated that her spouse is posted at Trivandrum and her transfer to Mumbai is violative of the transfer policy guidelines.

3 The 5th respondent filed reply statement stating that she was relieved on 22.06.2010 from Dantewada and is presently working in K.V Port Trust. She says that in OA 540/2010, the

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applicant, a Post Graduate Teacher (Maths) at Kendriya Vidyalaya Pangode has challenged the transfer order dated 21.6.2010 (Annx.A1) transferring him to K.V Vasco-da-Gama No.1, as illegal and arbitrary. He submits that after working for more than 13 years at K.V Jamnagar (Gujarath) he was transferred to K.V Ottappalam in 2000. Thereafter on promotion he was transferred to KV/BSF/Dabla, Jaisalmer, Rajasthan and he joined there on 25.8.2001. Since Dabla is treated as a hard station on completion of 4 years he was ultimately transferred to Pangode vide Annx.A2 dated 30.5.2005. Again he was transferred to Bilaspur vide order dated 2.5.2008 but the same was cancelled on the basis of his representation. To his utter shok and surprise his transfer order to Bilspur was revived vide order dated 23.7.2008 against which he filed OA 419/2008 before this Triobunal and this Tribunal allowed the OA by order dated 1.4.2009 (Annx.A5). In compliance of the order of this Tribunal the applicant was retained at Pangode. By this application he seeks to quash Annx.A1 transfer order to the extent it relates to him and 5th respondent. He has also challenged Para 15.1 of Annx.A-2, transfer guidelines being arbitrary, discriminatory and unconstitutional. In support of his contention he has referred to O.A 480 of 2009 which was disposed of by this Tribunal on 12.3.210 wherein para 15 of the transfer guidelines was under challenge. The applicant has challenged the transfer order and the relieving order on many grounds but the main ground being malafide on the part of the official respondents and 5th respondent, whom the applicant has impleaded by name. The

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applicant further states that her spouse is posted at the same station and her transfer to Mumbai is violative of the transfer policy guidelines.

4 In the reply statement the respondents submitted that the transfer of the applicant was ordered in public interest. The services of the applicant are transferable anywhere in India. Transfer is an incidence of service and it is left to the competent authority to decide as to how and where an employee is required to be posted. While taking a decision in public interest, individual's personal inconveniences have no relevance over the administrative exigencies. Personal problems of an employee cannot come in the way of normal service conditions and public interest. The guidelines in this respect are merely the guidelines for the competent authority to consider and they do not create any statutory right in favour of the employee which could be considered enforceable through the Courts or the Tribunals. While there is no doubt that ordinarily, as far as possible husband and the wife should be posted the same station but this does not mean that their place of posting invariably be one of their choice. It would be unavoidable, at times to post them at one station specially, when they belong to different services and one of them cannot be transferred to the place of other. In the case of applicant in OA 536/2010, the spouse is working in CBI, Trivandrum which is a Central Govt Organisation. In respect of the applicant in OA 540/2010, it is contended that his transfer from Ottappalam to Jaisalmer was on promotion and he was at

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liberty to refuse the said promotion. It is submitted that para 15.1 of the transfer guidelines was amended which stipulates that station seniority of an employee, who is transferred either on displacement or on request to another station and comes back to the same previous station without completing a period of 3 years service, will be counted from the date of his earlier posting excluding the period of stay outside. It is also contended that the transfer of the applicants have been made by the competent authority in public interest on administrative grounds. It does not suffer from any violation of statutory rules.

5 R-5, the party respondent in OA 536/10, in her reply submits that she joined the services of Kendriya Vidyalaya at Malanjkhanda (Jharkhand), a hard station, on 10.2.94 she continued there till its closure on 10.4.99. Thereafter she was posted at KV Ordinance Factory, Katni, Jabalpur Region for 7 years from 12.4.99. Again she was transferred to KV Dantewada, Chattisgarh a hard station, for two years. It is averred that ever since she joined the services of KV she was posted out of her home State viz Kerala and she repeatedly requested for a transfer to her home State to join her family. She submits that her husband holds a non-transferable service, she has two minor daughters and she could not stay with her family till now.

6 Party respondent in OA540/2010 has not contested the case and no reply is filed.



7 The applicant in her rejoinder to the reply filed by the respondents reiterated the facts as already stated in the O.A.

8 We have heard the learned counsel for the parties and have perused the records.

9 We notice that in OA 536/10, by an interim order dated 23.6.10, the impugned Annx.A1 transfer order in respect of the applicant was kept in abeyance for a period of four weeks and thereafter extended it from time to time. That be so in the case of OA 540/10, the interim order still continues in favour of the applicant.

10 Regarding the applicants' challenge to Para 15.1 of Annx.A-2, transfer guidelines being arbitrary, discriminatory and unconstitutional, the respondents have submitted that para 15.1 of the transfer guidelines was amended which stipulates that station seniority of an employee, who is transferred either on displacement or on request to another station and comes back to the same previous station without completing a period of 3 years service, will be counted from the date of his earlier posting excluding the period of stay outside.

11 In our view, while deciding the place of posting by the respondents, it has to be kept in mind that the same does not ultimately result into totally demotivating the employee, i.e in this case, the teachers. Their mental frame work should be

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conducive to the requirements of the job in the school which they handle. Their state of mind ultimately affects adversely the interests of the children in the school. In case, the applicant makes a written request for posting in a nearby area in the region, the same request needs to be considered sympathetically.

12 In the result, while we dispose of these OAs, we consider it appropriate to direct the respondent No.1 that in case, he receives a representation from the applicants within three weeks from the date of receipt of this order for a posting to a nearby place in the region, R-1 shall review the order of transfer, Annx.1 suitably to accommodate the applicants at a place which is more easily accessible to the family. The revised order shall be issued within a period of six weeks from the date of receipt of the representation from the applicants. The interim order issued shall be vacated. No order as to costs.


(K.NOORJEHAN)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER

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