

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.545 of 2013

Tuesday this the 3rd day of December 2013

C O R A M :

**HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

B.Surendran,
S/o.Bhargava Panicker,
Librarian, Kendriya Vidyalaya,
Pattom, Shift No.II, Trivandrum.
Residing at Sayujyam, TC No.7/1226,
Pongumoodu, Medical College P.O.,
Thiruvananthapuram – 695 011.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. The Commissioner, Kendriya Vidyalaya Sangathan,
18 – Institutional Area, Shaheed Jeet Singh Marg,
New Delhi – 110 016.
2. The Joint Commissioner,
Kendriya Vidyalaya Sangathan,
18 – Institutional Area, Shaheed Jeet Singh Marg,
New Delhi – 110 016.
3. The Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Ernakulam Region, Kadavanthra,
Cochin – 682 020.
4. Ms.Vidya,
Librarian, Kendriya Vidyalaya,
IIT Campus, Powai, Mumbai – 400 091. ...Respondents

(By Advocates M/s.Iyer & Iyer [R1-3] & Mr.K.T.Shyamkumar [R4])

This application having been heard on 19th November 2013 this
Tribunal on 3rd December 2013 delivered the following :-



.2.

ORDER

HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

Is Annexure A-1 order transferring the applicant from Kendriya Vidyalaya, Pattom in Trivandrum to Kendriya Vidyalaya at Payyanur illegal, arbitrary or vitiated?

2. The above question has come up for consideration in this Original Application in the following facts and circumstances.
 3. The applicant is presently working as Librarian in Kendriya Vidyalaya at Pattom, Trivandrum. By Annexure A-1 order dated June 4, 2013 he has been ordered to be transferred with immediate effect from Kendriya Vidyalaya, Pattom to Kendriya Vidyalaya, Payyanur in public interest. However, by virtue of the interim order passed by this Tribunal, the applicant is still continuing at Trivandrum.
 4. It is contended by the applicant that the above order is totally arbitrary, discriminatory and contrary to law. According to the applicant, he is being shifted to Payyanur only to accommodate respondent No.4 at Trivandrum and that too for "extraneous reasons and ulterior motives". In this context the applicant has raised a contention that his transfer is in total violation of Annexure A-2 transfer guidelines issued by the Sangathan.

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.3.

5. Per contra, it is contended by the respondents, particularly, respondent No.4 that Annexure A-1 order is perfectly legal and valid. It is pointed out that the applicant has been working in Trivandrum District for about 23 years now starting from December, 1990. Initially he had worked at Kendriya Vidyalaya Pangode from December, 1990 to April, 2003. It is true that he was transferred to Kendriya Vidyalaya, Adoor in Pathanamthitta District in April, 2003 and worked in that school till September, 2004. But he came back to Kendriya Vidyalaya, Pangode in September, 2004 and worked there till May, 2007, when he was transferred to Kendriya Vidyalaya, Pattom at Trivandrum. He has been working at Pattom ever since 2007 till now. The allegation raised by the applicant that his transfer is in violation of transfer guidelines is also vehemently denied by the respondents.

6. It may at once be noticed that respondent No.4 is presently working at Powai in Mumbai. She had joined the service of Kendriya Vidyalaya Sangathan as Librarian in March, 2012. Her husband is admittedly working in State Bank of Travancore in Kerala and her only daughter who is studying in 9th Standard is now living with her in Mumbai. Respondent No.4 had applied for a transfer to Trivandrum with a view to join her husband. She contends that the above request was made in terms of Clause 13 of Annexure R-4(a) Memorandum issued by the Sangathan which stipulates that she would be entitled to apply for a transfer on expiry of one year of her appointment subject to the transfer guidelines amended from time to time.

V

.4.

This respondent has also placed heavy reliance on Clause 9 of the transfer guidelines in this context. She contends that being a female employee who is living away from her husband she is entitled to get a preferential treatment.

7. Respondent Nos.1-3 in their written statement have heavily banked on Article 15 (a) of Education Code for Kendriya Vidyalayas which empowers the Commissioner to transfer and post or assign any duties to officers and staff of the Sangathan. It is specifically contended by them that Annexure A-1 order of transfer was issued in public interest and in exigencies of service.

8. It is primarily contended by the applicant that his transfer is not either in public interest or exigencies of service. According to him, Annexure A-1 order is intended only to benefit or favour respondent No.4. It is further contended by him that the said order has been issued in violation of the clauses contained in Annexure A-2 transfer guidelines.

9. It has been noticed already that the applicant has been working in Trivandrum district (Pangode and Pattom) right from December, 1990 till date except for 15 months in 2003-2004 when he was transferred to Adoor in Pathanamthitta district. It may be true that respondent No.4 had joined Sangathan in 2012. But she and her young child have been living in Mumbai away from her husband ever since she joined the service. Therefore, it is but natural for a young lady like respondent No.4



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to show anxiety to join her husband who is working in Kerala. Respondent No.4 has stated in her written statement that she would like to give her daughter the paternal care which she has been missing for the last more than one year. She contends that the applicant who had been working in Trivandrum for the last more than two decades cannot insist that he is entitled to continue in that station during the entire tenure of his service. It is also pointed out that the applicant in fact is hailing from Payyannur.

10. It is pertinent to note that the applicant does not have a case that Annexure A-1 order is vitiated by malafides nor has he placed on record any material to show that he has been singled out for any discriminatory treatment. Since applicant is holding a transferable post he cannot be heard to say that he is not liable to be transferred.

11. In State of U.P Vs. Gobardhan Lal; (2004) 11 SCC 402 it has been held thus :-

"A Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires."

.6.

12. A Division Bench of the High Court of Kerala in Nirmalandan Vs. Dinakaran (1989) 1 KLT 126 has held that :-

"Transfer is an incidence of service and the Government servant has no legal right in this behalf. Guidelines for transfer are not statutory and are only meant for the guidance of the transferring authority. The guidelines issued by the Government from time to time in the matter of transfer are not exhaustive and it is open to effect transfers taking into consideration circumstances not covered by the guidelines, as in administration variety of situations not contemplated by the guidelines may arise which have to be taken into account. The appellant cannot therefore successfully contend that he has acquired immunity from transfer on the strength of the guidelines of the Government in this behalf. The guidelines themselves make it clear that if transfers are required to be made to sub-serve public interest, none of the guidelines in the matter of transfers shall come in the way of effecting such transfers."

13. In Union of India and others Vs. S.L.Abbas JT 1993 (3) SC 678 their Lordship of the Supreme Court has held that "an order of transfer is an incident of Government service.Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Guidelines however does not confer upon the Government employee a legally enforceable right."

14. In Shilpi Bose (Mrs.) & Ors. Vs. State of Bihar & Ors. AIR 1991 SC 532 it has been held that "A government servant holding a transferable

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post has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights." The Court further held that "Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department....."

15. We have carefully perused the clauses contained in Annexure A-2 transfer guidelines and considered the contentions raised by the applicant while assailing Annexure A-1 order of his transfer. We do not find any merit in the contention that the order of transfer is in violation of transfer guidelines. In the course of the argument learned counsel for the applicant has invited our attention to Annexure MA-1 communication issued by the Sangathan containing a list of eighteen employees who were transferred along with respondent No.4. In this unsigned communication, alleged to be issued by the Administrative Officer (Estt.), it is seen mentioned that the Sangathan had received a note from the Private Secretary attached to the Minister of State, Human Resources Development stating that the Hon'ble Minister "has desired that suitable action may be taken in these cases". Learned counsel contends that the above communication will reveal that the order of transfer of the applicant has been issued only to accommodate respondent No.4 at Pattom as desired by the Minister by displacing him from that station.

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16. We have carefully perused the above communication which contains a list of 18 employees of the Sangathan including respondent No.4. As rightly pointed out by the learned counsel for respondent Nos.1-3 the Minister of State in the Ministry of Human Resources Development happens to be the Chairman of the Sangathan. Even assuming Annexure MA-1 contains the list of candidates forwarded from the office of the Hon'ble Minister of State, there is nothing on record to show that respondent No.4 was chosen for a special or favoured treatment.

17. In Mohd. Masood Ahmad Vs. State of U.P and others; (2007) 8 SCC 150, the Apex Court had occasion to consider the question whether a transfer effected on the recommendation of an MLA or MP can be held to be vitiated. The Court held thus :-

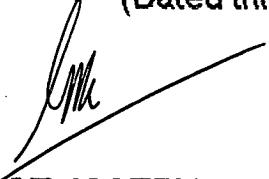
“ Even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself would not vitiate the transfer order. It is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official, the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depends on the facts and circumstances of an individual case.”

18. It is not in dispute that Minister of State in the Ministry of Human Resources Development happens to be Chairman of the Sangathan. Therefore, even assuming the Minister of State in his capacity as Chairman has directed the Commissioner to consider the grievances of certain employees, it cannot be said that such an action is illegal.

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19. Having regard to the entire facts and circumstances of the case, we do not find any merit in any of the contentions raised by the applicant. Annexure A-1 order, in our view, does not suffer from any illegality or irregularity nor is it vitiated by malafides or victimisation. The Original Application fails and it is accordingly dismissed.

(Dated this the 3rd day of December 2013)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE A.K.BASHEER
JUDICIAL MEMBER

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