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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Common Order in O.A.282/2003 and 547/2003.

Monday this the 21st day of July 2003.

CORAM:

**HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER**

O.A.282/2003:

B.N.Saradaman, PGT(Mathematics),
Kendriya Vidyalaya No.2.,
Vidyanagar, Kasaragod.

Applicant

(By Advocate Shri P.M.Pareeth)

Vs.

1. Kendriya Vidyalaya Sangathan,
represented by its Commissioner,
18/Institutional Area,
Shaheed Jagath Singh Margh,
New Delhi 110-016.
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
18/Institutional Area,
Shaheed Jagath Singh Margh,
New Delhi 110-016.
3. Joint Commissioner (Admn),
Kendriya Vidyalaya Sangathan,
18/Institutional Area,
Shaheed Jagath Singh Margh,
New Delhi 110-016.
4. Educational Officer,
Kendriya Vidyalaya Sangathan,
18/Institutional Area,
Shaheed Jagath Singh Margh,
New Delhi 110-016.
5. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Bangalore Region,
KVMEG Centre, St.John Road, Opp.Naga Theatre,
Bangalore 560 048.
6. Principal,
Kendriya Vidyalaya No.2,
Vidyanagar, Kasaragod.
7. Union of India, represented by
its Secretary, Department of
Human Resource Development,
Central Secretariat, New Delhi.

8. Agimon A Chellamcott, S/o Sri Alex,
Post Graduate Teacher(Mathematics),
residing at Chellamcott, Amalagiri,
P.O.Kottayam. Respondents

(By Advocate Shri.Thottathil B. Radhakrishnan (R.1-6)
(By Advocate Shri M.A.Shihabuddin for R-8)

O.A.547/2003:

Agimon A Chellamcott, S/o Sri Alex,
Post Graduate Teacher (Mathematics),
Kendriya Vidyalaya Sangathan,
residing at Chellamcott, Amalagiri P.O.,
Kottayam. Applicant

(By Advocate Shri M.A.Shihabuddin)

Vs.

1. Kendriya Vidyalaya Sangathan,
represented by its Commissioner,
18/Institutional Area,
Shaheed Jagath Singh Margh,
New Delhi 110-016.
2. Joint Commissioner (Administration),
Kendriya Vidyalaya Sangathan,
18/Institutional Area,
Shaheed Jagath Singh Margh,
New Delhi 110-016.
3. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Bangalore Region,
KVMEG Centre, St.John Road, Opp.Naga Theatre,
Bangalore 560 048.
4. The Principal,
Kendriya Vidyalaya No.2,
Vidhyanagar, Kasaragod.
5. Union of India, represented by
its Secretary, Department of
Human Resource Development,
Central Secretariat, New Delhi.
6. B.N.Saradamani, PGT (Mathematics,)
Kendriya Vidyalaya No.2, Vidhyanagar,
Kasaragod. Respondents

(By Advocate Shri Thottathil B. Radhakrishnan(R.1-4)
(By Advocate Shri P.M.Pareeth for R-6)

The applications having been heard on 21st July 2003,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Common order in O.A.282/03 and O.A.547/03.

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It is considered expedient to take the O.A.Nos.282/03 and 547/03 together, as the issues to be considered and resolved are based on certain common facts. The 8th respondent in O.A.282/03 is the applicant in O.A. 547/03 and the applicant in O.A.282/03 is the 6th respondent in O.A.547/03. In both the cases the issue to be settled revolves round transfer and posting of PG Teachers to and from KV No.2, Kasaragode. Since counsel for the respective parties agreed for a common disposal of the O.As., these O.As. are disposed of together and O.A.No.282/03 is dealt with first.

O.A.282/03

2. The applicant in this O.A., Smt.B.N.Sharadaman, a Post Graduate Teacher (Maths), Kendriya Vidhyalaya No.2, Kasaragod seeks the following main reliefs:

- i) To call for the records leading to Annexure A-1 and Annexure A-7 and quash the same as against the petitioner.
- ii) A direction to the fourth respondent to consider and pass orders on Annexure A-6 representation within a time frame and to stay all steps to shift the applicant from the present school;
- iii) A declaration to the effect that the applicant is entitled to be exempted from transfer on the basis of the Annexure-A3 medical certificate since the illness of the applicant's husband is covered under the transfer guidelines;

3. Admittedly, the applicant has been working as Post Graduate Teacher (Mathematics) ((PGT(Maths) for short)), in

Kendriya Vidyalaya No.2, stationed at Kasaragode since 18.7.1986. The problem that afflicts the applicant is that her husband is bed-ridden due to total paralysis and is entirely dependent on her. She had made several representations for exempting her from transfer and retaining her in Kasaragode. The first of those representations was Annexure R5(c) dated 26.11.2002. The Principal of KV-2, Kasaragode by A-8 communication forwarded the applicant's representation Annexure R5(c) to the Assistant Commissioner, Kendriya Vidyalaya Sangathan Bangalore(5th respondent). By A-1 communication dated 17.2.2003 issued by the 4th respondent, it was informed that the applicant's representation could not be acceded to, since her case for exemption from displacement on medical grounds was not found covered under the existing transfer guidelines. The applicant made a further representation (A6)dated 3.3.2003 enclosing A-3 Medical Certificate dated 7.2.2003 in the prescribed proforma revealing that the applicant's husband Shri Venugopal Bhat was "Completely bed-ridden" due to Motor Neuron Disease which had the effect of loss of entire muscle power. Her representation apparently was not considered since in the meanwhile A-7 order dated 31.3.2003 was issued transferring the applicant from KV-2, Kasaragode to KV, Khurda Road. It is under these circumstances that the applicant has approached this Tribunal with the above-mentioned prayers.

4. In the reply statement the respondents have strongly contested the applicant's case mainly on the ground that the disease mentioned in the medical certificate viz., Motor Neuron Disease, is not a disease covered under the transfer guidelines

for the purpose of getting exemption from transfer on medical grounds. It is also stated that, earlier the applicant had not pointed out any error or anomaly with regard to Annexure R5(d) dated 20.11.2002 containing the list of employees who had served for five years or more at the present station and are hence transferable. Meanwhile, another P.G.Teacher, Shri Agimon A.Chellamcott (8th respondent herein and applicant in O.A.547/03) who had been working in Manipur for more than three years, was transferred to Kasaragode to replace the applicant as per Annexure A-7 (i.e. Annexure R5(a)). Having found that due to an interim order dated 3.4.2003 passed by this Tribunal in this O.A., he could not be accommodated at KV Kasargode in the applicant's place, he got impleaded himself as additional 8th respondent in O.A.282/03 by order dated 25.4.2003 in M.A.331/03. By M.A.332/03 the additional 8th respondent prayed to vacate/modify the interim order by which the applicant was retained at KV-2, Kasaragod. While considering that M.A. it was pointed out that there was a vacancy of PGT(Maths) at KV.Kadavanthara, where the 8th respondent could be considered for a posting. While the said M.A. was taken up for consideration, it was agreed on all sides that the O.As. themselves could be disposed of.

5. When the matter came up for hearing, Shri P.M.Pareeth, learned counsel appearing for the applicant pointed out that, the serious paralytic disease of the applicant's husband which is duly certified by A-3 medical certificate was, in fact worse than any of the diseases mentioned in Annexure A-5, since he is totally bed-ridden and entirely depending on others, as he has

lost his power of locomotion. Learned counsel for the applicant has also pointed out that, the applicant had duly brought to the notice of the respondents the condition of her husband that called for her retention at Kasaragod as per R-5(c). It was also pointed out that the applicant's case was duly appreciated by the Principal and the Assistant Commissioner of Kendriya Vidyalaya as evidenced by A-8 and A-9.

6. Shri Thottathil B.Radhakrishnan, learned counsel for the respondents, on the other hand, has stated that the transfer guidelines did not cover the medical condition mentioned by the applicant as a reason for not transferring her. It might be a legitimate ground for requesting for a transfer from one station to another, which would mean that it can only be considered for the purpose of a request transfer. The applicant having spent over 5 years in Kasaragod itself, cannot have a legitimate objection against transfer in spite of the fact that, her husband is suffering from some disease. In a situation of conflicting interests, the administration has to take a decision in the best interest of the administration after considering all facts and this was the only way the respondents could solve the problem, the learned counsel for the respondents would urge. It is also specifically pointed out by the learned counsel for the respondents that, the applicant was the only PG Teacher who had spent more than 5 years in that station and therefore, nobody else can be disturbed in lieu of her.

7. Shri M.A.Shihabuddin, learned counsel appearing on behalf of the 8th respondent (Applicant in O.A.547/03) has stated that,

the 8th respondent has been transferred from Manipur after a tenure of three years of service in that station as per Clause 10(1) and 10(3) of A-1 Transfer guidelines. The 8th respondent was entitled to a posting in a place of his choice even by creating a vacancy. Though he was already relieved from Manipur, he could not join at Kasaragod, his place of posting and that caused immense hardship to him. That, according to counsel, was the reason why the 8th respondent furnished information regarding the vacancies of PGT(Maths) at KV, Kadavanthara, in order that he might be accommodated there. Shri Shihabuddin would state that, if the 8th respondent is accommodated either in KV, Kadavanthara or at a nearby station in Kerala, he (the 8th respondent) would have no objection, although by the order of transfer he was to be posted at KV-2 Kasaragod.

8. We have gone through the pleadings on records and considered the rival contentions. We find that the applicant's case is a very hard one in as much as, her husband is bed-ridden on account of total incapacitation caused by the severe affliction of motor neuron disease. He is entirely dependent on the applicant for everything. We are not inclined to agree with the respondents' contention that, the disease certified as per A-3 does not figure in the A-5 category of ailments. On the contrary, we are persuaded to consider that the affliction of the applicant's husband is of a greater magnitude than anyone of the diseases mentioned therein. We have also considered that A-5 mentions only diseases such as Paralytic Stroke (cerebro-vascular accidents) Death of a portion of the brain due to vascular causes such as (a) Hemorrhage (Cerebral), (b) Thrombosis (cerebral), (c)

Embolism (cerebral) causing total permanent disability of two or more limbs persisting for 3 months after the illness. It is not an exhaustive list. The truth of the matter is that the Motor Neuron Disease that has affected the applicant's husband is certified to have caused 100% loss of muscle power. In this connection, we are inclined to agree with the contention of the learned counsel for the applicant that, medical grounds should be an adequate ground for not only transfer of a person on request from one place to another, but also for exemption from transfer of a person from one place to another. Since the guidelines are provided for transfer purposes, it is unnecessary to say that, these guidelines are equally applicable to a case for abstaining from the exercise of power to transfer also. In view of the extreme hardship faced by the applicant due to total incapacity of her husband and the extreme agony that is likely to be caused to the lady if she is displaced, we are compelled to interfere in this case and direct the respondents to allow the applicant to continue in Kasaragod for the academic session 2003-2004 and to work out to the extent possible, any remedial measure by which she could be helped, by exercising administrative propriety and discretion conferred on the authority in that regard. With the above observations, we allow this O.A and set aside A-1 and A-7 orders to the extent they are prejudicial to the applicant.

(O.A.547/03:)

9. The applicant who is the 8th respondent in O.A.282/03, has filed this O.A. The 8th respondent is transferred to Kasargode in the place of the applicant in O.A.282/03. The 8th respondent has prayed for the following reliefs :

- i) To declare that the applicant is eligible and entitled to be posted as PGT, Mathematics in any of the Kendriya Vidhyalaya's inside Kerala after completion of his tenure of three years in the North East as laid down in Annexure A-1;
- ii) To direct the respondents to post the applicant as PGT Mathematics in any of the Kendriya Vidhyalaya's inside Kerala and to make available to him, all service benefits to which he is entitled indulging pay and other allowances and to allow him to continue to work in such post for the period he is eligible;
- iii) To direct the respondents to implement the Order issued by this Hon'ble Tribunal in O.A.No.320 of 2003 and in the event the representation of the applicant therein is rejected, to post the applicant as PGT, Mathematics in the post lying vacant in KV, Kadavantra.

10. Applicant in O.A.282/03 is the 6th respondent in this O.A.(O.A.547/03). Shri M.A.Shihabuddin, learned counsel appeared for the applicant, Shri Thottathil B.Radhakrishnan appeared for the respondents 1 to 4 and Shri P.M.Pareed appeared for R-6. Elaborating his submissions made in respect of O.A.282/03 supra, Shri Shihabuddin appearing for the applicant submitted that since there is a clear vacancy at KV Kadavanthara and since as per the existing transfer guidelines, the applicant is entitled to be accommodated at one or the other station of his choice, the applicant would be satisfied if he is accommodated against a vacancy of PGT(Maths) at KV Kadavanthara or any other nearby station in Kerala. Learned counsel for the respondents 1 to 4, Shri Thottathil B.Radhakrishnan has agreed that the O.A. can be disposed of by issuing suitable directions to the respondents to consider the applicant's A-6 representation dated 12.5.2003 and work out a feasible option.

11. On a consideration of the facts stated in this O.A.(O.A.547/03) and having regard to the arguments of the learned counsel on either side, we consider it appropriate to dispose of the O.A. by directing the respondents to consider the

applicant's A-6 representation and take a decision of his posting as PGT(Mathematics) in KV Kadavanthra, Ernakulam where admittedly a vacancy exists or in the alterntive any other nearby station in Kerala. We make it clear that in this matter, priority should be given to the rights of Mr.Agimon A Chellamcott, in as much as, he has been waiting without a posting over three months and hence without getting his salary. We also direct the respondents to regularise his absence caused by the uncertainty on account of the conflicting litigation, more specifically on account of our own interim orders in respect of the applicant in O.A.282/03. The representation (A6) shall be disposed of within a period of one month from the date of receipt of a copy of this order. His leave of absence from duty may be regularised with consequential benefits as if he was on duty /entitled leave/joining time, as the case may be, in accordance with rules.

12. Both the O.As. are disposed of as above. There is no order as to costs.

Dated the 21st July, 2003.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

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