

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 553 OF 2008

Dated the Tuesday, 27th January 2009

CORAM:-

HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN

T.I. Sheela,
W/o John K George,
Assistant Superintendent
Kendriya Vidyalaya Sangathan,
Regional Office, Chennai,
Permanent Address: South Janatha Road,
Palarivattom, Kochi-682 025, Ernakulam District.

..... Applicant

[By Advocate: Mr TC Govindaswamy]

-Versus-

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi-110 016.
2. The Deputy Commissioner (Admn),
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi-110 016.
3. The Educational officer,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi-110 016.
4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, IIT Campus,
Chennai-36.
5. Smt. Jaya Sasi,
Assistant Superintendent, Kendriya Vidyalaya,
Kendriya Vidyalaya, Kadavanthara, Ernakulam.

...Respondents

[By Advocates: Mr. Thomas Mathew Nellimoottil for R/1 to 4

Mrs. Sumathi Dandapani and Mr Millu Dandapani for R/5]

This application having been heard on 13th January, 2009 the Tribunal delivered the following -

ORDER

Annexure-A/1 order issued by the Deputy Commissioner (A), Kendriya Vidyalaya Sangathan, dated 6.8.08 is the subject under challenge in this application. The applicant, an Assistant Superintendent, presently working at Chennai, thereby has been advised that her request for transfer to Kendriya Vidyalaya, Ernakulam though considered could not be acceded to.

[2] Brief facts of the case are narrated hereunder:

While working at Ernakulam, the applicant has been transferred on 8.1.08 to Chennai. The above had been the subject of the challenge in OA 165/08. The application had been rejected; the case of the applicant that it was a case coming under surplusage was not found to be tenable. However, it has been observed that "if any vacancy arises in the nearby area, her case may be considered in preference to others, except priority category i.e. MDG, DSP and LTR category". The order was dated 19.6.2008.

[3] The applicant had challenged the order in OA 165/08 and obviously at her request, at the time, when the matter came up before the Division Bench for admission, an order had been passed, to suggest that the direction would cover vacancies which had arisen on 1.4.2008 at Kendriya Vidyalaya, Kadvanthara. A request is seen to have made by the applicant in the above scenario, on 8.7.08 as well, in addition to the existing representation already on record.

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[4] Mr TC Govindasamy, counsel for the applicant points out that Annexure-A/1 did not take note of the order of the Tribunal and as well had attempted to sideline the order of the High Court. The submission in essence is that when such binding observations were given by the Courts it could not have been circumvented. Annexure-A/1 is therefore bad.

[5] Reply statement has been filed by the Kendriya Vidyalaya Authority and also the 5th respondent, who had been accommodated at KV, Kadvanthara, to the vacancy which had arisen on 1.4.2008. The private Respondent points out that the application is defective as the specific order of her transfer has not been subjected to challenge and even if Annexure-A/1 is interfered with it could not have any effect. Therefore the OA is ill advised. It is further submitted by Smt Dandapani, Senior Counsel, that the applicant has been a recipient of extra consideration since she had been continuing to get posting in a place of her choice, viz. at Ernakulam, for most of her tenure spreading over two decades. It is further pointed out that the 5th Respondent was working at Mysore and had opted for transfer to Trivandrum or at least to Ernakulam and her application was pending for years and when the Guidelines specifies priority in specific terms, only for the reasons that the applicant had addressed on a sympathy element, where in fact there was none, the Tribunal's observations were to be understood only in a restricted manner, as subject to all general norms.

[6] The official respondents in their counter statement stated that all the aspects of the matter have been gone into and there is no irregularity in transferring 5th respondent on the strength of her priority in the priority list. Orders relied on were not to be understood as direction for specifically conferring any benefit to applicant overpowering all others' claims.

[7] Quite often it may happen that observations are made at the instance of the parties to the proceedings, but it really has to be understood in the back ground of the case and may not be confused with the final decision. Such observations are presumed to be made only subject to the Rules and Guidelines, which are already in force. The OA itself had been dismissed and applicant's claims had been rejected. Even though there is a direction that the claim has to be considered only subject to the superior claims of categories of MDG, DSP and LTR, the Department had a duty to consider the claims, with reference to the General Guidelines as it was not specifically directed to be overlooked. This is because of two reasons. Firstly, the direction was made not in response to any specific plea, or relief incorporated in the OA. More importantly it is fundamental that a Court's order should not result in injury and negation of the rights of equality available to a third person, who might have been unaware of the pendency of any such proceedings.

[8] If the applicant's stand is accepted that may result in the obliteration of the rights of several of her colleagues. Even if it is accepted that there was no full advertence to the orders of the Tribunal and High Court this may not be sufficient to set aside

the present order as the backgrounds cannot be ignored. . I may therefore, dwell upon the issue in some detail.

[9] It is presumed that the Court passes right and equitable orders. The Executive Authority is not entitled to follow a course of their own, ignoring the decision, since unquestioned obedience is expected. If there is mistake or non advertence to any issue, the remedy is an appeal or a review. If the Authority proceeds in a manner of its own, overlooking the judgment, it may pave way for contempt proceedings.

[10] But the question is whether this strictness could be attached at all circumstances, especially when third party rights are involved. According to Mr. Govindaswamy, the hands of the respondents were tied, and only the applicant's claim could have been recognizable.

[11] However, it may not be advisable to follow this strict course. The earlier judgment was passed in a totally different context. The presence of the 5th respondent in this OA makes all the difference. She could have very well highlighted a contention that the norms of transfer required strictly to be followed. No interpolation of an ineligible person could have been legally done. The ^{earlier} ~~later~~ judgment did not bind her, and it also did not offset the guidelines which were of universal application.

[12] Taking notice of the very general terms of the Guidelines and the circumstances that the directions had come without the possibly affected persons in the array of parties, the

effort of the Department was to see that unnecessary prejudice is not suffered by third parties, and special consideration can not be shown in favour of the applicant here. It may also be necessary to note that fundamental rights of 5th Respondent and persons similar to her would have been violated if their claims have been superseded purely on the basis of observations in the earlier order. Courts decide the specific lis brought up before it, and the observations made during the discussions, including directions which are issued in the course of disposal of a case cannot have as much force as a decision on the specific issue finally made. I am sure that the direction relied on by the applicant would not have been issued at all if all the relevant materials, including the possible impact of the order it might have had on third parties had been brought to the attention of the Tribunal. Therefore, I am of the view that Annexure-A/1 is not liable to be struck down.

[13] Mr Govindaswamy thereafter highlighted possibly the impact of the High Court's order, and submits that vacancy of 1.4.2008 required to be earmarked to applicant. But this argument also cannot be entertained for the reasons already explained. It was an *ex-parte* order and others were not given opportunity to bring full details of transfer norms to the notice of Hon'ble High Court and the writ petition had been withdrawn after Annexure-A/1 had been passed. These are positive circumstances to show that the applicant has not endeavored to bring full factual situation to the notice of High Court and especially whether it may affect others. Especially when Annexure-A/1 have been passed during pendency of the writ petition and in spite of the fact that

the pointed attention of the High Court had been drawn to it, the circumstance that it was not found as objectionable is also an *an* adverse factor staring at the applicant. I am compelled to observe that there were suppression of relevant materials, although not intentional and a technical approach as suggested would not be in the ^{larger} ~~longer~~ interest of anybody.

[14] In the result the application is dismissed. There will be no order as to costs.


(Justice M Ramachandran)
Vice Chairman

Stm