

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NOs. 565 of 2012

Tuesday, this the 18th day of December, 2012

CORAM:

HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER

C.S Usha
W/o.Santhilal
Working as P.G.T Economics
Kendriya Vidyalaya
Pangode, Thiruvananthapuram - 6

Applicant

(By advocate – Mrs.K.V Bhadra Kumari)

Versus

1. Union of India represented by
The Secretary to the Ministry of Personal
Public Grievances and Pensions
Department of Personnel and Training
North Block, New Delhi
2. The Commissioner
Kendriya Vidyalaya Sangathan
All Regional Offices
18, Institutional Area
Shahid Jeet Singh Marg
New Delhi – 110 602
3. The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office
New Delhi
4. Betty Sebastian
P.G.T Economics
Kendriya Vidyalaya
Ernakulam, Cochin - 20

- Respondents

(By Advocate – Mr.M.K Aboobacker, ACGSC for R1, Mr.T.C.G Swamy for R4 and M/s.Iyer & Iyer for R2&3)

The application having been heard on 10.12.12, the Tribunal on 18.12.12 delivered the following:

ORDER

BY HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by non-feasance on the part of the respondents to grant her request transfer from K.V Pangode, Trivandrum to any K.V in Ernakulam.

2. The applicant commenced her service at K.V, Port Trust, Kochi on 20.12.1993. In September 2001, she was transferred to K.V Pattom and in July 2003, to K.V Dnimalai, Karnataka. Later on, at her request she was transferred to K.V Pattom w.e.f 08.08.2003 and in 2004, she got a mutual transfer to K.V Port Trust, Kochi. She was transferred to K.V Pangode in September 2009. The applicant has submitted an application for consideration of her request for a transfer during the annual transfer for the year 2012-13. Her husband, who is working in Southern Railway, is suffering from Blood Cancer and he is undergoing chemotherapy. Earlier, she has requested for a transfer to K.V NAD Alwaye when Shri Chandrakanth, PGT Economics has applied for transfer to K.V Kanjickode, Palakkad (Annexure A-5). However, her request was not considered (Annexure A-6). Therefore, she requested for transfer to K.V Ernakulam during the general annual transfer for the year 2012-13. Her case was taken up by Shri.K.P Danapalan M.P. R2 informed the M.P that her case will be taken up during the annual transfer 2012-13. The applicant contends that she has a score of 66 transfer count while R4 has only 12 displacement counts. Hence, she is eligible for getting a transfer to K.V Ernakulam. She states that R4 is working continuously in K.V Ernakulam from 03.11.2000 onwards on the ground that her son is mentally retarded. The applicant contends that rejection

of the applicant's request for transfer on medical ground to K.V Ernakulam is illegal and unsustainable.

3. The fourth respondent filed reply statement and submitted that the applicant has remained at Ernakulam, her choice station, for 13 years out of her 16 years of service from 08.08.2003 to 10.09.2009. She avers that the applicant's husband is taking treatment in RCC, Thiruvananthapuram. Since he is employed with Railways, he can easily get a transfer to Thiruvananthapuram. R4 submits that her son is suffering from Down's Syndrome. According to the Medical dictionary, it is a congenital condition characterized by varying degrees of mental retardation and multiple defects. Her son has not yet developed speech and he cannot write even a single letter or word. He is presently studying at 'Sneha Nilaya' a special school at Kakkanad. In support of her contention R4 produced a copy of the chromosomal analysis by the Consultant Cytogeneticist, which shows the presence of an extra chromosome giving rise to Trisomy 21 leading to Down Syndrome. She also produced a copy of disability certificate for physically handicapped persons issued by the medical board convened at Ernakulam, wherein, her son is certified to have 70% disability. Dr. Sheela Nampoothiri, Head of the Department of Pediatric Geneticist, Amrita Institute of Medical Sciences & Research Center, Kochi has issued a medical certificate which shows that he is Epileptic for the past 8 years, he is unable to do any item of work independently and needs mother's presence for the ongoing care. R4 contends that it is on extreme compassionate grounds, the respondents have permitted her to stay at Ernakulam.

4. R 2 & 3 contested the Original Application and filed reply statement.

They conceded that R4 was exempted from displacement transfer in accordance with para 12 of the transfer policy guidelines effective from 01.04.2011 in view of severe mental retardation and delay in development milestones of her son. The respondents submitted that her case will be given due consideration during the annual request transfer for the year 2012-13. The respondents placed reliance on the judgment of the Hon'ble Supreme Court in the following cases:-

1. National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & another reported in 2001(91) FLR 259
2. Union of India and Others Vs. H.N Kirtania reported in (1989) 3 SCC 445
3. State of U.P and others V.Gobardhan Lal (2004) 11 SCC 402

The sum and subsistence of the observation of the Apex Court in the aforesaid judgments is that in matters of routine transfer intervention by a judicial forum is not warranted.

5. The applicant filed rejoinder to the reply filed by R 2 & 3, producing a copy of the report given by RCC Trivandrum, about the surgery conducted for her husband. She has averred that her husband is not willing to take a transfer to Trivandrum as it will mean leaving his old parents alone at Ernakulam they reside in their own house.

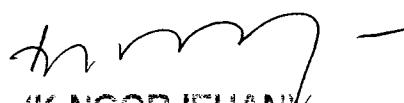
6. Heard the counsels on both sides and perused the documents.

7. The short point for consideration is whether the request of the applicant for transfer to K.V is to be granted at the cost of R4. It is seen from the reply statement filed by R4 that her presence at Ernakulam is essential to look

after her son who is suffering from Down's Syndrome and who is attending a special school at Ernakulam. He is not able to even brush his teeth or attend to any of his basic needs. Hence, the respondents after due consideration for the welfare of the child exempted R4 from transfer under the transfer policy guidelines. The applicant was working in K.V Ernakulam during different spells for a period of 13 years out of 16 years of her service. It is a fact that her request for transfer to Ernakulam was rejected during the annual year 2011-12. A perusal of Annexure A-6 memorandum rejecting her request shows that the respondents considered the case of 10 officials who have requested for any K.V in Kerala State. Excepting the applicant all the others are working in far away places like Madyapradesh, Maharashtra, Haryana, Orissa etc. Therefore, I do not find any discrimination being shown to the applicant in the matter of transfer. The respondents have agreed to consider her request for transfer during the ensuing annual transfer for the year 2012-2013.

8. In view of the foregoing, the respondents are directed to consider the representation of the applicant, take an appropriate decision and intimate the same to her on effecting the annual transfers for the year 2012-2013. The Original Application is disposed of with the above direction. No costs.

(Dated, this the 18th day of December, 2012)


(K.NOORJEHAN)
ADMINISTRATIVE MEMBER

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