

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.578/11

Tuesday this the 31st day of July 2012

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

C.D.Joy,
TGT Malayalam,
JNV Betul, Prabhat Pattan,
Betul District, Madhya Pradesh.Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. The Deputy Commissioner,
Navodaya Vidyalaya Samiti, (Bhopal Region),
Department of School Education & Literacy,
Government of India, Bhopal.
2. The Deputy Commissioner,
Navodaya Vidyalaya Samiti, (Hyderabad Region),
Department of School Education & Literacy,
Government of India, 1-1-10/3,
Sardar Patel Road, Secunderabad.
3. The Commissioner,
Navodaya Vidyalaya Samiti,
Department of School Education & Literacy,
Government of India, A28, Kailash Colony,
New Delhi – 110 048.Respondents

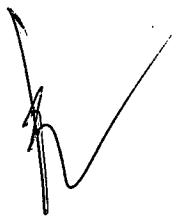
(By Advocate M/s.M.K.Damodaran Associates [R2])

This application having been heard on 31st July 2012 this
Tribunal on the same day delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant has through the OA, seeks the following reliefs :-



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1. Direct the respondents to consider regularising the period from 27.7.2005 to 1.3.2006 as duty for all purposes.
2. Direct the respondents to release arrears of salary for the period 27.7.2005 to 1.3.2006.
3. Call for the records leading to the issue of Annexure A-8 and set aside Annexure A-8.
4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
5. Award the cost of these proceedings.
6. Call for the records leading to the issue of Annexure A-9 and set aside Annexure A-9.

2. Briefly stated, the applicant is a Trained Graduate Teacher (Malayalam) under Jawahar Navodaya Vidyalaya Samiti and posted to Hyderabad Region. When Rotational Inter-Regional Transfer policy was issued, the applicant challenged the same and his two applications (OA Nos. 532 of 2000 and 654 of 2001) stood allowed. His transfer to Betal (MP) was set aside. However, when the Respondents took up the matter before the High Court of Kerala in OP No. 25991 of 2001, the High Court remitted the matter to the CAT for reconsideration. The OA was again allowed and the Writ Petition No. 2388 of 2002 filed by the respondents before the High Court dismissed on 24-10-2002.

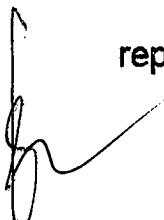
3. The respondents have modified the rules to include the Third Language Teacher as one of All India Cadre with All India Transfer Liability and this policy was also challenged by the applicant through OA No. 252 of 2003. The same having been dismissed by the Tribunal,

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the applicant moved the matter before the High Court through WP (C) No. 34875 of 2004. There was an intermediate stay in so far as the applicant's case was concerned. Ultimately, however, the Writ Petition was dismissed. The applicant moved the Apex Court in this regard through SLP(Civil) No. 11895 of 2005 and by way of an interim order, the Supreme Court had stayed the judgment in W.P. No. 34875 of 2004 of the High Court. This interim order was vacated on 30-01-2006. But, the applicant was permitted to retain the accommodation allotted to him for a period of one month. The applicant was permitted to retain the accommodation till 31-03-2006. The applicant joined duty at Betal (MP) on 01-03-2006. Thus, there was a gap between 27-07-2005 to 01-03-2006. The applicant claimed salary for the same, while the respondents deny the same and hence, this O.A. seeking the reliefs as extracted above.

4. Respondents have contested the OA and they contend that the period of absence has been regularized by treating a part of it as joining time and the balance as EOL on private affairs and the same is in order.

5. Counsel for the applicant invited the attention of the Tribunal to Annexure A-7 wherein, in reply to an RTI query, the respondents have replied as under :-



Sl	Info. Required	Reply
	<p>What was the basis of regularization of service (the period of absence of one year) of Malayalam teachers transferred from UP and Rajasthan to the JNV of Kerala who rejoined after a duration of one year</p> <p>2. Is the regularization of service is as per the prevailing rules of NVS</p> <p>What was the mode of payment of arrears of salary to these teachers? In lump or as monthly instalments?</p>	<p>The period, between date of relieving after a regional transfer and the date of joining on reposting in respect of some TGT (Malayalam) who could not join their place of posting due to stay orders of Hon'ble Courts, was regularised with a view to avoid hardship to these teachers.</p> <p>Concerned JNVs were advised to pay the salary to these teachers for this period. Details of disbursement of the salary or not available at NVS headquarters.</p>

6. Counsel for the applicant submitted that when the above procedure was adopted in respect of other cases, there is no reason as to why the same be not followed in the case of the applicant.

7. Counsel for the respondents has not disputed the contents of Annexure A-7.

8. Arguments were heard and documents perused. As could be seen from the above, at least on two occasions there have been stay granted to the applicant, one at the hand of the High Court and the other at the hand of the Apex Court. If the applicant had not joined the new duty station on the basis of the above orders, he cannot be faulted with. In respect of others similarly situated, the respondents themselves have stated in reply to the query raised by the applicant as extracted above, that the period, between date of relieving after a regional transfer and the date of joining on

.5.

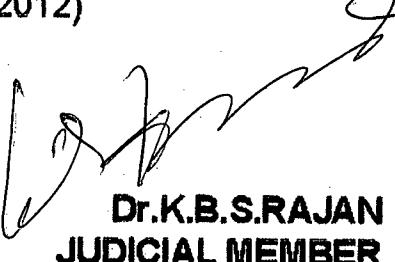
reposting in respect of some TGT (Malayalam) who could not join their place of posting due to stay orders of Hon'ble Courts, was regularised with a view to avoid hardship to these teachers. As such, the same concession should also be given to the applicant.

9. In view of the above, this OA is disposed of with a direction to the respondents to extend the aforesaid benefit of regularization of the absence at the time of Inter Regional Transfer due to operation of stay as carried out in other cases.
10. This order shall be complied with, within a period of two months from the date of communication of this order. No costs.

(Dated this the 31st day of July 2012)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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Dr.K.B.S.RAJAN
JUDICIAL MEMBER