

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 604 of 2002

Monday, this the 21st day of October, 2002

CORAM

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

1. K. Babootty,
Trained Graduate Teacher (Maths),
Kendriya Vidyalaya No.2,
Keltron Nagar, Kannur District-670001, Kerala
residing at Valiyapunathil House,
PO Pineray, Thalasserry,
Kannur - 670 741Applicant

[By Advocate Mrs. Sumathi Dandapani]

Versus

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016

2. The Educational Officer,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016Respondents

[By Advocate Mr. Thottathil B. Radhakrishnan]

The application having been heard on 21-10-2002, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant, a Trained Graduate Teacher (TGT for short) (Maths) who was working in Kendriya Vidyalaya No.2, Keltron Nagar, Kannur, was by order dated 26-6-2002 (Annexure A1) transferred to Kendriya Vidyalaya, Dimapur in accordance with the powers conferred under para 18(b) of the transfer guidelines in public interest with the approval of the competent authority. This order was challenged by the applicant by filing OA No.485/2002. The contentions of the applicant in that OA were that his order of transfer was

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intended to accommodate one Shri K.Balan who had not completed his tenure in Kendriya Vidyalaya, Dimapur at the relevant point of time, that the said Shri Balan's name did not figure in the transfer list No.2, that the applicant had made a request for mutual transfer with one Shri Venugopal, TGT, Kendriya Vidyalaya, Panampur, that the applicant had lost his mother on 1-5-2002, and that he had to look after his aged father and two unmarried sisters living with him. It was also pointed out in that OA that there was a vacancy at Calicut, wherein the applicant could be accommodated. After considering the respondents' submissions that the impugned transfer order in the OA which was made in public interest did not warrant judicial interference, this Tribunal by order dated 9-7-2002 (Annexure A4) directed the respondents to consider the applicant's representation highlighting the various points forming the basis of his pleadings in the OA as expeditiously as possible, at any rate within a period of four weeks from the date of receipt of a copy of the order. Since the applicant had already been relieved on 5-7-2002, the applicant was also permitted to make an application for leave for the period and the competent authority was directed to consider the leave application and pass appropriate orders thereon. The 1st respondent, in apparent compliance with the Tribunal's order in Annexure A4, has considered the applicant's representation and disposed of the same by order dated 9-8-2002 (Annexure A5) on the following lines:-

"4. Whereas, in compliance to the directions of the Hon'ble Central Administrative Tribunal, Bench Ernakulam dated 9-07-2002 in O.A. No.485/2002, the representation dated 4-7-2002 submitted by Shri K.Babooty has been considered carefully and sympathetically and he is informed as under:

- i) That Shri Babooty has been displaced from KV, Keltron Nagar to accommodate Shri K.Balan strictly as per Clause 18(b) read with Clause 10(1)(3) of transfer guidelines approved by the BOG of KVS which empowered the Commissioner,

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KVS to make such departure from the guidelines he may consider necessary in deserving cases. The names of teachers which deserve consideration under Clause 18(b) of transfer guidelines does not necessarily figure in the Priority list I/II.

- ii) The transfer order in respect of Shri K. Babooty has been issued by the Education Officer with the due approval of the competent authority.
- iii) That the Mutual transfer application in respect of Shri Babooty will be considered as per rules at an appropriate time alongwith others. Shri Babooty cannot be considered for transfer to KV No.1, Calicut as he was transferred as per Clause 18(b) read with Clause 10(1)(3) of transfer guidelines.
- iv) That he has been displaced and posted to KV, Dimapur in public interest. The personal problems mentioned by Shri Babooty are quite common in nature for which he will have to make his own arrangements to discharge his personal responsibilities as a member of the family since the personal inconveniences will have little importance over administrative exigencies.

5. In view of the above, Shri K. Babooty is hereby informed that his request for transfer to KV No.1, Calicut has been considered sympathetically but cannot be acceded to as he was transferred from KV, Keltron Nagar to KV, Dimapur in public interest as per Clause 18(b) read with 10(1)(3) of transfer guidelines. And transfer guidelines do not make any provision to consider the case of Shri Babooty for his transfer to KV No.1, Calicut. However, he is at liberty to submit his application in the prescribed proforma for transfer in response to circular that would be issued inviting request transfer applications for the year 2003-04 and take a chance alongwith others."

2. Accordingly, the applicant was informed that his transfer to Kendriya Vidyalaya No.1, Calicut, though considered sympathetically, could not be acceded to as his transfer from Kendriya Vidyalaya, Keltron Nagar to Kendriya Vidyalaya, Dimapur was in public interest as per Clause 18(b) read with Clause 10(1) to (3) of the transfer guidelines. He was further informed that however he was at liberty to submit his application in the prescribed proforma for transfer in response to the relevant circular calling for transfer applications for

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the year 2003-04 and take a chance alongwith others. Being aggrieved, the applicant has filed this OA seeking the following reliefs:-

- "(i) call for the records leading to the case and quash Annexure A1 Transfer Order dated 26.6.2002 as well as Annexure A5 Memorandum dated 9.8.2002 passed by the Commissioner,
- (ii) direct the 1st respondent not to fill up the vacancy that is existing at Kendriya Vidyalaya No.1, Kozhikode, pending disposal of the Original Application,
- (iii) direct the 1st respondent to sanction leave to the applicant till the disposal of this Original Application,
- (iv) such other appropriate order or direction as this Honourable Tribunal may deem fit and proper in the facts and circumstances of the case."

3. In the reply statement filed, the respondents have resisted the OA by stating that the applicant who had completed his tenure in the station was liable to be transferred and that in this matter the administration was governed by the requirement to be met at Dimapur because of the vacancy of a Trained Graduate Teacher (Maths) caused by the transfer of Shri K.Balan in accordance with the powers conferred under Clause 18(b) read with Clause 10(1) to (3) of the transfer guidelines. That being so, there was no need for including Shri Balan's name in the priority list. With regard to the applicant's case for mutual transfer, the respondents have stated that as per Clause 12 of the transfer guidelines, mutual transfers could be considered by the 30th of September each year on satisfaction of the Commissioner and since the matter fell exclusively within the administrative domain of the Commissioner, the applicant cannot as a matter of right ask for accommodation on the basis of a mutual transfer. With regard to the vacancy at Calicut in which the applicant had requested to be accommodated, the respondents' contention is that filling up of

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that vacancy could be considered only on the basis of applications for request transfers from the teachers for the year 2002-03.

4. I have heard the learned counsel for the applicant and the respondents. According to Mrs.Sumathi Dandapani, learned counsel for the applicant, the applicant's request for mutual transfer was not considered in the proper perspective and if that were, the provisions of Clause 18(b) ought to have been considered in his favour too, without causing any prejudice to Shri Balan. She would explain the applicant's case by stating that the applicant and one Shri Venugopal, TGT at Kendriya Vidyalaya, Panampur near Mangalore had sought for mutual transfer, which is permitted under Clause 12 of the transfer guidelines. There were sufficient circumstances justifying consideration of the same. The applicant had lost his mother just a month before the impugned transfer orders were made and that he had to shoulder the responsibility of looking after his aged father and also the two unmarried sisters who were dependent on him. The failure on the part of the respondents to exercise the powers conferred under Clause 18(b) in such a situation would justify the Tribunal's interference, according to the learned counsel for the applicant. Mrs Sumathi Dandapani has further plead that out of 7 cases for mutual transfers, 6 cases were considered by the administration and the applicant's case was a solitary exception which unfortunately did not receive any consideration much less any favourable consideration. Since the annual transfers were already over, the applicant's case for mutual transfer ought to have been considered. However, the respondents have not dealt with this matter clearly in the impugned orders, in spite of

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the directions of the Tribunal considering the applicant's representation as per Annexure A4 orders, learned counsel for the applicant would urge.

5. According to the learned counsel for respondents, Clause 18(b) of the transfer guidelines declares that the Commissioner would be competent to make such departures from the guidelines as he may consider necessary with the prior approval of the Chairman. It is the contention of the learned counsel for the respondents that the case of Shri Balan who was TGT (Maths) at Kendriya Vidyalaya, Dimapur was considered by the Commissioner and exercising his power to make a departure from the guidelines, it was decided that Shri Balan should be accommodated at Kendriya Vidyalaya, Keltron Nagar, Kannur. Shri Balan's case fell within Clause 10(1) of the transfer guidelines, since it was a hard case involving human compassion, learned counsel would reveal at the stage, probably for the first time, that Shri Balan was suffering from hypertension and that he had to be airlifted to Kerala from Dimapur. It was under these circumstances, though not made clear in the transfer orders, that he was accommodated causing the transfer of the applicant. Thus, according to the respondents, the transfer of Shri Balan from Dimapur was in exercise of powers conferred under Clause 18(b) read with Clause 10(1) of the transfer guidelines.

6. I have considered the facts and circumstances of the case, having regard to the contentions put forward by counsel on both sides. I am of the opinion that though this Tribunal should go very slow in interfering with transfer orders which fall within the administrative domain of the authorities concerned and that, though any haphazard interference would cause unwarranted results, the feeling that justice is not

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carried out in this case is irresistible. The applicant had, in his representation, made out a case for mutual transfer and the same was directed to be considered by the Tribunal as per Annexure A4 order. In my view, this aspect has not been dealt with by the respondents with the seriousness with which the remission of the matter warranted. What is stated in the impugned order with regard to the mutual transfer is as under:-

"That the Mutual transfer application in respect of Shri Babooty will be considered as per rules at an appropriate time alongwith others. Shri Babooty cannot be considered for transfer to KV No.1, Calicut as he was transferred as per Clause 18(b) read with Clause 10(1)(3) of transfer guidelines."

7. I find that the respondents have favourably considered 6 out of 7 cases for mutual transfer, while the applicant's case has not been considered at all. All that is promised is it will be considered at the appropriate time along with others. The meaning of the expression 'alongwith others' would suggest that it ought to have been considered along with other similar cases at the same time. This has not been done. I find that this is wholly unjustified. I am satisfied that the applicant too had genuine personal problems and the respondents had a duty in such a situation to show that they have genuinely tried to exercise the powers conferred on them under Clause 18(b) read with Clause 10(1) of the transfer guidelines with as much involvement and sympathy as other claimants received.

8. During the course of the hearing, it was pointed out and agreed by both sides that the post of TGT (Maths), Kendriya Vidyalaya No.2, Keltron Nagar, which was occupied by the applicant, has since been filled up by Shri K.Balan and therefore, the mutual transfer visualized in the earlier mutual transfer request of the applicant may not be feasible. However, it was pointed out by the learned counsel for the

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applicant that there is a vacancy of TGT (Maths) at Kendriya Vidyalaya No.1, Kannur and the same may be considered for mutual transfer in relation to the applicant and Shri Venugopal.

9. In the light of the above, I dispose of this Original Application by directing the respondents to consider the applicant's case for mutual transfer with Shri Venugopal. No doubt, the post of TGT (Maths) at Kendriya Vidyalaya, Keltron Nagar, Kannur has already been filled. But, as there is another vacancy of TGT (Maths) at Kendriya Vidyalaya No.1, Kannur, the applicant's request for a posting on transfer to Shri Venugopal's place would not be difficult for consideration, since Shri Venugopal is understood to be keen to come to Kannur. Respondents are directed to consider such a transfer in view of the fact that the applicant's request for mutual transfer was not considered in good time as promised. I, therefore, direct the competent respondent to consider the applicant's case on the above lines and make appropriate orders as expeditiously as possible and, in any case, within a period of four weeks from the date of receipt of a copy of this order. The time frame may strictly be adhered to in view of the fact that the applicant has been made to avail of precious leave already for getting his rightful claim considered. I further direct the respondents to regularise the leave already availed by the applicant and any leave that may be required till the applicant is able to join the new post to be ordered in accordance with the directions in this order. There is no order as to costs.

Monday, this the 21st day of October, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1: Photocopy of transfer order No.F-7-1(D) 18 (b) 2002-KVS (Estt.III) dated 26.6.2002 issued by the 2nd respondent to the applicant.
2. A-2: Photocopy of Transfer Guidelines referred to in the Original Application.
3. A-3: Photocopy of representation submitted by the applicant before the 1st respondent on 4.7.2002.
4. A-4: Photocopy of order dated 9.7.2002 in O.A.No.485/2002 rendered by this Hon'ble Tribunal.
5. A-5: Photocopy of Memorandum issued by the 1st respondent to the applicant vide No.F.19-348(18) 2002-KVS (I & C) dated 9.8.2002.

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