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CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 605 OF 2009

Thursday, this the 21st day of January, 2010

CORAM:

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

Uma Maheswari P,
W/o. A.P. Mohanan, PRT,
Kendriya Vidyalaya, Ottappalam,
Residing at "Ayilyam", Kutoor Road,
Muduvana, Thrissur.

... **Applicant.**

(By Advocate Mr. P. Ramakrishnan)

v e r s u s

1. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
LIT Campus, Chennai - 36

2. The Principal,
Kendriya Vidyalaya,
Puranattukara, Thrissur.

3. Preetha Nair,
PRT, Kendriya Vidyalaya,
Thrissur.

... **Respondents.**

The Original Application having been heard on 14-01-2010, this Tribunal on 21-01-10 delivered the following :

[By Advocates Mr. Mr. Thomas Mathew Nellimoottil (R1-2) and
Mr. M.B. Prajith (R-3)]

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

A word of appreciation, the respondents do deserve, for their candid admission of an inadvertent bona-fide error which has resulted in the generation of the grievance of the applicant. The question now is how to solve the same, without at the same time hampering the interest of respondent No. 3 who has been posted to the place which otherwise would have gone to the applicant.

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2. Brief facts of the case: The applicant is a Primary Teacher at Kendriya Vidyalaya, at present posted at Ottappalam since 2005. Prior to this station, she had earlier served at Kasargode and Thrissur. Her husband is an employee of the Accountant General's Office, Thrissur. She has two school going children both studying at K.V. Thrissur.

3. The applicant has sought for a transfer to Thrissur on the basis of the extant guidelines, especially invoking the provisions of clause 12.4 whereby, as far as practicable, request for transfer to join an employee's spouse, either at the same or nearby station, shall be considered for which reason, specific entitlement points have been provided for vide clause 13. As per the priority list, after exhausting the priority of inter-regional transfer, the applicant became first in the list for posting at Thrissur. This is the admitted position. There was a vacancy at Thrissur but by an act of inadvertent omission thinking that there was no vacancy the respondents failed to consider the posting of the applicant. Later, however, on ascertaining the availability of vacancy, the Regional Transport Committee (RTC for short), had recommended respondent No. 3 to the post on the ground that the said respondent had more years of service at her earlier place of posting i.e. Kanjijode than the applicant at Ottapalam. This is the contribution of the RTC to the error of the respondents leading to the grievance of the applicant.

4. Official respondents have, as stated in para 1 above, conceded the mistake on their part. Private respondent submitted that she had been transferred by the competent authority.

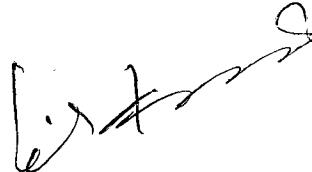
5. Counsel for the applicant submitted that there is likely to arise a vacancy at Thrissur for the post of Headmistress, which could be utilized in posting the applicant. Counsel for the respondents on instructions submitted that vacancy in the near future for at least six months may not be available to accommodate the applicant at Thrissur.

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6. Arguments were heard and documents perused. While the Tribunal does appreciate the candid admission of the genuine and bonafide mistake of the respondents, it is to be held simultaneously that respondent's contention that none of the grounds of OA are tenable cannot be accepted. The entitlement of the applicant for transfer being admitted, some remedial action, without disturbing others should be taken by the respondents. At present, the applicant has left the future of her children education at the hands of her spouse and she is visiting Thrissur only at the weekends. The elder child of the applicant is at 10th standard, a crucial class which would decide the future course of studies that the boy has to undertake. The mother cannot be by the side of the child to encourage him in the studies. Due to the error committed by the respondents and due to non availability of vacancy at K.V. Thrissur, she could not now been transferred. If by some adjustment, a vacancy could be created at Thrissur to accommodate the applicant at the earliest respondents should explore the possibilities of the same, as for example, availability of any other post such as Headmistress or so against which the applicant could be accommodated as suggested by the counsel for the applicant and private respondent. If not, at the time of general transfer that would be effected at the end of the academic sessions, invoking the relevant provisions of the Guidelines, the applicant should be accommodated. She should be granted the first priority, irrespective of priority for regional transfers as her priority pertains to the current year. In other words, transfer of the applicant to Thrissur be ensured latest by the next general transfer.

7. With the above direction the O.A. is closed. No costs.

(Dated, the 21st January, 2010)



Dr. K B S RAJAN
JUDICIAL MEMBER