CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.70/2007 & 320/2007
Wednesday the 31st day of October, 2007

CORAM :
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

Original Application No.70/2007.

M Janardhanan
Assistant Superintendent,
Kendriya Vidyalaya,
Kanjikode, Palghat District,
Residing at "THUSHARA",
Sastri Nagar, Kanjikode West,
Palghat. ... Applicant

By Advocate Mr.T.C.G.Swamy

V/s.

1 The Commissioner,
Kendriya Vidyalaya Sangathan,
18-Institutional Area,
Shahid Jeet Singh Marg,
New Delhi-110 016.
2 The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Chennai
3 The Principal
Kendriya Vidyalaya, Kanjikode,
Palakkad
4 Shri Sasikumar N.K.
Assistant Superintendent,
Kendriya Vidyalaya, Trichur ... Respondents

By Advocate Ms.Lakshmi for M/s.Iyer & Iyer (R 1-3)
Mrs.Sumathi Dandapani (R-4)

Original Application No.320/2007.

Besty Isaac,
Assistant Superintendent.,
Kendriya Vidyalaya, Pangode,
Trivandrum Residing at
"BETHESDA", No.7/1543(4),
Thirumala P.O., Trivandrum. ... Applicant.

By Advocate Mr.T.C.G.Swamy

V/s.

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

2 The Education Officer,
18-Institutional Area,
Shahid Jeet Singh Marg,
New Delhi-110 016.

3 The Assistant Commissioner
Kendriya Vidyalaya Sangathan,
Chennai

4 The Principal,
Kendriya Vidyalaya/Army Cantt./Pangode,
Trivandrum.-6.

5 Ravindra Kurup, Assistant Superintendent,
Kendriya Vidyalaya, Pattom,
Trivandrum. ... Respondents

By Advocate Mr.Shafik M.A (R 1-4)
Mr.Pratap Abraham for Mr.P.Ramakrishnan(R-5)

These applications having been finally heard on 10.10.2007 the Tribunal delivered the following on 31/10/2007.

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

Both these OAs are connected cases and, therefore, they are heard together and disposed of by this common order.

2 The applicant in OA 70/2007, (Shri M.Janardhanan) is presently working as Assistant Superintendent, Kendriya Vidyalaya, Kanjikode. He is aggrieved by the Order No.F.14-TR(SUR) (NTS-ASPD) 39400 dated 22/1/2007 issued by the second respondent, namely, the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Chennai transferring him to the Kendriya Vidyalaya, Chennai (copy not filed by the

applicant). .

3 The grievance of the applicant in OA-320/2007 (Besty Isaac) is against the Annexure A-5 Office Order No.F. 3-1/NTS/(SUR)/2006-KVS dated 14/5/2007 issued by the respondent No.1, namely, the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi transferring her from the post of Assistant Superintendent at KVS. Panagode, Trivandrum and redeploying her at K.V.No.1, Kalaikunda in Kolkatta.

4 The applicant in OA-70/2007 had earlier filed OA-666/2004 and the fourth respondent herein had filed OA 756/2004. Both those OAs were jointly heard and disposed of by Annexure A-3 order dated 7/7/2006. Applicants in both those OAs, were aggrieved by the Annexure A-2 Office Order dated 31/8/2004 transferring them to ZIET, Mumbai and R.O.Silchar respectively on the grounds of surplusage following the then existing transfer guidelines dated 7/7/2004 (Annexure R4(2)) and in terms of Para 6(B)(i) thereof, according to which the staff of a particular category who has least stayed in KV in terms of length of service are identified as excess to the requirement at KV level for that year and are adjusted in the manner prescribed in Sub Para (a) to (d) thereof. The reason given in the Annexure A-2 transfer order of 17 persons including the applicant and the fourth respondent Shri N.K.Sasikumar was that there was surplusage due to fixation of staff strength in Kendriya Vidyalayas for the year 2004-05, and the staff in excess of the sanctioned strength in certain Vidyalayas was required to be redeployed against the existing vacancies in other Kendriya Vidyalayas in terms of Clause 6(B) of the transfer guidelines of Kendriya

Vidyalayas and their transfers were in public interest. The applicants in the aforesaid OAs challenged the transfer on the ground that there was actually no actual surplusage in the schools where they were working but the so called surplussage was created artifically. However, the first submission of the respondents in those cases was that in the 24th meeting of the Academic Advisory Committee held on 14.10.2003, they have considered the revised staff norms for non teaching staff of Kendriya Vidyalaya (Annexure A1 in OA-70/2007) having three sections, and issued the Office Memorandum dated 20/10/2003 according to which post of Assistant Superintendent is not sanctioned for Kendriya Vidyalayas with three sections and consequently, the applicants have been identified as excess in terms of Clause 6(B) (i) of the transfer guidelines. However, the respondents filed an additional affidavit stating that the Board of Governors (BOG for short) of the Kendriya Vidyalaya in its 74th Meeting held on 14.12.2005 reconsidered the matter and approved the proposal for restoration of post of Assistant Superintendent of Kendriya Vidyalayas having three sections and decided that the matter would be referred to the Ministry of Human Resource Development for necessary approval and budgetary allocation. According to the respondents, since the BOG had already approved the aforesaid proposal, it was only a formality to wait for the approval of the Ministry of HRD. Accordingly, those OAs were disposed of by the Tribunal vide order dated 7/7/2006 (Annexure A4 in OA 70/2007) permitting both the applicants to make representations to the competent authorities for their appropriate placements and till a final

decision is taken by the Respondents, the parties were directed to maintain statusquo.

5 In terms of the directions of this Tribunal in its aforesaid order dated 7/7/2006 in OA 666/04 and 756/04, the applicant in OA No.70/04 made the Annexure A-5 representation dated 27/7/2006 requesting the respondents to continue him as Assistant Superintendent at Kendriya Vidyalaya, Kanjikode itself or in the alternative to post him at Kendriya Vidyalas in Port Trust, Cochin or Trichur in view of the submissions made by the respondents in OA-666/04 that the BOG of KVS has already approved restoration of the post of Assistant Superintendents in Kendriya Vidyalayas with three sections and that only formal orders were to be issued after the approval of the Ministry is obtained. On the other hand, applicant in OA-756/2004 sought for a posting at Trichur, Kendriya Vidyalaya on the ground that both husband and wife can be posted at the same place. Thereafter, the respondents issued the Impugned Annexure R4(4) order dated 22/1/2007 transferring the 4th respondent Mr.N.K.Sasikumar f(Applicant in OA-756/2004) from K.V.Kozhikode No.1 to K.V., Trichur and the applicant was transferred from K.V. Kanjikode, Palghat to K.V. Chennai. The applicant contented that his impugned transfer to K.V., Chennai is arbitrary, discriminatory, contrary to law and violative of the constitutional guarantees as the Ministry of Human Resource Development has still not taken a final decision on the decision of the Board of Governors held in its 74th Meeting on 14.12.2005 to restore the post of Assistant Superintendent at Kanjikode. He has also submitted

that if his transfer was on account of surplusage, he was entitled to be considered and posted at a nearby KV in Kerala region in preference to his juniors who were also transferred on the ground of surplusage.. He has, therefore, contended that he should have been given preference for a transfer and posting at KV, Trichur rather than the Respondent No.4 who has since been posted there. He has, therefore, sought a direction to the respondents to quash and set aside the aforesaid transfer order No.F.14-TR(SUR) (NTS-ASPO) 39400 dated 22.1.2007 and to permit him to continue at Kanjikode, as if the said impugned order has not been issued. He has also sought his posting at KV, Trichur in preference to the fourth respondent who has been posted there.

6 When the OA was heard initially on 1/3/2007, this Tribunal ordered the respondents to maintain statusquo regarding the posting of the applicant and permit him to continue to be posted at the present place of posting at Kanjikode and the Interim order has been continued from time to time and the applicant has been working at KV, Kanjikode.

7 The applicant in OA 320/2007 is working as Assistant Superintendent of K.V., Pangode, Trivandrum. She has also relied upon the common orders of this Tribunal dated 7.7.2006 in OA-666/2004 and 756/2004(supra) and the order dated 30/8/2007 in OA-341/2004- All India Kendriya Vidyalaya Non-teaching Staff Association represented by its Secretary in charge Shri C.S.Prem and Anr. V/s. The Board of Governors and Others. Noting the submission of the respondents therein that on receiving the representations against the re-fixation of the staff norms

approved by the BOG in its 72nd meeting, the same was re-considered in the 73rd meeting held on 17/4/2005 and norms existing prior to 2005 were restored, the said OA 341/2004 was closed. The relevant minutes of the meeting as recorded in the said order of this Tribunal is reproduced herein also for record:-

> **"ITEM NO.9 AMENDMENT IN NORMS FOR STAFF STRENGTH OF NON-TEACHNING STAFF & RESTORATION OF POST OF ASSTT. SUPDT. IN KENDRIYA VIDYALAYAS HAVING THREE SECTIONS:-**
>
> The BOG approved the recommendations of the Finance Committee and accordingly the staffing pattern will be as under:-

No. of sections in K.V.	Superintendent	Assistant Superintendent	UDC	LDC
01 Section			01	01
02 Section			01	01
03 Section		01	01	01
04 Section		01	01	01
05 Section	01	01	01	01

> It was further decided that the matter would be referred to the Ministry of Human Resource Development for necessary approval and budgetary allocation."

8 The applicant has also submitted that the KV at Pangode, presently where she is employed has four section school with about 1858 students (with 38 division) and, therefore, even in terms of Annexure A1, revised norms dated 31/7/2003, she was entitled to be retained in the same school as there would not be any surplus.

9 In this case also the impugned Annexure R-5 Office order

dated 14/5/2007 transferring her from KV, Pangode, Trivandrum to K.V.No.1 Kalaikunda, Kolkatta was stayed vide the order of this Tribunal dated 22/5/2007

10 I have heard Advocate Mr.T.C.G.Swamy for the applicants in OA Nos.70/2007 and 320/2007, Advocate Ms.Lakshmi for M/s.Iyer & Iyer for respondents 1 to 3 in OA 70/07, Advocate Mr.Shafik M.A for respondents in OA 320/07, Sr. Advocate Mrs.Sumathi Dandapani for Respondent No.4 in OA 70/07 and Advocate Mr.Pratap Abraham for Mr.P.Ramakrishnan for Respondent No.5 in OA 320/07.

11 In both these OAs, the applicants have been transferred on the basis of the Annexure A-1 staffing norms of Ministeiral staff issued by Office Order dated 20/10/2003 according to which one post of Assistant Superintendent is sanctioned in Kendriya Vidyalaya having four and more sections only. Those norms were effective for the staff sanction strength to be issued for the year 2004-05. It is on the basis of the said norms that the impugned transfer orders have been issued. However, the respondents have admitted that the BOG of KVS in its 74th meeting held on 14/12/2005 considered and approved the proposal for restoration of post of Assistant Superintendent for Kendriya Vidyalayas having three sections and referred to the Ministry of Human Resource Development for necessary approval and budgetary allocation. May be the matter is still pending with the Ministry. It is on the basis of the aforesaid submission of the respondents that OA-666/04 and 756/04 were disposed by common order dated 7/7/2006 permitting the applicants therein to make

fresh representations so that the respondents could consider them keeping in view of the decision of the BOG held on 14.12.2005. Again it was after following the same submissions of the respondents, OA – 471/2004 (supra) was also disposed. Admittedly, the KVs where the applicants are working, there are three or more sections and, therefore, there is justification in having the post of Assistant Superintendent in both the KVs and there is no question of any surplussage.

12 In view of the aforesaid facts and circumstances of the case, these OAs are allowed. Order No.F.14-TR(SUR) (NTS-ASPD) 39400 dated 22.1.2007 of the Respondent in OA No.70/2007 is quashed and set aside. Respondents 1-3 shall allow the applicant to continue at Kanjikode as if the Order bearing No.F.14-TR(SUR) (NTS-ASPD) 39400 dated 22.1.2007 had not been issued at all. Similarly, the order No. F.3-1/NTS/(SUR)/ 2006-KVS dated 14/5/2007 issued by the respondents in OA 320/2007 is also quashed and set aside. Respondents are directed to allow the applicant to continue at Pangode as if Annexure A5 had not been issued at all. There shall be no orders as to costs.

Dated the 31st October, 2007.

GEORGE PARACKEN
JUDICIAL MEMBER

abp