

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 123/2001

Friday this the 23rd day of November, 2001.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V. Job
S/o Ouseph Varkey
T.G.T.Mathematics
Kendriya Vidyalaya No.1
C.P.C.R.I.
Kasargod

Applicant.

[By advocate Mr.K.P.Dandapani]

Versus

1. The Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area, Shaheed Jeet Singh Marg
New Delhi-110 016.
2. The Deputy Commissioner (Finance)
Kendriya Vidyalaya Sangathan
Establishment III Section
18, Institutional Area, Shaheed Jeet Singh Marg
New Delhi.
3. The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office, Bangalore.
4. The Principal
Kendriya Vidyalaya
C.P.C.R.I., Kasargod-671121.
5. The Principal
Kendriya Vidyalaya
Borjhar, Guwahati-781-14.
6. Sri Shajimon Paul
T.G.T. Mathematics
Kendriya Vidyalaya No.I
C.P.C.R.I, Kasargod.

Respondents.

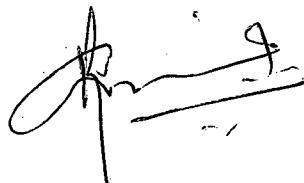
[By advocate Mr.Thottathil B.Radhakrishnan for R1 to 5]

The application having been heard on 23rd November, 2001, the Tribunal on the same day delivered the following:

O R D E R

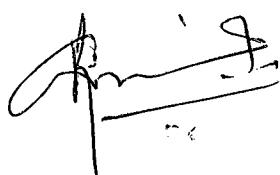
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant who is working as Trained Graduate Teacher (Mathematics) in Kendriya Vidyalaya No.1, Kasargod has filed this Original Application aggrieved by A-1 transfer order dated



28.11.2000 by which he has been transferred to Borjhar, Guwahati. The applicant approached this Tribunal earlier also through OA No.1308/2000 against the same transfer order. The said OA was disposed of by this Tribunal directing the first respondent herein to consider the representation of the applicant. The first respondent herein disposed of the representation by A-3 order dated 22.1.2001. According to the applicant, the said order was served on him on 21.10.2001 and the 6th respondent had come and joined the Kendriya Vidyalaya, Guwahati when the applicant had been relieved on 21.10.2001. Aggrieved by the above action of the respondents and assailing the reply given to him by the first respondent vide A-3, the applicant has approached this Tribunal seeking the following reliefs:

- i. Call for the records leading to A-1, A-2 and A-3 as far as the applicant and the 6th respondent are concerned.
- ii. To set aside A-1 order No.F.7-1(D)/2000-KVS(Estt.III) dated 28.11.2000 passed by the 2nd respondent, as far as the applicant is concerned, Annexure A-2 order No.F.7-1(D)/2000-KVS(Estt.III) dated 28.11.2000 passed by the 2nd respondent as far as the 6th respondent is concerned, and Annexure A-3 order No.F.19-24/18/2000/KVS (L&C) dated 22.1.2001 passed by the 1st respondent.
- iii. Direct the first respondent not to relieve the applicant from Kendriya Vidyalaya No.1, C.P.C.R.I., Kasargod and to retain him in the same school, pending disposal of the Original Application;
- iv. Direct the 4th respondent to permit the applicant to continue as TGT Maths in Kendriya Vidyalaya No.1, C.P.C.R.I., Kasargod, pending disposal of the Original Application.
- v. Direct the first respondent to accommodate the applicant anywhere at Kendriya Vidyalaya, Rubber Board, Kottayam, Kendriya Vidyalaya No.1, Mangalore and Kendriya Vidyalaya, Trichur.

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vi) Stay the operation of A-1 Transfer Order No.F.7-ID/2000-KVS(Estt.III) dated 28.11.2000 passed by the 2nd respondent, transferring the applicant from Kendriya Vidyalaya No.1, C.P.C.R.I., Kasargod to Kendriya Vidyalaya, Borjhar, Guwahati, pending disposal of the Original Application and

vii. Such other orders and directions as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

2. Official respondents filed reply statement resisting the claim of the applicant and the applicant filed rejoinder. Even though notice was served on 6th respondent, no appearance was made on his behalf nor was any reply filed by him.

3. When the Original Application was taken up on date, learned counsel for the applicant as well as the learned counsel for the official respondents submit that this OA is squarely covered by the order of this Tribunal in OA 348/01 and OA 771/01 dated 11.10.2001, OA No.182/01 dated 12.10.2001 and OA No.125/01 dated 17.10.2001. In all the above orders, the main question considered by this Tribunal was whether the transfer order issued was in violation of Clause 6 of the Transfer Guidelines issued by the respondents, copy of which is placed as A-4 in this OA. This question was considered by a Division Bench of this Tribunal in OA 348/01 and 711/01. Para 9 of the said order reads as under:

"9. In OA 348/2001, the impugned order of transfer is assailed mainly on the ground that this has been made in violation Clause 6 of the guidelines as the order of transfer has been issued in the midst of the academic session and beyond 31st August. The applicant has also contended that since the applicant had already served in a difficult station for one tenure he could not be transferred again and even in case the transfer is required, after completion of the tenure at Cochin, the teacher who had the longer stay has to be transferred. Regarding the contention of the applicant that since the applicant has served for a tenure in a difficult station he is not to be transferred again, such a contention is not based on any right or guidelines. Regarding the retention of teachers in Cochin who had



the longest stay, the action has been justified by the officials respondents on the ground that a policy decision was taken not to transfer lady teachers to distant places. We do not find any infirmity in such a decision if taken as a policy measure. The surviving contention of the applicant is that the transfer made after 31st of August being against the provision of Clause 6 of the guidelines and not made in exigencies of service is not sustainable. We find considerable force in this contention. Although guidelines do not cloth an employee holding a transferable post to enforce a right of retention or a right of posting at a particular place, if the order of transfer is sought to be justified only on the ground that it has been made according to the guidelines and if it is found that actually guidelines have been violated without any justification, judicial intervention is permissible. Total arbitrariness is also a valid ground for judicial intervention. Clause 6 of A6 guidelines provides that a transfer should not be made unless under exigencies of service beyond 31st of August. A deviation from that though permitted to meet the exigencies of service the competent authority should not ignore the guidelines if there is no pressing administrative need. In this case, the transfer of the applicant has been made on 22nd of December, 2000 only for accommodating the 7th respondent who had served in a difficult station for a tenure under Clause 10(1) of the transfer guidelines. This is a matter which could have been done conveniently during the summer vacation when transfers are made in a routine manner as per guidelines. No extreme urgency was there in giving a transfer to the 7th respondent to Cochin. His request should have been considered and the transfer made during the vacation. If it had been a case where the competent authority on the basis of a representation by the 7th respondent was satisfied about an extreme urgent need of the 7th respondent to be posted at Cochin immediately and had issued the order of transfer even beyond 31st of August, we would not have found any reason for interference. Such a situation is not available in this case. Therefore, the impugned order of transfer of the applicant issued after 31st of August made by A1 cannot be said to be in accordance with the guidelines. It is against the provisions of the guidelines. It cannot be supported by any administrative reason also. Therefore, we are of the considered view that the transfer of the applicant from Kendriya Vidyalaya, INS Dronacharya, Cochin to Kendriya Vidyalaya, Gangtok made by A1 has got to be set aside. Annexure A5 order turning down the claim made by the applicant in his representation also has go to be set aside for the reason that the competent authority has not considered the ground raised by the applicant in his representation namely that the transfer was made during the midst of the academic session for no pressing administrative exigencies."

4. In OA 182/01, concurring with the order of this Tribunal in OA 107/2001, it was held as follows:

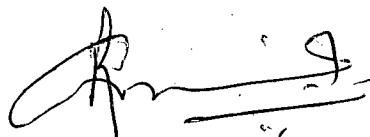


"9. I am in respectful agreement with the above dictum. In this particular case, even though the reason for transfer as stated in A-1 impugned order as public interest, I find from para 4 (b) of A3 impugned order that it is for accommodating the sixth respondent. Therefore, I am of the view that the case of the applicant in this OA is similar to that of the applicant in OA 107/2001. In view of the above, following the ruling of the Division Bench in OA 107/2001, I hold that the applicant is entitled for the first relief sought for by him."

5. The facts and circumstances of the applicant's case in this OA are similar to the ones in the OAs referred to above. The impugned transfer order had been issued on 28-11-2000 for accommodating the sixth respondent. Therefore, the applicant is entitled to the reliefs sought for the setting aside and quashing the impugned orders. Accordingly A-1 is quashed to the extent it relates to the applicant and A-2 is quashed to the extent it covers the 6th respondent. Since A-1 and A-2 are quashed as above, A-3 also is quashed.

6. The OA stands allowed as above with no order as to costs.

Dated 23rd November, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

APPLICANT'S ANNEXURE

1. Annexure A1: True copy of Order No.F.7-1D/2000-KVS (Estt.III) dt. 28.11.2000 passed by the 2nd respondent.
2. Annexure A2: True copy of Order No.F.7-1D/2000-KVS (Estt.III) dt. 28.11.2000 passed by the 2nd respondent.
3. Annexure A3: True copy of Order No.F.197(18)/2000/KVS (L & C) dated 22.1.2001 passed by the 1st respondent.
4. Annexure A4: True copy of the Guidelines for transfer.
5. Annexure A5: True copy of the representation dated 12.12.2000 submitted by the applicant to the 1st respondent.

RESPONDENT'S ANNEXURE: N I L.

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