

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.123/2009

Dated this the 3rd day of June, 2010

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HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Aleyamma Idicula w/o K.M. Idicula
Post Graduate Teacher (Maths)
Kendriya Vidyalaya, Kadavanthra,
Ernakulam
residing at Nanma/A-48, New Hope Pavilion
Godown Road, Edappally Toll
Kochi-682 024, Ernakulam District.

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs

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

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

- 3 The Principal
Kendriya Vidyalaya, Kadavanthara
Ernakulam, Kochi-682 020

- 4 Saji B.R.
Post Graduate Teacher (Maths)
KV, Kadavanthara, Ernakulam

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

The Application having been heard on 24.5.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a Post Graduate Teacher (Maths.) under the respondents, presently working at KVS Ernakulam, is challenging Annexure A-8 order transferring her to KV. INS Mandovi, Goa under para 17.4 of the transfer guidelines.

2 The applicant joined service as a PGT (Maths) at KVS Manendragarh, Chattisgarh on 18.2.1993. She was later transferred to Jamuna Colliery in Madhya Pradesh, a hard station on 18.2.2002 where she continued for a period of three years and thereafter she was transferred to K.V. Kadavanathra at Ernakulam displacing one Shri Agimon A. Chellarancott. Shri Agimon A Chellarancott challenged his displacement before the Tribunal through O.A. 426/05 which was allowed with a direction to find out a suitable posting for the 5th respondent (the applicant in the present O.A.) as expeditiously as possible, till then the respondents shall create a supernumerary post and accommodate the 5th respondent. The respondents challenged the order of the Tribunal before the High Court through WP(C) NO. 27365 of 2005 which was closed leaving freedom to the authorities to make transfer strictly in accordance with the norms (A-2). In obedience to the judgment of the High Court, the respondents issued order transferring Shri Ajimon A Chellarancott which was challenged by him

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through O.A. 269/08 which was allowed. Therefore, both of them were permitted to continue in the same K.V. Even though a regular vacancy arose in KV Port Tuest, Kochi as on 1.4.2008, the applicant was not transferred to that post. The grievance of the applicant is that her transfer order was issued in total violation of the transfer guidelines. The main grounds raised by the applicant against her transfer under Rule 17.4 of the transfer guidelines are that though she was transferred to K.V. Ernakulam in 2005 she was not allowed to join for a long time, several others who were transferred along with her are continuing in Kerala, her transfer is without jurisdiction and illegal, it is based on irrelevant considerations, there is no public interest involved in the case when one more post is created in the same school w.e.f. 1.4.2009. The applicant further submitted that the 4th respondent was transferred to Goa only a year ago and hence there was no public interest to transfer her back displacing the applicant.

3 The respondents in their reply statement submitted that KVS employees are liable for transfer any where in India. The guidelines do not confer upon the employee a legally forceable right to continue at a particular place of her choice. The applicant has been transferred as she was the station senior staying in KV Ernakulam since 13.6.2005 till date, she was accommodated/allowed to continue in the transferred place for the post four years. They submitted that two teachers were working against one post and that the transfer of the other teacher Shri Agimon Chellamcot was set aside by the Tribunal.

4 I have heard learned counsel for the parties and perused the records produced before me.

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5 The argument of the learned counsel for the applicant in nutshell is that the even though applicant was transferred to Enakulam in 2005 she was not allowed to join for a long time, her husband who was working at Trivandrum got a transfer to Ernakulam only in December, 2008, several others working in Kerala for more than ten years, the transfer of the 4th respondent was not in public interest, the transfer of the applicant is on extraneous consideration, therefore her transfer invoking Rule 17.4 of the transfer guidelines is arbitrary, discriminatory and colourable exercise of power and hence unconstitutional.

6 The learned counsel for the respondents mainly submitted that the applicant is the seniormost stayee at Ernakulam station and that she has completed more than 3 years in the station, the transfer of the 4th respondent who joined Goa in 2008 is in public interest, with the approval of the Chairman.

7 One of the contentions raised by the applicant is that the Commissioner has not formed any independent opinion in public interest to the effect that the 4th respondent must be transferred against the various other provisions in the transfer guidelines. The respondents have denied the contention of the applicant that there is no transparency and in invoking the article 17.4 of the guidelines and asserted that the Commissioner has ordered transfer orders only after applying his mind. Clause 17.4 of the Transfer Guidelines is extracted below:

17.4 Commissioner will be competent to make such departure from the "Transfer Guidelines" as he may consider necessary, with the approval of the Chairman, KVS.

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8 The applicant has filed M.A. 388/2010 to admit MA -1 into the records as the respondents have amended the policy of transfers. Annexure MA-1 is the order issued by the respondents on 12.4.2010 amending certain Paras of **Transfer Guidelines** w.e.f. 14.3.2006. Under Para 2 Definitions, for the existing clause "employee whose spouse is also a KVS employee and is posted at the same station" was amended as "Employee whose spouse is in KVS, Central/State Govt. And Autonomous body or PSU of Central/State Government and posted in same Station or nearby station." The "spouse ground" under clause 12.4 of the **Transfer Guidelines** stipulates that the employee of a State Government or its autonomous body or PSU is in **Priority IV**. It means that while considering posting on spouse ground, the priority will be determined on the basis of employee status of the spouse in the order stipulated therein. The argument of the applicant is that she has got priority over the 4th respondent to be retained in Ernakulam under clause 12 of the amended Transfer Guidelines..

9 Today, when the case was taken up for hearing, the learned counsel for the applicant submitted that opportunity may be given to the applicant to submit a representation to the competent authority, in view of the amended transfer policy guidelines. The learned counsel for the respondents submitted that the matter may be heard on merit.

10 In this view of the matter, I am of the opinion that in the light of the amended transfer policy guidelines, the case of the applicant requires reconsideration by the competent authority. Accordingly I permit the applicant to submit a detailed representation

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to the 1st respondent within two weeks from the date of receipt of a copy of this order. I direct the 1st respondent to consider the representation so submitted by the applicant in accordance with the amended transfer guidelines dated 12.4.2010 and pass appropriate orders within a period of two months from the date of receipt of the representation. Till the disposal of the representation, the interim order will continue.

Dated the 3rd June, 2010



K. NOORJEHAN

ADMINISTRATIVE MEMBER

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