

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM**

Original Application No. 160 of 2013

Thursday, this the 31st day of October, 2013

C O R A M :

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. E. Sreekanth,
Music Teacher,
Jawahar Navodaya Vidyalaya,
Lakkidi P.O., Vythiri, Wayanad – 673 576,
Residing at Staff Quarters,
Jawahar Navodaya Vidyalaya,
Lakkidi P.O., Vythiri, Wayanad – 673 576,
2. K. Sumitha,
Trained Graduate Teacher (English),
Jawahar Navodaya Vidyalaya, Banavasi,
Kurnool District, Andhra Pradesh – 518 360,
Residing at Staff Quarters,
Jawahar Navodaya Vidyalaya,
Kurnool District, Andhra Pradesh – 518 360

... Applicants.

(By Advocate Mr. Vishnu S. Chempazhanthiyil)

v e r s u s

1. The Deputy Commissioner,
Navodaya Vidyalaya Samiti,
(Hyderabad Region),
Department of School Education & Literacy,
Government of India,
1-1-10/3, Sardar Patel Road,
Secunderabad – 500 003
2. The Commissioner,
Navodaya Vidyalaya Samiti,
Department of School Education & Literacy,
Government of India, A-28, Kailash Colony,
New Delhi – 110 048

..... Respondents.

(By Advocate Mr. P. Parameswaran Nair)

This Original Application having been heard on 31.10.2013, the Tribunal on the same day delivered the following :



ORDER**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The applicants are husband and wife working in Jawahar Novodaya Vidyalaya (JNV). The 1st applicant is working in JNV, Wayanad as Music Teacher. The 2nd applicant is working as Trained Graduate Teacher (English) in JNV, Banavasi, Kurnool District, Andhra Pradesh. Their two children are being taken care of by the aged parents of the 2nd applicant who are at Palakkad. There is a newly created post of TGT (English) at JNV, Wayanad. Highlighting compassionate grounds, the applicants submitted their requests through their immediate superiors for transfer of the 2nd applicant to the said post. Aggrieved by the steps being taken to fill up the said post at JNV, Wayanad by appointing newly recruited TGTs, the applicants have filed this O.A for the following reliefs:

- (i) Direct the 2nd respondent to consider the request of the applicants for transfer as highlighted in Annexure A4 and A4 (a);
- (ii) Direct the respondents 1 and 2 to keep in abeyance the proceedings to fill up the newly created post of TGT English at JNV, Wayanad by appointing newly recruited TGTs;
- (iii) Direct the respondents to grant transfer to the 2nd applicant to the newly created post of TGT English at JNV, Wayanad;
- (iv) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice;
- (v) Award the cost of these proceedings;
- (vi) Call for the records leading to the issue of Annexure A-10 and set aside Annexure A-10 to the extent the same holds that claim for transfer can be considered only after 10 years in a present station."

2. The applicants contended that it is only fair and just that the 2nd



respondent grants the request of the 2nd applicant for transfer to the newly created post of TGT (English) at JNV, Wayanad. The father of the 2nd applicant is suffering from serious heart ailments. He is unable to undergo surgery on account of the fact that his daughter is posted at JNV, Kurnool, Andhra Pradesh. Despite the above contingency, he takes care of the two children of the applicants. The father is working at Wayanad, while the mother is at Kurnool, Andhra Pradesh and their children are in Palakkad. The 2nd applicant has completed full tenure of three years at Kurnool. The applicants further submitted that the respondents tried to fill up the post of TGT (English) at JNV, Wayanad after filing of the present O.A by shifting the husband and wife, duo working at JNV, Karaikal, Pondicherry as TGT (English) and TGT (Hindi) despite the fact that they had joined at JNV, Karaikal, Pondicherry only in the year 2011. As the said couple opposed the said transfer, orders were issued vide Annexure A-11 without considering the request of the applicants for filling up the vacant post of TGT (English) transferring one Jenson George to Wayanad, who also was not interested in the said transfer. He was reallocated to Bellary in Karnataka. The 2nd applicant has applied for child care leave upto 31.03.2014. The applicants relied on the guidelines issued by the DoP&T at Annexure A-6 wherein it is made mandatory that the husband and wife should be posted in the same station. In the light of the said guidelines, the respondents are bound to post both the applicants together by transferring the 2nd applicant to the vacant post of TGT (English) at JNV, Wayanad.

3. The respondents contended that as per the new transfer policy, minimum 10 years service should be rendered for consideration of transfer on



request. The approval of the competent authority for creation of the post of TGT (English) at JNV, Wayanad, was received only in February, 2013 vide office order dated 25.02.2013 at Annexure R1(f). The requests of the applicants have been included in the consolidated data being compiled for submission to Headquarters. As per the direction of this Tribunal dated 19.03.2013 in M.A. No. 306/2013, they have taken up the issue of posting of the 2nd applicant as TGT (English) at JNV, Wayanad, with the Navodaya Vidyalaya Samiti (NVS) Headquarters vide letter dated 26.03.2013. However, the NVS Headquarters circulated a tentative list of teachers proposed to be transferred shortly as per the existing transfer policy in which one Smt. K.S. Smitha, who is a TGT (English) at JNV, Minicoy, has been considered for the existing vacancy at JNV, Wayanad. She has completed two years in that hard station and is also a handicapped person. Smt. K. Sumita, the 2nd applicant, may not be eligible for request transfer as she has not completed the mandatory tenure of 10 years in the said School as per the transfer policy.

4. I have heard Mr. Vishnu S. Chempazhanthiyil, learned counsel for the applicant and Mr. P. Parameswaran Nair, learned counsel appearing for the respondents and perused the records.

5. The respondents have not disputed the guidelines of the DoP&T produced at Annexure A-6. The relevant part of the said guidelines is extracted as under :

" In view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare



of the children, guidelines were issued by the DoP&T in OM No. 28034/7/86-Estt.(A) dated 03.04.1986 and No. 28034/2/97-Estt.(A) dated 12.06.1997 for posting of husband and wife who are in Government service, at the same station. Department had on 23.08.2004 issued instructions to all Ministries/ Departments to follow the above guidelines in letter and spirit.

2. In the context of the need to make concerted efforts to increase representation of women in Central Government jobs, these guidelines have been reviewed to see whether the instructions could be made mandatory. It has been decided that when both spouses are in same Central Service or working in same Department, and if posts are available, they may mandatorily be posted at the same station. It is also necessary to make the provisions at Para 3 (iv) and (vi) of the O.M. dated 03.04.1986 stronger as it is not always necessary that the service to which the spouse with longer service belongs has adequate number of posts and posting to the nearest station by either of the Department may become necessary."

(emphasis supplied)

6. The respondents are silent as to the existence of mandatory requirement of posting of husband and wife together in view of the guidelines issued by the DoP&T. They have not also responded to the submission of the applicants that after filing of the present O.A, they tried twice but failed to fill up the post of TGT (English) at JNV, Wayanad by transferring TGTs who were not interested in a posting at Wayanad. Now as per the statement of the respondents, they are planning to transfer one Smt. Smitha from Minicoy, who is a handicapped person. The respondents had not considered her case while they sought to fill up the post of TGT (English) at JNV, Wayanad by posting a couple in the first instance and Shri Jenson George in the second instance. A perusal of the tentative transfer list at Annexure R1(i) shows that Smt. K.S. Smitha has shown her option for a posting at Alleppey/Ernakulam/Palghat. It is proposed by the respondents to post her at Wayanad instead of posting at a place of her choice on completion of two years tenure at Minicoy which is a hard station. This move on the part of the

respondents shows utter lack of sensitivity to a disabled person as well as a sinister design to frustrate the attempt of the 2nd applicant to get a posting at JNV, Wayanad.

7. The stipulation that a teacher should have completed 10 years of service to be eligible for request transfer goes against the policy of the Central Government to enhance the status of women in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children. If posts are available, husband and wife may be mandatorily posted at the same station. In the instant case, posts are available and the husband and wife are praying for a posting of the wife at JNV, Wayanad to ensure the education and welfare of the children and their family life. In so far as the Transfer Policy, 2012 of Novodaya Vidyalaya Samiti stipulates minimum 10 years service for consideration of transfer on request even in respect of posting the husband and wife together, It goes against the above stated policy of the Central Government. Hence I have no hesitation in setting aside the transfer policy of the Samiti to the extent it holds that the claim for transfer can be considered only after 10 years of stay at a particular station, even in respect of spouses who are employed in the JNV. Ordered accordingly. It is advisable that the respondents keep themselves abreast of the transfer policy of comparable institutions so as to frame more humane and less draconian transfer policy.

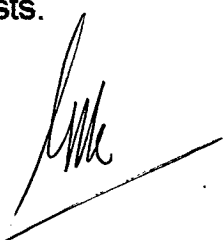
8. The respondents are directed to reconsider the case of the 2nd applicant for transfer to JNV, Wayanad in the light of the communication No. F.No.28034/9/2009-Estt(A) dated 30.09.2009 issued by the DoP&T and



communicate the decision thereon to the applicants within a period of 60 days from the date of receipt of a copy of this order.

9. The O.A is disposed of in the above terms. No costs.

(Dated, the 31st October, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

cvr.