

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 165 OF 2008

Dated the... 19th June, 2008

CORAM:-

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

T.I. Sheela,
W/o John K George,
Assistant Superintendent,
Kendriya Vidyalaya No.1,
Navel Base, Kochi-682 004,
Residing at South Janatha Road,
Palarivattom, Kochi-682 025,
Ernakulam District.

.. Applicant

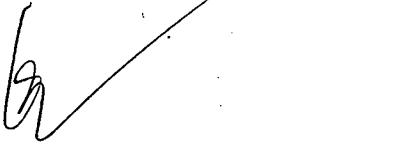
[By Advocates: M/s TCG Swamy, D.Heera & RR Rajitha]

-Versus-

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area, Shahid Jeet Singh Marg,
New Delhi-110 016.
2. The Deputy Commissioner (Admn),
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area, Shahid Jeet Singh Marg,
New Delhi-110 016.
3. The Educational Officer,
Kendriya Vidyalaya Sangathan,
No.18, Institutional Area, Shahid Jeet Singh Marg,
New Delhi-110 016.
4. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional office, IIT Campus, Chennai-36.
5. The Principal, Kendriya Vidyalaya No.1,
Katari Bagh, Naval Base, Kochi-682 004.
6. Smt. G.A.Rajalakshmi,
Assistant Superintendent,
Kendriya Vidyalaya No.1,
Katari Bagh, Naval Base, Kochi-681 004.

....Respondents

[By Advocates: Ms. Amina for M/s Iyer & Iyer (Respondent 1 to 5)]



And in the matter of

N.K. Sasikumar S/o Late G.K. Nair,
Assistant Superintendent,
Kendriya Vidyalaya,
Trichur ... Applicant in M.A. 383/08 for impleadment.

(By Advocate Mrs. S. Dandapani (Sr.) for Mr. Millu Dandapani.)

Versus

T.I. Sheela and 6 others ... Respondents

This application having been heard on 11th June, 2008, the Tribunal delivered the following –

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The Original application had been filed in this case on 27th March, 2008 challenging the transfer order vide Annexure A-1 read with Annexure A-2 whereby the applicant has been transferred from KVS Kochi to Chennai. As the applicant contended that his is a case of surplus, in which event, attempt should be made to accommodate him in the very same station and as a vacancy is likely to arise at KVS Kadavanthara, against which he could be accommodated, as an interim order, the respondents were directed not to fill up the said post at KVS Kadavanthara.

2. Reply statement was filed by the respondents on 26th May, 2008 only. Meanwhile, as the leave of the applicant had been refused and he had been directed to report for duty at the new duty station the following Miscellaneous Applications have been filed by the applicant:-

(a) M.A. 362/08 is an application by the applicant praying for stay of order dated 23-05-2008 whereby the respondents have directed the applicant to report for duty, failing which action under Rule 81(d) of the Education

Code would be initiated.

(b) MA 346/2008 is an application from the applicant praying for a direction to the respondents to allow the applicant to continue on leave till the disposal of the M.A. 342/2008 or the original application.

(c) M.A. 342/2008 is an application praying for a direction to the respondents to allow the applicant to function as Asst. Superintendent against the vacant post at K.V.S. Kadavanthara, on provisional basis.

3. In addition, M.A.383/2008 for impleadment has been filed by one Shri N.K.Sasikumar, working as Asst. Superintendent in K.V.S. Thrissur who is an aspirant for posting at K.V.S. Kadavantara. Applicant to the OA has filed objection to the same.

4. All the above M.As were directed to be listed for consideration at the time of final hearing.

5. Brief facts of the case:-

(A) Applicant is functioning as Assistant Superintendent (ASPD) at Kendriya Vidyalaya No.1, Kochi. She was served with Annexure-A1 transfer order dated 8.1.2008 purportedly issued under Para 17.3 of the Kendriya Vidyalaya Sangathan Transfer Guidelines transferring her from Kendriya Vidyalaya No.1, Cochin, to Kendriya Vidyalaya No.2, Tambram in public interest with immediate effect. This transfer order, which was issued by Kendriya Vidyalaya Sangathan, New Delhi, was modified by the Kendriya Vidyalaya Sangathan Regional Office, Chennai Region, vide Annexure-A2 order dated 11.2.2008 transferring the applicant to Kendriya Vidyalaya Sangathan, Regional Office, Chennai in lieu of the earlier posting in Kendriya Vidyalaya No.2, Tambaran. While issuing Annexure-A1 order, the Kendriya Vidyalaya Sangathan, New Delhi had by yet another order dated 8.1.2008, vide Annexure-A/3, transferred the respondent No.6 (Smt. GA Rajalakshmi) from Kendriya Vidyalaya No.2, Tambram to KV No.1, Cochin, on DSP Ground (death of spouse) at her own request with immediate effect. The applicant was relieved on 11.1.2008 in absentia vide Annexure-A5, which was however, kept in abeyance

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till receipt of the information from Kendriya Vidyalaya Sangathan, Headquarters, vide Annexire-A6 order dated 18.1.2008.

(B) The applicant has moved representation dated 14.2.2008 ventilating her difficulties in moving out of Kerala and also stating as under:

"I understand that a post of ASPD has been sanctioned at Kendriya Vidaylaya Ernakulam with effect from 1.4.2008. Therefore, I request your goodself to be kind enough to permit me to continue in Kochi or to adjust my posting in KV Ernakulam so that the aforesaid inconveniences that may caused to me can be retrieved"

This representation of the applicant, vide Annexure-A7, was forwarded by the Principal, KV No.1, Cochin to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Chennai, vide Annexure-A8 communication dated 14.2.2008 itself, who in turn forwarded it to the Headquarters at Delhi.

(C) There was, however, no response to the representation of the applicant. The applicant was at that time on leave.

6. This OA was filed on 27.3.2008 challenging the Annexure-A1 to A/3 transfer orders on various grounds as contained in para 5 of the OA. The applicant had prayed for quashing the impugned Annexures-A1 to A3 and also prayed for directions to the respondents to allow the applicant to continue at KV No.1, Naval Base, Kochi or in the alternative direct the respondents to consider and post the applicant against the vacancy of Assistant Superintendent sanctioned w.e.f. 1.4.2008.

7. Respondents have contested the O.A. According to them, the applicant having served at Kochi for more than 19 years, he has to move as Respondent No. 6 has been posted in her place under the provisions of Para 17.3 of the Transfer Guidelines.

8. Applicant has filed rejoinder, denying the contentions of the respondents in the reply and reiterating his contentions and averments as in the O.A.

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9. The main points projected by the counsel for the applicant are that the applicant was transferred out of Kendriya Vidyalaya No.1, Kochi with a view to accommodate the respondent No.6, whose case for transfer was considered under 'DSP' (Death of spouse) priority. The applicant being the senior most, the transfer effected was, to that extent, within the transfer guidelines. However, according to the counsel for the applicant, with the addition of Respondent No.6, a staff of KV No.1, Kochi, the case of the applicant should be viewed as one of the transfers on surplus basis, in which event, para 7 of the Guidelines would apply. According to para 7, in case of surplus, it will be ascertained whether any of the service employee is willing to be transferred out to other KVs within the region having vacancies in relevant category and after exhausting that possibility in respect of remaining surplus, persons in requisite numbers will also be identified at the station where each school having a surplus is located for effecting administrative transfer to the extent of such remaining surplus. Thus, according to the counsel for applicant, in view of the fact that a post has been sanctioned at KV No.2, Kadavanthara, Ernakulam the applicant ought to have been adjusted under the aforesaid provisions of para 7 of the Guidelines. The counsel further argued that the case of the applicant cannot fall under 17.3 though her case of transfer might be as a consequence of invoking the power of the Commissioner under para 17.3 to transfer the 6th respondent to the place of the applicant. In that event, para 16.2 provides for certain procedures before dislodging any person to accommodate somebody else under provisions to para 17.3. According to para 16.2, persons so identified for displacement shall be called for counseling by a specific date. This procedure has not been followed in respect of the applicant. Again, the applicant should have been asked for her places of choice of postings as her move is with a view to accommodate some other individual. The counsel further argued that the respondents ought to have accommodated the respondent No.6 against the vacancy to the post of

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ASPD at KV No.2, Ernakulam, as the post was newly created, effective from 1.4.2008. This was not done. If the posting of 6th Respondent should be only at KV No.1, Kochi, the respondents could have at least considered the case of the applicant against the vacancy at KV.2, Ernakulam. Thus, the applicant has been unnecessarily shifted from Kochi to Chennai.

10. Counsel for the applicant has also questioned about the *locus- stand* of impleading the applicant in the Misc. Application No.383/08. According to the counsel, the Misc. applicant to the M.A. does not have the first priority to be considered for posting at KV No.2, Kadavanthara, Ernakulam as by his own words vide para 6 of the MA, one Smt. J.R. Sasi is figuring as the first candidate, who is entitled to get posting at KV No.2 Kadavanthara, Ernakulam.

11. Senior counsel representing the Misc. applicant in MA No. 383/08 submitted that the case of the misc. applicant falls within the category covered by para 12.4 of the Guidelines. Within that category also, the case falls under priority No.1 as his spouse is an employee of the Kendriya Vidyalaya Sangathan itself. According to para 13 of the Guidelines for such request to be posted out with an employee's spouse, the entitlement point is 10. In the event of none being posted in KV No.2 Kadavanthara, the misc. applicant has a bright chance to be posted for. Since by an order of the Tribunal that post was kept unfilled, the Misc. applicant has a *locus standi* to get impleaded in this OA.

12. Counsel for the official respondents submitted that the applicant stood transferred to Kendriya Vidyalaya Sangathan, Regional Headquarters at Chennai and she had not carried out the transfer though sufficient time has lapsed. She had been on medical leave after expiry of which she had applied for further leave on the ground that the present OA has been filed by her is pending. However, her leave other than on medical ground was not sanctioned and she was directed to report for duty in the new place of posting. She has, however, not cared to comply with the transfer order and remained absent herself to be proceeded under Article 81(d) (3) of the Education Code and she had been earlier warned in this regard as well.

13. There was no response from the private respondent No. 6.

14. In rejoinder, the counsel for the applicant submitted that the respondents have acted in a hasty manner in rejecting the application of the applicant for further extension of leave, and in addition, are taking coercive steps for removal of the applicant from service by issuing the order dated 3.6.2008, whereby the applicant had been asked to show cause why her service be not terminated on the ground of abandonment of service. The counsel for the applicant at this junction made request that the applicant may be considered to be posted at Trissur in case any vacancy at Trissur arises by accommodating the Misc. applicant.

15. Arguments were heard and documents perused. Before analysing the facts of the case, certain provisions of the guidelines should be considered.

16. The Kendriya Vidyalaya Sangathan has prepared very comprehensive and scientific Guidelines in respect of transfer. They have defined certain categories as follows:

“2(1)(1) ‘Category whose Dislocation will be Avoided (CDA)’, means persons falling in one or more of the following categories:-

‘MDG’, as defined in Clause (viii) below, and who have been transferred on ground of DSP in the last three years as on 31st March of year (Amended on 15.11.2007).

‘LTR’, as defined in Clause (vii) below,

Physically challenged employees, as defined in Clause (x) below,

Employees whose spouse is also a KVS employee and is posted at the same station, and

President/General Secretary of recognized service associations of KVS, who are also members of JCM.”

2(iv) “DSP mans an employee whose spouse has died within two years, as on 31st March of the year.

2(vii) “LTR” means an employee who has less than three years to retire, as on 31st March of the year.

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2(viii) "MDG" means an employee seeking transfer on the basis of *one or more of the medical conditions listed in Annexure-1*, affecting himself/herself, spouse or dependent son/daughter.

2(xii) "Priority Category for Grant of Request Transfer (PCGR)" means a person falling in *one or more of the following categories:-*

MDG,
DSP,
LTR, and
person who has completed his tenure in Priority Areas."

17. As regards priority, para 14 provides first priority for inter-regional request transfers against available vacancies, followed by second priority- inter-regional transfers of persons in PCGR category vide para 2(xii) extracted above. Transfers by Regional Office relate to inter regional transfers, which comes under third priority. In respect of all kinds of transfers, transparent guidelines have been provided for and entitlement points have been prescribed vide para 13 of the Guidelines. These Guidelines leave not much scope for judicial interference, save when there is deviation from the professed norms or guidelines or when these guidelines are exercised discriminately.

18. Evidently, invoking the provisions of clause 17.3 the sixth respondent has been transferred to Kochi. As there is no vacancy readily available, the posting of Respondent No. 6 has to be inevitably by dislodging one hand and the axe fell upon the applicant who has put in 19 years at Kochi itself. This is in accordance with the provisions of 16.2 of the guidelines.

19. The locus of applicant in M.A. in this case is to the limited extent that his spouse being working at Kochi, he has applied for transfer to KVS Kadavanthara and in case the applicant succeeds in the OA in respect of his prayer for being accommodated against the

vacancy at KVS Kadavanthara, his chance of being posted there would sink into oblivion.

20. That the Commissioner has full powers to invoke the provisions of 17.3 of the guidelines has been fully accepted by all the parties. Hence, so far as Respondent No. 6 is concerned, her position is safe. A feeble attempt was, however, made by the counsel for the applicant that the authorities could have posted respondent No. 6 to KVS Kadavanthara, w.e.f. 01-04-2008, in which case the applicant would not have been disturbed. This submission has to be rejected as it is for the authorities to decide as to who is to be posted and where vide *Union of India v. S.L. Abbas, (1993) 4 SCC 357*. All that the applicant could claim is that in the event of his being dislodged, for accommodating a DSP candidate, whether he has some options to seek for his posting. According to the applicant, his case falls under the provisions of Surplus, since, on the joining of respondent No. 6, he becomes surplus and in that event provisions of clause 7 of the Guidelines spring into play. This argument cannot hold good. For, the respondents had on the one hand transferred Respondent No. 6 to Kochi and by a separate order, issued on the same day, the applicant has been transferred to Chennai. The transfer of the applicant thus cannot be one coming under surplus. Consequently, he cannot be considered for being accommodated in the vacancy available at Kadavanthara.

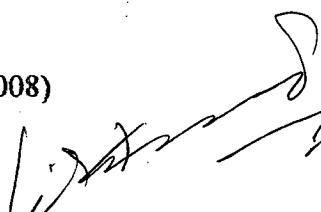
21. The only concession available to the applicant is counseling. The applicant's intention is to have himself posted to any nearest station. At present, there is no vacancy anywhere and if the applicant to the Misc. Application is transferred to Cochin, he can be considered for that post. However, the entitlement of the said Miscellaneous Applicant to his posting from Thrissur to Kadavanthara depends upon his priority position vis-à-vis others who have asked for that posting. In the words of the very Miscellaneous applicant , vide para 6 of the M.A. one more individual by name Smt. Sasi

is the first candidate who is entitled to get posting at K.V. Kadavanthara.

22. In view of the above, the applicant is not entitled to any relief save that in the near future, if any vacancy arises in the nearby area, her case may be considered in preference to others, except the priority category i.e. MDG, DSP and LTR category. At present, the applicant has to carry out the transfer order and the authorities may keep in mind the fact that he deserves to be considered, as stated above, for a transfer to any other nearby school. In so far as MA No. 362/08 is concerned, the non reporting of the applicant for duties cannot be held to be willful abandonment. He has applied for leave initially on medical grounds followed by leave on the ground that he had filed his OA here. This leave was not approved. The applicant, as any other individual, may be hoping that his OA would be allowed. As such, taking action under Rule 81(d) of Education Code is inappropriate in this case. The applicant has been served with yet another show cause notice dated 03-06-2008. In case she has filed a separate OA against the same, it would be dealt with separately. The OA is disposed of accordingly. M.A. 342/08 has become infructuous and hence the same is closed. M.A. 346/08 for an interim order is also closed as having become infructuous in view of the final order in OA having been passed. M.A. No. 362/08 filed by impleading respondent is disposed of with the observation as made above (that the case of the Misc. Applicant be considered in accordance with the rank of priority he has with reference to transfer to Kadavanthara. M.A. No. 383/2008 is also closed without any orders.

23. No costs.

(Dated, the 19th June, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER