

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 168 of 2010

...FRIDAY...., this the 16th day of April, 2010

C O R A M

**HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Joseph M.J.,
S/o. John Manakkaparambil,
Trained Graduate Teacher (Biology),
KV No. II, Naval Base, Kochi.
Residing at Manakkaparambil,
Mariya Bhavan, Sub Station Road,
Vallakom, Vaikom : 686 146

... Applicant.

(By Advocate Mrs. Sumathi Dandapani (Sr.) with Ms. Jebi Mather for
Mr. Millu Dandapani)

v e r s u s

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Saheed Jeet Singh Marg, New Delhi.
2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Chennai

... Respondents.

(By Advocate Mr. Thomas Mathew Nellimootttil)

The Original Application having been heard on 31.03.10, this Tribunal on 16/4/10
delivered the following :

O R D E R

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

In this OA, the applicant challenges his transfer from Kendriya Vidyalaya (KV, for
short) No. 2, Naval Base, Kochi, to KV No. 1, Palakkad, and seeks a direction to the

2nd respondent not to transfer him as he is a physically challenged employee and to grant him conveyance allowance for the physically handicapped.

2. The brief facts of the case are that the applicant is a Trained Graduate Teacher (Biology). He joined KV, Wellington, Nilgiris, Tamil Nadu, on 01.07.1988 as TGT (Biology). At present, he is working as TGT (Biology) in KV No.2, Naval Base, Cochin. He was transferred by Annexure A/1 order dated 18.02.2010 from Cochin to Palghat on account of redeployment of employees in excess of the sanctioned strength.

3. The applicant submits that he is a physically handicapped person with 40% orthopedic disability. As per the transfer guidelines dated 28.01.2005, physically handicapped persons are exempted from transfer. But he has been transferred without notifying him and without seeking his willingness. There is no cause for transferring the applicant. He was doing his duty as a teacher in a dedicated and disciplined manner. His transfer would cause enormous personal hardship. Therefore, he should not be transferred.

4. The respondents contested the OA. They took the stand that the applicant is one of the 22 teachers transferred on surplus ground. As there was no vacancy at Cochin, he was posted at Palakkad. He had been redeployed purely in accordance with the transfer guidelines. There is no mala fides on the part of the respondents. As per the transfer guidelines, a physically challenged employee who has been sanctioned conveyance allowance only is exempted from transfer. The applicant has not drawn any conveyance allowance. Therefore, he cannot be treated as a physically challenged employee within the realm of the transfer guidelines notwithstanding the certificate produced at Annexure A5. The Central Government instructions governing the payment of conveyance allowance do not include the kind of disability the

applicant is suffering from. The applicant was the seniormost teacher in Cochin and was eligible for redeployment in Palakkad, which is a nearest vacancy for him. He was not notified about the vacancies as there was no vacancy in Kerala other than the one at Palakkad. The applicant is a member of KVS family and the department cannot afford to neglect his interest. Although the respondents are very sympathetic towards him, they are helpless. The personal problems of the applicant cannot be a reason for retaining him in the same station where he is the seniormost. Therefore, the OA is liable to be dismissed being devoid of any merit.

5. In the rejoinder, the applicant submits that in case he could not be accommodated at Cochin, the feasibility of accommodating the applicant either at Adoor or Trichur may be explored. He further points out that the definition of physically challenged employee as per Annexure A-2 does not refer to such categories eligible for sanction of conveyance allowance.

6. Arguments were heard and documents perused.

7. The medical certificate issued by the head of orthopedic department, Government Hospital, Chertala, dated 18.12.2003 at Annexure A-5 shows that the applicant is an orthopaedically handicapped person with 40% disability. Although the applicant in the rejoinder stated that the definition of physically challenged employee as per Annexure A-2 does not refer to the categories eligible for conveyance allowance for the handicapped, he himself has in para 12 of the OA extracted the relevant clause in the transfer guidelines which defines "Categories whose Dislocation is Avoided (CDA)". The same is reproduced as under :

“(i) “Category whose Dislocation will be avoided (CDA)” means persons falling in one or more of the following categories :-

.....,

.....,

.....,

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

....., and

.....”

Transfer guidelines defines “Physically Challenged Employee” as follows :

“(x) “**Physically Challenged Employee**” means an employee who has been sanctioned Conveyance Allowance due to visual and/or orthopaedic disability, as per instructions of the Central Government”. “

8. As per the definition of physically challenged employees in the transfer guidelines, a physically challenged employee is an employee who has been sanctioned conveyance allowance due to visual and/or orthopaedic disability as per the instructions of the Central Government. The applicant suffers from orthopaedic disability, but no conveyance allowance for handicapped person is sanctioned to him. Therefore, he is not eligible to be exempted from transfer. The stand of the respondents is on the transfer guidelines and is quite tenable. As regards not notifying him about the vacancies available and not seeking his willingness, the respondents have stated that there is only one vacancy available in Kerala which is at Palakkad. Therefore, the question of notifying the applicant about the vacancies available and not seeking his willingness does not arise as there is no choice. We are unable to find any malafide against the respondents in transferring him from Cochin on the ground of surplus to Palakkad, which is the only vacancy in Kerala. There is no reason to disbelieve that the department is not sympathetic to his problems. It appears that after applying for conveyance allowance in the year 2006, the applicant has not taken the trouble of pursuing the same. He has not yet been sanctioned conveyance allowance. Only those who are in receipt of conveyance allowance are eligible for exemption from transfer on the ground of being physically disabled.



9. Although in the rejoinder the applicant mentioned about Annexure R-2 order as rejecting his request for conveyance allowance, Annexure R-2 does not support it. Annexure R-2 is reproduced as under :

**“KENDRIYA VIDYALAYA SANGATHAN
I.I.T. CAMPUS, CHENNAI – 600 030**

F.17045-46/2009-10/KVS(Cher)/63105 Date: 09.03.2010

The Principal,
Kendriya Vidyalaya No. II,
Naval Base, Cochin – 682 004

Sub: Representation of Shri M.J. Joseph, TGT (Sci) to exempt from transfer on the ground of PCE - reg.

Sir,

With reference to your letter No.F.3/2009-10/KVIIICHN/4608 dated 15.02.2010 on the subject cited above, it is to inform that the request of Shri M.J. Joseph, TGT (Sci) to exempt him from transfer, on the ground that he is a physically challenged employee is examined with reference to KVS transfer guidelines and the same is not acceded to, as he is not covered under CAD category (PCE) as per the definition given in the transfer guidelines.

The teacher concerned may be informed accordingly.

Yours faithfully,
Sd/-
(S. Vijaya Kumar)
Assistant Commissioner"

10. Annexure R-2 is a letter rejecting his request to exempt him from transfer on the ground that he is a physically challenged employee. There is no mention about rejecting his request for grant of conveyance allowance. In order to get covered under CDA category (PCE) as per definition given in the transfer guidelines, the applicant has to get conveyance allowance due to orthopaedic disability. Condition No. 2 in

31.08.1978 on transport allowance to Blind and Orthopaedically handicapped employees, is extracted as follows:

“2. Sanctioning authority.- All Head of Departments are authorized to sanction conveyance allowance in terms of these orders. The Government servants concerned shall accordingly apply for the grant of conveyance allowance to the Heads of their Departments. It shall be responsibility of the Head of the Department concerned to refer the cases of the concerned employees to the appropriate medical authorities for obtaining their recommendations for the grant of the conveyance allowance. The allowance may be granted with effect from the date the recommendation the recommendation of the concerned medical authority is received by the Head of the Department.”

11. The Head of the Department has to refer the applicant's case to the appropriate medical authority for obtaining recommendation for grant of conveyance allowance to him. The applicant has already made a request for conveyance allowance through proper channel vide Annexure A-7 to the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi. It appears that no reply has been sent to the applicant. It would be proper on the part of the Commissioner, Kendriya Vidyalaya, New Delhi, to refer the case of the applicant to the medical authority concerned for its recommendation for grant of conveyance allowance to him. As the request for conveyance allowance was made by the applicant years ago, he may make another representation for grant of conveyance allowance to the Commissioner, KVS, New Delhi. He may also make a request for accommodating him either at Adoor or Trichur.

12. In view of the above, we do not find sufficient cause for this Tribunal to interfere in the matter of applicant's transfer from Cochin to Palakkad at this stage. Therefore, the O.A. is dismissed for want of merit.

(Dated, the 16th April, 2010)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER