

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 182/01

Friday this the 12th day of October, 2001.

CORAM

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.J.Joseph
S/o J.Joseph
Trained Graduate Teacher (Mathematics)
Kendriya Vidyalaya Rubber Board
Kottayam. 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, I.I.T.Campus
Chennai 600 036.
4. The Principal
Kendriya Vidyalaya
Rubber Board
Kottayam 686 001.
5. The Principal
Kendriya Vidyalaya
OF Bhandra, Maharashtra 441 904.
6. Smt. Accamma Mathew
Trained Graduate Teacher
Kendriya Vidyalaya
OF Bhandra, Maharashtra. Respondents.

[By advocate Mr.Thottathil B.Radhakrishnan]
[R 1 to 5]

The application having been heard on 12th October, 2001, the Tribunal on the same day delivered the following:

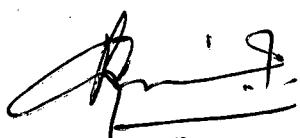
ORDER

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, a Trained Graduate Teacher (Mathematics) under the Kendriya Vidyalaya Sangathan has filed this Original Application aggrieved by A-1 transfer order dated 28.11.2000 and A-2 transfer order dated 28.11.2000, both of the 2nd respondent and A-3 memorandum dated 12.2.01 of the 1st respondent, rejecting the representation made by him against his transfer order. He has sought the following reliefs through this Original Application:

- (i) Set aside Annexure A1 transfer order dated 28.11.2000 issued by the 2nd respondent, as far as the applicant herein is concerned transferring him from Kendriya Vidyalaya, OF Bhandra, Maharashtra, Annexure A2 transfer order dated 28.11.2000 issued by the 2nd respondent as far as the 6th respondent is concerned transferring her from Kendriya Vidyalaya, OF Bhandra, Maharashtra to Kendriya Vidyalaya, Rubber Board, Kottayam and also Annexure A3 order passed by the 1st respondent, dated 12.2.2001 rejecting the representation submitted by the applicant.
- (ii) Direct the 1st respondent to consider the feasibility of accommodating the applicant in the vacancy at Kendriya Vidyalaya, Rubber Board, Kottayam which was kept vacant for the last one year.
- (iii) Such other orders and directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

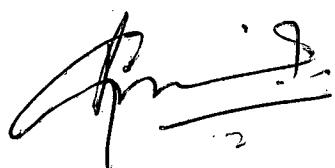
2. According to the applicant, he joined under the respondents as Trained Graduate Teacher in 1983 in Madhya Pradesh at a place called Kirandul. After working there for 2 years he was posted at Port Trust, Kochi in 1985 and in 1994 he was posted at Rubber Board, Kottayam. According to him, his transfer to Bhandara had been issued by A-1 order, in violation of A-4 Transfer Guidelines issued by the respondents and the grounds included in his representation filed pursuant to the directions of this Tribunal in OA 1295/2000 seeking cancellation of the transfer were not properly dealt with in A-3 reply. Further grounds advanced by him were (i) there was



a clear vacancy at Rubber Board, Kottayam, (ii) violation of Clause 10 (1) of the Transfer Guidelines, (iii) even though 6th respondent had expressed her willingness by submitting her choice of 5 places, the first respondent had not explored the possibility of accommodating her in the first 4 choice stations, which are at Kochi even though senior teachers were working there with the idea to disturb the applicant and (iv) his request for mutual transfer with a teacher working at Adoor had not been considered. Though the applicant had pointed out that his children were studying at Government School in Kottayam and they had to meet the public exams the same had been overlooked in flagrant violation of the dicta laid down by the Hon'ble Supreme Court. The transfer order was malafide one as it was in violation of A-4 Guidelines, The second respondent should not have discriminated the teachers on grounds of sex.

3. Respondents filed reply statement resisting the claim of the applicant. According to them in obedience to the order in OA 1295/2000 first respondent adverted and considered all the contentions and submissions made by the applicant and had issued A-3 order and that the same was in tune with the guidelines and was not invalid on any count and did not warrant interference by this Tribunal It was submitted that public interest required transfer and posting of the applicant to the station to which he had been posted and the impugned orders were not liable to be set aside as they were valid.

4. Applicant filed rejoinder.



5. Even though notice was issued, 6th respondent did not put in appearance.

6. Heard learned counsel for the applicant and for the official respondents. Learned counsel for the applicant pressed into service only the ground that the transfer order had been issued in violation of the transfer guidelines specifically para 6 of A-4. She cited the order of a Division Bench of this Tribunal in OA 107/2001 dated 26.9.01 in support of the case of the applicant. She also submitted that in two other OAs No. 348/2001 and 771/2001 disposed of by a Division Bench of the Tribunal on 11.10.01 the impugned transfers therein were set aside as the orders were issued in violation of para 6 of A-4 transfer guidelines. Learned counsel for the respondents submitted that there was no violation of the transfer guidelines. He drew my attention to para 3 of A-4 transfer guidelines. Relying on the dictum laid down by the Hon'ble Supreme Court in Union of India and Others Vs. S.L.Abbas (AIR 1993 SC 2444) it was submitted that even if there was violation of transfer guidelines, the Tribunal was not liable to interfere with transfer orders acting as appellate authority as the guidelines did not give any legally enforceable right to the applicant. In this case, no malafide had been alleged. He cited the judgement of the Hon'ble Supreme Court in Prabodh Sagar Vs. Punjab State Electricity Board and Others (2000 [5] SCC 630) in this regard. There was no case for interference by this Tribunal. Learned counsel for the applicant relied on the judgement of the Hon'ble Supreme Court in Rajendra Roy Vs. Union of India and Another (AIR 1993 SC 1236) in support of her arguments and submitted that as the transfer order issued was



in violation of the guidelines, it was liable to be quashed. She also relied on the judgement of the Hon'ble Supreme Court in Director of School Education, Madras and Others Vs. O.Karuppa Thevan and another (1994 Supp.[2] SCC 666) for the reliefs sought as the transfer was made in mid academic year.

7. I have given careful consideration to the submissions made by the learned counsel for the parties as well as the rival pleadings. The main thrust of the arguments of the respondent in urging to take a view different from that of the Division Bench of the Tribunal cited by the learned counsel for the applicant in OA 107/2001 was that in accordance with para 3 of the transfer guidelines, transfers orders on request could be made at any time. Para 3 of A-4 Transfer Guidelines reads as under:

"3. In terms of their all India transfer liability, all the employees of the KVS are liable to be transferred at any time depending upon the administrative exigencies/grounds, organizational reasons or on request, as provided in these guidelines. The dominant consideration in effecting transfers will be administrative exigencies/ground and organizational reasons including the need to maintain continuity, uninterrupted academic schedule and quality of teaching and to that extent the individual interest/request shall be subservient. These are mere guidelines to facilitate the realization of objectives as spelt out earlier. Transfers cannot be claimed as of right by those making requests nor do these guidelines intend to confer any such right".

8. I find the above paragraph 3 is a general one whereas para 6 is a specific one prohibiting transfers beyond 31st August except on certain specified grounds stated therein. I also note that the Division Bench of this Tribunal in the order in OA 107/2001 have dealt with this aspect as well as the aspects that mere violation of the guidelines did not give any

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legally enforceable right to the applicant even though without citing the judgement of the Hon'ble Supreme Court. In paras 3, 4 and 5 of the order in OA 107/2001, this Tribunal held as under:

"3. We have heard the learned counsel on either side. It is well settled by now that transfer is an incident of service and an officer who is holding a transferable post, has no indefeasible right to claim posting in any particular place. It is also well settled now that guidelines do not clothe an officer with enforceable right for a posting in a particular place. However, it has also been held in a catena of decisions of the Apex Court that, guidelines are meant to be followed and not to be violated or ignored although deviation from the guidelines would be justified only on administrative grounds and exigencies of service. In this case, the impugned order of transfer A-1 was issued on 30.11.2000. Paragraph 6 of the Transfer Guidelines (A9) reads as follows:

'As far as possible, the annual transfers may be made during summer vacations. However, no transfers, except those on the following grounds shall be made after 31st August.

- i. Organizational reasons, administrative grounds and cases covered by para 5.
- ii. Transfers on account of death of spouse or serious illness when it is not practicable to defer the transfer till next year without causing serious danger to the life of the teacher, his/her spouse and son/daughter.
- iii Mutual transfers as provided in para 12.'

4. As per this paragraph normal transfer should be made during the summer vacation and transfer beyond 31st August is permitted only for exceptional reasons like organizational reasons, administrative grounds and cases covered by paragraph 5 of the guidelines. Paragraph 5 of the guidelines relates to transfer on the recommendation of the Principal and the Chairman and transfer of spouse of a Principal to Kendriya Vidyalaya at the station where the Principal is working. We find that the transfer in this case ordered on 30.11.2000 is not covered by paragraph 5 nor by exception contained in paragraph 6. Accommodation of a Teacher who has rendered service in a tenure station, in a station of his choice, can be done during the normal routine transfer made during the summer vacation. That is not, something to be done hurriedly in the midst of the academic session and beyond 31st August.



5. Thus we find that while the respondents seek to justify the impugned orders on the ground that Annexure A-1 was made strictly in accordance with rules and not on account of any exigency, as a matter of fact the order has been issued overlooking the guidelines contained in Clause 6 for no valid and exceptional reasons. The impugned orders A1 and A6 are therefore, liable to be set aside, to the extent it affects the applicant."

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.

10. Accordingly A-1 order dated 28.11.2000 issued by the 2nd respondent to the extent of transferring the applicant from Kottayam to Bhandara, Maharashtra State, A-2 order dated 28.11.2000 to the extent of transferring the 6th respondent from Bhandara and A-3 memorandum dated 12.2.2001 issued by the first respondent are set aside and quashed.

11. The Original Application stands disposed of as above. No costs.

Dated 12th October, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

APPLICANT'S ANNEXURE

1. Annexure A1: Copy of transfer order No.F.7-1(D)/2000-KVS (ESTT.III) dated 28.11.2000 issued by the 2nd respondent pertains to the applicant.
2. Annexure A2: Copy of relevant extract of transfer order No.F.7-1(D)/2000/KVS (ESTT.III) dated 28.11.2000 issued by the 2nd respondent pertains to the 6th respondent.
3. Annexure A3: Copy of Memorandum No.F.19-521(3)/2000-KVS (L&C) dated 12.2.2001 issued by the 1st respondent to the applicant.
4. Annexure A4: Copy of transfer guidelines, referred to in the Original Application.

RESPONDENT'S ANNEXURE

NIL

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