

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.22/2001
and
OA No.782/2001

Tuesday this the 27th day of November, 2001.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

OA 22/2001

V.Ramakrishnakurup
S/o V.Vasudevan Namboothiri
PGT (Maths), Kendriya Vidyalaya
Palakkad.

Applicant.

[By advocate Mr. M.R.Rajendran Nair]

Versus

1. Union of India represented by the
Secretary, Ministry of Human Resources
New Delhi.
2. Commissioner
Kendriya Vidyalaya Sangathan
New Delhi.
3. Deputy Commissioner (Finance)
Kendriya Vidyalaya Sangathan
New Delhi.
4. Principal
Kendriya Vidyalaya,
Hemambika Nagar
Palakkad.
5. B.R.Saiji
Kendriya Vidyalaya
SECL, Baikankore
(Now working as PGT- Maths)
Kendriya Vidyalaya
Hemambika Nagar
Palakkad.

Respondents.

[By advocate Mr.Sunil Jose for R-1]
[Mr.Thottathil B.Radhakrishnan for R2-4]
[Mr.K.Jaju Babu for R-5]

OA No.782/2001

B.R.Saiji
Post Graduate Teacher (Mathematics)
Kendriya Vidyalaya Sangathan
Hemambika Nagar
Palakkad.

Applicant

[By advocate Mr.K.Jaju Babu]

Versus

1. Kendriya Vidyalaya Sangathan
New Delhi represented by its
Commissioner.
2. The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office Chennai Region
I.I.T.Campus
Chennai.
3. The Principal
Kendriya Vidyalaya
Hemambika Nagar
Palakkad.
4. Sri V.Ramakrishna Kurup
Post Graduate Teacher (Maths)
Kendriya Vidyalaya, Hemambika Nagar
Palakkad-678 014. Respondents.

[By advocate Mr.Thottathil B.Radhakrishnan for R1-3]


These two applications having been heard together on 27th November, 2001, the Tribunal on the same day delivered the following common order.

O R D E R

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

OA 22/01 has been filed by the applicant, who is a Post Graduate Teacher (Maths), Kendriya Vidyalaya, Palakkad, aggrieved by A1 order transferring him from Palakkad to SECL, Baikunthapur in Madhya Pradesh. By A2 order dated 7.11.2000, 5th respondent has been transferred from SECL, Baikunthapur to Palakkad. This applicant had earlier approached this Tribunal by filing OA No.1206/2000 challenging A1 transfer order which was disposed of by A5 order dated 16.11.2000 directing the second respondent to consider the request of the applicant made in A4 representation therein and the averments made in para 4.7 in that OA. A-6 memo dated 2.1.2001 has been issued to the applicant pursuant to the said directions. By A7 order dated 6.6.2001 the applicant had been relieved. Aggrieved by A1, A2, A6 and A7 order the applicant has filed this OA seeking the following reliefs:

- i. Quash Annexure A1, A2, A6 and A7 in so far as it relates to the applicant and 5th respondent.



- ii. To direct the respondents to permit the applicant to continue at Palakkad or consider his transfer to the existing vacancies inside Kerala.
- iii. Alternatively direct the respondents to defer the implementation of the transfer ordered till the end of the academic year so as not to affect the studies of the applicant's child.
- iv. Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- v. Grant the cost of this Original Application.

2. When the OA came up for admission on 8.1.2001, the relieving of the applicant was directed not to be given effect to.

3. OA 782/2001 has been filed by the 5th respondent in OA 22/01. Pursuant to A-2 order dated 7.11.200 in OA 22/01 the applicant joined Palakkad on 17.11.2000. She took a house on rent near the school, she also got admission for her son and daughter in the very same school. She received A-2 order dated 29.8.2001 directing her to go back and join Kendriya Vidyalaya, Baikunthapur. Assailing the said order she has filed this OA seeking the following reliefs:

- i. Call for the records leading to Annexure A-2 and quash the same.
- ii. Direct the respondents to permit the applicant to continue at Kendriya Vidyalaya No.I in Palakkad in accordance with Annexure A-1.
- iii. Grant such other reliefs as may be prayed for and the Court may deem fit to grant and
- iv. Grant the cost of the Original Application.

4. When this OA came up for admission on 7.9.2001, as an interim measure, directions were given that applicant should be permitted to work in the present place of posting until further orders. At that time, learned counsel for the respondents also



submitted that the 4th respondent herein is the applicant in OA 22/01. Accordingly both the Original Applications were posted on the same dates. Today both the OAs were heard together and are being disposed of by this common order.

5. Learned counsel for the applicant in OA 22/01 took me through the factual aspects as contained in the OA and cited the order of this Tribunal in OA 348/01 and OA 771/01 dated 11.10.2001. He submitted that on the basis of the factual situation obtaining in these two OAs the ruling of this Tribunal in the aforesaid OAs was squarely applicable in that the A-1 transfer order having been issued on 7.11.01 to accommodate the 6th respondent was issued not on administrative grounds and was clearly against para 6 of A-3 Transfer Guidelines. Learned counsel for the 5th respondent in OA 22/01 drew my attention to the alternative relief sought for by the applicant that the implementation of the transfer order may be deferred till the end of the academic year. According to him, having made such a prayer the applicant should have withdrawn the OA when the academic year was over and should have carried out the transfer. According to him, the children of the applicant in OA 22/01 are college going students whereas the children of the 5th respondent are in standards 1 & 3 and she having admitted her children after carrying out the transfer, the balance of convenience was in her favour. Her order of transfer (A2 in OA 782/01) may be quashed and she may be retained at Palakkad. Learned counsel for the official respondents in both the OAs took me through the pleadings. He fairly conceded that a Division Bench of this Tribunal had held



in OA 348/01 and OA 771/01 that the orders of transfer issued beyond 31st of August to accommodate teachers in the place of their choice having served in difficult stations were bad and against para 6 of the Transfer Guidelines.

6. I have given careful consideration to the submissions and pleadings of the parties and perused the documents brought on record.

7. A Division Bench of this Tribunal in the common order dated 11.10.2001 in OA 348/01 and OA 771/01 held as follows:

"9. In OA 348/01, the impugned order of transfer is assailed mainly on the ground that this has been made in violation of Clause 6 of the guidelines as the order of transfer has been issued in the midst of the academic session and beyond 31st of August. The applicant has also contended that since the applicant had already served in a difficult station for one tenure he could not be transferred again and even in case the transfer is required, after completion of the tenure at Cochin, the teacher who had the longer stay has to be transferred. Regarding the contention of the applicant that since the applicant has served for a tenure in a difficult station he is not to be transferred again, such a contention is not based on any right or guidelines. Regarding the retention of teachers in Cochin who had the longest stay, the action has been justified by the official respondents on the ground that a policy decision was taken not to transfer lady teachers to distant places. We do not find any infirmity in such a decision if taken as a policy measure. The surviving contention of the applicant is that the transfer made after 31st of August being against the provision of Clause 6 of the guidelines and not made in exigencies of service is not sustainable. We find considerable force in this contention. Although guidelines do not cloth an employee holding a transferable post to enforce a right of retention or a right of posting at a particular place, if the order of transfer is sought to be justified only on the ground that it has been made according to the guidelines and if it is found that actually guidelines have been violated without any justification, judicial intervention is permissible. Total arbitrariness is also a valid ground for judicial intervention. Clause 6 of A6 guidelines provides that a transfer should not be made unless under exigencies of service beyond 31st of August. A deviation from that though permitted to



meet the exigencies of service the competent authority should not ignore the guidelines if there is no pressing administrative need. In this case, the transfer of the applicant has been made on 22nd of December, 2000 only for accommodating the 7th respondent who had served in a difficult station for a tenure under Clause 10(1) of the transfer guidelines. This is a matter which could have been done conveniently during the summer vacation when transfers are made in a routine manner as per guidelines. No extreme urgency was there in giving a transfer to the 7th respondent to Cochin. His request should have been considered and the transfer made during the vacation. If it had been a case where the competent authority on the basis of a representation by the 7th respondent was satisfied about an extreme urgent need of the 7th respondent to be posted at Cochin immediately and had issued the order of transfer even beyond 31st of August, we would not have found any reason for interference. Such a situation is not available in this case. Therefore, the impugned order of transfer of the applicant issued after 31st of August made by A1 cannot be said to be in accordance with the guidelines. It is against the provisions of the guidelines. It cannot be supported by any administrative reason also. Therefore, we are of the considered view that the transfer of the applicant from Kendriya Vidyalaya, INS Dronacharya, Cochin to Kendriya Vidyalaya, Gangtok made by A1 has got to be set aside. Annexure A5 order turning down the claim made by the applicant in his representation also has got to be set aside for the reason that the competent authority has not considered the ground raised by the applicant in his representation namely that the transfer was made during the midst of the academic session for no pressing administrative exigencies.

10. In the light of what is stated above, we are of the view the impugned orders A1, A2 and A5 in OA 348/2001 have got to be set aside.

11. Since we have found that the impugned order of transfer of the applicant in OA 348/2001 has got to be set aside, the applicant in OA 771/2001 naturally will have to go back to Gangtok because two persons cannot be permitted to work against one post. However, the applicant in OA 771/2001 is a person who has served at a difficult station for more than 10 1/2 years. It was considering this aspect that he was given a posting to Cochin. On account of the fact that the competent authority committed an error in issuing the order of transfer after the 31st of August, the order of transfer has to be set aside. The competent authority has to consider the case of the applicant in OA 771/2001 for a posting to one of his choice stations and the applicant may point out his choice stations in a representation to be made by him within two weeks from today.

12. In the result, OA 348/2001 is allowed and the transfer of the applicant made in A1 order is set aside. A2, the order of relief of the applicant as



also A5 in this application are set aside. Official respondents are directed to allow the applicant to continue in the present station. It is made clear that this order would not preclude the official respondents from issuing appropriate orders in accordance with law transferring the applicant from Cochin if such transfer is required to be made on administrative grounds.

13. In OA 771/2001, while declining the reliefs sought for by the applicant, the applicant is permitted to make a representation to the 3rd respondent indicating his choice stations and the 3rd respondent is directed to take into consideration the representation while ordering his transfer from Kendriya Vidyalaya, Gangtok at the appropriate time. However, the applicant herein will have to give effect to the impugned order A1 by reporting at Gangtok."

8. I find that the order of transfer of the applicant in OA 22/01 has been issued on 7.11.00 and the respondents admit in their reply statement that the said order was issued to accommodate the 5th respondent in the place of her choice as she had worked in a hard station for more than 5 years. Pursuant to A2 order, she joined Palakkad on 17.11.2000. Thus on facts I find that the applicants in these two OAs are similarly situated as the applicants in OA 348 and OA 771 of 2001 and A-1 and A-2 transfer orders dated 7.11.2000 had been issued beyond 31st August 2000. Thus I hold that the ruling of a Division Bench of this Tribunal in the above mentioned OAs would be squarely applicable in these two OAs. Accordingly A1 transfer order dated 7.11.2000 to the extent it relates to the applicant in OA 22/01 and A2 transfer order dated 7.11.2000 relating to the transfer of the applicant in OA 782/01 (who is 5th respondent in OA 22/01) is quashed and set aside. Since A1 and A2 in OA 22/01 are set aside and quashed, A6 which is the reply given to the applicant in OA 22/01, in response to his representation is set aside and quashed. Since A1, A2 and A6 are quashed, A7 could not have been issued. Accordingly A7 also is set aside and quashed. Since A1 and A2 are set aside and quashed the applicant in OA 782/01 will have to go back to



Baikuntpur as two persons cannot be permitted to work against one post. However, considering the fact the applicant in OA 782/01 is the person who had served at Baikuntpur for more than 5 years and it was considering this aspect that she had been given a posting of her choice, and it is because the authorities had committed an error in issuing the order of transfer after 31st August, that said order of transfer is set aside by me as above. I direct the competent authority to consider the case of the applicant in OA 782/01 for a posting to one of her choice stations in accordance with law. For this purpose, she may make a representation to the competent authority within three weeks from today.

9. In the result OA 22/01 is allowed as above. Official respondents are directed to allow the applicant to continue in his present station. However, it is made clear that this order will not preclude the official respondents from issuing appropriate orders in accordance with law transferring the said applicant if such transfer is required to be made.

10. In OA 782/01 while declining the reliefs sought for by the applicant the applicant is permitted to make a representation to the first respondent indicating her choice stations and the first respondent i.e. the Commissioner is

A handwritten signature in black ink, appearing to be 'Ami S', with a horizontal line drawn underneath it.

directed to take into consideration the representation while ordering transfer from Kendriya Vidyalaya, Baikuntpur at the appropriate time. However the applicant in OA 782 /01 will have to give effect to the A2 impugned transfer order in the said OA by reporting to Baikuntpur.

11. The two Original Applications are disposed of as above with no order as to costs.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

O.A. 22/2001

Applicant's Annexure

1. Annexure A1: True copy of the Order No.F.8-(10)/2000-KVS (ESTT.III) dated 7.11.2000 issued for the 2nd respondent.
2. Annexure A2: True copy of the order No.F8-(10)/2000-KVS (ESTT.III) dated 7.11.2000 issued for the 2nd respondent.
3. Annexure A3: True copy of the transfer guidelines of Kendriya Vidyalaya Sangathan.
4. Annexure A4: True copy of the representation dated 14.11.2000 submitted by the applicant to the 2nd respondent.
5. Annexure A5: True copy of the final order of this Honourable Tribunal dated 16.11.2000 in O.A. No.1206/2000.
6. Annexure A6: True copy of the order No.F. 19-452(3)/2000-KVS(L & C) dated 2.1.2001 issued by the 2nd respondent.
7. Annexure A7: True copy of the order No.F3-7(2)/KVP/2000-01/900 dated 6.1.2001 issued by the 4th respondent.

RESPONDENT'S ANNEXURE: N I L

....

O.A.782/2001

Applicant's Annexure

1. Annexure A1: True copy of Order No.F8-(10)/2000-KVS (ESTT.III) dated 7.11.2000 issued by the Deputy Commissioner of KVS.
2. Annexure A2: True copy of Order No.F.14-3/2001-KVS (CHER) 12711 dated 29.8.2001 issued by the 2nd respondent.

Respondent's Annexure: N I L.

.....