

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 239/2001

Friday this the 12th day of October, 2001.

CORAM

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

C.P.Ramachandran
S/o C.Kunju
Trained Graduate Teacher (Sanskrit)
Kendriya Vidyalaya
INS Dronacharya,
Kochi 682 001

Applicant.

[By advocate Mr.K.P.Dandapani]

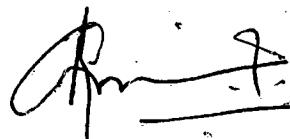
Versus

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 Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office
Bangalore 560 001.
5. The Principal
Kendriya Vidyalaya
INS Dronacharya
Kochi 682 001.
6. The Principal
Kendriya Vidyalaya, Kalpetta,
Wynad District 673 121.
7. Mrs. Parvathy.N.
T.G.T.(Sanskrit)
Kendriya Vidyalaya
Kalpetta
Wynad District 673 121.

Respondents.

[By advocate Mr.Thottathil B.Radhakrishnan]
[R 1 to 6]

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 (Sanskrit) under the Kendriya Vidyalaya Sangathan has filed this Original Application aggrieved by A-1 transfer order dated 22.11.2000 issued by the 2nd respondent transferring him from INS Dronacharya, Kochi to Kendriya Vidyalaya, Kalpetta, and A-4 memorandum dated 2.3.2001 issued by 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 No.F.7-1(5-0)/2000-KVS(Estt.III) dated 22.11.2000 as far as the applicant is concerned and A-4 Memorandum dated 2.3.2001 vide No.F.19-503(3)/2000-KVS(L&C) passed by the 1st respondent.
- (ii) Quash the decision alleged to have been taken by the 3 member committee not to transfer female teachers for the time being under clause 10 (1) of the transfer guidelines.
- (iii) Such other appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. According to the applicant, he joined service on 25.1.94 as a Trained Graduate Teacher in INS Dronacharya, Kochi. According to him his transfer order had been issued in violation of A-5 Transfer Guidelines issued by the respondents. Further, according to him, there were teachers with longer stay than him in Kochi area, but he had been chosen for transfer. In A-4 reply it had been stated that the Committee consisting of Chairman, Commissioner and Joint Commissioner had decided not to transfer female teachers under clause 10 (1) of A-5 Transfer

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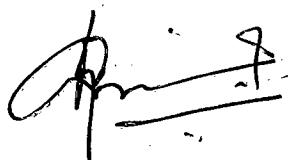
Guidelines against the guidelines framed by the larger Committee, without authority and the same was arbitrary and discriminatory. The transfers were ordered in the midst of the scholastic year.

3.. Respondents filed reply statement resisting the claim of the applicant. According to them in obedience of A-2 order in OA 1268/2000 first respondent adverted and considered all the contentions and submissions made by the applicant and had issued A-4 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.

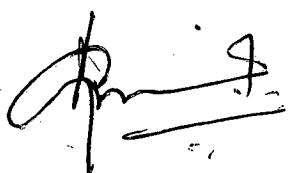
5. Even though notice was issued, 7th respondent did not put in appearance.

6. Heard learned counsel for the applicant and for the official respondents. Learned counsel for the applicant submitted that she is ^{not} pressing the second relief sought. She pressed into service only the ground that the transfer order had been issued in violation of the transfer guidelines specifically para 6 of A-5. 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

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other OAs No. 348/2001 and 771/2001 which were 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-5 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-5 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 Supreme Court in Rajendra Roy Vs. Union of India and Another (AIR 1993 SC 1236) in support of the 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 ^{order} on request could be made at any time. Para 3 of A-5 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 not 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 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 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:

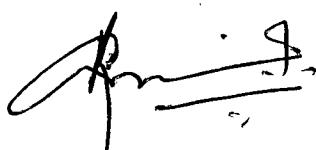
"As far as possible, the annual transfers may be made during summer vacations. However, no transfers, except those on the following grounds shall be made after 31st August.

- 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 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 4.1 of A4 impugned order that it was for accommodating the



seventh 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, applicant is entitled for the first relief sought for by him.

10. Accordingly A-1 order dated 22.11.2000 issued by the 2nd respondent to the extent of transferring the applicant from Kendriya Vidyalaya INS Dronacharya to KVS Kalpetta and A-4 memorandum dated 2.3.2001 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(5-D)/2000-KVS(Estt-III) dated 22.11.2000 issued by the 2nd respondent to the applicant.
2. Annexure A2: Copy of order of this Honourable Tribunal dated 4.12.2000 in O.A.No.1268/2000.
3. Annexure A3: Copy of representation submitted by the applicant before 1st respondent on 1.12.2000.
4. Annexure A4: Copy of Memorandum No.F-19-503(3)/2000-KVS (L & C) dated 2.3.2001 issued by the Ist respondent to the applicant.
5. Annexure A5: Copy of transfer guidelines referred to in the Original Application.
6. Annexure A6: Copy of transfer order No.F.2-1(D)/2001/KVS (E-IV) dated 21.6.2001.
7. Annexure A7: Copy of relevant extract of Transfer Order No.F.7-1(D)(BIO)/2001-KVS(Estt.III) dated 21.6.2001 of the 2nd respondent.
8. Annexure A8: Copy of relevant extract of Transfer Order No.F.8-1(D)/Biology/2001/KVS(E-III) dated 25.6.2001 of the 2nd respondent.

RESPONDENT'S ANNEXURE

NIL

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