

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH



O.A.NO. 241/03 AND O.A. NO. 242/03

Tuesday this the 17th day of February, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

O.A.241/2003:

T.James, Upper Division Clerk
Jawahar Navodaya Vidyalaya,
Kottarakkara,
Kollam-691531. ...Applicant

(By Advocate Mr.K.Jaju Babu)

V.

1. The Principal, Jawarhar Navodaya Vidyalaya, ETC PO, Kottarakkara Kollam District.
2. Shri A.N.Ramachandra, Sub Regional Officer, Navodaya Vidyalaya Samithi, Mangalore Sub Regiona, Mangla Gangotri, Konaje, Dakshina Kannada District Karanataka State 574199.
3. The Deputy Director (Estt) Navodaya Vidyalaya Samithi I.G.I.Stadium, IP Estate New Delhi.2.
4. Navodaya Vidyalaya Samithi, IGI Stadium, IP Estate New Delhi 110 002 represented by the Commissioner. ...Respondents
5. Union of India, represented by Secretary to Government of India, Ministry of Human Resources Development (Department of Secondary Education and Higher Education) Central Secretariat, New Delhi.

(By Advocate Mr.M.K.Damodaran)

O.A.NO.242/2003

P.Prasanna Kumar
Upper Division Clerk,
Jawahar Navodaya Vidyalaya,
Vadavathoor PO
Kottayam District 686010. ...Applicant

(By Advocate Mr. K.Jaju Babu)

V.

.2.

1. The Principal, Jawahar Navodaya Vidyalaya, Vadavathoor PO Kottayam District 686010.
2. Shri A.N.Ramachandra, Sub Regional Officer, Navodaya Vidyalaya Samithi, Mangalore Sub Region, Mangala Gangotri, Konaje Dakshini Kannada Distt. Karanataka State 574199.
3. The Deputy Director (Estt) Navodaya Vidyalaya Samithi, IGI Stadium, IP Estate, New Delhi.2.
4. Navodaya Vidyalaya Samithi, IGI Stadium, IP Estate, New Delhi-110 002. represented by the Commissioner.
5. Union of India, represented by Secretary to Government of India, Ministry of Human Resources Development (Department of Secondary Education and Higher Education) Central Secretariat, New Delhi.Respondents

(By Advocate Mr. M.K.Damodaran)

These applications having been heard on 5.12.2003 the Tribunal on.17..2...2004 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

These two applications have similar facts and identical question of law. The applicants in OA 241/03 and OA 242/03 who were Upper Division Clerks in Jawahar Navodaya Vidyalaya, Kottarakkara in Quilon District and Vadavathoor in Kottayam District have filed this application impugning two orders dated 11.3.03 transferring them to Shillong Region.

2. The facts of individual cases are shortly stated as follows.

OA: 241/03: The applicant who is working as Upper Division Clerk, Jawahar Navodaya Vidyalaya, Kottarakkara, Kollam District under the Hyderabad Region initially joined service of the Jawahar Navodaya Vidyalaya on deputation from the Indian Navy on 16.1.1991. He was absorbed there on 1.4.94. As the post of Office Superintendent in Jawahar Navodaya Vidyalaya, Kottarakkara is vacant, he has been discharging the functions of Office Superintendent.II. The second respondent the Sub Regional Officer of the Navodaya Vidyalaya Samithi of Mangalore Sub Region visited the Jawahar Navodaya Vidyalayas in Kollam District during February, 2003. He visited the Jawahar Navodaya Vidyalaya, Kottarakkara on 17.2.2003. It appears that the second respondent during his inspection made an order that UDCs should fully cooperate with administration for effective functioning of the Vidyalaya activities failing which the Samiti would be constrained to take serious remedial action. The first respondent on 26.2.2003 issued an order accordingly to the applicant (Annexure.A1). The applicant thereupon submitted a representation to the Deputy Director of Navodaya Vidyalaya Samithi, Hyderabad Region explaining that the order of the second respondent was unwarranted and that it reflected his prejudice mind to the ministerial staff. He also made a request for cancellation of his earlier willingness to be transferred to North Eastern Region on 5.3.2003. To the dismay of the applicant an order issued by the third respondent (Annexure.A3) dated 11.3.2003 transferring the applicant to Shillong Region was

served on him. The applicant aggrieved by Annexure.A3 order has filed this application alleging that the impugned order of transfer is based on the prejudicial report of the second respondent without any valid reason, without giving any notice to the applicant and that the same being penal is unsustainable. It is further alleged that as can be seen from the Annexure.A2 message from Navodaya Vidyalaya Samithi, Hyderabad Region to all Principals dated 20.1.2003 there is no vacancy of UDCs in North Eastern Region and that the impugned order has been issued only on the basis of the prejudicial report of the second respondent. It is further alleged that the UDC being a regional cadre and the applicant belongs to Hyderabad Region in terms of the transfer guidelines the applicant is not liable to be transferred out of Hyderabad Region which is the seniority unit to which he belongs. The applicant has also alleged that as he is neither the seniormost nor the juniormost and as there are several juniors and seniors in the cadre who are not disturbed picking and choosing him for transfer out of his cadre is arbitrary, discriminatory and undoubtedly punitive. With these allegations the applicant seeks to set aside the Annexure.A3 order, to call for the reports submitted by the second respondent pursuant to the inspection at Jawahar Navodaya Vidyalaya, Kottarakkara on 17.2.2003 and for a direction to the respondents to permit the applicant to continue in the present station for the normal tenure as per the transfer policy and also to quash Annexure.R.1(A) to the extent it permits the respondents to transfer the applicant to North East Region.

OA: 242/03: The applicant who is an Upper Division Clerk presently working in the Jawahar Navodaya Vidyalaya, Kottayam joined the service of the Navodaya Vidyalaya Samithi on 12.6.87. As the post of Superintendent in the Jawahar Navodaya Vidyalaya, Kottayam was lying vacant, the applicant has to discharge the function of Superintendent II. The second respondent who is Sub Regional Officer of Navodaya Vidyalaya Samithi, Mangalore visited the Jawahar Navodaya Vidyalayas in Kottayam on 14.2.2003. The second respondent directed the shifting of computer and telephone in the office room of the applicant and it appears that he instructed the Principal not to give dominant position to the UDCs. Shortly thereafter on 11.3.2003 the third respondent issued an order transferring the applicant to Shillong Region. Though the transfer was stated to be on administrative grounds there was no vacancy in Shillong or North Eastern Region of UDCs and the reason for the transfer according to the applicant was only the prejudicial report of the second respondent. The applicant is not the seniormost nor the juniormost of UDC in Hyderabad Region to be picked up for transfer out of the region. Going by the transfer guidelines the applicant who belongs to Hyderabad Region is not liable to be transferred outside the region. It is alleged that the order of the respondents in picking up the applicant for transfer out of his cadre not being in public interest without disturbing several of his juniors and seniors is arbitrary, distrimatory and also punitive. Aggrieved by the impugned order of transfer the applicant has filed this application seeking to set aside Annexure.A3 order, to call for the report submitted by the second

respondent on 21.2.2003 regarding his visit in Jawahar Navodaya Vidyalaya, Kottayam and for a direction to the respondents to permit the applicant to continue in the present station for the normal tenure and also set aside Annexure.R.1(A) to the extent it permits the respondents to transfer the applicant to North Eastern Region. The second respondent was impleaded by his name in the wake of the allegation of malafides.

3. Reply statement in both cases have been filed on behalf of the respondents by one Shri V.S.Joseph, who was working as Principal, Jawahar Navodaya Vidyalaya, Neriamangalam, Ernakulam District swearing that he has been authorized and was fully conversant with the facts of the cases to file the affidavit. The contentions raised in the reply statement in both these cases are identical. The respondents deny the allegation that the transfer of the applicants in these two cases was either punitive or on the basis of the report of the second respondent and states that the transfer was made on the basis of the transfer policy contained in Annexure.R.1(A) appeal of the Navodaya Vidyalaya Samithi dated 6.2.2003 taking into account the acute shortage of the teachers and employees in North Eastern Region and in the administrative exigencies. The transfer having been made on the basis of transfer policy, the respondents contend that the applications are devoid of merit and bonafides.

4. The second respondent who has been impleaded by name

has filed a separate affidavit in each of the two cases refuting the allegations against him explaining that the orders made and instructions given by him during the inspection to two Jawahar Navodaya Vidyalayas were only to safeguard the interests of the administration and without any bonafides.

5. Reiterating their stand in the Original Application that the orders of transfer of the applicants in these two cases were made only on account of the prejudicial report alleged to have been made by the second respondent which would be evident from the documents which led to the impugned orders. They have also stated that immediately on receipt of the order of interim stay on 3.4.2003 charge sheets have been issued to the applicants on the basis of the report of the second respondent and that this would show that the applicants have been picked and chosen for transfer only as a punitive measure. They have also produced the appointment orders in their case to show that they were appointed in the Hyderabad Region.

6. I have heard Shri Jaju Babu who appeared for the applicants in both these cases and Shri M.K.Damodaran, standing counsel for the respondents at considerable length and have also perused all the materials brought on record. The learned counsel of the applicant invited our attention to Sub Rules (iv) and (v) of Rule 2 regarding the recruitment and service of teachers and other staff of the Navodaya Vidyalaya Samithi and argued that the applicants who were non-teaching staff below the rank of Office

Superintendent belong to the regional cadre, their seniority is maintained in the respective regions and therefore, they are not liable to be transferred out of their cadre unless their posts have been brought in the All India cadre or if there is an extreme administrative exigency. In support of this argument, the learned counsel referred me to the decision of this Bench of the Tribunal, of which I was a party, in OA 532/2000 titled C.D.Joy and others Vs. Union of India and others and connected cases decided on 11.1.2002 wherein it was held that unless the staff who are in the Regional Cadre of the Navodaya Vidyalaya Samiti are placed by a general or special order by the Director, in the All India cadre, a transfer out of the regional cadre is not permissible unless it is warranted by extreme administrative exigency as also to the ruling of the Hon'ble High Court of Kerala in O.P.No.2388/2002 confirming the view taken by the Tribunal and observing that atleast after receipt of the judgment of the Tribunal, the Samithi could have amended the rules or the Director should have issued order bringing those in the Regional Cadre to the All India Cadre, if they wanted to transfer them out of the cadre. The learned counsel argued that the situation in this case is exactly identical and that the impugned orders in these two cases are required to be set aside. Learned counsel also argued that Annexure.R.1 (A) produced by the respondents is only an appeal of the Navodaya Vidyalaya Samithi to the teachers to willingly accept posting in North Eastern Region and detailing the incentive etc. which would be applicable to those who accepted posts in North Eastern Region. The order

issued by the Joint Director on 31.10.2002 (Annexure.R.1 (A)(4) also does not amount to an order placing the category of UDCs in the All India Cadre, argued the learned counsel.

7. Shri Jaju Babu, learned counsel of the applicants further argued that from Annexure.A2 it would be evident that shortage in North Eastern Region is only of teaching staff and the allegation in the application that there is no vacancy for Upper Division Clerks in Shillong or in the North Eastern Region having not been specifically denied by the respondents in their reply statement, the contention that there is acute shortage of staff and it was in that administrative exigency that the applicants were transferred is untenable. Elaborating this point the learned counsel argued that the applicants alone had been chosen for transfer to North Eastern Region while no senior or junior of the applicants although they are in plenty having longer and shorter stay than the applicants in the Hyderabad Region who have not been disturbed and that the haste in the memorandum of charges having issued to both the applicants on the very same day ie., on 3.4.2003 evidently on the basis of the second respondent's report would expose the intention of the respondents to transfer the applicants on account of the prejudicial report and not on account of any administrative exigency. Learned counsel further argued that had the respondents produced for the perusal of the Tribunal the file which led to the impugned orders of transfer in these cases, the truth of the matter would have been revealed and that despite the statement in that regard in the rejoinder of the applicants the non-production of the

files by the respondents clearly establishes the averment in the application that the transfers were not made in the exigencies of services but on the basis of the report of the second respondent.

8. Shri M.K.Damodaran, learned counsel of the respondents argued that although the applicants belong to the cadre of Hyderabad Region they have an All India transfer liability and that it would be evident from Annexure.R.1(A) that there has been acute shortage of teaching staff and other staff and it was accordingly that the applicants were transferred to North Eastern Region. He argued that visit of the second respondent and the report made by him had nothing to do with the impugned orders of transfer and the case of the applicants that the cause for the transfer is the report was put forth only to mislead the Tribunal to show that there is a legitimate grievance. The averments made against the second respondent is without substance, argued the learned counsel.

9. The facts and circumstances that have emerged from the pleadings and documents would clearly indicate that the transfer of the applicants who are Upper Division Clerks from Hyderabad Region to the North Eastern Region was not on account of any extreme administrative exigency. I came to this conclusion because the averment in both these applications that there is no shortage of Upper Division Clerks in the North Eastern Region because Annexure.A2 issued on 20.1.2003 speaks of shortage of only of teaching

staff and that no other Upper Division Clerk either senior or the junior of the applicants have been transferred to North Eastern Region has not been specifically refuted by the respondents, as also because nothing has been brought on record by the respondents to show that Upper Division Clerks are very much in need in the North Eastern Region. The specific allegation that no posts of Upper Division Clerks is vacant in the North Eastern Region has not been denied by the respondents. Coupled with the above factual situation, the fact that the impugned order of transfer of the applicants in these two cases were issued simultaneously on the same date on 11.3.2003 shortly after the visit of the second respondent in the two relevant Jawahar Navodaya Vidyalayas and that shortly after the filing of the Original Application both the applicants have been served with Memorandum of Charges dated 3.4.2003 (Annexure.A6 in these cases) ^{with} the imputation contained which directly relate to the observations of the second respondent on his visit would all lead to the irresistible conclusion that administrative exigency ~~of~~ ^{scarcity} of Upper Division Clerks was not the real reason which prompted the authorities to issue the impugned orders. The impugned orders state that the transfer was on administrative grounds but it does not state that it was on administrative exigency or scarcity of Upper Division Clerks in the North Eastern Region. I may not understood to mean that the report made by the second respondent on his visit to the Vidyalayas were tainted with malafides. The second respondent on his visit made his observations and suggestion which he felt was necessary for the smooth functioning of the Vidyalayas. The applicants

have not been able to establish that second respondent had any malafides in his mind against them. The second respondent also has not made any suggestion that the applicants should be transferred. However, the circumstances in which the impugned orders and the Memorandum of Charges to these applicants were issued simultaneously exposes the real reason for issuing the impugned orders.

10. It is not disputed by the respondents that the applicants who are Upper Division Clerks belong to Hyderabad Regional cadre. This Bench of the Tribunal has in OA 532/2000 and connected cases taking note of what is contained in Sub Rules (iv) and (v) of Rule 2 of the Recruitment Rules governing the recruitment and service conditions of teachers and staff of the Navodaya Vidyalaya Samithi which read as follows:

"(iv) All teaching staff other than Principals, Vice Principals and PGTs and all non-teaching staff upto and including Office Superintendents working in Navodaya Vidyalayas in a region, shall be borne on the concerned Regional Cadre. The seniority of Post Graduate Teachers, which is a feeder post for promotion to Vice-Principal, would be maintained on all India basis.

(v) All group 'A' and 'B' employees of the Samithi including Principals and Vice Principals will be borne on respective all India cadres. The seniority of employees borne on Regional Cadres will be maintained at the Regional basis, class or category of posts and incumbents thereof, may be placed in the Regional Cadre or all India Cadre, as the case may be by general or special orders of Director, NVS."

held that unless the teaching staff other than Principal, Vice Principal and PGTs and non-teaching staff upto and

including Superintendents borne on the Regional Cadre, are placed in the all India cadre by a general or special order of the Director transferring them out of the cadre except on extreme administrative exigency is not justified. The above decision of the Tribunal has been upheld by the Hon'ble High Court of Kerala in OP No.2388 of 2002. There is no document in this case produced by the respondents to show that the category of Upper Division Clerks has been placed in the All India Cadre by any general or special order of the Director. Under these circumstances following the decision of the Tribunal which was confirmed by the Hon'ble High Court of Kerala I am bound to hold that the transfer in this case is not justified especially when no administrative exigency has been established as the respondents did not produce any file or document to show that there has been acute shortage of Upper Division Clerks in the North Eastern Region and as the reason why the applicants in these cases alone have been chosen for transfer not disturbing their juniors or seniors also remains a mystery as unexplained by the respondents.

12. In the light of what is stated above, I am convinced that the impugned orders are liable to be set aside and therefore, I allow both these applications and set aside the impugned orders. There is no order as to costs.

Dated this the 17th day of February, 2004

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

(s)