

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.252/2003

Monday, this the 22nd day of November, 2004.

CORAM;

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

HON'BLE MR S.K.HAJRA, ADMINISTRATIVE MEMBER

1. C.D.Joy,  
Trained Graduate Teacher,  
Jawahar Navodaya Viddyalaya,  
Chennithala, Alleppey.
2. Ajayakumar.B.  
Trained Graduate Teacher,  
Jawahar Navodaya Vidyalaya,  
Neriyamangalam.
3. Mercy Paul,  
Trained Graduate Teacher,  
Jawahar Navodaya Vidyalaya,  
Kottayam-686 001.
4. Lizzamma Mathew,  
Trained Graduate Teacher,  
Jawahar Navodaya Vidyalala,  
Kottaya-686 001.
5. Sreelatha.A.K.  
Trained Graduate Teacher,  
Jawahar Navodaya Vidyalaya,  
Venchoochira,  
Pathanamthitta-689 645.
6. Anitha.C.V.  
Trained Graduate TEacher,  
Jawahar Navodaya Vidyalaya,  
Malampuzha-678 651.
7. Kumari.K.K.  
Trained Graduate Teacher,  
Jawahar Navodaya Vidyalaya,  
Calicut-673 001.
8. Ajithakumari.K.  
Trained Graduate Teacher,  
Jawahar Navodaya Vidyalaya,  
Vechoochira,  
Pathanamthitta-689 645.

9. Sreekumar, O.  
Trained Graduate Teacher,  
Jawahar Navodaya Vidyalaya,  
Malappuram-676 505.
10. Sudhakaran Nair,  
Trained Graduate Teacher,  
Jawahar Navodaya Vidyalaya,  
Neriyalamangalam,  
Ernakulam.
11. Preethy,  
Trained Graduate Teacher,  
Jawahar Navodaya Vidyalaya,  
ITC Campus, Kottarakkara,  
Kollam-691 506.
12. Rosamma Sebastian,  
Trained Graduate Teacher (Malayalam),  
Jawahar Navodaya Vidyalaya,  
Malampuzha-678 651.
13. Subha A.,  
Trained Graduate Teacher,  
Calicut-673 001. - Applicants

By Advocate Mr K.P.Dandapani

Vs

1. Union of India  
represented by the Secretary,  
Ministry of Human Resources  
& Development,  
Department of Education,  
New Delhi-110 001.
2. The Commissioner,  
Navodaya Vidyalaya Samiti,  
Indira Gandhi Stadium,  
L.P.Estate,  
New Delhi-110 002.
3. The Deputy Director,  
Regional Office,  
Navodaya Vidyalaya Samiti,  
Hyderabad-500 001. - Respondents

By Advocate Mr M.K.Damodaran

The application having been heard on 15.11.2004, the Tribunal on 22.11.2004 delivered the following:

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O R D E R

HON'BLE MR S.K.HAJRA, ADMINISTRATIVE MEMBER

The applicants who are Trained Graduate Teacher (TGT) in Malayalam are working in different Jawahar Navodaya Vidyalaya (JNV) in the State of Kerala. They belong to the region of Hyderabad out of 8 regions in which JNVs are located. Commissioner (Director) Navodaya Vidyalaya Samithi (NVS) who is the second respondent, by notification dated 25.2.2003 ordered that all Third Language (Regional Language) Teachers would be borne on respective all India cadres with all India transfer liability (A-6). Apprehending their transfer from Kerala to North Indian states, consequent on the notification, the applicants filed this O.A. for the following reliefs:

- (i) Quash A-6 notification as arbitrary, ultra vires to the memorandum of Articles of Association and the rules prescribed therein,
- (ii) declare that the notification, A-6 will have to apply only prospectively with respect of those Teachers who are to be appointed as Regional Language Teachers subsequent to the notification dated 25.2.2003,
- (iii) Quash clause (v) of Rule 2 of A-2 as unconstitutional, illegal and violative of Article 14 of the Constitution of India,
- (iv) such other appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

The submissions made on behalf of the applicants, in short, are as follows: One the essential conditions required for TGT (Regional Language) is competence to teach regional language. Rule 2 (iv) and (v) of notification dated 22.6.1995 of NVS debar the transfer of the applicants to other regions, since they are borne on the concerned regional cadre with the seniority being maintained at the regional basis. Apprehending their transfer to distant Hindi speaking States, the applicants filed O.A.532/2000 and 561/2001 before this Tribunal. This Tribunal by order dated 11.1.2002 set aside the transfer of the applicants and held that the recruitment rules governing recruitment and conditions of service of employee cannot be altered to the detriment of the employee and contrary to the recruitment rules. This order of the Tribunal was upheld by the Hon'ble High Court of Kerala in O.P.No.2388/2000 by judgment dated 24.10.2002. In spite of the aforesaid judgments, the impugned notification (A-6) was issued. By virtue of Clause (v) of Rule 2 of the aforesaid notification of the NVS, 1995, it is calculated to change the very basis of service conditions of the applicants by placing them from the regional cadre to All India cadre with All India transfer liability. The placement of the applicants in all India cadre ignoring Rule 2(iv), providing for the regional cadre by the impugned notification which is a mere executive order is arbitrary and unsustainable. This apart, service conditions in respect of posts carrying pay scales above Rs.1600/per month are to be regulated with the prior approval of the Government of India. Therefore, the conferment of the Director (now designated as Commissioner) of the power to

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alter the service conditions which include transfer of TGTs without approval of Government violates Article 14 of the Constitution. The essential qualification for recruitment of TGT (Regional Language) is competence to teach through concerned regional language. Without changing this qualification of TGT (Regional Language) All India transfer liability will defeat the very purpose of the rules promulgated in 1995. They will not be able to teach to north Indian students the language in their regional language. The impugned notification is liable to be struck down on the ground of lack of practical application.

2. The submissions made on behalf of the respondents are summarised below: The original appointments of TGT were in All India cadre. The appointment order shows that the TGT is liable to serve anywhere in India. Pursuant to Regulation 24 of the Memorandum of Association of NVS, the Review Committee, with the additional Secretary (Education), Government of India as its chairman proposed transfer of Third Language Teachers on completion of 5 years of service. The Executive Committee on 29.9.99 ratified the transfer policy. The Commissioner of NVS issued the notification placing all Third Language Teachers in All India cadre with all India transfer liability by virtue of powers vested in him. The Hon'ble High Court in its judgment in O.P. 2388/2002(S) observed that the Director is empowered to pass such an order. The contention that regional language teachers will not be able to teach the north Indian students is without any substance. The regional

language Teachers impart education in the regional language itself and not in Hindi even though they are posted in north Indian regions. Further more, these teachers are expected to have working knowledge in Hindi which will be sufficient for regional language Teachers to teach in north Indian States.

3. We heard the learned counsel for both sides and perused the pleadings and records. The bone of contention is the placement of TGT (Regional Language) in All India cadre with All India transfer liability. For consideration of this question, Rule 2 (iv) and (v) of the notification dated 22.6.1995 of NVS is reproduced below:

(iv) All teaching staff other than Principals and Vice Principals and PGTs and all non-teaching staff upto and including Office Superintendents working in Novodaya 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 Samiti including Principals and Vice Principals will be borne on respective all India Cadres. The seniority of employees borne on Regional Cadre will be maintained at the Regional basis. Notwithstanding anything contained herein any 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 Directory, NVS.

(emphasis added)

Rule 2(v) makes it abundantly clear that the Director is empowered to place any category of posts and incumbents including TGT(Regional Language) in All India cadre by virtue of powers vested with him under Rule 2(v) of the Notification dated 22.6.95. Therefore, the impugned notification dated

25.2.2003 (A-6) placing Third Language Teachers (Regional Language) on all India cadres with all India transfer liability was issued by the Commissioner( former Director) of NVS in conformity with Rule 2(v) of the notification dated 22.6.95. The contention of the applicants that the notification issued by the Commissioner is not legally sustainable without the approval of the Government is untenable. The transfer policy including the transfer of Third Language Teachers to different regions was approved by the review committee headed by Additional Secretary (Education), Government of India and ratified by the Executive Committee of NVS in 1999.

4. Furthermore, the validity of the impugned notification and the powers of the Director (redesignated as Commissioner ) are sustainable in terms of the judgement dated 24.10.2002 of the Hon'ble High Court of Kerala in O.P.No.2388/2002(S). The Hon'ble High Court in the aforesaid judgement held as follows:

"... At least after the receipt of the judgment, if the petitioners wanted to implement the resolution of Executive Committee they could have amended the rules or the Director could have passed an order as per the powers given to him as per rules, instead of challenging the order of the Tribunal before this Court. Even now they can amend the regulations as executive committee has accepted the recommendations of review committee or Director can pass an order making language teachers in all India Cadre."

In view of the observation made by the Hon'ble High Court, the contention of the applicants about the alleged illegality of Rule 2(v) of the notification and the arbitrariness of the impugned notification at A-6 are untenable.

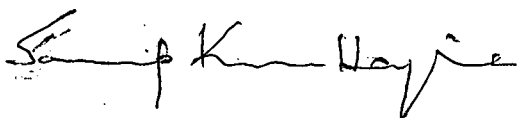
5. The contention of the applicant of inability of regional language Teachers to teach the students in north Indian states in the regional language is without substance. The regional language Teachers who are appointed to teach regional language will be able to do so, even in north Indian region with their qualification in regional language, supplemented by working knowledge in Hindi, which they are expected to possess.

6. The plea of the applicant that Rule 2(v) dated 22.6.1995 is illegal and unconstitutional does not hold good. The aforesaid rule which is calculated to maintain the seniority of the employees 'borne' on regional cadre on regional basis and authorise the placement of any category of posts and incumbents thereof in the regional or all India cadre is a valid service condition.


7. On consideration of the facts and circumstances of the case, we see no reason for interfering with the impugned notification dated 25.2.2003 and Rule 2(v) of the notification dated 22.6.1995.

8. Accordingly the O.A. is dismissed. No costs.

Dated, the 22nd November, 2004.



S.K. HAJRA  
ADMINISTRATIVE MEMBER



A.V. HARIDASAN  
VICE CHAIRMAN

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