

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 261 of 2003

Monday, this the 23rd day of June, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. T.N. Pushpavalli,
Trained Graduate Teacher (Hindi),
Kendriya Vidyalaya No.2, Keltron Nagar,
C-5, Kendriya Vidyalaya Quarters,
Keltron Nagar, Kannur District, Kerala.Applicant

[By Advocate Mr. P.M. Pareeth]

Versus

1. Kendriya Vidyalaya Sangathan,
represented by its Commissioner,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi - 110 016
2. Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi - 110 016
3. Joint Commissioner (Admn),
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi - 110 016
4. Educational Officer,
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi - 110 016
5. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Bangalore Region,
KVMEG & Centre, St. Johns Road,
Opp. Naga Theatre, Bangalore - 560 042
6. Principal,
Kendriya Vidyalaya No.2,
Keltron Nagar, Kannur - 670 562
7. Union of India, represented by Secretary,
Department of Human Resources Development,
Central Secretariat,
New Delhi.Respondents

[By Advocate Mr. Thottathil B. Radhakrishnan (R1 to R6)]

The application having been heard on 23-6-2003, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant, Trained Graduate Teacher (Hindi) working in Kendriya Vidyalaya No.2, Keltron Nagar, Kannur, has filed this application impugning Annexure A8 order of her transfer to Kendriya Vidyalaya, Kasargod on being rendered surplus as also Annexure A1 office memorandum dated 20-1-2003 to the extent to which exemption from being identified as surplus is granted only to those Teachers who have only less than three years of service left and not including the case of a person who is claiming exemption on the ground of illness of self, spouse or minor son. The short facts in this case are as follows:

2. The applicant, a Trained Graduate Teacher (Hindi), has been working in Kendriya Vidyalaya No.2, Keltron Nagar, Kannur since 1-7-1988. By a communication dated 22-10-2002 (Annexure R5[c]) issued by the Kendriya Vidyalaya Sangathan, Bangalore Region to all the Principals, inter alia, the Principals have been asked to submit names of Teachers who were rendered surplus and are due for transfer indicating whether any claim for exemption has been made. The applicant had submitted an application dated 26-6-2002 (Annexure A5) to the Commissioner, Kendriya Vidyalaya Sangathan. The applicant sought exemption from transfer on the ground that her son is completely disabled by severe Hydrocephalous and Miclomeningocele. She had followed it up by making another representation dated 19-2-2003 (Annexure A7) stating that as her husband is a practicing lawyer in Kannur and the disabled child needs her constant personal care and attention, she might be exempted from transfer. However, to her dismay, it was seen that by Annexure A8 order the applicant was transferred from Kannur to Kasargod. The applicant states that because of the serious ailment of her

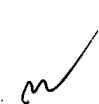
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son, the transfer of the applicant even on surplusage to a distant place would cause undue hardship to her and even to the safety of her ailing son. The applicant finding that in the OM dated 20-1-2003 (Annexure A1) while exemption from transfer is given in the case of Teachers who have less than three years to retire, such an exemption is not granted to persons on medical grounds. To that extent, alleging discrimination, the applicant has challenged Annexure A1 order also.

3. Respondents seek to justify the impugned transfer of the applicant on the ground that she being the seniormost Trained Graduate Teacher (Hindi) in Kendriya Vidyalaya No.2, Keltron Nagar, Kannur identified to be transferred on surplusage in the absence of a special request for exemption indicating the proper category to which the applicant's case would belong, action taken by the respondents to transfer the applicant cannot be faulted. The provision for retention of persons who have less than three years service left for superannuation is sought to be justified on the ground that persons on the verge of superannuation should be placed as comfortably as possible.

4. Since the matter is required to be disposed of at the earliest and the pleadings are said to be complete, with the consent of the counsel on either side, we heard the application for a final disposal.


5. Learned counsel of the applicant with considerable tenacity argued that what is a good ground for transfer should also be a good ground for retention or exemption from transfer. He invited our attention to the following words in paragraph 3 of Annexure R5[c] letter dated 22-10-2002, which reads as follows:-




".. It may also be noted that the employees who are to be exempted under medical grounds, physically handicapped, death of spouse as defined in transfer guidelines are to produce the necessary documents now itself to the respective Vidyalayas which are to be forwarded to KVS (HQ) through the concerned Regional Offices with their comments. It may also be informed whether the employees, who are physically handicapped, as per the instructions of the Govt. of India, are in receipt of Conveyance Allowance sanctioned by KVS (HQ) and if so a copy of the order may be enclosed. Regarding Office-bearers of recognized service Associations who are also the members of Joint Consultative Machinery (JCM), a list containing their names and other particulars may be sent immediately on receipt of this letter by SPEED POST. The said list will be final for the purpose of exemption from displacement for the year 2003-2004, for the eligible member. .."

Relying on the use of the words "to be exempted under medical grounds", the learned counsel argued that the applicant by Annexure A5 and A7 representations, which were made prior to the transfer, had claimed exemption on medical grounds, i.e. the ground of illness of her son. This has been omitted to be taken note of by the competent authority, argued the learned counsel.

6. Learned counsel of the respondents, on the other hand, argued that in Annexure R5[a] the applicant's name was shown as the seniormost Trained Graduate Teacher (Hindi) and the exemption code number for claiming exemption, if any, shown in the communication to be addressed to the Regional Office by the Principal (Annexure R5[d]) the code number shown against the applicant was '06' while, if exemption from transfer required, code number '02' should have been shown. Therefore, the action on the part of the respondents in transferring the applicant who is the seniormost in the subject in the Kendriya Vidyalaya in view of the surplusage to the nearest place where the applicant could be accommodated cannot be faulted, argued the learned counsel.



7. Given the facts and circumstances emerging from all the materials and the submissions made by the learned counsel appearing on either side our anxious consideration, we are not in a position to fault the identification of the applicant as seniormost for being redeployed on the basis of the materials supplied by the Principal. However, we find that some of the relevant aspects have lost the attention of the competent authority. True, in Annexure R5[d], the category status of the applicant should have been noted as '02'. Annexure R5[d] having been sent by the Principal and not by the applicant, the applicant cannot be faulted with for not indicating the category number properly. What the applicant has done was long prior to the transfer, apprehending that she might be transferred due to surplusage, she made representations one after the other to the 2nd respondent stating that her son who is suffering a very serious illness requires constant care and attention as he cannot be transferred to a distant place she may be spared from transfer. The Principal of the Kendriya Vidyalaya, where the applicant is working, has also indicated in Annexure R5[d] that the applicant has claimed exemption on compassionate grounds. What compassionate ground was claimed by the applicant could have been easily understood had the competent authority taken care to look into Annexure A5 and A7 representations made by her and if the Principal concerned had taken care to assign the appropriate code number in Annexure R5[d]. This having been not done, we find there has been probably an inadvertant error and omission on the side of the Principal of the Kendriya Vidyalaya No.2, Keltron Nagar, Kannur (6th respondent herein) in not indicating the proper code number in Annexure R5[d] and non-consideration of the claim for exemption on medical grounds, i.e. on the ground of illness of the son of the applicant. The argument of the learned counsel of the applicant that requests for transfer on medical grounds



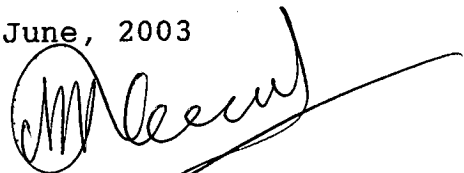
should be treated similar to requests for exemption from transfer is a very plausible and forcible argument which is seen, in fact, accepted in Annexure R5[c]. That the applicant's son is afflicted by a very serious ailment is evident from Annexure A2, A3 as also A9. Under these circumstances, we are of the considered view that the request of the applicant contained in Annexure A5 and A7 has to be reconsidered by the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi (2nd respondent) taking into account the facts stated in the representations in this OA as also as is evident from Annexure A2, A3 and A9.

8. In the conspectus of facts and circumstances, we dispose of this application with a direction to the 2nd respondent to consider Annexure A5 and A7 representations of the applicant seeking exemption from transfer on medical grounds, i.e. on the ground of serious illness of her son, treating that medical ground is a common ground for request for transfer as also request for exemption from transfer, in the light of the photographs (Annexure A2) and medical certificates (Annexure A3 and A9) and to consider the case with due sympathy and issue appropriate order within a reasonable time. We direct that till such time an order on the representations of the applicant is served on the applicant by the 2nd respondent, the applicant shall not be relieved from Kendriya Vidyalaya No.2, Keltron Nagar, Kannur. No order as to costs.

Monday, this the 23rd day of June, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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