

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 269/ 2008Monday, this the 1st day of December, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Agimon A Chellamcott,
Post Graduate Teacher (Maths),
Kendriya Vidyalaya,
Ernakulam.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. The Commissioner,
Kendriya Vidyalala Sangathan,
18 – Institutional Area,
Shahid Jeet Singh Marg,
New Delhi-110 016.
2. The Education Officer,
Kendriya Vidyalala Sangathan,
18 – Institutional Area,
Shahid Jeet Singh Marg,
New Delhi-110 016.
3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, IIT Campus,
Chennai-600 006.
4. The Principal,
Kendriya Vidyalaya,
Ernakulam, Kochi-20.Respondents

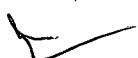
(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 29.10.2008, the Tribunal on 1.12.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Challenge in this O.A is to the Annexure A-1 transfer order dated 16-



21.5.2008 by which the applicant was transferred from his present place of posting at Kendriya Vidyalaya, Kadavanthara, Ernakulam to Kendriya Vidyalala No.1, Raipur and the Annexure A-2 order dated 29.5.2008 by which he was relieved from the forenoon of the same date with the instructions to report to the Principal Kendriya Vidyalaya Raipur.

2. The brief facts of the case are that the applicant was initially appointed on 22.1.2000 at K.V, Bokajan in the North Eastern Region and on its closure, he was transferred to K.V, Ranga Pahar, Nagaland on 31.3.2000 and back to K.V., Bokajan on its reopening. Thereafter, on being declared surplus, he was transferred to K.V., Loktak, Manipur. After having worked for three years at the hard stations in the North Eastern Region, on his request, he was transferred to K.V.No.2, Kasargod and he reported there on 15.4.2003. Due to the pendency of O.A.282/2003 filed by some one else, he was not permitted to join there. Then, he was posted at K.V, Kadavanthara, Ernakulam 24.9.2003. Again, he was transferred to K.V., Jamuna Colliery, Shadhol District, Chattisgarh vide order dated 30.5.2005 to accommodate the request of one Smt Eliyamma Idicula who was working at K.V., Jamuna Colliery by way of displacement in terms of Clause 10(2) of the then transfer guidelines. He challenged the aforesaid transfer vide O.A.426/2005. The Tribunal, considering the fact that his transfer was after a period of just 1 ½ years of his posting in Ernakulam, held that it could not be termed as a transfer in public interest and set aside the transfer order. The Tribunal has also directed the respondents to find out suitable posting to Smt Eliyamma Idicula who was respondent No.5 in the said O.A, either in Ernakulam or in a nearby place and to accommodate her in Ernakulam itself on a supernumerary post till then, since her transfer could not be faulted as she was eligible to be transferred to her choice station as per the existing guidelines.



3. The respondents challenged the aforesaid orders of this Tribunal before the Hon'ble High Court in W.P.C.No.27365/2005 and the same was pending. Later on, vide the Annexure A-4 judgment dated 28.3.2008, it was closed on the basis of the submission of the respondents that both the Applicant and Smt Eliyamma Idicula (respondents No.1&2 in the Writ Petition) have been working in the school against regular vacancies. The said judgment reads as under:

"This W.P.C. is filed against the order of the Central Administrative Tribunal authorising retention of respondents 1 and 2 in the Kendriya Vidyalaya School at Kadavanthara. It is reported that both the respondents are working in the same School against regular vacancies. We are of the view that the Tribunal rightly suggested framing of norms for transfer which is stated to be done. In the circumstances, WPC is closed leaving freedom to the management to make transfers strictly in accordance with norms."

4. During the pendency of the aforesaid Writ Petition, the respondents issued the Annexure A-3 "New Transfer Guidelines w.e.f. 14.03.2006 (Amended till 15.11.2007)". Para 7 of the said guidelines deals with "Administrative Transfers to Eliminate Staff Surplus" and it reads as follows:

"7.1 In the Kendriya Vidyalayas where teachers are in surplus, action will be taken to reduce such surplus to zero, in the following manner:

(i) All teachers of relevant category working in Kendriya Vidyalayas having a surplus in that category will be notified that teachers of that category in requisite numbers need to be transferred out to eliminate the surplus, and it will be ascertained whether any of them are willing to be transferred out to other KVs within the region having vacancies in relevant category. To the extent possible, surplus will be eliminated by transferring willing teachers, who respond to the above notice, to vacant posts within the Region.

(iii) Since some surplus may remain after (i) above, person(s) in requisite numbers will also be identified at the station where each school having a surplus is located for effecting administrative transfer to the extent of such remaining surplus. This will be done on the basis of highest station seniority of teachers not belonging to the CDA category.

Preferences of such teachers from among available vacancies in KVs of the Region will also be ascertained.

Preference of such persons (Amended on 15.11.2007) under (i) above and those identified under (ii) above will be called at the time of calling for the details of surplus staff (Amended on 15.11.2007) by 10th January, and transfers will be effected, in that order, with due regard to their choice from amongst available vacancies, and as per the guidelines in paras 13 and 14, below, by 15th January.

7.2 In some cases there may be surplus staff in a particular category, in a region as a whole. To that extent, persons of that category will have to be transferred out of the region. Such persons will be those who can not be accommodated within the region by following the exercise spelt out in para 7.1 above. List of such persons, along with their preference for other regions, will be sent by the Assistant Commissioner to the Commissioner by 20th January, who will then transfer them to regions having net vacancies in that category, in the manner provided in paras 13 and 14, by 31st January.

7.3 Vacancies arising on account of superannuation upto 31st July of the year at stations from which teachers are transferred out on administrative grounds under paras 7.1(ii) and 7.2 above, shall be filled up by re-posting of teachers who are so transferred out, in pursuance of the above paras. While doing so, priority would be given to teachers who are transferred out of the region, and wherever applicable, it will be specified in their initial transfer order itself that they will stand-posted to their original station on superannuation of the person concerned."

5. Para 14 deals with "First Priority List: Inter-Regional Request Transfers against available vacancies." Sub para 14.1 reads as under:

"14.1 The first priority list shall be prepared by listing of applications received for inter regional transfers against available vacancies taking into account the entitlement points as per Para 13 above and shall be displayed on KVS website by 20th February. This priority list shall be prepared in accordance with para 12 and 13 above."

6. Para 15 deals with "Second Priority List: Inter-Regional transfers of persons in PCGR category by displacement of others and certain consequential transfers." Sub para 15.1 reads as under:

"Where transfer is sought by a teacher coming under PCGR and no vacancy is available at the station of his choice, required vacancy will be created by displacing a teacher of the same category (post/subject) with longest stay at the said station, and not belonging to CDA. However, nobody shall be displaced in this manner, as far as possible, before completing the tenure of three years. If no non-CDA category employee with more than 3 years'

tenure is not available at the station of first choice of a PCGR category employee, the exercise will be done for locating such a person at stations of his second, third and lower choices, in that order. If no non-CDA employee with more than 3 years' tenure is available at any of the stations of choice, the non-CDA employee with longest tenure out of all the preferred stations taken together, will be displaced. The displaced teacher will be accommodated against available nearby vacancy as far as possible within the region. The resultant vacancies arising out of transfers orders as per first priority list, will be used to accommodate non-PCGR category requests, who could not be accommodated in the first priority list, to the extent possible."

7. Under Para 17.4 the said transfer guidelines, the Commissioner, Kendriya Vidyalaya Sangathan has the power to make departure from the transfer guidelines and it reads as under:

"Commissioner will be competent to make such departure from the Transfer Guidelines, as he may consider necessary, with the approval of the Chairman, KVS."

8. The respondents have now transferred the applicant vide Annexure A-1 transfer order dated 16-21.05.2008 under the aforesaid para 17.4 of the guidelines. The said order reads as under:

"TRANSFER ORDER

Under para 17.4 of the transfer guidelines of KVS, Sh Agimon A Chellamcott, PGT(Maths) is hereby transferred from Kendriya Vidyalaya, Ernakulam, Cochin to Kendriya Vidyalaya, No.1 Raipur, in public interest, with immediate effect.

This issues with the approval of the competent authority.

(Ranvir Singh)
Education Officer"

He challenged the aforesaid transfer order stating that he was not liable to be displaced to accommodate the request of anyone except to the extent where transfers are ordered in accordance with the requirements in para 15.1 of the transfer guidelines and the contingencies warranting his displacement as provided for in para 15.1 above do not exist as of now and he is also not the person with the longest service in Ernakulam. He has also submitted that the



power under para 17.4 of the guidelines cannot be exercised to consider the request transfer of an employee who is not otherwise entitled to be transferred on priority basis. Further, he has alleged that the prior permission of the Chairman, KVS was not obtained before effecting his transfer of the applicant and, therefore, the requirement under para 17.4 of the guidelines has not been followed.

9. The respondents in the reply have contended that in terms of Para 1 of the Transfer Guidelines, "*All employees of the KVS are liable to be transferred and posted anywhere in India, at any time, and for any period, as requirements of public service and of the Sangathan may dictate. Transfers and postings are a right of the Sangathan which it would endeavour to exercise in the best interest of the students, with due regard to the principles of equity and transparency vis-a-vis its employees.*" According to them, the transfer of the applicant from KV, Ernakulam to K.V.No.1, Raipur is in public interest and it was made under para 17.4 of the Transfer Guidelines with the proper prior approval of the Chairman, KVS. They have also stated that he was working as 'surplus' at the station and, therefore, there was no illegality in transferring him. They have also stated his transfer was to accommodate one Smt Mary Grace, PGT(Maths) in his place but her transfer was later on modified and she was accommodated in K.V.No.2, Kochi for administrative reasons. It is the further contention of the respondents that para 17.4 is to be read with para 15.1 of the Transfer Guidelines and the required vacancy is to be created by displacing a Teacher with longest stay at the station but not before completing minimum tenure of 3 years. According to them, the applicant has completed the tenure of 3 years in Ernakulam and he is liable to be transferred. They have also submitted that Mrs Eliyamma Idicula, PGT (Maths) was also working in the same school ever since she was transferred in 2005 and both of them are working against a single sanctioned



post and therefore, the applicant has become surplus. According to them, Mrs Eliyamma Idicula was allowed to continue along with the applicant as she could not be adjusted elsewhere for want of a vacancy. By an additional affidavit filed by the respondents, they submitted that though "the applicant has not been transferred on surplus ground, as literally he was not surplus", yet he has later on become surplus as he was working under the direction of this Tribunal as there was only one post of TGT(Maths) in KV, Kadavanthara, Cochin and Mrs Eliyamma Idicula was accommodated against the same post. As regards availability of posts at Port Trust under Chennai region, they have submitted that one post was available at KV, Port Trust, Kochi, and another at KV, Ooty as on 1.4.2008. However, those vacancies have been filled up by transferring Smt Anjana Sivaprakash, PGT (Maths) from IIT, Karagpur to KV, HPF Ooty and by transferring Shri Ramachandran Nair, PGT (Maths) from KV, Hassan to KV, Port Trust, Kochi. No other vacancy for PGT(Maths) exist in the region.

10. I have heard the learned counsel for the parties at length. I have also perused the copy of the relevant part of the respondent's File No.11046/26/(17.4)2008/KVS(Estt.II) where cases of transfer of Teachers including the applicant from one KV to another have been discussed with the Hon'ble Minister of Human Resources who is also the Chairman of KVS. The basic contentions of the applicant are two fold: (i) that he was transferred under the provisions of Para 17.4 of the Transfer Guidelines to accommodate Smt Mary Grace, PGT (Maths) and since she has already been accommodated at KV, Naval Base, Kochi, the very reason of his transfer does not exist any more, (ii) he has not become surplus as contended by the respondents as is evident from the Annexure A-4 judgment of the High Court dated 28.3.2008 wherein the respondents have informed the High Court that both he and Smt Eliyamma Idicula are working against the regular vacancies. The contention of the

respondents, on the other hand, is that there is only one post of PGT(Maths) in KV, Kadavanthara and against that post both the applicant and Smt Eliyamma Idicula have been working for the last more than 2 years and thus the applicant has thus become a surplus staff. On perusal of the record, I have seen that the applicant was transferred to K.V, Raipur by the Annexure A-1 transfer order dated 16/21.5.2008 only to accommodate Smt Mary Grace, PGT(Maths), Avikanagar who had applied for request transfer for the year 2008-09 for Cochin Station. The applicant was displaced in terms of para 17.4 of the revised transfer guidelines as no other vacancy was available. Admittedly, Smt Mary Grace has since been accommodated in another KV in Cochin. Therefore, the very reason for the transfer of the applicant no more exists. Secondly, this Tribunal vide order dated 29.7.2005 in O.A.426/2005(supra) directed the respondents to continue to retain the applicant at KV, Kadavanthara and to find a suitable posting for Smt Eliyamma Idicula either in Ernakulam or in a nearby place and accommodate her, till then by creating supernumerary post. The respondents, instead of finding a suitable place of posting for Smt Eliyamma Idicula, retained her in the same school with the applicant without creating a supernumerary post. Even when a vacancy have arisen at KV, Port Trust, Kochi as on 1.4.2008, Smt Eliyamma Idicula was not transferred and posted there. The said vacancy was filled up with another teacher. They have also informed the Hon'ble High Court in W.P.C.No.27375/2005 filed by them against the order of this Tribunal in O.A.426/2005 that both the applicant as well as Smt Eliyamma Idicula have been working against regular vacancies in K.V., Kadavanthara. It was on the basis of the above submission that the Hon'ble High Court closed the said Writ Petition. In an affidavit filed in this case also, the respondents have submitted that the applicant was not literally surplus and he became a surplus only because of the Tribunal's order. The respondents have not been consistent in their stand. On the one hand, they submitted before the Hon'ble High Court



that the applicant has been working in KV, Kadavanthara, Cochin against a regular vacancy and on the other hand they submitted before this Tribunal that there is only one post of TGT(Maths) in KV, Kadavanthara, Cochin and the applicant has been working there as a surplus under the orders of this Tribunal. The respondents cannot blow cold and blow hot. As is evident from the guidelines, the surplus employees are treated in a different way than other employees. In such cases, para 7.1 of the transfer guidelines would apply. If there is only one sanctioned post of PGT(Maths) in KV, Kadavanthara, Cochin, as submitted by the respondents, they may transfer the applicant to any other KV but only after following the said guidelines strictly.

11. In the above facts and circumstances of the case, I find merit in the contention of the applicant and allow this O.A. Consequently, the Annexure A-1 transfer order dated 16/21.5.2008 and the Annexure A-2 relieving order dated 29.5.2008 are quashed and set aside. There shall be no order as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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