

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 283/2004

Friday, this the 10th day of June, 2005.

CORAM:

**HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

**S.P.Saxena,
Primary Teacher,
Kendriya Vidyalaya,
INS Dronacharya,
Kochi-682 507.**

By Advocate Mr K.P.Dandapani

VS

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
10, Institutional Area,
Shahid Jeat Singh Marg,
New Delhi-110 016.
2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
10, Institutional Area,
Shahid Jeat Singh Marg,
New Delhi-110 016 .
3. The Principal,
Kendriya Vidyalaya,
INS Dronacharya,
Kochi-682 507.
4. The Principal,
Kendriya Vidyalaya,
NHPC, Dharchula,
P.O.Felori 262 576,
District: Pithoragarh.
5. The Principal,
Kendriya Vidyalaya,
Shahjahanpur – 242 001.

By Advocate M/s Iyer & Iyer

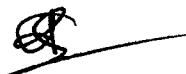
The application having been heard on 1.6.2005, the Tribunal on 10.6.2005 delivered the following:

O_R_D_E_R

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant in O.A.283/2004, S.P. Saxena, Primary Teacher, Kendriya Vidyalaya, INS Dronacharya, Kochi seeks redressal of grievances relating to his promotion as Trained Graduate Teacher and to place of posting.

2. The applicant while working as Primary Teacher was offered promotion as Trained Graduate Teacher vide A-3 which contained certain conditions to be fulfilled by him. Such conditions included communication of acceptance by 31.12.2003 in the prescribed form, mandatory relief from the present post on 1.4.2004, non-acceptability of any request for change of station, debarment from promotion for 5 years in case of non-acceptance, irrevocability of acceptance once given etc. The applicant, based upon information (for which no document has been produced in the O.A.) made a plain paper representation for change of station in the promoted place. He had not filled in the proforma as required in A-3. He approached this Tribunal through O.A.11/2004 challenging A-3 (A-4 in that O.A.) The Tribunal disposed of the O.A. with the observation that the applicant's prayer could not be granted on the present facts and circumstances and that if at all an order was to be made in this regard, it was for the administrative authority to act on the representation made by the applicant in that regard in adherence to the extant instructions and orders on the subject. The applicant made A-7 representation dated 13.1.2004 to the 1st respondent saying that he was not aware of the consequences of non-submission of the proforma within the specified date and ended with the prayer that delay in non-submission be condoned, the Principal



of KV, INS Dronacharya under whom he was working be directed to accept and forward the proforma for acceptance of promotion and that his request for change of place of posting to Shajahanpur be considered. The first respondent passed an order (A-8 impugned order) rejecting the applicant's representation on the following grounds.

- The A-3 memorandum envisages forwarding of unconditional acceptance and those not submitting the same will be deemed to be not interested in promotion and their offer of promotion shall automatically withdrawn without any further notice and the applicant did not submit his acceptance before the specified date.
- The contention of ignorance of consequences flowing from non-acceptance cannot be accepted.
- His request for posting cannot be acceded to on account of certain administrative reasons.

3. The applicant has adduced the following grounds in the present OA:

- His request for transfer and consideration of the same are governed by transfer guidelines. The respondent 1 has ample powers to grant the required relief.
- He has expressed his willingness to accept the promotion in A-4 representation dated 26.12.2003.
- The debarment clause in A-3 is illegal.
- The applicant has a legal right to represent for transfer.



4. Applicant's prayers in the OA are for the quashing of A-3 order relating to unconditional acceptance and to the taking away of the legal right to represent for a place of posting and for directing the 1st respondent to promote him and post him at Shajahanpur.

5. In reply the respondents made the following points:

- The applicant has not submitted his acceptance in terms of the A-3 document.
- The transfer guidelines are used for transfer and not for promotional posting.
- In any case, the transfer guidelines would apply to him only if he had become a Teacher on promotion.
- The debarment policy has been prescribed with the view to ensure that the promoted Teachers take up their assignments without interruption which would not be possible if choices are given for the preferred location on promotion.

6. We heard the counsel for both parties. Learned Counsel, Smt. Sumathi Dandapani appeared for the applicant and generally reiterated the points mentioned in the O.A. It was pointed out that actually another vacancy had arisen in Shajahanpur which could have been given to the applicant. In reply, the Learned Counsel, Shri Sunil Shanker of M/s Iyer and Iyer appearing for the respondents pointed out inter-alia that debarment of promotion in case of non-acceptance of promotion had been in vogue from 9.6.99 as a policy approved duly by the Board of Governors, never challenged so far.

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7. On the basis of the documents and arguments, it is seen that the applicant did not accept the offer in its entirety. It is seen that the promotion offer was made to as many as 149 teachers. As rightly pointed out by the respondents, the process of considering choice stations along with promotion if given to the teachers to be promoted would only add to the administrative burden, which might prove injurious to the academic process. It is seen that the acceptance letters so far made by the applicant can at best be termed tangential and his refusal to fill in the prescribed proforma is neither understandable nor appreciable. In fact, entertaining a deviation from the accepted procedures in the single case could be discriminatory to the majority of the promotees who must have accepted and fulfilled the conditions preceding promotions. On all counts, the applicant was unwilling to play by the rules which other identically placed Teachers must have accepted. Besides, it is difficult to believe that a Teacher with more than 20 years experience does not understand the implications of non-observance of offer conditions. He has been harping on the applicability of transfer guidelines and the powers vested with the Commissioner. The basic thing forgotten during this argument is the need to acquire the status and locus standi before seeking applicability of transfer guidelines. That is he can ask for the applicability of the guidelines as Trained Graduate Teacher only after becoming one. Whenever he made such representations for transfer, he was still holding the position of Primary Teacher. He would not fulfill any of the conditions to become Trained Graduate Teacher. Thus, he lacks a locus standi for claiming the benefits of posting to Shajahanpur as such. The impugned order cannot be faulted for non-application of mind. The applicant may contend that the respondents cannot take away his rights to represent for a change of place of posting on promotion. It is equally competent for the respondents to insist that

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the promoted teachers accept certain conditions prior to their being allowed to function as such.

8. On account of the above, we find that the applicant does not have a valid case. The Original Application is dismissed. No order to costs.

Dated, the 10th June, 2005.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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