

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 313/2001

Thursday, this the 17th day of January, 2002

CORAM

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Aleykutty Sebastian
W/o Sebastian
Primary Teacher
Kendriya Vidyalaya
Ernakulam,
Cochin-20.

Applicant.

[By advocate Mr. P.V.Mohanan]

Versus

1. The Deputy Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi.
2. The Principal
Kendriya Vidyalaya School
Gandhi Nagar
Kochi.

Respondents.

[By advocate Mr. Thottathil B.Radhakrishnan]

The application having been heard on 17th January, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, a primary teacher of Kendriya Vidyalaya Sangathan aggrieved by A-7 order dated 7.2.2001 issued by the first respondent rejecting her representation along with representations from other teachers and directing the 81 persons listed in that order including the applicant to get relieved by 20.2.2001 and to join the place of posting and stating that in case of failure the offer of their promotion would stand withdrawn with effect from 21.2.2001 and they would be debarred for a period of 5 years, has filed this Original Application seeking the following reliefs:

- i. To direct the respondents to post the applicant, a Primary Teacher, as Headmistress either in Kendriya Vidyalaya School, Kottayam or Kendriya Vidyalaya School, Ernakulam.



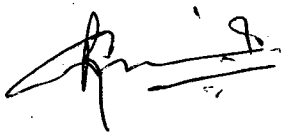
- ii. To set aside A-7 order in so far as it transfers the applicant to Kendriya Vidyalaya, Ottapalam and in so far as it withdraws the promotion and debars her for a period of 5 years.
- iii. Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.

2. According to the applicant's averments in the OA, she commenced service as a Primary Teacher, Kendriya Vidyalaya Sangathan on 18.7.1972. By order dated 10.11.2000 she was transferred from Ernakulam to Kendriya Vidyalaya No.1 at Palakkad (A-1). Applicant filed A-2 representation dated 18.11.2000. By A-3 order dated 22.11.2000, 172 Primary Teachers including the applicant were promoted to officiate as Headmaster and posted in different stations. In this order, the applicant was transferred on promotion from Ernakulam to Ottapalam. It was stated therein that those teachers who were willing to join as Headmaster must be relieved on or before 30.11.2000 and join the transferred place at Ottapalam on or before 16.12.2000. Applicant claimed that when A-3 order was issued, the post of Headmistress, Kendriya Vidyalaya, Ernakulam as also that of Kendriya Vidyalaya, Aluva were vacant. It was also averred that Mrs. Sobha Nair who was promoted and transferred from Kendriya Vidyalaya, Pattom to Kendriya Vidyalaya, Kottayam, had expressed her unwillingness to join duty as Headmistress (A-4). Applicant submitted A-5 and A-6 representations dated 2.12.2000 and 11.12.2000 respectively requesting for a posting either at Kendriya Vidyalaya, Ernakulam or Kendriya Vidyalaya, Kottayam, enclosing therein A-4 representation of Shobha Nair. By A-7 order dated 7.2.2001, the representation submitted by the applicant was rejected. Aggrieved, the applicant has filed this OA.



According to her, requests of similarly placed teachers, both senior and junior were considered and they were retained in the place of their choice on promotion. She referred the cases of her two seniors Smt. Lekha Damodharan and Smt. Catherine and Smt. Jyothirmathi, a junior to her. She further submitted that the stipulation contained in A-7 that the offer of promotion would be withdrawn with effect from 21.2.2000 and they would be debarred for a period of five years was illegal, unconstitutional, opposed to public interest and violative of Article 14 of the Constitution of India. Applicant also relied on Clause 10 (2) of the Transfer Guidelines in support of her case.

3. Respondents filed reply statement resisting the claim of the applicant. According to them, employees appointed in Kendriya Vidyalaya Sangathan were liable to be transferred anywhere in India. It was averred that representations received from the promotees were considered sympathetically and changes in place of posting were ordered in few cases considering the seniority of the persons, retirement within two years etc. Accordingly the applicant's request for change of place of posting to Kendriya Vidyalaya, Ernakulam or Aluva instead of K.V.Ottapalam where she was originally posted had been considered. But in view of there being no vacancy in those two schools during the disposal of the representation, the request of the applicant was not acceded to and accordingly the applicant was informed by memo dated 7.2.2001. As per the decision taken in the Board of Governors meeting - the apex body of Kendriya Vidyalaya Sangathan - a teacher declining



promotion for reasons acceptable to the appointing authority would not be promoted for a period of 5 years. According to them, if the reasons for declining promotion were not acceptable to the appointing authority, the Kendriya Vidyalaya Sangathan had the right to enforce promotion. However if promotion was declined, such teachers were debarred from promotion for a period of 5 years. Kendriya Vidyalaya Sangathan being an autonomous body framed rules and regulations on promotions and seniority of its own. The prescription of forfeiture of promotion for 5 years was neither illegal nor unreasonable and the ^{same} was not assailable in this OA. Applicant's averment that it was the policy of the Kendriya Vidyalaya Sangathan not to transfer from one cluster to another was also denied. In terms of the policy decision taken by the Kendriya Vidyalaya Sangathan, a teacher on promotion may necessarily be posted out of the region where he/she was currently working. At the same time, a lady teacher may, on promotion, be considered for a posting to another district subject to availability of clear vacancy. In the present case, there was no vacancy in Kendriya Vidyalaya, Ernakulam. The vacancy which existed in Kendriya Vidyalaya, Aluva was filled up by one Smt. Damodaran who was originally posted from Kendriya Vidyalaya, PT, Cochin to Kendriya Vidyalaya, Trichur. In respect of the vacancy at Kendriya Vidyalaya, RB, Kottayam, the representation of Smt. Shobha Nair of Kendriya Vidyalaya, Pattom was under consideration and she was directed to get herself relieved by 20.2.2001 to join the place of posting. In such circumstances, the request of the applicant could not be agreed to. All India seniority was the criterion for promotion



and not the seniority in cluster schools. If the reasons adduced for refusal of promotion were acceptable to the appointing authority, as it may not be administratively possible or desirable to offer promotion year after year to the persons who initially refused, no fresh offer of promotion would be made in such cases for a period of 5 years from the date of refusal of the first promotion. Clause 10(2) of the Transfer Guidelines stipulated that lady teachers be posted at nearby places of station and the said Clause applied only in case of transfers covered under displacement scheme of the transfer and not transfer on promotions. Clause 15 of the transfer guidelines clearly envisaged that a teacher on promotion should necessarily be posted out of the region where he/she was currently posted. However, a lady teacher may on promotion be posted within the same region but a district or two away from the existing place of posting subject to availability of vacancy. In the instant case, the applicant had been working in Ernakulam and had been accommodated in a nearest vacancy at Kendriya Vidyalaya, Ottapalam in a nearby district. If such an offer to a nearby place was not acceptable to the applicant she would have to forfeit the promotion offered to her. The OA was liable to be dismissed.

4. Heard the learned counsel for the parties. Learned counsel for the applicant took me through the pleadings in the OA and submitted that the request of the applicant needed to be considered sympathetically. He submitted that there was a vacancy of Headmistress in Kendriya Vidyalaya, Gandhinagar, Kochi, the Principal of which Vidyalaya had been made as the



second respondent and the second respondent had not filed any reply statement. Learned counsel for the respondents took me though the reply statement and submitted the the reply statement filed by the first respondent may be treated as the reply statement of the second respondent also .

5. I have given careful consideration to the submissions made by the learned counsel for the parties, the rival pleadings and have also perused the documents brought on record. On the basis of the pleadings as well as the submissions, I do not find the applicant being entitled for the reliefs sought for.

6. The first relief sought for by the applicant is for a direction to to the respondents to post her as Headmistress either in Kendriya Vidyalaya School, Kottayam or Kendriya Vidyalaya School, Ernakulam. Respondents in the reply statement have averred that the vacancy of Headmistress at Kendriya Vidyalaya, Kottayam had been filled up by Smt. Shobha Nair who was a teacher at Kendriya Vidyalaya, Pattom. As regards the rules, I find Clause 15 of the Transfer Guidelines reads as under:

:15. A teacher on promotion shall necessarily be posted out of the Region where he is currently posted. However, a lady teacher may on promotion be posted within the same region but a district or two away from the existing place of posting, subject to availability of vacancy."

I find that on the basis of the above Clause, the applicant who is working at Ernakulam is not entitled for a posting in Ernakulam on promotion. I also note that the applicant has



been posted as Head Mistress in Kendriya Vidyalaya, Ottapalam which is situated in a nearby district. The junior to the applicant pointed out by the applicant had not been accommodated in the district in which she was working. Further, the respondents in the reply statement have averred that there was no vacancy in Kendriya Vidyalaya, Ernakulam and this has not been denied by the applicant by filing any rejoinder.

7. The second relief sought for by the applicant is to set aside A-7 order in so far as it transferred the applicant to Kendriya Vidyalaya, Ottapalam and in so far as it withdrew promotion and debarred her for a period of 5 years. Even though the applicant submitted that the said debarring for a period of 5 years was illegal and unconstitutional, opposed to public interest and violative of Article 14 of the Constitution, no materials have been placed before me to substantiate the same. Respondents have categorically stated that it was a policy decision taken by the Governing Council of the Kendriya Vidyalaya to debar a teacher who declined promotion for reasons which were acceptable to the appointing authority and the same was not liable to be challenged. I find considerable force in this.

8. I hold that transfer is not only an incidence of service for employees like the applicant but it is a condition of service. In this case the applicant is not being simply transferred but she is being promoted and then transferred. It is not for this Tribunal to act as an appellate authority over



the departmental authorities who are to consider the cases of their employees and decide who should be posted where. Judicial review of transfer is limited to examine if there was any violation of the statutory principles laid down for transfer or the transfer was as a result of malafides or had been ordered by an authority not competent. No such grounds have been advanced by the applicant in support of her case in this OA.

9. In view of the foregoing, I do not find any merit in this Original Application and accordingly I dismiss the OA with no order as to costs.

Dated 17th January, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of transfer order No.F.2-1(14)(P.1) 2000-KVS (EIV) dated 10.11.2000 issued by the respondent.
2. A-2 : True copy of representation dated 18.11.2000 submitted by applicant to the respondent.
3. A-3 : True copy of Memorandum F.No.F.4-1/98-KVS (Estt.III) dated 22.11.2000 issued by the respondent.
4. A-4 : True copy of representation submitted by Smt.Sobha dated 4.12.2000 to 1st respondent.
5. A-5 : True copy of representation dated 2.12.2000 submitted by applicant to the respondent.
6. A-6 : True copy of representation dated 11.12.2000 submitted by the applicant to the respondent.
7. A-7 : True copy of the Memorandum No.F.4-1/98-KVS (Estt.III) dated 7.2.2001 issued by the respondent.
8. A-8 : True copy of the representation dated 16.2.2001 submitted by the applicant to the respondent.

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