

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 333/2000

Tuesday this the 2nd day of April, 2002.

CORAM

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

Janaki Menon
W/o Kesavankutty
Trained Graduate Teacher (Bio)
Kendriya Vidyalaya, Trichur.
residing at Parakkota House
Patturaikkal, Thrissur.

...Applicant.

(By advocate Mr.P.Ramakrishnan)

Versus

1. The Kendriya Vidyalaya Sangathan
rep. by the Chairman
Institutional Area, Shaheed Jeet Singh Marg
New Delhi.
2. The Commissioner
Kendriya Vidyalaya Sangathan
Shaheed Jeet Singh Marg
New Delhi.
3. The Officiating Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office, IIT Campus
Chennai-36.
4. The Principal
Kendriya Vidyalaya, Trichur.
5. Union of India rep. by
Secretary, Ministry of Human
Resources Development
New Delhi.

...Respondents.

(By advocate Mr.Thottathil B.Radhakrishnan R1-4)
Mr.C.Rajendran for R5.

The application having been heard on 2nd April, 2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant filed this Original Application aggrieved by A-1
memo dated 18.12.99 issued by the second respondent by which she
had been promoted as Post Graduate Teacher (PGT) and posted at
Nowrozabad from Trichur. She sought the following reliefs through
this OA:



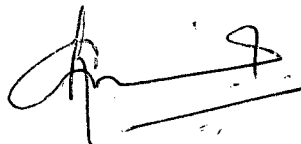
- i. An order quashing and setting aside A-1 in so far as it posts the applicant to Nowrozabad.
- ii. An order directing the respondents to promote the applicant as PGT (Bio) with effect from the date on which her juniors Smt. Madhavi Waghle and Smt. Geetha S. Manion were promoted as PGT (Bio) and grant her all consequential benefits.
- iii. An order directing the respondents to promote and post the petitioner as PGT(Bio) in the same district or region.
- iv. An order directing the respondents to take up and dispose of A-5 representation.
- v. Such other writs, orders and directions as are deemed fit in the facts and circumstances of the case.

2. Applicant commenced her service as Trained Graduate Teacher (Biology) in September 1985 at Gandhinagar. She was transferred to Trichur in 1991. By A-1 memo dated 18.12.99 she had been posted to Nowrozabad in Madhya Pradesh upon promotion as PGT. Applicant claimed that earlier by order dated 29.7.94 the Assistant Commissioner of Kendriya Vidyalaya Sangathan had promoted a number of TGTs as PGTs and the list contained teachers who were junior to her. One such junior teacher was Sreelatha. In the seniority list of TGTs as on 30.4.88 the applicant's seniority position was 5171 and that of Sreelatha was 6639. However, Sreelatha had been reverted as TGT by order dated 26.5.95 issued by the respondents. Against the reversion, Sreelatha filed O.P.No.8770/95 before the Hon'ble High Court of Kerala. The applicant got herself impleaded in the matter. The said O.P. was disposed of by judgement dated 14.10.95 in which the Hon'ble High Court directed the 2nd respondent to decide the issue by giving notice to all concerned. Pursuant to the judgement of the Hon'ble High Court, A-2 order was issued by the second respondent confirming the reversion of Sreelatha. Applicant claimed that even though the respondents had stated that a review DPC was being constituted to rectify the erroneous



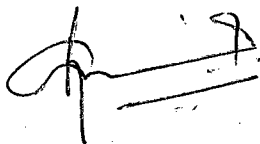
promotion given to Smt.Madhavi Waghle and Smt.Geetha S.Manion they had not taken any steps in that regard and in the meanwhile Smt.Sreelatha had moved the Hon'ble High Court of Kerala challenging A-2 order in O.P.3528/99. By A-3 interim order dated 16.2.99, the Hon'ble High Court refused to stay the operation of A-2. The applicant filed A-4 representation dated 22.7.99 addressed to the second respondent. Respondents issued A-1 order dated 18.12.99 promoting the applicant as PGT and posting her to Nowrozabad. As she was being posted to Nowrozabad and her family life was in peril as she was a native of Trichur she filed A-5 representation claiming that her posting to Nowrazabad was arbitrary, illegal and was an act of victimization and claiming support of the latest transfer guidelines in respect of teachers on promotion she filed this OA seeking the above reliefs.

3. Respondents 1-4 filed reply statement resisting the claim of the applicant. It was submitted that the OA was barred by limitation. According to them, the decision of the respondents which the applicant challenged was not the context of A-1 but was one which was passed long ago. It was submitted that the Hon'ble High Court of Kerala had already found that the decision taken on the basis of the facts stated in the statement attached to A-2 was correct. According to them the applicant was seeking a direction that she may be promoted with effect from the date of Madhavi Waghle and Geetha S.Manion whereas in the statement attached to A-2, it had been clearly brought out that they were promoted inadvertently and it was proposed to revert them following the prescribed procedure hence the applicant could not make out and did not have any sustainable case to seek promotion



as on those dates the said persons were mistakenly included in the promotion list. The applicant who was allotted her due serial No.5171 had to wait for her turn for promotion and she was not entitled to be promoted at that point of time. Applicant had also accepted the said factual position as she had not challenged the decision contained in A-2. A-1 was ordered on 18.12.99 and her posting was governed by the principles contained in the transfer guidelines as approved by the Chairman of the first respondent Sangathan. Transfer guidelines applicable for the academic year 1999-2000 are as in R-1.

4. Heard the learned counsel for the applicant. None was present on behalf of the respondents 1 to 4. Learned counsel for the applicant submitted that the last teacher among direct recruits, TGT (Bio) promoted so far was one Yogendra Tripathi (Seniority No.5039). Applicant's position in the seniority list was 5171. There were only 131 TGT teachers between the applicant and Yogendra Tripathi. The 1st respondent had promoted so many persons during the years 1994 to 1999 as promotions were effected every year. Applicant did not have any access to any of these orders as they were never circulated. In A-1 list Sl.No.5048 Kanakalatha and Sl.No.5143 Girish Kumar had seniority over the applicant. The names of 32 others did not even figure in the seniority list. According to him, the Sangathan had apparently relied on a pick and choose method rather than to making promotions from the seniority list. He submitted that there were two vacancy of PGT (Bio) at Kendriya Vidyalaya, Trichur but on 16.7.99 one Mallika was appointed on inter region request transfer from Orissa in the first vacancy. This was followed by



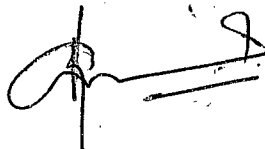
the appointment of one Usha Menon on inter regional transfer from Chennai on 22.11.99. According to him, these were in violation of the transfer guidelines which provided for posting on promotion in the following order:

- i) Postings on promotion
- ii) Intra region transfers
- iii. Inter regional transfers
- iv. Posting of direct recruits.

5. According to him, the applicant had been denied her due promotion from 1994 and now she had been posted to an obscure corner in Madhya Pradesh to harass and victimize her. If the applicant did not accept the posting she was liable to be barred from promotion for the next five years. He claimed that according to the guidelines issued by the Sangathan, priority to posting on promotions was given. However, during the current academic session, The Sangathan had made postings in total violation of the guidelines. He also submitted that another vacancy which was available in Kochi region had been filled up on 14.12.99 by transferring another teacher. Even though action was being taken against the two teachers Madhavi Waghle and Geetha S.Manion for their reversion, they were still being continued and hence the applicant was entitled for promotion with effect from the date these two teachers were promoted. Inclusion of persons who did not figure in the seniority list was not justifiable on any count as only two of them appeared in the A-1 list. The latest guidelines for posting on promotion of teachers also provided that the women teachers need not be shifted from one region to another upon promotion and hence the applicant's posting at Nowrozabad was unwarranted, arbitrary and illegal.



6. We have given careful consideration to the submissions made by the learned counsel for the applicant and the rival pleadings and have also perused the documents brought on record. The main relief sought for by the applicant through this OA is to quash and set aside A-1 in so far as it posts the applicant to Nowrozabad on promotion. To a question being put to the learned counsel for the applicant as to how the second relief is consequent to the first relief, learned counsel for the applicant submitted that his main reason for claiming promotion and posting in a place where she is working is because Smt.Madhavi Waghle and Smt.Geetah S.Manion who are admittedly junior to her were promoted earlier. On going through the annexure attached to A-2 it is evident that Smt.Madhavi Waghle is admittedly junior to the applicant and the Sangathan was taking action for reverting her. Similar is the case with Geetha S.Mainion also. When the Sangathan has rectified the mistake committed by them in the case of Smt.Sreelatha and had also decided to rectify the mistake in the case of Smt.Madhavi Waghle and others, we are of the view that on the basis of these promotions, the applicant cannot have surviving cause of action for claiming promotion with reference to the dates on which the above named had been wrongly promoted. In any case, from A-2 we find that the seniority number of Geetha S.Mainon was 5623. By the applicant's own averment in the OA one Yogendra Tripathi having his seniority number as 5039 was the last person promoted in 1994. Applicant can claim any promotion only if she is able to show that all persons between 5039 the seniority position of Yogendra Tripathi and 5171 her seniority position had been promoted and somebody below her after 5171 had been promoted. In the averments, she has not shown anybody other



than Geetha S.Manion and Madhavi Waghle as having been promoted. It is a well accepted principle that nobody can have a legal claim for promotion on the basis of wrong promotions given to somebody else.

7. In fact this OA has been filed by the applicant on receipt of A-1 order posting her to Nowrozabad. From A-5 representation dated 29.12.99, the applicant has in effect refused the promotion ordered in her favour. The said letter reads as under:

"The Commissioner
Kendriya Vidyalaya Sangathan, New Delhi.

Ref:Memorandum No.F 13-1/99-KVS (Estt.II) dated 18.12.99.
Sub: My promotion to PGT (Bio) and posting at Nowrozabad.

Respected Sir,

By order under reference, I have been informed that I stand promoted as PGT (Bio). I feel that the said promotion was long overdue.

The accepted norms are specific that lady teachers are to be accommodated in nearby districts and an inter-regional transfer may not be prescribed for them. I accept the promotion but would request you to keep it in abeyance, till such time a vacancy in the same or nearby districts or even nearby regions occur.

I may be favoured with a reply at your earliest convenience.
Thanking you in anticipation.

Yours faithfully
sd/-
(Mrs.Janaki Menon)"

8. When she states in the above letter that she accepts the promotion but would request the authorities to keep the same in abeyance, the same would mean in effect that she is refusing the promotion. When such is the case, we do not find any merit in the relief claimed in (b) that she should be promoted with effect



from the date of promotion of Madhavi Waghle and Geetha S.Manion because on her refusal some others who could have been promoted by the authorities, junior to her, would have accepted the promotion and would have been promoted. Thus we find inconsistency in the applicant's prayer.

9. Respondents' case is that the applicant had been promoted and posted to Nowrozabad on the basis of the latest guidelines R1 issued on 13.12.99. Their specific case is that the said guidelines are applicable for the academic year 1999-2000. The applicant has not produced any supporting document for her claim that the posting on promotion has to follow the order stated by her in the OA and submitted by the learned counsel for the applicant. Further as per R1 guidelines, we find that 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. Nothing has been brought to our notice that there are vacancies existing in the nearby districts. The only vacancy which by the applicant's own averment is available at Kochi and the same had been filled up on 14.12.99 whereas the order to promote her had been issued on 18.12.99. It is for the executive to decide where to deploy the employees. In this case it is for the Sangathan to decide where to deploy the teachers under them. This is an executive decision generally not susceptible to judicial intervention while exercising the powers of judicial review unless the executive decisions are tinted with malafides or totally irrational and arbitrary. No such malafides has been



alleged in this OA. Nothing has been brought to our notice also as to the availability of vacancies in nearby districts. We also do not find anybody being posted to any station in Kerala Region in A-1 order. This leads us to the conclusion that at the time of issue of A-1 order perhaps there was no vacancy.

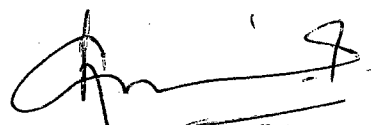
10. For the above reasons, the application has to fail.

11. Accordingly we dismiss this OA with no order as to costs.

Dated 2nd April 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of Memorandum No.F.13-1/99-KVS (Estt.111) dt.18.12.99 issued by the 2nd respondent.
2. A-2 : True copy of Memorandum No.19-7(3)/95/KVS (L&C) dt. 4/5th Feb. 99.
3. A-3 : True copy of order dt.16.2.99 in CMP No.6009/99 in OP No.3529/99 of the Hon'ble High Court of Kerala.
4. A-4 : True copy of representation dt.22.7.99 from the applicant to the 2nd respondent.
5. A-5 : True copy of representation dt.29.12.99 from the applicant to the 2nd respondent.

Respondents' Annexure:

1. R-1 : True copy of the transfer guidelines applicable in the academic year 1999-2000 dated 30.12.1999.

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