

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 341/2010

Dated this the 3rd day of August, 2010

C O R A M

HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

N. Ragini W/o C.K.V. Kurup
Upper Division Clerk, Kendriya Vidyalaya Sangathan
No.1, Shift II, Calicut
residing at No.1/3135-A, Viswa Ragam, East Hill
West Hill PO, Calicut-673 005

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs

- 1 The Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shahid Jeet Singh Marg
New Delhi-110 0016

- 2 The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office, IIT Camplus
Chennai-36

- 3 The Principal
Kendriya Vidyalaya Sangathan
NO.1, Calicut

- 4 The Joint Commissioner (Admn)
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shahid Jeet Singh Marg
New Delhi-110 0016

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

The Application having been heard on 16.7.2010, the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, an Upper Division Clerk, Kendriya Vidyalaya Sangathan School No. 1, Calicut is challenging the order transferring her to KV CRPF Pallipuram, Trivandrum and relieving her in haste notwithstanding the fact that she was on medical leave.

2 The applicant was working as UDC at KV NO.1, Calicut. While so, she was on leave due to Koch's Spinkle and related disease affecting the spinal range of movements, lumbar region, etc.(A-4). The KVS NO. 1, Calicut was functioning in two shifts and the applicant was working in Shift No. II which was later merged with Shift No. I w.e.f. 1.4.2010 (A-6). The Principal sent a letter endorsing copy of the letter received from the 2nd respondent, to the applicant (A-7) according to which, the applicant stood transferred to KVS CRPF, Pallipuram as per clause 7.1 (i) and (ii) of KVS transfer guidelines. Immediately, she submitted a representation to retain her at Calicut. Since there was no reply, she filed this O.A to quash Annexure A-1 and A-2 and to direct the respondents to allow her to continue at Calicut. She raised the grounds that she was on medical leave from November, 2008, there is no public interest warranting her transfer, the transfer has not been issued as per the guidelines in para 7.1(i) and (ii), the willingness of the other UDC working in the school who had expressed his willingness to be transferred to Ooty, has not been obtained, no merger of Shifts has

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taken place so far, there is no surplusage, the applicant's husband is now transferred to Calicut, therefore, the transfer of the applicant at this juncture is illegal and arbitrary and that she has been relieved in haste.

3 The respondents in their reply statement submitted that on merger of the two shifts there was surplusage of 17 staff members and that since the applicant has not submitted her option, there was no other alternative but to transfer her being the seniormost stayee. As regards the contention of the applicant that her husband has sought transfer to Calicut, they submitted that he is working at KV Kalpetta which is under Bangalore region. Therefore, she cannot be treated as CDA category. Regarding the contention of the applicant that option was not sought from the other UDC, they submitted that option can be sought only from surplus hands and that the other UDC was not declared surplus. They submitted that the disease the applicant is suffering is not covered under KVS transfer guidelines so as to give her right to retention in the same station. They submitted that the Medical Board to whom she was referred, certified that she is fit to resume duty (A-2)

4 The applicant filed rejoinder producing Annexure A-18 order of request transfer of the husband of the applicant to Calicut. She further submitted that if the post of UDC becomes surplus all the UDCs would have been asked to express their option and the transfers would be effected to the extent possible in accordance with the willingness given. Therefore, she stated that the other UDC should also have been asked to give his option.

5 We have heard learned counsel appearing for the parties.

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6 The Kendriya Vidyalaya School No. 1 at Calicut has been working in two shifts while shift NO. 1 was a 3 Section school, shift No.II was a 2 Section school. Accordingly, on merger, it would become a 5 Section School, therefore, the ministerial staff as per revised staff norms would have 1 Section Officer, 2 UDC and 2 LDC. Therefore, there is no surplusage.

7 The applicant challenges the transfer order as ultra vires of Para 7.1(i) and (ii) of the transfer guidelines and hence unconstitutional. Para 7.1(i) and (ii) is extracted below:

7 Administrative transfers to eliminate staff surplusage

7.1 In the Kendriya Vidyalayas where teachers are 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.

(ii) 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.

Preference of such teachers from among available vacancies in KVs of the Region will also be ascertained. Persons responding to the notice under (i) above and those identified under (ii) above will be called for a round of counselling before the Regional Transfer Committee, 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.

From the above, it is clear that as per the guidelines, even when there is surplus, the entire staff should have been given an opportunity

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to exercise their option for transfer to a place of their choice.

8 In the case on hand, both the UDCs working in the KV Calicut should have been asked to exercise their option for transfer, when the shifts in the KV were merged into one. Therefore, it cannot be said that surplusage happened only in Shift II. Therefore, we hold that the willingness of the entire staff in both the shifts in the surplus category, should have been ascertained. The respondents having not done so, we are of the view that it is violative of the transfer guidelines. The learned counsel of the applicant pointed out in the rejoinder that K.V. Calicut is a 5 Section School and hence it is entitled to 2 UDCs and 2 LDCs as per the new staffing norms w.e.f. 2010-11 vide Annexure A-16 dated 4.6.2010 which is extracted below:

No. of sections in KV	Superintendent (now known as Section Officer)	Assistant Supdt. (now known as Assistant)	UDC	LDC
01 Section	-	-	01	01-
02 Sections	-	-	01	01
03 Sections	-	01	01	01
04 Sections	--	01	01	02
05 Sections	01	-	02	02

The restoration of staff norms was in compliance with this Tribunal's order at Annexure A-17. Hence, one post of UDC declared surplus on merger of shifts in February, 2010 vide Annexure A-7 stands restored. Therefore, the counsel laboured to establish that the very foundation for applicant's transfer i.e the surplusage on merger of shifts, no longer exists and hence there is no justification for her transfer on the ground of surplusage, now.

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9 Moreover, in the rejoinder, the applicant has stated that her husband has since been transferred to Calicut K.V. by order dated 07.05.2010. This has brought a sea change in the scenario, as she gets included in the CDA category now. It is seen that Annexure A-15 defines the CDA category to include "employee whose spouse is in Kendriya Vidyalaya/Central/State Government and Autonomous body or PSU of Central/State and posted in the same station or nearby station. Therefore, the applicant has the protection of not being transferred from her present place of posting. In that circumstance, the applicant sought reconsideration of her transfer.

10 In view of the above discussion, we are of the opinion that the impugned order at Annexures A-1 requires re-consideration by the 1st respondent in the changed scenario. Accordingly, we permit the applicant to submit a detailed representation to the 1st respondent, requesting for retention at KVS No.1 Calicut, within two weeks from the date of receipt of a copy of this order. The 1st respondents shall reconsider the matter, in the light of the new facts and circumstances and our observation above and pass a speaking order within two months from the date of receipt of the representation as directed above. Till then the interim stay dated 23.4.2010 will continue. The O.A. is disposed of as above. No costs.

Dated 3rd August 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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JUSTICE K. THANKAPPAN
JUDICIAL MEMBER