

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 348 of 2001

AND

OA No. 771 of 2001

Thursday, this the 11th day of October, 2001

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

OA No. 348/2001

1. C.N. Nanukuttan Nair,
Trained Graduate Teacher (Biology),
Kendriya Vidyalaya, INS Dronacharya,
Fort Cochin - 682 501
residing at 26/1520 'Vasanth',
Thevara, Kochi - 682 013.Applicant

[By Advocate Mrs Sumathi Dandapani for Mr. KP Dandapani]

Versus

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016
2. The Deputy Commissioner (Finance),
Kendriya Vidyalaya Sangathan,
Establishment III Section,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016
3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, I.I.T Campus,
Chennai - 680 036
4. The Education Officer,
Kendriya Vidyalaya Sangathan,
(Estt. III Section),
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi - 110 016
5. The Principal,
Kendriya Vidyalaya,
INS Dronacharya,
Fort Cochin - 682 501
6. The Principal,
Kendriya Vidyalaya,
Gangtok, Sikkim - 737 101

7. Shri John,
Trained Graduate Teacher (Biology),
Kendriya Vidyalaya, Gangtok,
Sikkim - 737 101Respondents

[By Advocate Mr. Thottathil B. Radhakrishnan (R1 to R6)]
[By Advocate Mr. P. Ramakrishnan (R7)]

OA No. 771/2001

1. K.J. John,
S/o late K.T. John,
TGT (Biology), KV-INS Dronacharya,
residing at Kalaparambil House,
Thoppumpady, Kochi-5Applicant

[By Advocate Mr. MR Hariraj for Mr. MR Rajendran Nair]

Versus

1. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Chennai Region,
IIT Campus, Chennai.

2. Principal,
Kendriya Vidyalaya, INS Dronacharya,
Kochi - 682 501

3. Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheeb Jeet Singh Marg,
New Delhi - 110 016Respondents

[By Advocate Mr. Thottathil B. Radhakrishnan]

The applications having been heard on 11-10-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Facts of these two cases are so interrelated that they
can be conveniently considered and disposed of by a common
order. Hence, this common order.

2. OA 348/2001: Sri C.N. Nanukuttan Nair, Trained
Graduate Teacher (Biology), Kendriya Vidyalaya, INS
Dronacharya, Cochin aggrieved by A1 order dated 21-12-2000 by
which he was transferred to Kendriya Vidyalaya, Gangtok
submitted a representation to the 1st respondent on 5-1-2001
(Annexure A3) inter alia pointing out that the transfer during
the midst of the academic session being against the provision

of Clause 6 of the transfer guidelines he could not have been transferred in the month of December. As the representation was not considered and disposed of, apprehending relief the applicant filed OA 25/2001, which was disposed of directing the Commissioner to consider the applicant's representation and to give the applicant appropriate reply without delay keeping the relief of the applicant pursuant to the impugned order in abeyance until after expiry of five clear working days of service of orders on the representation on the applicant. In obedience to the order of the Tribunal, the 1st respondent passed the order dated 9-4-2001 (Annexure A5) turning down the representation and directing the applicant to report at the place of posting forthwith without any further delay. Aggrieved by the same the applicant has filed this application impugning A1 order, A2 order dated 5-1-2001 relieving the applicant and A5 order by which the representation has been rejected. The applicant has alleged in the application that the transfer of the applicant in the midst of the academic session is against the guidelines, that no administrative exigency existed in making such an order of transfer at that point of time, that the applicant having served in a difficult station for more than five years he could not have been again transferred from Cochin, that even if such a transfer was required according to the guidelines the person who had the longest stay should have been moved first, that there are several Teachers working in Cochin who had served for longer period than the applicant and for all these reasons the impugned order of transfer is not sustainable and that the order A5 is unsustainable for want of application of mind to all the relevant factors.

3. On behalf of respondents 1 to 6, the impugned orders have been sought to be justified on the grounds that transfer of the applicant was made under Clause 10(1) of the guidelines

to accommodate the Teacher (7th respondent) who had rendered more than five years at Gangtok, a difficult station, that it may not always be possible to issue orders of transfer during the academic session itself and that as the order of transfer is not vitiated by malafides the Tribunal may not interfere.

4. The 7th respondent has filed a reply statement justifying his transfer on the ground that he has already served for more than 10 years in a difficult station.

5. OA 771/2001: The applicant, who is the 7th respondent in OA 348/2001, was by order dated 22-12-2000 (Annexure A2) transferred to Kendriya Vidyalaya, INS Dronacharya, Cochin. The applicant was relieved pursuant to the order of transfer and has joined at Kendriya Vidyalaya, INS Dronacharya, Cochin on 30-1-2001. His grievance is that by an order dated 29-8-2001 (Annexure A1) he has been asked to go back to Kendriya Vidyalaya, Gangtok in view of the fact that on the basis of the interim order granted in OA 348/2001 the applicant in that case is continuing and the working of two teachers against one post is creating administrative problems. The applicant says that it is after a long service of 10 1/2 years at Gangtok that he has been transferred to Kendriya Vidyalaya, Cochin in accordance with the guidelines and therefore, the impugned order directing the applicant to go back to Gangtok is totally unjustified. The applicant has also stated in the application that there are vacancies of Trained Graduate Teacher (Biology) in Kendriya Vidyalaya, Trichur and that in case the applicant has to be moved from Kendriya Vidyalaya, Cochin, the respondents should be directed to accommodate him in Kendriya Vidyalaya, Trichur.

6. Respondents have filed a reply statement justifying the direction given in the impugned order on the ground that as two

Teachers cannot work against one sanctioned post the administration had no choice but to direct the applicant to go back to Gangtok subject to the result of the OA 348/2001.

7. We have heard Smt. Sumathi Dandapani, learned counsel for the applicant in OA 348/2001, Sri Thottathil B. Radhakrishnan, learned counsel for the official respondents, Sri P. Ramakrishnan, learned counsel for the 7th respondent in OA 348/2001 and Sri M.R. Hariraj, who appeared for the applicant in OA 771/2001.

8. The decision in OA 771/2001 will follow the decision in OA 348/2001 as two Trained Graduate Teachers (Biology) cannot work against one sanctioned post in Kendriya Vidyalaya, INS Dronacharya, Cochin. So, we will first consider whether the impugned orders in OA 348/2001 can be justified.

9. In OA 348/2001, the impugned order of transfer is assailed mainly on the ground that this has been made in violation of Clause 6 of the guidelines as the order of transfer has been issued in the midst of the academic session and beyond 31st of August. The applicant has also contended that since the applicant had already served in a difficult station for one tenure he could not be transferred again and even in case the transfer is required, after completion of the tenure at Cochin, the teacher who had the longer stay has to be transferred. Regarding the contention of the applicant that since the applicant has served for a tenure in a difficult station he is not to be transferred again, such a contention is not based on any right or guidelines. Regarding the retention of teachers in Cochin who had the longest stay, the action has been justified by the officials respondents on the ground that a policy decision was taken not to transfer lady teachers to

distant places. We do not find any infirmity in such a decision is taken as a policy measure. The surviving contention of the applicant is that the transfer made after 31st of August being against the provision of Clause 6 of the guidelines and not made in exigencies of service is not sustainable. We find considerable force in this contention. Although guidelines do not cloth an employee holding a transferable post to enforce a right of retention or a right of posting at a particular place, if the order of transfer is sought to be justified only on the ground that it has been made according to the guidelines and if it is found that actually guidelines have been violated without any justification, judicial intervention is permissible. Total arbitrariness is also a valid ground for judicial intervention. Clause 6 of A6 guidelines provides that a transfer should not be made unless under exigencies of service beyond 31st of August. A deviation from that though permitted to meet the exigencies of service the competent authority should not ignore the guidelines if there is no pressing administrative need. In this case, the transfer of the applicant has been made on 22nd of December, 2000 only for accommodating the 7th respondent who had served in a difficult station for a tenure under Clause 10(1) of the transfer guidelines. This is a matter which could have been done conveniently during the summer vacation when transfers are made in a routine manner as per guidelines. No extreme urgency was there in giving a transfer to the 7th respondent to Cochin. His request should have been considered and the transfer made during the vacation. If it had been a case where the competent authority on the basis of a representation by the 7th respondent was satisfied about an extreme urgent need of the 7th respondent to be posted at Cochin immediately and had issued the order of transfer even beyond 31st of August, we would not have found any reason for interference. Such a situation is not available in this case. Therefore, the

impugned order of transfer of the applicant issued after 31st of August made by A1 cannot be said to be in accordance with the guidelines. It is against the provisions of the guidelines. It cannot be supported by any administrative reason also. Therefore, we are of the considered view that the transfer of the applicant from Kendriya Vidyalaya, INS Dronacharya, Cochin to Kendriya Vidyalaya, Gangtok made by A1 has got to be set aside. Annexure A5 order turning down the claim made by the applicant in his representation also has got to be set aside for the reason that the competent authority has not considered the ground raised by the applicant in his representation namely that the transfer was made during the midst of the academic session for no pressing administrative exigencies.

10. In the light of what is stated above, we are of the view that the impugned orders A1, A2 and A5 in OA 348/2001 have got to be set aside.

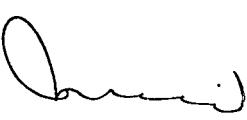
11. Since we have found that the impugned order of transfer of the applicant in OA 348/2001 has got to be set aside, the applicant in OA 771/2001 naturally will have to go back to Gangtok because two persons cannot be permitted to work against one post. However, the applicant in OA 771/2001 is a person who has served at a difficult station for more than 10 1/2 years. It was considering this aspect that he was given a posting to Cochin. On account of the fact that the competent authority committed an error in issuing the order of transfer after the 31st of August, the order of transfer has to be set aside. The competent authority has to consider the case of the applicant in OA 771/2001 for a posting to one of his choice stations and the applicant may point out his choice stations in a representation to be made by him within two weeks from today.

12. In the result, OA 348/2001 is allowed and the transfer of the applicant made in A1 order is set aside. A2, the order of relief of the applicant as also A5 in this application are set aside. Official respondents are directed to allow the applicant to continue in the present station. It is made clear that this order would not preclude the official respondents from issuing appropriate orders in accordance with law transferring the applicant from Cochin if such transfer is required to be made on administrative grounds.

13. In OA 771/2001, while declining the reliefs sought for by the applicant, the applicant is permitted to make a representation to the 3rd respondent indicating his choice stations and the 3rd respondent is directed to take into consideration the representation while ordering his transfer from Kendriya Vidyalaya, Gangtok at the appropriate time. However, the applicant herein will have to ^{give} ~~be effected~~ the impugned order A1 by reporting at Gangtok.

14. Both these Original Applications are disposed of by this accordingly. There shall be no order as to costs.

Thursday, this the 11th day of October, 2001


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

ak.

APPENDIX - O.A.348/2001

1. Annexure A1: Copy of Order No.F.7-1(50)/2000-KVS (Estt.III) dated 21.12.2000 issued by the 4th respondent to the applicant.
2. Annexure A2: Copy of order No.F.28/KV DNC/2000-01/446 dated 5.1.2000 issued by the 5th respondent to the applicant.
3. Annexure A3: Copy of representation submitted by the applicant before the 1st respondent on 5.1.2001.
4. Annexure A4: Copy of order of this Honourable Tribunal dated 12.1.2001.
5. Annexure A5: Copy of Memorandum No.F.19-80(3)/2000-KVS (L&C) dated 9.4.2001 issued by the 1st respondent.
6. Annexure A6: Copy of Transfer Guidelines referred to in the Original Application.

APPENDIX - O.A.771/2001

1. Annexure A1: True copy of Order No.R.14-3/2001-KVS (CHER)/12707 dated 29.8.2001 issued by the 1st respondent.
2. Annexure A2: True copy of the transfer order dated 22.12.2000 issued by the Education Officer.
3. Annexure A3: True copy of the relieving order dated 17.1.2001.

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