

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 372/2001

Tuesday this the 27th day of November, 2001.

CORAM

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.Pushkaran
S/o late K.Kunjupillai
SUPW Teacher
Kendriya Vidyalaya, Pattom
Trivandrum.

Applicant

[By advocate Mr.K.P.Dandapani]

Versus

1. The Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area, Shaheed Jeet Singh Marg
New Delhi.
2. The Deputy Commissioner (Finance)
Kendriya Vidyalaya Sangathan
Establishment III Section
18, Institutional Area, Shaheed Jeet Singh Marg
New Delhi.
3. The Asst. Commissioner
Kendriya Vidyalaya Sangathan
Regional Office III Campus
Chennai.
4. The Principal
Kendriya Vidyalaya, Pattom
Trivandrum.
5. The Principal
Kendriya Vidyalaya
Thirunalveli, Chennai. Respondents

[By advocate Mr.Thoottathil B.Radhakrishnan]

The application having been heard on 27th November, 2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, an SUPW teacher in Kendriya Vidyalaya, has filed this Original Application aggrieved by A1 order dated 16.4.2001 transferring him from Pattom, Trivandrum to Vijayanarayananam at Thirunalveli in Chennai, seeking the following reliefs:

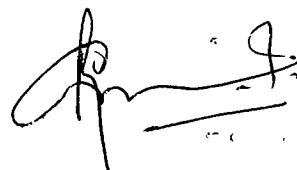


- i) Set aside Annexure A1 order No.F.4/Estatt/SA/2001/KVS (CHER) dated 16.4.2001 issued by the 3rd respondent so far as it relates to the applicant transferring him from Pattom, Trivandrum to Vijayanarayananam.
- ii) Such other appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the facts of the case.

2. According to the applicant's statement in the OA, he is a holder of Diploma in Electrical Engineering. He started his career as a teacher in electrical gadgets and repairs in Port Blair in 1967 and till the date of filing this OA, he had been transferred to 5 places i.e. from 21.12.67 to 15.7.74 Kendriya Vidyalaya, Port Blair; from 16.7.74 to 12.1.83 Kendriya Vidyalaya, Pattom; from 13.1.83 to 16.1.92 Kendriya Vidyalaya, Naval Base, Kochi; from 17.1.92 to 10.11.93 Kendriya Vidyalaya, Pangode and from 11.11.93 till date Kendriya Vidyalaya, Pattom. By A1 order dated 16.4.2001 issued by the 3rd respondent he had been transferred from Pattom to Vijayanaranam at Thirunelveli in Chennai. He raised a number of grounds in this OA against A-1 order and sought for the above reliefs.

3. Respondents filed reply statement resisting the claim of the applicant contesting the grounds raised by the applicant and applicant filed rejoinder reiterating the points made in the OA.

4. Heard learned counsel for the parties. Smt. Lakshmi, learned counsel for the applicant assailed the order of transfer pressing into service the following three grounds:

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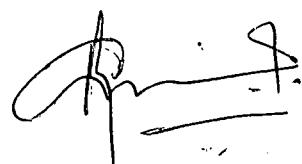
i) As per para 10 (1) of the A2 transfer guidelines, teachers with longest stay were to be moved out provided they have served not less than 5 years in that station. According to her, the teacher who had the longest stay at the station was one Thressiamma. If the practice followed in other departments is followed on surplusage, the junior most was to be disturbed due to surplusage. Applicant was not the junior most teacher and in that case the person to be transferred was one T.C.Stephen as he had joined the Kendriya Vidyalaya, Pattom only in year 1998.

ii) According to the learned counsel of the applicant, there was no surplusage of SUPW teacher at Kendriya Vidyalaya, Pattom. She submitted that for standards 6 to 12 i.e. 7 classes, there were 4 divisions for each and 3 periods were set apart for each division per week for SUPW and thus there would be 84 periods. In addition, for 11th and 12th standards 14 periods of SUPW were there, thus totalling 98 periods. According to her, minimum 3 teachers were required for taking 98 periods.

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iii) Applicant had only 3 years more to superannuate and he having worked at hard station - at Port Blair - there was no reason for shifting him at the fag end of his career instead of shifting the senior most in the station. It was also submitted that there was no reason that the practice of retaining one female and one male teacher for SUPW was not followed in the case of other Kendriya Vidyalayas such as one at Pangode, Pallipuram and Ernakulam.

5. Learned counsel for the respondents submitted that this was not a case of transfer and it was a case of redeployment of surplus teachers in other Kendriya Vidyalayas. According to him, it was not a case where teachers had become surplus to the requirement of all the Kendriya Vidyalayas creating a need for a surplus teacher being retrenched where junior most should be considered. As the redeployment involved a transfer, the guidelines for transfer were being followed and applying para 10 (1) of the guidelines, the teacher with the longest stay in the Kendriya Vidyalaya concerned where the surplus had occurred was being transferred. It was further submitted that as per the decision of the Academic Advisory Committee, as far as possible, for SUPW/PET, one male and one female teacher would be retained while identifying excess/surplus teachers. Applicant being a male teacher, with longest stay, the other senior being a female teacher, she was not transferred and the applicant was transferred. As regards the applicant's contention that the number of classes for SUPW would be more and 3 teachers would be required, according to the learned

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counsel for the respondents, the applicant had worked out SUPW periods including periods of drawing and the applicant being a diploma holder in Electrical Engineering he could not handle drawing classes.

6. Learned counsel for the applicant cited the judgement of the Hon'ble Supreme Court in the case of N.K.Singh Vs. Union of India and others (1994 6 SCC 98) wherein the Hon'ble Supreme Court held :

"6. Shri Ram Jethmalani, learned counsel for the appellant did not dispute that the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of malafides and violation of any specific provision or guideline regulating such transfers amounting to arbitrariness....."

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".....Unless the decision is vitiated by malafides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personal management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

6.. I have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

7. I find that even though the applicant disputes the existence of surplus SUPW teachers in Kendriya Vidyalaya, Pattom, in my view this matter should be left to the authorities to decide because it is for them to decide as to



how many classes should be there for SUPW and how many teachers would be required to handle the said classes in a particular school. When the respondents have stated that there are only 40 classes, for SUPW and 2 teachers would be sufficient for the same, it is not for this Tribunal to go into this aspect further. Moreover, it had been averred by the respondents in the reply statement that during the annual fixation of staff strength of Kendriya Vidyalaya, Pattom for 2001-2002, one post of SUPW teacher had been withdrawn. This is an administrative decision of creation and surrender of posts, normally not susceptible to judicial review. Under these circumstances, I reject this ground.

8. Having come to the conclusion that there is one post of surplus teacher in SUPW, the next question which comes up is whether the transfer of the applicant on account of one SUPW teacher being surplus in Kendriya Vidyalaya, Pattom is legal or not. From the respondents' statement it is seen that they have followed the guidelines given in para 10 (1) of the A-2 transfer guidelines for the purpose of identifying the teacher to be redeployed. Para 10 (1) of the Transfer Guidelines reads as follows:

"10(1) Where transfer is sought by a teacher under para 8 of the guidelines after continuous stay of 3 years in NE & hard stations and 5 years elsewhere at places which were not of his choice or by teachers falling under the Provisions to para 7 of these Guidelines, or very hard cases involving human compassion, the vacancies shall be created to accommodate him by transferring teachers with longest period of stay at the station provided they have served for not less than five years at that station. Provided that Principals who have been retained under para 4 to promote excellence, would not be displaced under this clause."

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9. According to the applicant, there is a teacher Smt. Thressiamma having longer stay than him in Kendriya Vidyalaya, Pattom. According to him, Smt. Thressiamma should have been transferred if para 10 (1) is strictly followed. Respondents contend that the Academic Advisory Committee had decided that while identifying excess to the requirement of the staff in SUPW category in a particular Kendriya Vidyalaya as far as possible one male and one female teacher should be retained. I find that this is again a policy decision and is not a matter to be interfered with by this Tribunal in judicial review. It may be that in other Kendriya Vidyalayas, there were no female and male teachers for SUPW. In any case no material has been brought before me to show that while identifying and transferring surplus SUPW teachers in other Kendriya Vidyalayas, a female teacher has been transferred and 2 male teachers have been retained. In the absence of such material, I do not find any reason to interfere with the policy decision taken by the Academic Advisory Committee.

10. The applicant has 3 years more to superannuate. This cannot be a reason for interference by this Tribunal in the decision taken by the authorities for redeployment of the applicant due to being surplus to the requirement in Kendriya Vidyalaya, Pattom.

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11. In view of the foregoing, I do not find any reason to interfere with the orders issued by the respondents and I hold that the applicant is not entitled to the reliefs sought for. Accordingly, I dismiss the OA with no orders as to costs.

Dated 27th November, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexure

1. Annexure A1: Copy of the Order No.F-4-Estt/SA/2001-KVS (CHER) dated 16.4.2001 issued by the 3rd respondent to the applicant.
2. Annexure A2: Photocopy of Transfer guidelines referred to in the Original Application.
3. Annexure A3: True copy of the extract of Senior School Curriculam.
4. Annexure A4: True copy of the relevant extract Staff Fixation Circular No.F.1-1/2000-01/kvs(O&M) dated 11.9.2000.
5. Annexure A4(a): True copy of the Distribution of Time Periods.
6. Annexure A4(b): True copy of the Distribution of Time of Periods.
7. Annexure A5: True copy of the Class Time Table for the year 2001-2002 issued to K.Thressiamma, SUPW Teacher, Kendriya Vidyalaya, Pattom.
8. Annexure A5(a): True copy of the Teachers Time Table for the year 2001-2002 issued to K. Pushkaran, SUPW Teacher, Kendriya Vidyalaya, Pattom.
9. Annexure A5(b): True copy of the Class Time Table for the year 2001-2002 issued to T.C. Stephen, SUPW Teacher, Kendriya Vidyalaya, Pattom.
10. Annexure A5(c): True copy of the Teachers Time Table for the year 2001-2002 issued to Mrs.Leena R, SUPW Teacher, Kenriya Vidyalaya, Pattom.

Respondent's Annexure: N I L.

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