

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.373/2003

Friday, this the 26th day of September, 2003.

CORAM:

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

Asha Therose Joseph,
Trained Graduate Teacher(Maths),
Kochiveettil, XI/798,
Patalam Road,
Kochi-682 001. - Applicant

By Advocate Mrs Sumathi Dandapani

Vs

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheet Jeet Singh Marg,
New Delhi-110 001.
2. The Assistant Commissioner(Administration),
Kendriya Vidyalaya Sangathan,
Regional Office, Jabalpur Region,
Madhya Pradesh.
3. Leena Manoj,
Trained Graduate Teacher(Maths),
Kendriya Vidyalaya No.I,
Naval Base, Kochi-682 004.
4. Abraham John,
Trained Graduate Teacher(Maths),
Kendriya Vidyalaya,
Vascodagama, Goa. - Respondents

By Advocate Mr Thottathil B Radhakrishnan(for R.1&2)

By Advocate Mr George Jacob(for R-3)

By Advocate Mr K Jaju Babu(R-4)

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

By A-1 dated 31.3.2003 the applicant a Trained
Graduate Teacher(TGT), Maths at K.V.No.I, Naval Base, Kochi

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since 1995, was transferred to Chiri Miri(SECL) in Jabalpur Region wherefrom Smt.Leena Manoj, TGT(Maths), the 3rd respondent in this case, was transferred in the applicant's place. As per Clause 10(2) which is an amended clause in the relevant transfer guidelines for teaching and non-teaching staff of Kendriya Vidyalaya Sangathan(see A-2 dated 8.1.2003), while transferring K.V. Teachers efforts will be made to accommodate lady teacher in the same Notional Zone either against clear vacancy or by displacing the male teacher having the longest stay in his present station of the Notional Zone. (Emphasis supplied). The applicant is aggrieved by the noncompliance with the above transfer norm and the A-6 order dated 16.4.2003 without considering her A-4 and A-5 representations highlighting the relevant facts. The applicant is seen to have made A-7 representation dated 28.4.2003 explaining the compelling family circumstances and pointing out that there was a clear vacancy of TGT(Maths) in K.V. INS Dronacharya, Kochi and requesting the 1st respondent to retain her within the same Notional Zone by transferring her to the post of TGT that had fallen vacant at KV INS Dronacharya, Kochi. This O.A. was filed seeking orders from this Tribunal setting aside A-1 transfer order, A-6 relieving order and the order passed in favour of the 4th respondent transferring him from NAD, Aluva to K.V. Vascodagama which fell within the same Notional Zone, allegedly ignoring her case for placement within the same Notional Zone. The applicant has also sought direction to be issued to the official respondents to transfer the 4th respondent to Chiri Miri where she had been transferred to and to explore the

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feasibility of accommodating the applicant in the clear vacancy that had arisen at INS Dronacharya, Kochi. By the interim order dated 2.5.2003 this Tribunal directed the 1st respondent to dispose of the applicant's A-7 representation and pass appropriate orders within three weeks. It was also directed not to fill the post of KV INS Dronacharya, Kochi, if in fact, that post was vacant, until specific orders from this Tribunal were obtained. Thereupon, the respondents considered the applicant's A-7 representation and disposed of the same by issuing A-8 order holding that the applicant's request for posting as TGT(Maths), KV INS Dronacharya could not be acceded to due to administrative problems that it might cause. However, the official respondents modified the A-1 transfer order and the applicant's posting at Chiri Miri was changed to K.V. Thakolam(No.2 Arakonam). The applicant amended the O.A. challenging A-8 order dated 18/19.6.2003. The applicant's problems are that she, being a widow, is saddled with the responsibilities of looking after her 10 year old son studying in K.V. INS Dronacharya and her ailing, widowed mother-in-law who is undergoing treatment in connection with total hip replacement and related medical problems. The applicant has filed a photo copy of an advertisement in New Sunday Express dated 22.6.2003(A-10) calling for resumes from candidates having the required qualifications for posting as TGT(Maths) on part time/contract basis at KV INS Dronacharya, Kochi.

2. Respondents 1&2 have filed a reply statement resisting the O.A. and stating that the applicant's grievance arising out of her transfer to Chiri Miri stood redressed by A-8 order

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dated 18/19.6.2003 whereby her posting is changed to Thakolam, i.e. K.V.No.2, Arakonam falling within the same Notional Zone. It is pointed out by the respondents that the very fact that the applicant had impleaded the 4th respondent who was transferred to Vascodagama, Goa would show that the applicant wanted a posting to Vascodagama within the same Notional Zone in preference to the 4th respondent. Now that she is accommodated at Arakonam falling within Chennai Region within the same Notional Zone the applicant could have no grievance in that regard, according to the respondents. It is further submitted by the respondents that the retention of the applicant at KV INS Dronacharya was not feasible as the displaced teacher could not be accommodated in the same station by way of modification. It is also stated that such teachers would continue to have uninterrupted seniority thereby giving scope for getting displaced again even to a far off place. With regard to A-10 advertisement calling for response from candidates to be engaged as TGT(Maths) on contract basis, the respondents have stated that this was necessitated by the academic compulsions as it was imperative that the vast and excessive syllabus of mathematics in the CBSC stream should be tackled in time lest it should adversely affect the studies of the children. It is also stated by the respondents that K.V.No.2, Arakonam does not have a teacher who can handle mathematics in the secondary classes and that therefore it was in the interest of the public as well as on account of administrative exigency that she was posted to K.V.S.No.2, Arakonam.

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3. Respondent No.3 Smt.Leena Manoj has stated that the applicant did not have any relief to be enforced against her, that she wanted a transfer to one of the K.V.S. in Kerala for which she has been endeavoring since 1999 onwards and that therefore she has got her transfer order in her own right without interfering with anybody's superior right. In his reply statement respondent No.4 has also stated that the applicant could have no relief enforced against him that he had been transferred to Vascodagama in accordance with the guidelines by a separate transfer order R4(a), and that he had already joined at Vascodagama on 11.4.2003 thereby fully carrying out the transfer order.

4. We have examined the records and have heard Smt.Sumathi Dandapani, learned counsel for the applicant, Shri Thottathil B Radhakrishnan for respondents 1&2, Shri George Jacob for respondent No.3 and Shri K Jaju Babu for respondent No.4.

5. According to Smt.Sumathi Dandapani, the impugned A-1 transfer order would show that respondents were under a mistaken notion that K.V. Kochi and K.V.Chiri Miri fall within the same Notional Zone (i.e. Notional Zone 3). The fact however, was that the applicant was transferred from Kochi falling under Notional Zone.5 to Chiri Miri falling under Notional Zone 3. As per clause 10(2) of the amended transfer guidelines, the respondents were under an obligation to accommodate the applicant, being a lady teacher, in the same Notional Zone either against a clear vacancy or by

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displacing the mail teacher having the longest stay in his present station. Learned counsel for the applicant would state that the 4th respondent, a male TGT(Maths) at K.V. NAD, Aluva was transferred to Vascodagama falling within the same Notional Zone without complying with clause 10(2). In any case, there was a clear vacancy of TGT(Maths) at INS, Dronacharya. The official respondents ought to have appreciated the applicant's special problems and accommodated her in K.V., INS Dronacharya as it would have been in perfect adherence to the amended transfer norms. Our attention was specially drawn to the fact that the applicant is a widow aged 41 years, that she has a 10 year old son who is studying in KV INS Dronacharya and that, above all, she has to shoulder the burden of looking after her aged mother-in-law who is undergoing treatment for total hip replacement and related problems. Learned counsel would therefore plead that if the applicant be permitted to remain in the present station for another year, it would be a matter of great relief to her and that such action would be legitimate with reference to the transfer guidelines. Shri Thottathil B Radhakrishnan, the learned counsel for respondents 1&2, defended the action of the respondents by stating that the applicant's grievance, if any, caused by the impugned A-1 order, has been redressed by A-8 order retaining her within the same Notional Zone in accordance with the transfer guidelines inasmuch as she has now been posted to as TGT(Maths) to KV Thakolam (No.2 Arakonam). The applicant who at one point of time would have been satisfied if she were accommodated at Vascodagama where the 4th respondent was transferred, could not have any

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legitimate grievance because of her posting to No.2, Thakolam(Arakonam) within the same Notional Zone, learned counsel would urge. He would maintain that the Tribunal should not interfere with the freedom of the administration to run its business in accordance with the policy laid down and the guidelines issued in regard to matters like transfer. Counsel for respondents 3&4 have reiterated the pleadings in the reply statement pointing out that the placement of respective respondents would in no way prejudice the interest of the applicant and that therefore, they were unnecessarily dragged into the litigation.

6. On a consideration of the relevant facts and the arguments put forward by the respective counsel, we observe that the applicant's transfer to Chiri Miri as per A-1 order has since been changed to K.V.Thakolam(No.2 Arakonam) falling within the same Notional Zone where she had been posted immediately prior to her transfer. It is true that it is well settled that transfer is an incident of service and that Courts and Tribunals should not ordinarily interfere with orders passed in administrative exigency. Now that the applicant has been accommodated at KV Thakolam(No.2 Arakonam), we are, no doubt, convinced that the official respondents have rectified their earlier mistake and acted fairly in adherence to the amended transfer guidelines in so far as they relate to transfers and postings of lady teachers. Therefore, in the ordinary course, we would not have interfered with the modified transfer order A-8. But we notice that the special facts and circumstances of the applicant's case merited more

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judicious consideration. The applicant is a widow with a 10 year old child studying in K.V. INS Dronacharya. It cannot be denied that the onerous responsibility of looking after her ailing and invalid mother-in-law is entirely on her. It is also a fact that the applicant's mother-in-law is currently undergoing a very serious medical treatment for total replacement of hip and other related medical problems. Though, strictly according to the transfer norms, her transfer and posting to K.V. Thakolam(No.2 Arakonam) cannot be faulted, the special problems which the applicant is confronted with would justify a fairer consideration particularly in view of the fact that there is a clear vacancy of TGT(Maths) at INS Dronacharya. In the ordinary course, in view of the problems highlighted by the applicant in her representations, the administration itself could have reconsidered her case and allowed her a short term accommodation for one year at INS Dronacharya where there is vacancy. It is the specific case of the applicant that her problem would be considerably solved if she is allowed to remain in the present station for another year. In our considered opinion, no serious damage or harm or dislocation would be caused by allowing the applicant to remain in one of the KV Schools in the same station. Since there is a vacancy of TGT(Maths) at INS Dronacharya we would direct the official respondents to consider the applicant's transfer and posting to the said K.V. for one year as a special case in order to mitigate her present hardship. This observation of ours is strengthened by the fact that the official respondents admittedly have taken steps to engage a TGT(Maths) at KV INS

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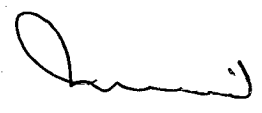
Dronacharya on part time or contract basis to ensure that the vast and extensive syllabus of Mathematics is handled properly at KV INS Dronacharya. In our considered view, the applicant could be engaged for one year in the capacity of TGT(Maths) at KV INS Dronacharya although such short term accommodation might entail her dislocation in the next year. We find that she is willing to face such an eventuality.

7. In view of the facts and in the circumstances discussed above, we direct the 1st respondent to consider the applicant's case and cause necessary orders to be issued permitting the applicant to remain as TGT(Maths) in the same station in any of the KV's in the same station including KV INS Dronacharya. Necessary orders in that regard shall be passed and served on the applicant within a period of one month from the date of receipt of copy of this order. Subject to the above direction the interim orders already issued in this case are deemed to be vacated. There is no order as to costs.

Dated, the 26th September, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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