

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.402/2002

Friday this the 24th day of January, 2003

CORAM

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

C.M.Gopinathan Nair,
aged 41 years, S/o C.P.Kunhambu Nair
Trained Graduate Teacher (Social Sciences)
Kendriya Vidyalaya, Payyannur
residing at Jyothis, Chandera,
Post Maniyat
Via.Thrikkaripur,
Kasargode District.Applicant

(By Advocate Mr. Shafik MA)

...Applicant

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1. Union of India, represented by Secretary, Department of Education Ministry of Human Resources Development, New Delhi.
 2. The Commissioner,
Kendriya Vidyalaya Sangathan
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.16.
 3. The Deputy Commissioner (Admn)
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh Marg,
New Delhi.16. Respondents

(By Advocate Mr. Thottathil B.Radhakrishnan (rep.))

The application having been heard on 24.1.203 the Tribunal on the same day delivered the following:

Q R D E R

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

The applicant, a Trained Graduate Teacher (Social Sciences) in Kendriya Vidyalaya, Payyanur, had already completed the tenure in that station and was due to request for change to his choice station. However, as there was 2 posts of TGT (Social Sciences)

at KV, Payyanur out of which one was and still is vacant, believing that he would not be transferred from the present station, the applicant did not make any request for transfer. The work of 66 periods per week was being managed by the applicant as also by teachers engaged on contract basis very efficiently. Pursuant to the letter dated 12.1.2001(Annexure A3), teachers submitted their request for transfer. One Shri V. Shamsudheen, TGT(Social Sciences), Kendriya Vidyalaya, Kasargod made a request for posting to Kendriya Vidyalaya, Payyanur. According to the transfer guidelines, 2 priority lists are to be prepared, one against available vacancies and another against created vacancies by transfer of persons who had completed their tenure in the station. The name of Shri Shamsudhin was placed at priority No. 1 in both the lists with reference to Kendriya Vidyalaya, Payyanur. One Mr. Vinodan, TGT(Social Sciences), Kendriya Vidyalaya II, Kannur had sought transfer to Kendriya Vidyalaya, Kasargod. He was also placed at Sl. No. 1 in both the lists. Without disturbing the applicant, the request of Shamsudhin and Vinodan could have been granted. Thus, apprehending no transfer at all, the applicant did not make any representation. While so, the applicant found that by Annexure A2 order dated 2.4.2002, he was transferred from Kendriya Vidyalaya, Payyanur to Kendriya Vidyalaya, Kasargod for accommodating the request of Shri V. Shamsudhin. Aggrieved by the order of transfer, explaining personal problems of the applicant if the transfer is given effect to and also stating that the transfer was not justified in view of the fact that the 1st priority list was not operated, the applicant submitted a representation Annexure A9. The applicant also filed OA

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No.263/2002 challenging the order of transfer. The said OA was disposed of as agreed to by the learned counsel on either side, permitting the applicant to submit a supplementary representation to the 3rd respondent within a week and directing the 3rd respondent to consider the representation as also the supplementary representation and to give an appropriate reply keeping the relief of the applicant pending. The applicant submitted a supplementary representation Annexure A11. The 3rd respondent in obedience to the directions of the Tribunal in OA 263/2002 considered the representations and issued the impugned order Annexure A1 turning down his request for retention at Kendriya Vidyalaya, Payyanur. Aggrieved by the impugned order, the applicant has filed this application seeking to set aside the impugned orders Annexure A1 and A2 to the extent of transfer of the applicant to Kendriya Vidyalaya, Kasargod and to declare that the applicant is entitled to continue in his present posting at KV, Payyanur and for other appropriate directions. It is alleged in the application that the transfer of the applicant by displacing him from KV, Payyanur to accommodate Mr. V. Shamsudheen while Mr. Shamsudheen could have been accommodated by operating Priority list No.1 without disturbing the applicant, is arbitrary, discriminatory and irrational.

2. The respondents filed a reply statement seeking to justify the impugned order on the ground that the transfer of the applicant displacing him for accommodating Shri V. Shamsudheen, even if there is a vacancy at Payyanur is not prohibited by the transfer guidelines and therefore the applicant, who has already completed 5 years in that place and due for transfer has no

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legitimate grievance to be redressed. The transfer is valid as it is made strictly in accordance with Clause 10(1)(3) of transfer guidelines of the KVS and therefore the application is only to be dismissed, contend the respondents.

3. I have carefully gone through the pleadings and documents and have heard Shri Shafik M.A., the learned counsel for the applicant and Shri George Varghese, representing Shri Thottathil B. Radhakrishnan, the learned counsel for the respondents.

4. It is settled law that guidelines do not confer on an officer holding a transferable post to enforce a right for posting in a particular station. It is further settled in a catena of rulings of Apex Court that unless malafides or violation of statutory rules are made out, Courts or Tribunals should not normally interfere with the routine administrative orders relating to transfer. However, it is also a settled position of law that any action which is totally arbitrary is liable to be interfered with by the Courts/Tribunals.

5. Apparently there is no allegations of malafides nor has it been stated that any statutory rules have been violated in the impugned order. The case of the applicant is that, as an open vacancy exist at K.V. Payyannur, and Shri Shamsudheen's name at Sl.No.1 in the first priority list relating to that Vidhyalaya Shamsudheen should have been accommodated in the open vacancy operating the first priority list posting Sri Vinodan in his place and therefore the action of the respondents in keeping the Ist priority list not operative and displacing the applicant is

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arbitrary, irrational, discriminatory and opposed to the policy itself. Learned counsel of the respondents admit that as per policy the first priority list is to be operated first and second only next if necessary, but seeks to justify the action in this case on the ground that either in the transfer policy or guidelines there is no prohibition against operating the second priority list without operating the first one.

6. I have given anxious consideration to the facts and circumstances contained in the pleadings and material placed on record and submission of the learned counsel for the parties.

7. Para 3 of the transfer guidelines is reproduced as below :-

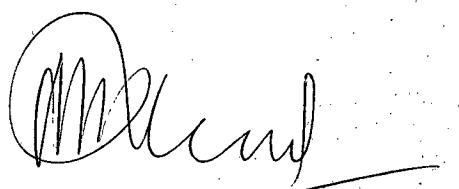
"The dominant consideration in effecting transfer will be administrative exigencies/ground and organisational reasons including the need to maintain continuity, uninterrupted academic schedule and quality of teaching and to that extent the individual interest/request shall be subservient."

8. It is evident from the above guidelines that individual interests and requests of the employees are not to be totally neglected and that such interests and requests shall only be subservient to public interest, uninterrupted academic schedule and quality of teaching. Here, in this case apart from accommodating the request of Shri Shamsudheen for a posting to KV, Payannur, no other administrative exigency had to be met. This administrative exigency could have been met even without disturbing the applicant because one open vacancy of the TGT(Social Sciences) is already there in the Vidhyalaya. By

transferring Shri Shamsudheen against the open vacancy at KV Payyannur and posting Sri Vinodan at KV, Kasargod who had requested for posting there on administrative exigency the continuity and qualify of teaching and the individual request of the applicant could have been harmoneously taken care of. When the transfer policy and guidelines stipulate that request transfers of persons who completed tenure in a station must first be considered against open vacancies as per priority list number one, and only thereafter resort be made to created vacancy as per priority list No.two, with a view to avoid unnecessary transfer of individuals which would not be conducive to personal convenience and continuity and quality of teaching the action on the part of the respondents to disturb the applicant while that was not required, according to me is arbitrary, unreasonable and discriminatory calling for judicial intervention. Arbitrariness is the ante thesis of rule of law and therefore cannot be upheld.

9. In the light of what is stated above, the impugned orders Annexure A1 and A2 are set aside to the extent of the transfer of the applicant from Kendriya Vidyalaya, Payyanur to Kendriya Vidyalaya, Kasargod. No costs.

Dated the 24th day of January, 2003.



A.V. HARIDASAN
VICE CHAIRMAN

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