

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 407 OF 2011

Tuesday, this the 1st day of November, 2011

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

Alice Joseph,
W/o. Joseph Varghese
Post Graduate Teacher (Physics)
Kendriya Vidyalaya No. II
Vidyanagar, Kasaragod – 671 123. - Applicant

[By Advocate Mrs. Sumathi Dandapani, Senior with Mr. Mathew Kuriakose]

Versus

1. The Commissioner
Kendriya Vidyalaya Sangathan
118, Institutional Area
Shaheed Jit Singh Marg
New Delhi – 110 018.
2. The Assistant Commissioner
Regional Office, Kendriya Vidyalaya
Chennai – 600 003.
3. The Assistant Commissioner
Regional Office, Kendriya Vidyalaya
Bangalore – 560 001.
4. The Principal
Kendriya Vidyalaya
Palakkad No. II (Kanjikode).
5. The Principal
Kendriya Vidyalaya
Cochin No. II (Naval Base)
Kochi – 682 002.
6. Smt Sindhu R. Menon
Post Graduate Teacher (Physics)
Kendriya Vidyalaya No. II
Kanjikode, Palakkad. - Respondents

[By Advocate Ms. Ramanya Gayathri for M/s. Iyer & Iyer (R1-5)]



The application having been heard on 01.11.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

This case came up for consideration on 28.10.2011 and judgment was orally dictated holding that the Tribunal has no jurisdiction based on the judgment of the Hon'ble High Court of Calcutta in W.P.C.T No. 310/2008 dated 29.04.2011. Immediately thereafter, the learned counsel appearing for the respondents brought to my notice that subsequent decision of the Division Bench in Calcutta High Court has found that the decision rendered in W.P.C.T No. 310/2008 is contrary to the decision of the Apex Court in **Kendriya Vidyalaya Sangathan and Another v. Subhas Sharma** reported in (2002) 4 SCC 145 and accordingly held that the earlier decision taking a contrary view is not good law. Hence, the matter was posted for to be spoken to. I heard the parties. The subsequent decision of the Calcutta High Court is rendered in W.P.C.T. 351/2007 dated 23.06.2011. I have gone through the decision of the Calcutta High Court in W.P.C.T. 351/2007 as also the earlier decision and the decision of the Apex Court reported in (2002) 4 SCC 145. The Apex Court considered the question as to whether the Kendriya Vidyalaya is an autonomous body and the service dispute of the employees come within the jurisdiction of the Central Administrative Tribunal and held that the matter squarely comes within the ambit of the provision contained in Section 19 of the Administrative Tribunals Act and directed the High Court to transfer the matter to the Tribunal. In view of the binding decision under

transfer on public interest and second is request transfer. As per the new guidelines, which is came into force in April, 2011, there are factors, points and calculation of 'Transfer count' of an employee are dealt with elaborately and transfer on request is to be effected on the basis of 'Transfer count' of the employee computed by assigning appropriate points to factors considered relevant for transfer. The transfer count published in the website is produced as Annexure A-4. It is admitted in the reply statement that the transfer count of the applicant is 23, whereas the transfer count of the party respondent is only 9. So, going by the norms for transfer, the applicant has an edge over 6th respondent for transfer to Ernakulam.

5. The stand taken in the reply statement is that the applicant has requested for transfer to a particular school in Ernakulam, whereas the 6th respondent has sought for transfer to a "place". Going by the request made by the applicant, it can be seen that the applicant wanted transfer to Ernakulam. No doubt, she might have also preferred the KVs in the area, it is only optional and in case vacancies are not available in KV, Naval Base, she may be transferred to any other school in Cochin. Admittedly, when there is a guideline for awarding transfer counts based on the relevant facts, the authorities are expected to follow the guidelines in the absence of specific reason. No specific reason in favour of the 6th respondent is shown. The 6th respondent has not come forward to contest the matter. In the above facts and circumstances and on the premise that the applicant has got 23 points as transfer count over the respondent who got only 9 counts. The applicant has a better preference than the 6th respondent in the matter of transfer to

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Article 141 of the Constitution, it has to be held that this Tribunal has jurisdiction over the service dispute of the Kendriya Vidyalaya. Hence, the earlier judgment orally dictated, but not signed is recalled.

2. Coming to the merits of the case, this is a matter relating to transfer of a teacher from Kendriya Vidyalaya. The applicant while working at Kasargode wanted a transfer to Naval Base, Kochi, whereas the party respondent No.6 also wanted a transfer from Palghat to Kochi. The authorities preferred to transfer the party respondent No. 6 and accommodated her by the impugned order which is under challenge in this Original Application. An interim order of stay was granted. Parties have completed their pleadings. The party respondent No. 6 though served with a notice has not contested the matter.

3. In view of the interim order of stay passed by this Tribunal, the party respondent No. 6 and the applicant continued to be in the same places as they were at the time of issuance of the transfer order.

4. According to the applicant, the applicant's husband is a native of Ernakulam District. His mother is a widow. The applicant's husband has made a request transfer to Ernakulam and his request was fairly considered twice earlier within the period from 2001 to 2011. Now, the applicant's husband is being transferred to Ernakulam as evidenced by Annexure A-3, it is a relevant portion of the transfer order issued in the case of the applicant's husband. There are two types of transfers in Kendriya Vidyalaya. One is

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Ernakulam. Further, the applicant's husband is also being transferred to Ernakulam and as far as possible, spouses are to be accommodated in the same place, both of them are working in Government establishment. In the light of the above facts and circumstances, I find that the order of transfer made in favour of the 6th respondent is liable to be set aside. Accordingly, Annexure A-6 is quashed. The respondents shall consider the relevant merit of the applicant viz-a-viz the 6th respondent and issue fresh orders in accordance with law and in accordance with what is stated above as early as possible, at any rate before the end of the academic year.

6. O.A is allowed as above. No costs.

(Dated, the 1st November, 2011.)



**JUSTICE P.R. RAMAN
JUDICIAL MEMBER**

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