

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.652/2000.

Pronounced this the 29th day of September 2000.

Coram: Hon'ble Smt. Shanta Shastry, Member (A).

Smt. Manjula Sharma,
B-21, Acharya Niwas,
Navy Nagar,
Colaba,
Mumbai - 400 005.
(By Advocate Shri M.S. Ramamurthy
along with Shri K.R. Yelwe)

Vs.

1. The Commissioner
Kendriya Vidyalaya Sangathan
Institutional Area,
Qutub Enclave
New Delhi - 110 016.
2. The Section Officer
Kendriya Vidyalaya Sangathan
Estt. III Section
18, Institutional Area
New Delhi - 110 016.
3. The Flag Officer Commanding
(For Staff Education Officer)
Head Quarters,
Maharashtra Naval Area
Mumbai - 400 023.
4. The Assistant Commissioner
Kendriya Vidyalaya Sangathan
(Mumbai Region)
I.I.T. Powai,
Mumbai - 400 005.
5. The Principal
Kendriya Vidyalaya No.3,
Near R.C. Church,
Colaba,
Mumbai - 400 005.

(By Advocate Shri V.G. Rege)

...Respondents.

| O R D E R |

{Per Smt. Shanta Shastry, Member (A)}

The applicant has assailed the order dt. 30.8.2000 insofar as it relates to her. She has prayed to quash and set aside the said order in relation to her.

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2. The applicant has been working as TGT (Science), to be more specific TGT (Biology) in Kendriya Vidyalaya - III, Colaba, Mumbai since 6.8.1985. The applicant has now been transferred to Kendriya Vidyalaya, Porbunder on the ground that the staff in excess of the sanctioned strength in certain Vidyalayas is required to be redeployed against the existing vacancies in other Kendriya Vidyalayas outside the region. It is the contention of the applicant that there is no justification for her transfer or for declaring her surplus. As per the guidelines given in the Kendriya Vidyalaya Code para 104, the total strength of a section is not to exceed the maximum limit of 40 students to a section. The sections should have 30 students at the beginning and the vacant seat should be a cushion to accommodate candidates who may seek admission on transfer from a Kendriya Vidyalaya. Considering these guidelines, the VIth standard would still need existing number of Divisions. The applicant has further stated that her stand that an extra Division is needed has been supported by the recommendations from the Principal of Kendriya Vidyalaya - III, by the Assistant Commissioner of the Kendriya Vidyalaya Sangathan, as well as, the Vidyalaya Management Committee. The applicant further submits that during the academic year 1999-2000 when another teacher one Smt. Mallya was found to be surplus in Kendriya Vidhyalaya - I, she was accommodated in Kendriya Vidyalaya - III, though the student strength had remained the same and the applicant's work load was not reduced, yet Smt. Mallya was taken as an additional teacher. There is, therefore, a strong case to retain the earlier number of Divisions and not to transfer the applicant. The applicant has further argued that even if a transfer is to be effected on

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account of redeployment of surplus staff, then as per settled law the juniormost teacher should have been shifted instead the applicant who is the seniormost teacher has been moved out. The applicant is aggrieved that the transfer order has been issued in the midst of the academic year. Her son is studying in Standard - XII and her transfer during the middle of the academic session will affect his studies badly. The [learned counsel for the applicant is relying upon the Judgment of the Hon'ble Supreme Court in the case of Director of School Education, Madras and Ors. Vs. O.Karuppa Thevan and Anr. (1994 (28) ATC 1999), wherein the Hon'ble Court has set aside the transfer order directing the appellants not to effect the transfer till the end of the current academic year. The applicant further points out that it is against the instructions of the Government that husband and wife should be kept together. The applicant has thus challenged the transfer order on various grounds.

3. The applicant had also prayed for interim relief, however, the same was not granted. A notice was issued to the respondents, the respondents have now produced their reply in the Court. The learned counsel for the applicant stated that he would like to proceed with the argument without filing any Rejoinder as the matter was urgent.

3. The learned counsel for the respondents submits that the applicant holds a transferable post and therefore has no vested right to remain at one place. The applicant has been transferred in the same capacity without affecting her career prospects. There is no mala fide nor is there any violation of any mandatory or statutory provisions. The applicant is being transferred after she has been in Kendriya Vidyalaya - III in Mumbai, for 15 years, The applicant has been relieved on

13.9.2000 and has been enjoined to join at Kendriya Vidyalaya, Porbunder. The learned counsel urges that it is settled law that hardships or personal family problems cannot be made grounds to impugn a transfer order. The Kendriya Vidyalaya Sangathan guidelines issued vide letter dt. 23.7.1996 have clearly laid down that a teacher who has the longest stay at the Vidyalaya is required to move out of the Vidyalaya under the category of automatic surplus and accordingly applicant being with the longest stay and being found surplus has been transferred out of Mumbai. As regards the staff strength, the learned counsel for the respondents asserts that the allocation of adequate staff strength in each Vidyalaya is evolved by the Competent Authority keeping in mind the teacher-students ratio, the number of students and sections in each Vidyalaya. The recommendations are considered and an overall view is taken. In the instant case also, the respondents have considered the recommendations made by the Principal of the Kendriya Vidyalaya - III, the Assistant Commissioner of Kendriya Vidyalaya Sangathan, as well as, the Vidyalaya's Management. It is a policy matter to be left to the Respondents to decide. It is not a matter for judicial interference. Although the applicant claims that the strength of students has not reduced and is likely to increase in standard Vith, In standard Xth the number of students is less and an overall view has therefore been taken and this is strictly in accordance with the guidelines laid down by the Kendriya Vidyalaya ^{Sangathan.} Unless, therefore, it is brought out that the decision is with a mala fide intention, the respondents cannot be faulted. In fact, it is a regular feature that every year the staff strength is reviewed and such adjustments are made. The

Respondents also argued that administrative exigencies and public interest have an overriding effect on personal hardships in transfer cases. The respondents have further produced a Judgment of this Tribunal in the case of Mrs.S.H.Deshpande Vs. Kendriya Vidyalaya Sangathan & Ors. in OA 858/99, wherein the prayer was similar and also the grounds raised were similar and that OA was dismissed. The learned counsel for the respondents points out that the present case is squarely covered by the said Judgment. The learned counsel has also relied on another Judgment of the Jodhpur Bench in OA No.224/99 in the case of Smt. R.S.Vyas Vs. Union of India & Ors., this OA was also dismissed and in this case also similar grounds were taken by the applicant as in the present case. Also in this OA, one of the grounds taken was about keeping the husband and wife together and this ground was also overruled in the Order.

4. I have given careful consideration to the arguments advanced by the learned counsel for the applicant, as well as, the respondents. I agree with the respondents that the transfer is part of the service conditions and since the applicant holds a transferable post she cannot impugn the transfer order. The transfer orders are not to be interfered with normally, unless the transfer is against the statutory guidelines or has been made in colourable exercise of power or is based on mala fides. This has been so held in Union of India Vs. H.N.Kirtania (JT 1989 (3) SC 131). Similar ruling is there in the case of Union of India Vs. S.L.Abbas (1993 (3) SCC 678) holding that the Tribunals are not expected to go into transfer unless malafides are established or when the transfer is made in violation of statutory provisions. In the instant case, the applicant has not

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established in any way that the transfer order is malafide or is in violation of the statutory provisions. The applicant's contention that the juniormost should have been sent out instead of the seniormost is also not acceptable. Had there been no guidelines, perhaps this could have been considered, however, the Kendriya Vidyalaya Sangathan has laid down clear guidelines in this matter vide letter dt. 23.7.1996. Therefore, one has to abide by these guidelines. Accordingly, the respondents are right in transferring the seniormost teacher while redeploying the excess staff. It is no doubt laid down that as far as possible the husband and wife should be kept together, but it is not mandatory it does not give a legally enforceable right. The applicant has tried to produce the statistics to establish that there is a need for retaining the extra section for Class - VIth. However, this is purely a policy matter and it is not for this Tribunal to go into the merits of the same. In any case, the respondents have also explained how the extra division is not required. I am satisfied with the explanation. I therefore, do not find it necessary to interfere with the policy decision of the respondents.

5. I have perused the Judgment relied upon by the learned counsel for the applicant i.e. the case of Karuppa Thevan and Anr. cited (supra). In that case, the Hon'ble Supreme Court has only observed that the appellant was unable to point out that there was such an urgency that the employees could not have been accommodated till the end of the current academic session and therefore it was directed not to give any effect to the transfer order till the end of the academic session. In my view, the

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facts and circumstances of the present case are not covered by the ratio of this Judgment. Further, I have also gone through the Judgments produced by the learned counsel for the respondents and I find that the Judgment in OA No.858/99 has discussed all the grounds taken by the applicant in this present OA and has dismissed the case. Since the present case is squarely covered by the same Judgment, I see no reason to deviate from the said Judgment. In the result, the OA is dismissed. No costs.

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(SHANTA SHASTRY)
MEMBER(A)

B.