

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00697/2018

Wednesday, this the 23rd day of January, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

Chandhini Chandrasekhar, aged 45 years
D/o P.S. Chandrasekhar
Trained Graduate Teacher (English)
Kendriya Vidyalaya, Kadavanthara, Ernakulam
Kochi-20
Permanent Address: "Indeevaram"
Sundara Iyer Road, Ottappalam
Palakkad Dt-679 101.

Applicant

[Advocate: Mr.T.C.Govindaswamy]

versus

1. The Commissioner
Kendriya Vidyalaya Sangathan
No.18, Institutional Area
Shaheed Jeet Singh Marg
New Delhi-110 016.
2. The Deputy Commissioner
Kendriya Vidyalaya Sangathan
Regional office
Ernakulam, Kochi-682 020.
3. The Principal
Kendriya Vidyalaya, Kadavanthara
Ernakulam, Kochi-682 020.

Respondents

[Advocate: Mr.Mayankutty Mather rep by Mr.Vineeth Komalachandran]

The OA having been heard on 16th January, 2019, this Tribunal delivered the following order on 23.01.2019:

ORDER

By Ashish Kalia, Judicial Member

The applicant seeks the following reliefs:

Quash Annexure A1 to the extent it does not provide the applicant 50 points as transfer count on medical grounds.

- (i) *Quash Annexure A10 and A17.*
- (ii) *Declare that Annexure A1 of Annexure A2 to the extent it does not include the parent/senior citizen afflicted with the diseases mentioned therein for the purpose of transfer on medical grounds is arbitrary, discriminatory, irrational and unreasonable and hence unconstitutional.*
- (iii) *Direct the respondents to grant the applicant 50 points as transfer count on medical grounds and direct further to consider her for transfer to KV Ottapalam on that basis with all consequential benefits arising therefrom or in the alternative*
- (iv) *Direct the 1st respondent to consider the applicant for transfer to KV Ottapalam, if necessary by relaxing the guidelines in the given circumstances in paragraph 4 of the OA as also in Annexure A9.*

2. The applicant who is working as a Trained Graduate Teacher (English) at Kendriya Vidyalaya, Kadavanthra, Ernakulam, is aggrieved by the failure on the part of the respondents to grant her necessary transfer count on medical grounds, taking into consideration the Parkinsons Disease which the applicant's mother has been suffering from, as also the illness of the applicant's only daughter, aged 8 years, suffering from "Chronic Idiopathic Thrombocytopenic Purpura". She is also aggrieved by the transfer guidelines of the KVS, which do not provide for the widowed mother's (senior citizen-75 years) serious illness, for grant of transfer count on medical grounds. Earlier also, the applicant had approached this Tribunal by filing OA No.531/2018 which was disposed of by this Tribunal directing the applicant to file a comprehensive representation and further directing the respondents to consider such representation and take consequent action before the general transfer is ordered. The representation was considered

and rejected by the respondents. The applicant was initially posted to Visakapatnam and later transferred to the present place. It is submitted that her husband had deserted her and the only child- a daughter aged 8 years- is suffering from a chronic illness and requires constant attention. The applicant's father passed away in 1984. Her mother who is 75 years old is suffering from Parkinsons Disease and has been under continuous treatment since 2015. It was under these circumstances, the applicant has approached this Tribunal, having exhausted all remedies.

3. The respondents have filed a reply statement in which it is contended that Kendriya Vidyalaya Sangathan had revised transfer guidelines for teaching/non-teaching posts in KVS duly approved by Board of Governors. Transfers and postings are rights of the Sangathan. KVS had considered the illness of applicant's daughter and mother sympathetically though the disease of the applicant's daughter is not listed in Annexure A1 Transfer Counts, so also the parents of the employee are not covered under the provisions of the transfer guidelines marked as Annexure A2. +50 transfer counts could not be given to the applicant in terms of Para 2 (8) of the transfer guidelines as these counts are awarded to those employees who are seeking transfer on the basis of one or more medical conditions listed in Annexure A1 Transfer Counts. In so far as allotment of transfer count on account of single parent is concerned, the applicant is not entitled for +50 transfer count merely based on the fact that she has filed a petition in the family court for divorce which is pending. The applicant's mother is not dependent on the applicant as well as she is a State Government pensioner. All relevant factors had been considered while dealing with her representation sympathetically. The respondents have prayed for dismissing the OA.

4. Heard learned counsel for the parties and perused the records.

The applicant is seeking transfer on three counts. Firstly, she is an abandoned lady as her husband had deserted her and she being single parent has to take care of her only daughter who has not attended school for the last one year because of her medical condition. Secondly, the applicant's mother is suffering from Parkinsons' Disease. Transfer Guidelines of the respondents clearly state that a KVS employee who has lost spouse or separated by a Court of Law or attained parenthood through the surrogacy route/legal adoption is eligible to apply for transfer. Degree of disease and dependency of mother on the employee are factors that have to be taken into consideration. Guidelines and regulations are meant to cater to the circumstances where a person requires to be accommodated in a just and fair manner. Though strictly going by the Guidelines, the applicant is having no case, but if we go by the circumstances where the applicant is fighting for her conjugal rights in a Court of Law, she is taking care of her mother suffering from serious illness, her request for getting a posting of her choice has considerable force. In a very famous case, the Apex Court had observed that "Son is son till he gets married, but daughter is a daughter forever".

5. Keeping in view the observations of the Apex Court, this Tribunal feels that the applicant should have been accommodated by the respondents to the place of her choice because of the difficulty she is facing.

6. In view of the above, we hold that there is merit on the side of the applicant. She deserves to be considered for her choice posting. We allow this OA and direct the respondents to post the applicant at KV, Ottappalam. This order shall be complied with, within a period of 60 days from the date of this order. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexures filed by the applicant:

- Annexure A1: Copy of provisional displacement and transfer counts for KVS Annual Transfers 2018 published in the web site of the respondents.
- Annexure A2: Copy of Transfer Guidelines 2018 as published by the respondents under No.F.I/2018/KVS HQ (Est-II) dated 13.04.2018.
- Annexure A3: Copy of treatment records of the applicant's mother as an inpatient in "Aster Medcity".
- Annexure A4: Copy of the medical certificate issued by the Taluk Headquarters Hospital dated 2.6.2018 indicating the continued treatment of the applicant's widowed mother since 2017.
- Annexure A5: Copy of the request of the petitioner for transfer in the prescribed format.
- Annexure A6: Copy of affidavit dated 2nd June 2018 indicating illness of the applicant's mother.
- Annexure A7: Copy of affidavit dated 2nd June 2018 indicating the factum of being the single parent.
- Annexure A8: Copy of order of this Tribunal in OA No.531/2018 dated 27.6.2018.
- Annexure A9: Copy of representation submitted by the applicant dated 8.7.2018 addressed to the 1st respondent.
- Annexure A10: Copy of memorandum bearing No.F.11-E-11065(TGT)/18/2018-Estt.II dated 30.7.2018 issued by the 1st respondent.
- Annexure A11: Copy of representation dated 20.6.2018 submitted to the 1st respondent.
- Annexure A12: Copy of Postal Receipt bearing No.RL468512984IN IVR:8276468512984 dated 9.7.2018 issued from Ernakulam HO (682011).
- Annexure A13: Copy of Track Consignment downloaded from the website of the Postal Department.
- Annexure A14: Copy of communication bearing No.F.1-1/2018/KVS (HQ)/Estt.II dated 7.7.2018 issued from the office of the 1st respondent.
- Annexure A15: Copy of letter bearing No.F.31046/2018/KVS-RO(EKM) dated 9.7.2018 issued from the office of the 2nd respondent.
- Annexure A16: Copy of representation dated 13.7.2018 addressed to the 3rd respondent.
- Annexure A17: Memorandum bearing No.F11-E-11065(TGT)/18/2018/Estt.II dated 12.10.2018 issued by the Assistant Commissioner (Estt-II/III) from the office of the 1st respondent.
- Annexure A18: Copy of order bearing F.No.1-1/2018/KVS (HQ)/Estt.II dated 4.9.2018 issued from the office of the 1st respondent.