

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00604/2018

Wednesday, this the 6th day of February, 2019.

CORAM

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

Mredula P., aged 53 years
W/o P.T.Lathish Babu
Trained Graduate Teacher (English)
Kendriya Vidyalaya, Kannur.
Residing at MreduGayathri,
Adoor, Kannur-670 621.

Applicant

[Advocate: Mr.Hariraj M.R.]

versus

1. Kendriya Vidyalaya Sangathan represented by
its Commissioner
KVS (HQs), Institutional Area
S.J.S.Marg, New Delhi-110 016.
2. Assistant Commissioner (Estt),
KVS (Hqs), Institutional Area, S.J.S.Marg
New Delhi-110 016.
3. Deputy Commissioner
Kendriya Vidyalaya Sangathan
Ernakulam Region, Regional Office,
Kadavanthra, Ernakulam.
4. Union of India represented by
the Secretary to Govt of India
Ministry of Human Resources Development
New Delhi-110 001.
5. Pramitha P.,
Trained Graduate Teacher (English)
Kendriya Vidyalaya, Naval Base, Karwar
now under orders of transfer to Kendriya Vidyalaya,
Nileshwar, Kasaragode.
6. Susheel Babu V.S.
Trained Graduate Teacher (English)

Kendriya Vidyalaya I, Panambur,
Mangalore, Karnataka,
now under orders of transfer to Kendriya Vidyalaya,
Pangode, Thiruvananthapuram.

7. Manisha Menon
Trained Graduate Teacher (English)
Kendriya Vidyalaya, Aruvankadu, Tamil Nadu,
now under orders of transfer to Kendriya Vidyalaya,
Pangode, Thiruvananthapuram. Respondents

Advocates:

Mr.V.V.Asokan, Sr. along with Mr.K.I.Mayankutty Mather rep by Mr.Vineeth Komalachandran for R1 to 4.
Ms.Nazeeba O.H., for R5
Mr.Nirmal V.Nair for R7

The OA having been heard on 25th January, 2019, this Tribunal delivered the following order on 06.02.2019:

O R D E R

By E.K.Bharat Bhushan, Administrative Member

This OA is filed by Smt. Mredula P, Trained Graduate Teacher (English), Kendriya Vidyalaya, Kannur against the order transferring the party respondents, preferring them to her, for grant of request transfer despite the applicant having the higher transfer count than any of them. The copy of the order under challenge dated 7.7.2018 is at Annexure A1. The reliefs sought in the OA are as follows:

- “i) Quash Annexure A1 to the extent it prefers the party respondents for transfer to the applicant;*
- ii) Quash Annexure A4 to the extent it relates to the applicant.*
- iii) Direct the respondents to consider the applicant for transfer to the vacancies of Trained Graduate Teacher (English) at Kendriya Vidyalaya, Nileswar and Kendriya Vidyalaya, Pangode, in preference to any one having lesser transfer count than the applicant”.*

2. The applicant is a Trained Graduate Teacher (TGT-English) working at Kendriya Vidyalaya, Kannur. When transfer requests were called for, for the year 2018, the respondents 1 to 3 notified clear vacancies at Kendriya

Vidyalaya, Nileshwar and Kendriya Vidyalaya, Pangode (Thiruvananthapuram). The applicant applied for transfer citing Nileshwar as her first option and Pangode as the second. The applicant is entitled to have 30 points as transfer count. However, due to a software mismatch, 6 points were initially reduced from her count, showing her transfer count as 24. The applicant followed this up and finally she was allotted the 30 points as eligible. Among the candidates who applied for transfer to either Nileshwar or Pangode, the applicant was having the highest transfer count of 30 points as per Annexure A2.

3. However, overlooking her higher eligibility, the 5th respondent was transferred to Nileshwar and respondents 6 & 7 were transferred to Pangode (Tvm). Pointing out the injustice, the applicant filed a representation dated 9.7.2018, a copy of which is at Annexure A3. Apprehending that the vacancies available would be filled up without considering the claim of the applicant and she would be displaced from Kannur, the applicant has filed the present OA.

4. The case for interim stay was considered on the first posting date i.e., 11.07.2018 and was rejected. MA for amendment to OA was allowed.

5. Reply statements have been filed on behalf of official respondents 1 to 4 as well as separately by the 5th and 7th respondents. In the reply filed by the official respondents, it is admitted that the applicant had filed her preference for on-line transfer for 2018-19 giving Nileshwar, Trivandrum, Calicut, Mahe and Payyannur as 1st, 2nd, 3rd, 4th, and 5th choices in terms of preference. It is affirmed that “the computer system” had ordered her transfer to Kendriya Vidyalaya, Pangode, which is her 2nd choice. She was seen to possess 28 transfer counts. Her claim for two additional points on account of having acquired an award was disallowed. In contrast, Smt. Pramitha P., (5th respondent) had also

applied for transfer wherein Thrissur, Neleshwar, Kochi, Calicut and Malappuram were shown as 1st, 2nd, 3rd, 4th, and 5th choices respectively as preferred postings. She also possessed 28 transfer counts and “she was selected by the computer” to be allotted to Kendriya Vidyalaya, Nileshwar.

6. It is affirmed that there is no injustice meted out to anyone. It is further stated that now most of the applicant's grievances have been addressed by her being transferred to Kendriya Vidyalaya, Pangode (Trivandrum) which is her second choice. Hence she has been similarly treated as the 5th respondent who also got Nileshwar which is her second choice station.

7. It is further stated that a catena of decisions of the Apex Court as well as the Hon'ble High Court of Kerala have held that transfer guidelines do not confer upon any employee any enforceable right and they are only meant to act as guidelines and an order of transfer invites interference only if it is passed by an incompetent authority or is made in violation of statutory provisions.

8. Heard Sri Hariraj M.R., learned counsel on behalf of the applicant and Sri Vineeth Komalachandran on behalf of Sri K.I.Mayankutty Mather and Smt. Nazeeba O.H., counsel for respondent No.5, and all pleadings were examined.

9. Kendriya Vidyalaya Sangathan which runs several schools in different parts of the country employs thousands of teachers. Many of the schools are in the remote corners of the country and hence it is necessary for the management to have a transparent and blemishless system by which individual preferences for various locations could be taken into consideration and requests considered in a fair and equitable manner. It was with this intent that a system of transfer count has been evolved.

10. Coming to the controversy in this case, Annexure A2 contains the points for transfer count allotted to the applicant as well as to the other two party respondents. The conflict is between Smt. Mredula P., who was posted at Kendriya Vidyalaya, Kannur at the time of filing the OA and Smt. Pramitha P. As per the said document, the applicant - Smt. Mredula is seen to possess a total transfer count of 30 as compared to Smt. Pramitha who gets 28. The learned counsel for the respondents pointed out that the two marks allowed to the applicant for getting an award was by means of an error and the said award of marks is not to be allowed, bringing down her total count to 28, which is the same as that of respondent No.5. It is seen that Smt. Mredula had given her first choice as Kendriya Vidyalaya, Nileshwar and second choice as Kendriya Vidyalaya, Pangode (Trivandrum) whereas Smt. Pramitha has given Kendriya Vidyalaya, Thrissur as her first choice and Kendriya Vidyalaya, Nileshwar as her second choice. While the OA was pending, the applicant is stated to have been transferred to K.V., Pangode (Trivandrum) which, according to the official respondents, addresses her grievance as Pangode is her second choice. But the applicant continues to be aggrieved on the ground that the applicant is better qualified than respondent No.5 for being considered for Nileshwar K.V., as her service with KVS is much longer and she had also continued in the same post for a significantly longer period. This is the admitted position even if we consider that both the teachers have the same total transfer count of 28. The applicant is seen to have joined KVS in the present post on 10.9.1993 and the 5th respondent on 10.4.2015. The applicant has been at her present station since 7.8.2008 whereas the 5th respondent has not had any transfer after being appointed to the present station (Annexure A2). Even a cursory glance at the data above would

show that the applicant has a better case for her choices to be considered than any of the other party respondents including the 5th respondent. She has considerably longer experience with KVS and has been in her present post for a much longer period than respondent No.5.

11. The reply statement is also quite inadequate from the point of view of justifying the manner in which the applicant's claim has been considered. Without going into the question as to why the 5th respondent was preferred for her second choice station of Nileshwar, ignoring the claim of the applicant for her first choice station of Nileshwar, the official respondents place the blame entirely on the computer system. Employing a computer network for mass transfers of this kind is intended to enable the management in ensuring the optimal deployment of personnel. It cannot be used to justify patent errors which the authorities are unable to justify in any manner. We are aware of the judgments including those of the Apex Court which insist that transfer guidelines should not confer any enforceable right on individual employees. However, these guidelines cannot be violated at will and unjustifiable transfers done, which would fly in the face of justice and fair play.

12. The applicant does have merit on her side. However, as the academic year is fast approaching closure, we direct that the applicant is to be given a posting at Kendriya Vidyalaya, Nileshwar in the next academic year, if necessary by shifting an existing teacher. With the aforesaid direction, the OA stands disposed of. No order as to costs.

(Ashish Kalia)
Judicial Member
aa.

(E.K.Bharat Bhushan)
Administrative Member

Annexures filed by the applicant:

Annexure A1: Copy of order No.1-1/2018/KVS(HQO)/Estt II dated 7.7.2018.

Annexure A2: Copy of the relevant portion of the table published online by the respondents indicating the transfer count.

Annexure A3: Copy of a representation dated 9.7.2018 submitted by the applicant.

Annexure A4: Copy of the order No.1-1/2018/KVS (Hqs)/Estt.II dated 4.9.2018.