

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00171/2018

Monday, this the 25th day of February, 2019

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Sreejith.S.,
S/o.late Sri.K.Sreedharan,
Post Graduate Teacher (Mathematics),
Kendriya Vidyalaya No.II, Kasaragod.
Residing at Maniyot (H), Nirmallur,
Panagad P.O., Balussery, Via Kozhikode – 673 612. ...Applicant

(By Advocate – Mr.M.R.Hariraj)

v e r s u s

1. Kendriya Vidyalaya Sangathan,
represented by its Commissioner,
KVS (H.Q), Institutional Area,
S.J.S.Marg, New Delhi – 110 016.
2. Assistant Commissioner (Estt.),
KVS (H.Q), Institutional Area,
S.J.S.Marg, New Delhi – 110 016.
3. Union of India
represented by the Secretary to Government of India,
Ministry of Human Resources Development,
New Delhi – 110 001.
4. Santhosh B,
Post Graduate Teacher (Mathematics),
Kendriya Vidyalaya, Silvasa – 396 230.
Under orders of transfer to
Kendriya Vidyalaya No.I, Calicut. ...Respondents

**(By Advocates – Mr.K.I.Mayankutty Mather [R1-2]
& Mr.C.P.Ravikumar, ACGSC [R3])**

This application having been heard on 6th February 2019, the Tribunal
on 25th February 2019 delivered the following :

ORDER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The applicant has filed this O.A seeking the following reliefs :

1. To call for the records leading to Annexure A-10 and quash the same to the extent it transfer the 4th respondent to Calicut.
2. To direct the respondents 1 to 3 to consider the applicant for transfer to Calicut in preference to any of the person including the 4th respondent having lesser transfer count than applicant.
3. Grant such other reliefs as may be prayed for and the court may deem fit to grant and
4. To grant the costs of this Original Application.

2. The applicant entered into service in 2009 at Devalali, Nasik. In 2011 he was transferred on administrative grounds to Assam, which is a hard station, for a tenure of three years. The applicant submits that his wife is working as Development Officer in Life Insurance Corporation (LIC). They have two children. His late father is an Ex-serviceman and his mother is suffering from various ailments due to old age. On completion of his tenure in the hard station, he made a request for transfer to his home district which is Calicut and indicated his second option as Kasargod. However the applicant was transferred to Kasargod on the ground that there was no vacancy at Calicut. It is more than 150 kms from Calicut. Thereafter a retirement vacancy at K.V.I, Calicut arose in October, 2016 to which the applicant submitted a representation dated 30.7.2016. There was no response to the said representation. However, applications were invited for request transfers. Based on various criteria marks were allotted to all those who applied for transfer. The applicant has 30 transfer count whereas the 4th respondent has 22 transfer count. Among the candidates who requested for

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transfer to Calicut one Smt.Aleyamma Idicula has maximum transfer count and therefore she was transferred to Calicut. But she did not join on the said post and made a request for cancellation of her transfer. The applicant raised the grievance through proper channel before the 2nd respondent on 23.9.2017. On cancelling the transfer of Smt.Aleyamma Idicula again applications were called for to No-Taker vacancies and mutual transfers. As per Annexure A-7 letter dated 6.11.2017 it is submitted that preference will be given to the employees where request is made for joining spouse. Due to some software problem the applicant's preference was not uploaded and the transfer was granted to the 4th respondent. Feeling aggrieved the applicant has approached this Tribunal seeking the aforementioned reliefs.

3. Notices were issued and the respondents have filed their reply statement. It is submitted that Article 71 of Education Code, which is a documentary text, for governance of Kendriya Vidyalayas, the services of KVS are liable to be transferred to any Kendriya Vidyalaya of the Sangathan at any time on short notice on organization reasons and administrative exigencies. They have also relied upon the Apex Court which held that the individual's personal inconveniences have got little importance over administrative exigencies and public interest particularly in the matter of transfer/posting. That a new transfer guideline has been framed by the respondents, which came into force with effect from 1.4.2011 and duly approved by the Board of Governors which is an apex policy making body of KVS. The Transfer Guidelines is amended from time to time in consultation with all the stakeholders and finally approved by the

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Board of Governors. Further, the applicant PGT (Maths) has applied for transfer to KV Calicut against No-Taker Vacancy but he could not get transfer as per transfer guideline. Secondly the applicant who has also applied on line transfer against No-Taker Vacancy from KV, Silvasa to KV No.1 Calicut and got his transfer on the basis of his seniority in KVS. With regard to No-Taker Vacancy it was clearly indicated therein that these transfers are not considered on the basis of transfer counts and other grounds mentioned for the annual request transfers. 4th respondent has joined the KVS on 30.4.2007 and the applicant joined KVS on 30.6.2014. There is no unjust discrimination in the transfer order dated 29.12.2017. However it is admitted that Shri.B.Santhosh was having only 22 transfer counts which are lesser than the applicant.

4. Heard Shri.M.R.Hariraj, learned counsel for the applicant as well as learned standing counsel for the respondents at length. Learned counsel for the applicant drawn our attention to Annexure A-7 letter dated 6.11.2017 inviting online applications for request transfers against No-Taker Vacancies and Mutal Transfers for 2017. He has drawn out attention to Para (iii) under the heading 'transfer against no taker vacancy' which states that if a KVS employee wants to join his/her spouse through the “No Taker Vacancy” provision, such an employee will be given top priority. In case husband and wife both get transferred in the same year, first one of them gets transferred under the other provisions of the transfer guidelines to a Hard/Very Hard/NER station and so on. Contrary to this, learned counsel for the respondents submitted that though the applicant is having more

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counts than the 4th respondent but in No-Taker Vacancy seniority has to be taken into account. We have given a considered thought on this process and we are in agreement with the submissions made by the learned counsel for the applicant that even in the case of 'No Taker Vacancy' an employee who has given request to join his/her spouse will be given top priority and in the present case the applicant's wife is working in LIC at Calicut and he has given request for transfer on the ground of joining his spouse. We see no reason why the applicant has not been considered for the said transfer when there is a clear cut provision that the employee who has given a request for transfer on spouse ground should have been considered on top priority basis.

5. Thus, we are of the considered view that Annexure A-10 is liable to set aside to the extent it transfer 4th respondent to Kendriya Vidyalaya, Calicut and we do so. We direct that the applicant be posted at Calicut in view of the observations made herein above. The present O.A is accordingly allowed. Orders in this regard shall be issued by the respondents within a period of one month from the date of receipt of a copy of this order. No costs.

(Dated this the 25th day of February 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00171/2018

- 1. Annexure A-1** – True copy of the reliving order No.Ref.No.3-18/KV.RRL/Jorhat/14-15/2408 dated 25.6.2014.
 - 2. Annexure A-2** – True copy of the representation dated 30.7.2016.
 - 3. Annexure A-3** – True copy of the relevant portion of the details of candidate who requested for transfer published into internet on 25.8.2017 by the respondents.
 - 4. Annexure A-4** – True copy of the transfer order No.11029/2017 dated 20.9.2017.
 - 5. Annexure A-5** – True copy of the representation dated 23.9.2017.
 - 6. Annexure A-6** – True copy of the order No.11.46/Rep./1/2017 dated 23.10.2017.
 - 7. Annexure A-7** – True copy of the Letter No.F.No.11029/2017/KVS(HQ)/Estt.II (TP) dated 6.11.2017.
 - 8. Annexure A-8** – True copy of the representation dated 8.9.2017.
 - 9. Annexure A-9** – True copy of the application dated 9.11.2017.
 - 10. Annexure A-10** – True copy of the order No.11029/2017 dated 29.12.2017.
 - 11. Annexure A-11** – True copy of the Notice No.F.No.11029/2017/KVS(HQ)/Estt.II dated 29.12.2017.
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