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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00645 of 2019

Thursday, this the 21st day of November, 2019

CORAM

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

Shri Shaji K.N.,
Post Graduate Teacher – Biology,
Jawahar Navodaya Vidyalaya,
ETC P.O., Kottarakkara,
Kollam, PIN – 691 531,
Residing at 'Vaishnavam',
Thumpamanthodi, Madathara P.O.,
Kollam, PIN-691 541,
Mob. No.9447011643. ...Applicant

(By Advocate Mr. P.Santhoshkumar & Mr.P.Chandrasekhar.)

Versus

1. Union of India,
Rep. by its Chairperson,
Navodaya Vidyalaya Samiti,
Ministry of Human Resource & Development,
Shastri Bhawan,
New Delhi – 110 001.
2. The Commissioner,
Navodaya Vidyalaya Samiti,
Department of School Education & Literacy,
Government of India, B15, Institutional Area,
Sector 62, Noida, Budh Nagar,
Uttar Pradesh – 201 309.
3. The Deputy Commissioner (Pers),
Navodaya Vidyalaya Samiti (Hyderabad Region),

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Nallagandla, Gopanapali,
Hyderabad – 500 019.

4. The Principal,
Jawahar Navodaya Vidyalaya,
ETC Post, Kottarakkara,
Kollam – 691 531.
5. Sri Minil Kumar G. PGT-Biology,
Jawahar Navodaya Vidyalaya,
Wayanad – 637 121.
6. Deleted
7. Heera Harimadhavan, PGT-Biology,
Jawahar Navodaya Vidyalaya,
Panchavadli PO,
North and Middle Andaman,
Andaman & Nicobar Islands- 744 205.
Residing at Jawahar Navodaya Vidyalaya
Quarters, Panchavadi PO,
North and Middle Andaman,
Andaman & Nicobar Islands – 744 205.

..... Respondents

(By Advocate Mr.Millu Dandapani for Respondents-1to4, Mr. Vishnu S Chempazhanthiyil for Respondents-5 and Mr. Ajith Mohan M.J. for Respondent-7)

This application having been heard on 19th November, 2019, the Tribunal on 21st November, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.645/2019 is filed by Shri Shaji K.N., Post Graduate Teacher (PGT)-Biology, aggrieved by the change of status of his post from 'Protected Deemed' to 'Deemed' and is transferred from JNV, Kollam to JNV, Guntur, ignoring the fact that the applicant's wife is working in a State Government

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Aided Higher Secondary School. The relief sought in the OA are as follows:

- i.** To set aside the Annexure A13 final transfer list as far as the Applicant is concerned transferring him from Kollam to Guntur.
- ii.** To call for the records leading to the issue of Annexure A3 & Annexure A15 and quash the same.
- iii.** To direct the 2nd respondent to consider and dispose of Annexure A14 representation of the Applicant within a time frame fixed by this Hon'ble Tribunal.
- iv.** To pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal.

2. The applicant had entered service as Trained Graduate Teacher (TGT)-Science on 05.012.1997 under the 3rd Respondent and after working in different places had been posted to JNV, Kollam in July, 2006. In line with the preference given to employees for posting along with their spouse, the DOP&T had brought out orders, copies of which are at Annexure A2. In accordance with Annexure A2 order, the status of the applicant's post was considered as 'Protected Deemed or Non Deemed'. Pursuant to the above, the applicant was retained at the same station i.e., JNV, Kollam since 2006 and none could apply for transfer to that station.

3. It is submitted that for the Annual Transfer Drive, 2019, the status of the applicant was listed as 'Deemed' instead of 'Protected Deemed' as is seen at Annexure A3, which is the extract of web page dated 02.06.2019 of the Employee Transfer Portal of the 2nd Respondent. This change in

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category is in violation of the Transfer Guidelines of the 2nd Respondent himself. In fact the applicant after completion of six years at the present place, had applied for transfer to JNV, Thiruvananthapuram from 2012 to 2016, a request which has not been considered so far.

4. The applicant has a disability percentage of 20% as per Disability Certificate, copy of which is at Annexure A4. He also has two female school going children. The mother of the applicant is 87 years old and is in indifferent health. Based on these facts, the applicant had submitted a representation on 03.06.2019 before the 2nd Respondent to retain his post as 'Protected Deemed' (Annexure A6). The applicant, apprehending a transfer, had filed an OA No. 437/2019 before this Tribunal, which had been closed on the submission of the Standing Counsel for respondents that there is no move to transfer the applicant from the present station so far. It had been ordered in the above OA by the Tribunal that the transfer of the applicant to Thiruvananthapuram may be considered when an opportunity arises (Annexure A7). He filed a further representation seeking transfer to Thiruvananthapuram, which also did not fetch any result.

5. The applicant submits that there will be a retirement vacancy of PGT-Biology, JNV, Pathanamthitta on 31.12.2019, where the applicant would like to be accommodated. The applicant once again approached this Tribunal by filing OA No. 591/2019 to set aside Annexure A9 therein, proposed transfer

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list, which is again contested by the Standing Counsel for the respondents stating that no transfer order had been issued and the applicant's representation was under consideration by the 2nd Respondent. However, the final transfer list was published by the 2nd Respondent in the website on 23.08.2019, by which the applicant stands transferred to Guntur, Andhra Pradesh and the 5th Respondent is posted in his place at Kollam. On the same day the applicant had submitted a representation seeking a posting at Pathanamthitta, in the retirement vacancy arising on 31.12.2019 (Annexure A14) . In the meanwhile, the earlier representation of the applicant was rejected as per Annexure A15. The main contention in Annexure A15 order is that Government aided Schools are not considered at par with Government institutions for getting benefit of spouse posting. In the hope that his representation will be favourably considered, the applicant had not participated in the Annual Transfer Drive, but now finds himself deprived on both counts.

6. The reply statement has been filed on behalf of the Respondents-1to4. As is admitted by the applicant in the OA, his status had been moved from 'Protected Deemed' to 'Deemed' category. He had opted not to participate in the Annual Transfer Drive on his own volition. Thus he is not entitled to any benefit from the orders of the Bangalore Bench of this Tribunal issued in OA No.764/2018. The applicant cannot claim any benefit as the Government aided schools are not to be considered on par with

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Government institutions. Thus his slot at JNV Kollam is to be thrown open to others who would like to be posted there when the applicant completes his term.

7. A JNV Teacher has All India transfer liability and cannot refuse orders of transfer in the manner the applicant has chosen to do. His claim that he is entitled to spouse ground protection as his wife is employed as a teacher in a Government aided Institution, has not been supported in CAT, Bangalore Bench decision in OA No.764/2018. Besides he did not choose to participate in the Annual Transfer Drive. Reply statements have been filed by Respondents-6 and 7 also.

8. Heard Shri P.Chandrasekhar, on behalf of Shri P.Santhosh Kumar, learned Counsel for applicant, Ms.Meera for Shri Millu Dandapani, learned Standing Counsel for Respondents-1-4, Shri Vishnu S.Chempazhanthiyil for Respondents-5 and Shri Ajith Mohan M.J, learned Counsel for Respondent-7. All pleadings and documents were examined.

9. The matter lies in a narrow compass. The applicant has completed over 13 years of service in his present station and has been continuing there taking the benefit of spouse posting, whereby his post was not open for others to seek transfer to. With Annual Transfer Drive, 2019, this has undergone a change and the post was opened up for others to apply, while

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at the same time the applicant decided not to participate in the Drive. He had on two earlier occasions come before this Tribunal apprehending a transfer, but his diligence did not extend to the point of participating in the Annual Transfer Drive, which would have apprised the authorities of his predicament.

10. No illegality or impropriety can be attributed to the respondents in the transfer ordered. His post was no longer 'Protected Deemed' and has been included in the chain of postings, with Respondent-5 being transferred there and Respondent-7 coming to replace Respondent-5. The applicant can have no case that the whole process should be stalled on account of a benefit which he is no longer entitled to. OA fails. The stay of operation of the transfer order vis-a-vis the posting at JNV, Kollam is vacated. However, the respondents may consider the applicant's posting to JNV, Pathanamthitta, if it falls vacant in the coming months, but we reiterate that the present posting is not to be kept in abeyance pending such consideration. Consequent to dismissal of the OA, MA No.883/2019 and MA No.1013/2019 are also dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00645/2019

- 1.** Annexure A1 - True copy of the Employment Certificate dated 06.06.2019 of the wife of the applicant.
- 2.** Annexure A2 - True copy of the order No.28.034/9/2009-Estt(A) dated 30.09.2009 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions.
- 3.** Annexure A3 - True copy of the web page dated 02.06.2019 of the Employee Transfer Portal.
- 4.** Annexure A4 - True copy of the Disability Certificate dated 10.04.2018.
- 5.** Annexure A5 - True copy of the letter dated 18.06.2014 issued by the Minister for Human Resources Development, Government of India.
- 6.** Annexure A6 - True copy of the representation dated 03.06.2019 to the 2nd respondent.
- 7.** Annexure A7 - True copy of the order in OA No.437/2019 dated 03.07.2019 of the Hon'ble CAT, Ernakulam.
- 8.** Annexure A8 - True copy of the representation dated 16.07.2019 to the 2nd Respondent.
- 9.** Annexure A9 - True copy of the proposed transfer list.
- 10.** Annexure A10 - True copy of the Office Order No.F.2-18(PGT-Biology)/2015-NVS(Estt.)/744 dated 02.06.2016.
- 11.** Annexure A11 - True copy of communication F.No.24(Admn)/JNVN/2019-2020/148 dated 01.07.2019.
- 12.** Annexure A12 - True copy of the order in OA No.591/2019 dated 09.08.2019 of the Hon'ble CAT, Ernakulam.
- 13.** Annexure A13 – True copy of the final transfer list published by the 2nd Respondent.
- 14.** Annexure A14 - True copy of the representation dated 23.08.2019 to the 2nd Respondent.

- 15.** Annexure A15 - True copy of the F.No.7-120/2019-NVS-(Estt.II)/1371 dated 23.08.2019.
- 16.** Annexure R5(1) – True copy of the web site record of employees of JNV Kollam showing the home district of the applicant as Kollam District.
- 17.** Annexure R5(2) - True copy of the Transfer Policy 2012 of the Navodaya Vidyalaya.
- 18.** Annexure R5(3) - True copy of list of hard stations under the NVS.
- 19.** Annexure R5(4) - True copy of application submitted by the 5th Respondent.
- 20.** Annexure R5(5) - True copy of representation submitted by the 5th respondent on 30.06.2017 to the Commissioner, NVS.
- 21.** Annexure R5(6) - True copy of representation submitted by the 5th respondent on 24.03.2018 to the Commissioner, NVS.
- 22.** Annexure R5(7) - True copy of medical records in respect of the aged parents of the 5th respondent's wife.
- 23.** Annexure R5(8) - True copy of medical certificate in respect of treatment of 5th respondent's wife.
- 24.** Annexure R5(9) - True copy of representation dated 06.06.2019 to the Commissioner, NVS.
- 25.** Annexure R5(10) - True copy of notice No.F.2-1/2019(ATD)-NVS(Estt.II)/1321 dated 09.08.2019 issued by the NVS.
- 26.** Annexure R6(1) - True copy of representation dated 21.01.2016 to the Commissioner, NVS.
- 27.** Annexure R6(2) - True copy of communication No.F.No.PF(USN) JNVN/2015-2016/898 dated 22.01.2016 issued by the Principal, JNV Ernakulam.
- 28.** Annexure R6(3) - True copy of the medial discharge summary from Sree Gokulam Medical College and Research Foundation, Venjaramoodu, Trivandrum.
- 29.** Annexure R6(4) - True copy of outpatient record of Medical College Hospital, Thiruvananthapuram.

30. Annexure R6(5) - True copy of medical certificate dated 10.06.2019 issued by Dr.Subha, Professor and HOD of Department of Psychiatry, Sree Gokulam Medical College and Research Foundation.

31. Annexure R6(6) - True copy of submission submitted by the 6th respondent to the Commissioner, NVS.

32. Annexure R7(1) - True copy of the order dated 17.09.2018 in O.A.No.170/00764/2018 of the Hon'ble CAT, Bangalore Bench.

33. Annexure R7(2) - True copy of the notice No.F.2-1/2019(ATD) – NVS (Estt.II)/1433 dated 11.09.2019 issued by the Deputy Commissioner (Pers).

34. Annexure R7(3) - True copy of Office Order No.F.No.2-2/2009/PGT-Biology/NVS(Estt.II)/303 dated 06.09.2019 issued by the NVS Headquarters.

35. Annexure R7(4) - True copy of representation dated 03.10.2019 to the Principal, JNV Panchawati.

36. Annexure R7(5) - True copy of representation dated 05.10.2019 to the Deputy Commissioner, NVS.
