
(2024) 06 CAT CK 0012

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00591, 00600, 00601, 00605, 00606, 00607, 00608 Of 2023

I.K Sudharma & Ors.

APPELLANT

Vs

Kendriya Vidyalaya Sangathan, No. 18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi ? 110016 Represented
By Its Commissioner & Ors.

RESPONDENT

Date of Decision : 27-06-2024

Acts Referred:

Citation : (2024) 06 CAT CK 0012

Hon'ble Judges : Sunil Thomas, Member, J

Bench : Single Bench

Advocate : K.I. Mayankutty Mather, P. Babu

Final Decision : Dismissed

Judgement

Sunil Thomas, Member (J)

1. All the above applicants are Teachers employed in Kendriya Vidyalaya, Kannur, in Kerala under the respondents. They were transferred to other schools by transfer orders issued in September, 2022. All the applicants approached this Tribunal challenging the orders of transfer. After hearing both sides, by a common order, all the OAs were dismissed holding that there was no reason to interfere in the transfer order. The applicants challenged the common order before the Hon'ble High Court of Kerala. The Hon'ble High Court by a common judgment dated 9.2.2023 in OP(CAT) No. 80 of 2022 and connected matters, held that the order under challenge did not suffer from any infirmity or illegality. Hence the order was sustained. However, it was noticed that the said conclusion does not give quietus to the litigation or the grievances canvassed by the original petitioners. Hence, all the original petitioners were granted two weeks time to represent to the administration for consideration of their respective requests for cancellation and adjustment of the transfer order. Respondents were directed to consider their representations on individual merits.

2. Thereafter, by separate orders, all the representations submitted by the applicants herein were rejected. The applicants have again approached this Tribunal with these OAs challenging the rejection of their representations and also the consequential transfer orders. It is also to be noted that along with the applicants herein two other applicants namely the applicants in OA No. 592 of 2023 and OA No. 595 of 2023 had also approached this Tribunal seeking identical reliefs. Interim stay was granted in all OAs.

3. It emerges that while the present OAs were pending, the Sangathan had taken up the matter regarding transfer order of 2022 before the Supreme Court. The Hon'ble Supreme Court by its order dated 1.12.2023 in Kendriya Vidyalaya Sangathan & Ors. v. Neena Khatri in SLP No. 24825/2023 produced as Annexure A5 in OA No. 600 of 2023 noticed that since the matters related to large scale transfer of teachers of Kendriya Vidyalayas and regular recruitment process had been undertaken, the Kendriya Vidyalaya Sangathan may like to revisit the process of rationalization of teachers in the Kendriya Vidyalaya Sangathan schools. Accordingly, the matter was adjourned for further instructions.

4. It emerges that consequent to the above, Kendriya Vidyalaya Sangathan permitted all the affected teachers to submit three choice stations for reconsideration of their transfer and place of posting. Accordingly, all the applicants submitted their choices.

5. When all the OAs including OAs Nos. 592 of 2023 and 595 of 2023 were taken up, it was submitted by the learned SCGSC as well as the Standing Counsel for the Kendriya Vidyalaya Sangathan that all the applicants were transferred to one of their chosen stations and they have moved to their respective stations, notwithstanding the interim orders of stay granted by this Tribunal in each cases. Accordingly, the applicants in OAs Nos. 592 of 2023 and 595 of 2023 submitted that they are satisfied with their transfer and the stations allotted to them and submitted that the OAs may be treated as infructuous and closed. Accordingly, OAs Nos. 592 of 2023 and 595 of 2023 were recorded as closed.

6. However, the applicants in the remaining batch of cases raised their objections regarding the transfer orders, inspite of the fact that they had shifted to the transferred stations chosen by them pursuant to the fresh option submitted by them, pursuant to the Supreme Court order. The grievance of the applicant in OA No. 591 of 2023 was that pending the disposal of the representation submitted by him pursuant to the direction of the Hon'ble High Court, fresh selection was conducted and several vacancies which were available at that point of time, including the chosen stations of the applicants were filled up with new recruits. Hence, the applicant sought a direction of this Tribunal to permit her to seek transfer in the next general transfer also. It was further contended that after the Supreme Court order, fresh choices were taken from the applicants herein strictly informing them that they were not permitted to choose their current stations. It was contended that consent was virtually extracted from them and they were transferred to the new stations. They had no other choice except to move to the

new stations pending the OA. The applicant in OA No. 605 of 2023 raised an additional contention that her husband was permanently disabled, and suffering from 50% disablement which was not taken into consideration by the respondents, while rejecting her application.

7. The first contention of the applicant that pending the consideration of their representations, several vacancies including their choice stations were filled up with newly recruited teachers and were no longer available to them and hence she may be permitted to submit fresh option in the next general transfer, cannot be accepted. The Hon'ble High Court only permitted the applicants to submit their grievances and the respondents were directed to consider their individual grievances on merits. There was no further direction that till the consideration of the representations, the posts chosen by them should be kept vacant. In the absence of any such specific direction from the Hon'ble High Court, Kendriya Vidyalaya Sangathan was well within their jurisdiction in fairly posting the newly recruited teachers against the available vacancies, considering all relevant factors, including rationalized distribution of teachers. Hence, the contention of the applicant is not at all sustainable.

8. It was vehemently contended by the above applicant that choices were extracted from the teachers and they had no other option except to move to the new stations. This contention was endorsed by other applicants also. It is pertinent to note that the Supreme Court by its order had only enabled the Kendriya Vidyalaya Sangathan to revisit the general transfers. However, it was extended by the Kendriya Vidyalaya Sangathan to teachers like the applicants who were not before the Supreme Court. Still a further opportunity was given to them to choose their new stations. Applicants had voluntarily submitted their choice.

9. It is also pertinent to note that pending the OA there was a stay against the order of transfer. Pursuant to the new choices given the applicants, they were ordered to be transferred to new stations. Each of the applicants herein voluntarily moved to the new stations, notwithstanding the stay granted by this Tribunal. They also moved to the new stations unconditionally and without reserving their right to pursue their claims in the OAs. All the applicants who are senior teachers cannot be heard to contend that consent was extracted from them. Since they had unconditionally moved and had not expressed that it was without prejudice to their right to pursue the OA, now they cannot turn around and contend that they were forced to move out. If they were genuine in their contentions, they could have definitely brought it to the notice of this Tribunal before moving to the new stations and sought appropriate directions to record their protest or to reserve their rights to challenge that transfer order and to pursue the remedies sought in the OA.

10. Though the learned counsel for the applicants claimed that they may be permitted to exercise the option for the 2024 general transfer also, such a permission cannot be granted. By virtue of clause 7(a) of Transfer Guidelines, a

copy of which was produced as Annexure R1(A) in OA No. 600 of 2023, only after completing the minimum duration in a new station, one is entitled to seek the transfer to another station. Since the applicants had moved to the new stations only recently, such a right is not available to her. Hence, I am not inclined to reserve any right as sought by the applicant. However, it is made clear if they are legally entitled to seek transfer on any other ground legally available to them under the relevant guidelines, this order will not stand in the way of exercising such an option.

11. The above contention of the applicants is not sustainable for another reason also. Two similarly placed applicants, namely applicants in OAs Nos. 592 of 2023 and 595 of 2023 had fairly accepted new transfer order and submitted that they have no further grievance and accordingly submitted that their OAs can be closed. They did not have any of the grievances now raised by the applicants herein.

12. In OA No. 605 of 2023 the applicant had a specific contention that her husband was 50% disabled and that was not taken into consideration by the competent authority while rejecting her representation. To substantiate the above contention, the applicant heavily relied on Annexure A5 certificate for differently abled person issued by Government District Hospital, Kannur in favour of her husband. It is stated that the husband of the applicant was suffering from Spinal Muscular Atrophy Type-III. The disability was quantified at 50%. Relying on it, the applicant contended that this aspect was not taken into consideration by the respondents.

13. The above contention is absolutely baseless. It is seen that the Hon'ble High Court's order permitting the applicant to submit representation was dated 9.2.2023. Thereupon, Annexure A4 representation was submitted by the applicant on 16.2.2023. Along with the application she had only produced a certificate dated 26.9.2022 issued by Aster MIMS, Kannur. This document has been produced by the respondents as Annexure R1(B). It only stated that the husband of the applicant was a patient under the concerned Doctor for chronic LMN syndrome. It was only after the rejection of the representation the applicant procured Annexure A5 dated 12.7.2023. Hence, the Annexure A5 was not before the competent authority at any point of time. Hence, she cannot now contend that the case of the applicant was not considered in its true perspective. Such a contention now raised is not only baseless but also uncharitable.

14. Having considered the entire facts in the above circumstances, I find that none of the grievances of the applicants can now survive since they have voluntarily and unconditionally accepted their chosen stations. The applicants after having accepted it and moved out is not entitled to pursue the OAs now. There is yet another fact to be noticed. All the above applicants were earlier transferred to distant places either in Kerala or outside the State. By the present order, all of them have been transferred to schools in Kannur District or adjoining district. Still, they remain discontented. This only shows that they do not want to

move out from the schools where they had been working for long, notwithstanding the All India Transfer Liability. No reliefs can be granted to the applicants herein at this stage.

15. Accordingly, the OAs are dismissed. No costs.