

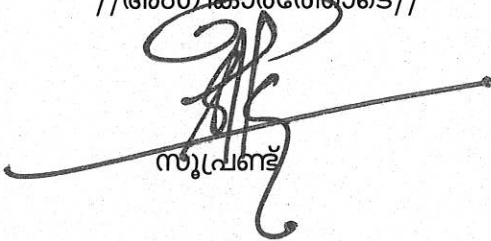
പുറത്തെഴുത്ത് നം ഡി 1/19502/18/ഡി.പി.ഐ

പൊതുവിദ്യാഭ്യാസ ഡയറക്ടറേറ്റ്,
തിരുവനന്തപുരം, തീയതി. 02/02/2019

സർക്കാർ ഉത്തരവ് - (സാധാ)നം.454/19/പൊവി, തീയതി 02.02.2019
അറിവിലേക്കും, അടിയന്തിരമായി തുടർ നടപടികൾ സ്വീകരിച്ച് വിവരം റിപ്പോർട്ട്
ചെയ്യുന്നതിനുമായി അയയ്ക്കുന്നു.

ഒപ്പ്/-
പൊതുവിദ്യാഭ്യാസ ഡയറക്ടർക്കുവേണ്ടി

//അംഗീകാരത്തോടെ//


സുപ്രഭാ

സ്വീകർത്താവ്

- 1) ബന്ധപ്പെട്ട ഉദ്യോഗസ്ഥർക്ക്
- 2) ജില്ലാ വിദ്യാഭ്യാസ ഓഫീസർ, മാവേലിക്കര.
- 3) വിദ്യാഭ്യാസ ഉപഡയറക്ടർ, ആലപ്പുഴ.
- 4) വിദ്യാഭ്യാസ ഉപഡയറക്ടർ, പത്തനംതിട്ട.
- 5) ഓഫീസ് കോപ്പി



GOVERNMENT OF KERALA

Abstract

General Education Department - Establishment - Order of the Hon'ble Kerala Administrative Tribunal dated 13/12/2018 in O.A. No. 2339/2018 filed by Shri. Rajendra Prasad.M, PA to DEO, Mavelikkara - Complied with - Orders issued.

GENERAL EDUCATION (C) DEPARTMENT

G.O(Rt) No. 454/2019/G.Edn.

Dated, Thiruvananthapuram 02.02.2019

- Read:
1. Order of the Hon'ble Kerala Administrative Tribunal dated 13.12.2018 in OA No. 2339/2018 filed by Shri. Rajendra Prasad.M
 2. Representation dated 25.12.2018 from Sri. Rajendra Prasad.M
 3. Letter No. VB4/30355/2018/DPI dated 17.01.2019 from the Director of Public Instruction, Thiruvananthapuram.

ORDER

The Hon'ble KAT in their order dated 13.12.2018 in O.A. No. 2339/2018 filed by Shri. Rajendra Prasad. M, P.A to DEO, Mavelikkara has directed the 1st respondent Government to consider Annexure A5 petition preferred by the applicant for revoking Annexure A3 order of transfer to the office of the District Educational Officer, Ottappalam within a period of one month from the date of receipt of a copy of the order; and also to consider whether disciplinary action /proceedings initiated against the applicant as per Annexure - MA-2 Memo of charges and statement of allegation dated 8.10.2018 is to be proceeded with in view of the findings in Annexure MA-4 and MA-5 documents.

2) Before disposing of the Annexure A5 petition, wherein the applicant has challenged the promotion transfer ordered vide G.O.(Rt) 4995/2018/G.Edn. Dated 28.11.2018 (Annexure A3) to him to the Office of the District Educational Office Ottappalam as PA to DEO, it has been decided to offer an opportunity of being heard to the applicant and thus was heard on 18.01.2019. The applicant Shri. Rajendra Prasad. M, his counsel and representatives of DPI were present for the hearing.

3) The applicant submitted that he had suffered Pseudo Pancriatism and removed his pancreas during 1999 and treatment is being continued since then. In the above background based on his request he was transferred to AEO Office, Ambalappuzha in Alappuzha District as Senior Superintendent on compassionate ground vide order No.D1/19502/2018/DPI dated 12/07/2018 issued by the DPI. Subsequently in the same year he was again transferred as Personal Assistant to District Educational Officer (DEO), Mavelikkara in Alappuzha District vide order No:D1/19502/2018/DPI dated 12/07/2018 for Administrative reasons and currently working in that capacity. He is a senior P.A. to D.E.O.

and due to retire from service on 31/05/2020. His wife Smt. Syama is a Primary School Teacher (PSA) working in S.N.V.U.P. School, Muthukulam in Alappuzha District. He contended that his transfer was in violative of conditions enumerated at Para 5(iv), 6(ii), 10(xi), 10(xii) and 12(i) of the transfer norms vide G.O.(P).No.03/2017/P&ARD dated 25.02.2017. He has also stated that Government recently formed a new cadre of Personal Assistant to DEO in the General Education Department by separating the Higher Grade post of Senior Superintendents /Personal Assistant to DEO and naming the new cadre as "Personal Assistant to DEO". A Selected List was prepared for promotion from among the existing Senior Superintendents /Personal Assistants to DEO and published the Select List as per GO (P) No. 21/2018/G.Edn. Dated 22/11/2018 thereto. As far as the duty of Personal Assistant to DEO, even after promotion in the newly formed cadre there is no change and except very few promoted from the post of senior superintendents(HG), all other recipients of promotion are supposed to attend the duty they have attended earlier without any change. There is no change in the scale of pay also in the promotion post. In such circumstances most of the PA to DEOs were promoted based on the Select List dated 22/11/2018 permitting them to continue in the same post without any dislocation. This fact is clearly stated in 2nd para in page No.2 of the Promotion Order dated 28/11/2018. But unfortunately though there is any legally sustainable reasons, he was unnecessarily transferred to the post of PA to District Educational Officer of Ottappalam in Palakkad District vide order in GO(Rt) No. 4995/2018/G.Edn. Dated 28/11/2018 wherein his name was included as Sl. No. 24 in page No.3 of the Order dated 28/11/2018 by posting Shri. V. Rajan Senior Superintendent (Higher Grade), DDE, Pathanamthitta as PA to DEO, Mavelikkara (3rd Respondent) on his promotion. For the said reasons the impugned transfer ordered vide G.O.(Rt) 4995/2018/G.Edn. Dated 28.11.2018 is liable to be modified to the extent of retaining him in the present post till the date of his retirement ie., on 31.05.2020.

4) On a careful consideration of the arguments/contentions put forth by the applicant against facts, circumstances and extant rules in the case, it can very well be summarised that the ~~the~~ Annexure -A5 application/request is devoid of any merits for the reasons as stated below:-

A. In the first place, It is a fact that prior to the issuance of impugned order the posts of PA to DEO and Senior Superintendent were considered as interchangeable by virtue of a Pay Revision order where the scale of pay of Senior Superintendent (HG) and PA to DEO were made identical. In fact, in Special Rules, the post of PA to District Educational Officer in General Education Department is constituted as a second gazetted post prescribing the method of appointment as 'by promotion' from the cadre of Senior Superintendent. Moreover, Rule 28 Part II KS&SSRs stipulates that promotions to a selection post shall be made only on the basis of a duly approved select list. In-order to fulfill the afore-said statutory requirements before making appointment to the post of PA to District Educational Officer Government convened the Departmental Promotion Committee on 11.10.2018 and published the select list vide G.O.(P) No. 21/2018/G.Edn dated 22.11.2018. Resultantly the eligible officers included in the select list have accrued a statutory right for promotion in

the cadre of PA to DEO in their due turn as and when vacancies arise and eventually, impugned promotion orders were issued and hence the order is legally sustainable. Besides, the transfers occurred in the impugned order granting promotions to the cadre of PA to DEO is only incidental and hence not governed by the General Transfer Guideline vide G.O. (P).No.03/2017/P&ARD dated 25.02.2017. Therefore it is quite evident that the promotion order challenged herein is not in violation of any rules or guidelines.

B. Secondly it is worthwhile to take note of the fact that the post of PA to District Educational Officer entails both change of duty and change of pay. The PA to District Educational Officer holds a pivotal role in the administration of schools & offices in an education district and also have to exercise statutory powers mandated in Kerala Education Rules in the absence of District Educational Officers. Based on their functions, job roles and delegated powers the officers promoted and appointed to the cadre of PA to District Educational Officer; and hence they are eligible for a higher scale of pay and consequent fixation benefit. This in turn necessitate promotions to the cadre of PA to DEO after drawing a select list of eligible officers from the cadre of Senior Superintendents by the Departmental Promotion Committee. The transfers ordered herein to the applicant and others are inevitable consequence of such promotion undertaken by Government to fill up the existing vacancies. For the above reasons, the posts of PA to DEO which were hitherto occupied by Senior Superintendents were segregated and streamlined to accommodate the duly selected officers as a lawful measure.

C. Thirdly, it is seen that the 3rd Respondent Shri. B.Rajan (Senior Superintendent, Office of the Deputy Director of Education, Pathanamthitta) was promoted to the category of PA to District Educational Officer and posted as PA to DEO in the District Educational Office Mavelikkara in the place of the applicant. Shri. Rajan is due to retire from service on 31.07.2019 even though he is junior to applicant in service. Hence he has given priority in providing a convenient posting at Mavelikkara a nearby station as a matter of transparent convention and practice followed in administrative set up and also as a recognition of his service.

D. Fourthly it is seen that the applicant had never furnished the Medical Certificate or supporting documents in connection with disease/ surgery details, as contended, before the DPI along with request for transfers (even for general transfer during 2017 & 2018 where he had furnished reason of 'better convenience'). Thus the authorities have no prior authentic information or record other than his oral submissions to consider his case on compassionate grounds. However, on a perusal of the medical certificate furnished before Government during hearing, the illness or medical condition mentioned therein is not an illness categorized as critical illness to be considered on compassionate grounds in extant General Transfer norms.

E. Fifthly it is pertinent to see that the applicant has challenged the promotion order raising his claims based on the conditions in the General Transfer norms issued vide G.O. (P).No.03/2017/P&ARD dated 25.02.2017. But the said conditions are not applicable to transfers consequent upon promotions.

For the afore-said reasons, the request of the applicant to retain him as PA to DEO Mavelikkara is declined.

5) As ordered by the Hon'ble KAT the matter of pending departmental action against the applicant is considered and decided as follows:-

It came to the notice of the Government that departmental proceedings are seen initiated for imposing a minor penalty against the applicant subsequent to the publication of Select list. Therefore Government has decided to promote the applicant temporarily subject to conditions in Note (iii) under Rule 28 b(i)(7) of Part II of KS&SSRs as hereunder:-

".....Officers whose name are included in the select list but against whom departmental proceedings for imposing a minor penalty are initiated subsequently, may be promoted on a temporary basis pending disposal of the proceedings against them. If the Officer is fully exonerated of the charges the temporary promotion shall be treated as regular promotion and if the Officer is not fully exonerated of the charges, his case may be considered by the Departmental Promotion Committee on merits."

This fact has been specifically mentioned in the promotion order not at all as reason for transferring him to Ottapalam from the present station on promotion. But as matter of rule to define the nature of promotion and also to distinguish it from other promotions in the same order.

In the matter of closing disciplinary actions already initiated on the basis of the report of the the District Superintendent of Police in his letter D1/47907/2018/A dated 28.07.2018, it seems that there needs a re-appreciation of factual position of the cases pending against the applicant as of now since the District Superintendent of Police in his letter D1/47907/2018/A dated 01.12.2018 has confirmed that a re-enquiry has been ordered in Crime No.1582/2017 registered at Kanakakkunnu Police Station in Alappuzha District. The enquiry conducted by the DPI on 14.12.2018 also raised similar apprehensions to that end. Besides these crime cases, it is also seen that Government and the DPI have been receiving complaints from the public regarding the unlawful activities of the applicant in his neighborhood. Indubitably, a Government servant is liable to maintain absolute integrity in private liabilities or in personal life and any charge not connected to official duty will even be treated as professional misconduct. MA-4 and MA-5 annexures in the O.A. are not seen sufficient to absolve him of all the charges objectively. Therefore it is felt that before ordering a closure of disciplinary action Government should ascertain that the conduct of the applicant is not unbecoming of a public servant and not detrimental to the interest of the public in accordance with procedure established by law.

6) In the light of the conclusions at pre paras,

I) Government hereby declines the request of the applicant Shri. Rajendra Prasad.M to retain him as PA to DEO Mavelikkara;

II) Shri. Rajendra Prasad.M is directed to join as PA to DEO Ottapalam immediately; and Shri. B.Rajan (Senior Superintendent, Office of the Deputy Director of Education, Pathanamthitta) is directed to report for duty as PA to DEO Mavelikkara at once;

III) The DEO Mavelikkara shall relieve Shri. Rajendra Prasad. M from the duties of

PA to DEO Mavelikkara forthwith and to furnish action taken report within 5 days with copies of RTCs;

IV) The DDE Alappuzha is directed to report the status of crime cases pending against Shri. Rajendra Prasad. M within Alappuzha district after an enquiry with police authorities.

7) The order of Hon'ble Kerala Administrative Tribunal read as 1st paper above is thus complied with.

(By Order of the Governor)

AJI PHILIP

DEPUTY SECRETARY TO GOVERNMENT

The Director of Public Instruction, Thiruvananthapuram.

The Deputy Director of Education, Alappuzha

The District Educational Officer, Mavelikkara

Shri. Rajendra Prasad.M, PA to DEO, Mavelikkara

Shri. B. Rajan, Senior Superintendent(PF) HG, O/o the DDE, Pathanamthitta.

The Advocate General, Kerala, Thiruvananthapuram (with C/L)

The Accountant General (Audit/A&E), Kerala, Thiruvananthapuram.

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Forwarded/By Order



Section Officer

Copy to : The PS to Hon'ble Minister (General Education)