

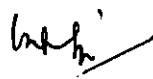
CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATANo. O.A. 351/00858/2018  
M.A. 351/00856/2018Reserved on: 26.11.2018  
Date of order: 17.12.2018Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. R. Dev Das,  
 Son of Late P. Raman Pillai,  
 Aged about 56 years,  
 By Occupation Service as  
 Principal, GSSS Manglutan  
 Under the Directorate of Education,  
 Andaman & Nicobar Administration,  
 Port Blair,  
 Residence at S-3, Sunrise Apartments,  
 Dudhline,  
 Shadipur,  
 Port Blair – 744 101.

.... Applicant

## - V E R S U S -

1. The Andaman & Nicobar Administration,  
 Service through the Lt. Governor,  
 A&N Islands,  
 Raj Niwas,  
 Port Blair – 744 101.
2. The Secretary (Education),  
 Andaman & Nicobar Administration,  
 Secretariat,  
 Port Blair – 744 101.
3. The Director of Education,  
 Andaman & Nicobar Administration,  
 Directorate of Education,  
 VIP Road,  
 Port Blair – 744 103.
4. The Deputy Director of Education (Academic/HOO),  
 Andaman & Nicobar Administration,  
 Directorate of Education,  
 VIP Road,  
 Port Blair – 744 103.



... Respondents

For the Applicant : Mr. S. Samanta, Counsel

For the Respondents : Mr. R. Haldar, Counsel

**O R D E R**

**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached the Tribunal challenging his transfer order dated 13.3.2018 as well as the reasoned order dated 30.5.2018 issued in compliance to this Tribunal's directions in applicant's earlier O.A. No. 351/378/2018.

During hearing, both Ld. Counsel would agree that this Tribunal should dispose of this O.A. in terms of the directions in WPCT No. 055/2018 (Dr. R. Dev Das – vs. – Andaman & Nicobar Administration (Education) issued on 10<sup>th</sup> September, 2018, whereby the Hon'ble High Court at Calcutta had directed as follows:-

“ After hearing learned Counsel for the parties, this writ application is disposed of by affirming the interim order dated 31<sup>st</sup> July, 2018 with the only modification that the interim order will continue till the disposal of the original application before the Tribunal.

The Tribunal is requested to dispose of the original application as expeditiously as possible preferably within six months from date.”

2. Accordingly, in compliance with the directions of the Hon'ble High Court at Calcutta, this Tribunal proceeds to dispose of the Original Application after considering rival contentions of both Ld. Counsel, examination of pleadings and documents on record.

3. The applicant's submissions, as articulated through his Ld. Counsel, is that:

(i) The applicant was holding the post of Lecturer in Geography since 1985.

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(ii) In 1997, he was selected by the UPSC for appointment to the post of Principal in the Directorate of Education and thereafter joined at SS School, Bamboo Flat.

While holding the post of Principal, State Institution of Education, he was given additional charge of the post of Director of Education but was relieved from the said additional charge in July, 2013. Thereafter, in June, 2014, he was given additional charge of the post of Principal ANCOL and upon handing over the charge of Principal ANCOL, he was handed over the charge of Principal, GSSS, Manglutan, a post he joined without prejudice to his rights and contentions and represented for appropriate posting as, according to the applicant, given his seniority, he was the only rightful claimant for the post of Director Education. On 13.3.2018, however, the applicant was transferred for the post of GSSS, Manglutan (Zone V) to SSS Teressa (Zone I) wherein, according to the applicant, there is no sanctioned post.

The applicant represented against such transfer order and approached the Tribunal in O.A. No. 351/378/2018. In compliance to the directions of the Tribunal, the respondent authorities served him with a reasoned order dated 30.5.2018, which the applicant has challenged in the instant O.A.

The grounds advanced by the applicant in support of his claim are as under:-

- (i) That, the orders, so impugned, suffer from malice in law and malice in fact. The orders are arbitrary and are influenced by extraneous considerations that are unfair and unjust to the applicant concerned.
- (ii) That, although the representation of the applicant was also for the grant of appropriate posting commensurate with his

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service seniority, the speaking order has not dealt with the said contentions of the applicant.

(iii) Ld. Counsel for the applicant, during hearing, would also draw the attention of the Tribunal to orders in WPCT No. 055/2018 dated 31.7.2018, and, particularly, internal page 3 of the same wherein the Hon'ble High Court at Calcutta had observed as follows:-

“ In view of the above facts and circumstances, we are of the considered view that a strong arguable case has been made out by the petitioner to grant interim relief in his favour restraining the respondent authorities to compel the petitioner to discharge his function under his Junior Officers without considering his grievances in spite of the directions of the learned Tribunal.”

4. Per contra, the respondents have controverted the claim of the applicant as follows:-

(i) That, the applicant was given a personal hearing on 11.5.2018 by the Secretary (Education) prior to issue of the reasoned order, and, that, the grievances of the applicant was considered on merit after being heard both through his written and oral submissions.

(ii) On account of the long pending demand of tribal inhabitants, the School of Govt. Secondary School, Teressa (Zone I) was upgraded to Senior Secondary level which required the services of an experienced and senior professional of the Education Department such as the applicant.

(iii) The latest transfer policy of the respondent authorities dated 5.12.2014 (Annexed as Annexure R-3 to the reply) mandates that:

“(xvi) Teachers who attained age of 55 years or above shall be considered for their desired place of posting as far as possible subject to the following conditions:-

(a) Those who have already served the prescribed tenure at least in Four Zones and with service of prescribed tenure in any one of the Hard Zones namely Zone I, II & III.

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(d) Those who have already crossed 59 years of age and are retiring within the academic session itself and transferring them at mid-way of the session may not be in the public interest, apart from causing additional burden on Govt. in the shape of transfer TAs claim."

In the context of the above noted provision, the respondents would argue that, as noted in their speaking order at Annexure R-4 to the O.A., the applicant has spent 30 years and 8 months of his service in zone V and VI, and, had never served in Zone I of which Teresa Island is a part.

(iii) The respondents have further disclosed that the applicant cannot be posted in a position whereby he would be entrusted with discharging sensitive duties as well as be involved in financial matters as because his name has been included in the "Agreed list 2018" by the Vigilance Department in consultation with the anti-corruption unit of CBI.

(iv) The respondents would further contend that as the applicant stands at Srl. No. 1 of the station seniority list of Gr. A Officers of South Andaman Zone V and VI, he is the seniormost employee who has rendered more than 30 years of service in Zone V and VI combined. Hence, he has enjoyed more than 15 years of additional service which is beyond the prescribed tenure of that zone and it is an admitted fact that he had never served in Zone - I.

5. The primary issue for adjudication before us is whether the transfer order dated 13.3.2018 (Annexure A-2 colly. to the O.A.) as well as the speaking order dated 30.5.2018 deserve to be set aside on grounds of arbitrariness, malice or violation of professed norms of the transfer policy, as alleged by the applicant.

6.1. At the outset, we refer to the transfer order of the applicant dated 13.3.2018 (Annexure A-2 colly. to the O.A.) and note that the applicant has been transferred from SSS Manglutan to SSS Teressa against an existing vacancy with certain directions for drawal of his salary against



the sanctioned strength of Principal SSS Champin on production of duty certificate.

6.2. Next, we proceed to examine the speaking order, as impugned in the instant O.A. and we extract the findings of the respondent authorities in the said speaking order as follows:-

"AND WHEREAS, the grievance of the applicant were heard through his written as well as oral submissions and after due examinations of the status of the case on merit, the following were noted:

- I. As per station seniority list prepared as on 31/05/2018 of Group - A Officers of Education Department, Dr. R. Dev Das stands at Sl. No. 1 in South Andaman which comprises of Zone - V & VI.
- II. Dr. R. Dev Das, Principal has never served in Zone-I (of which Teressa Island is a part). The posting profile of the applicant prior to this transfer is as follows:-

ZONE	I	II	III	IV	V	VI
Years of posting	00	1.10	00	00	3.05	27.03

Considering all the above, it is found that the transfer of Dr. R. Dev Das from GSSS Manglutan (Zone V) to GSSS Teressa (Zone-I) has been done in conformity with the existing transfer guidelines.

NOW THEREFORE, in view of the reasons narrated above, the representation dated 02/04/2018 of Dr. R. Dev Das, Principal is found to be devoid of merit and as such his request for retention at Port Blair cannot be acceded to accordingly the representation is disposed off.

This is being issued in compliance to order dated 20.03.2018 passed by the Hon'ble CAT, Calcutta Bench, Kolkata in O.A. No. 351/378/2018 (Dr. R. Dev Das - vs. - UOI & Ors.).

Secretary (Education)  
A & N Administration  
(F. No.O.A. No. 351/378/2018)"

From the above speaking order, the following is inferred:-

- (i) The applicant is foremost in terms of station seniority list having spent more than 30 years in Zone V and VI.
- (ii) The applicant has not rendered any service in Zones I, III and IV respectively. He has served for 1 year and 10 months in Zone II and more than 30 years in Zone V and VI taken together.

During hearing, the Ld. Counsel for the applicant would draw our attention to the grounds advanced in assailing the transfer order.

We proceed to examine each of those contentions ad seriatim, as follows:-

(i) The applicant claims that there is no sanctioned post at the place where he has been transferred.

In contrast, we find the transfer order categorically states that the applicant is being accommodated against an existing vacancy. Ld. Counsel for the applicant would vociferously argue that in such case, his salary ought not to be drawn against a sanctioned post of SSS Champin which we do not find as unreasonable given that SSS Teressa has been recently upgraded to a Sr. Secondary School, and, regularizing the budget head for such a newly upgraded institution would take some time to be finalized. The transfer order does not say that the applicant has to appear at SSS Champin to obtain his salary but only that his salary would be disbursed against sanctioned strength of Principal at SSS Champin.

(ii) The applicant further agitates that by virtue of his transfer order, he would be posted in a position subservient to his purported juniors in violation of established principles of service jurisprudence.

While, the applicant, in his capacity as the Principal of SSS Teressa, would be at liberty to function as per Govt. instructions to activate and manage the recently upgraded Senior Secondary School which would serve

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the long pending demand of the local tribal population, we note that the applicant cannot be given independent charge with financial powers or could be entrusted with sensitive decision making given the inclusion of his name in the "Agreed list of 2018" by the vigilance department in consultation with the Anti-Corruption Bureau.

At this stage, Ld. Counsel for the applicant would furnish an order of the Hon'ble High Court of Calcutta dated March 04, 2019 in [SR] CAN No. 037 of 2019 (Stay) with M.A. No. 012 of 2019 in W.P. No. 310 of 2019 wherein the prayer of the applicant/petitioner to set aside the applicant's name in the First Information Report of the CBI on grounds of the fact that there was no mens rea on the part of the petitioner, was disposed of by the Hon'ble High Court by stating as follows:-

"Mr. Samanta strongly relied on the decision of the Hon'ble Supreme Court in the case of **State of Haryana and others v. Ch. Bhajan Lal and others** reported in **AIR 1992 SC 604** in support of his submission that the writ court in exercise of jurisdiction under Article 226 of the Constitution of India can direct that a criminal case should not continue against a party if the writ court is satisfied that even taking the allegations in the First Information Report to be correct, no commission of cognizable offence by the concerned person is disclosed. We are conscious that the writ court has such power but the same has to be exercised with due care depending upon the facts of such case. In the present case, our conscience does not permit us to pass an order stifling the criminal investigation against the appellant/petitioner at this stage.

The petitioner/appellant will be at liberty to make representation to the administration for appropriate posting. However, this liberty will not be construed as any kind of mandate on the administration."

We note respectfully that the Hon'ble High Court, Calcutta did not wish to impose any mandate on the administration so as to stifle the criminal investigation against the appellant/petitioner.

Hence, there is no embargo on the criminal investigation against him and the applicant has not disputed the contentions of the

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respondents that his name is included in the "Agreed List of 2018" of the vigilance department.

(iii) The applicant has further alleged that the transfer order violates the transfer policy. Ironically, the applicant's tenure of 30 years in combined Zone V and VI (which tantamounts to additional 15 years beyond the prescribed tenure) is indeed violative of transfer policy and the respondents, unless otherwise debarred, were at fault in not moving the applicant earlier to other prescribed zones of Zone I, III and IV in accordance with their transfer policy. The present transfer order seeks to redress such violation, although belatedly, on grounds of public interest.

The applicant has not reached the age of 59 years by his own admission in the verification of the O.A. Undisputedly he has not served in the hard Zones of I, III and IV and, hence Clause (xvi) of the transfer policy dated 13.3.2018 does not come to his aid.

The applicant alleges that the incompetent authority, namely, the Director of Education had issued his transfer order. This is not a correct allegation as because the Director of Education has only conveyed the transfer orders upon the approval of the competent authority, who is the Lt. Governor, in this case.

6.4. The applicant has also alleged that his representations for appropriate posting remains unconsidered. In elaboration, Ld. Counsel for the applicant would produce a memorandum dated 27.6.2019 of the respondent authorities who has not agreed to disturb the applicant from his present place of posting in compliance to the orders of the Hon'ble High Court in WPCT No. 55 of 2018 directing status quo ante with regard to his present place of posting.

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According to Ld. Counsel for the applicant, the applicant's representation for appropriate posting should have been considered as directed by Hon'ble Court and, that, the Memorandum dated 27.6.2019 is, at worst, contemptuous against the orders of the Hon'ble High Court, Calcutta. We revert herein once again to the judgment of Hon'ble High Court at Calcutta dated 27.6.2019, which had directed that there would be an order of status quo ante with regard to his place of posting as on the date of his transfer (issued under Office Order No. 576 dated 13<sup>th</sup> March, 2018) till the date of hearing of the Original Application. While finally disposing of the said Writ Petition No. 55 of 2018, the Hon'ble High Court at Calcutta further directed that interim order shall continue till the disposal of the Original Application before the Tribunal.

Accordingly, with the adjudication of this O.A., the currency of the interim order will come to an end and the respondent authorities would thereafter be at liberty to pass a reasoned order on the applicant's prayer of appropriate posting in the light of directions of the Hon'ble High Court in Writ Petition No. 55 of 2018.

6.5. Judicial pronouncements in the subject of transfer lays down the scope of judicial review. In ***Union of India v. S.L. Abbas (1993) 4 SCC 357*** and in ***State of Haryana v. Kashmir Singh 2010 (7 Supreme 666***, it was categorically held that an order of transfer can be questioned in a Court or Tribunal only when the order is vitiated by mala fide or where it has been made in violation of statutory provisions.

The applicant could not establish that the transfer order dated 13.3.2018 and the consequent speaking order dated 30.5.2018 reiterating the same were violative of transfer guidelines. Hence, we conclude that no statutory provisions have been violated thereby.

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On the issue of malafide, we refer to the ratio of the Hon'ble Apex Court in ***Rajendra Roy v. Union of India, 1993 (1) SCC 148*** wherein it was held as follows:-

“.... In an appropriate case, it was possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions.”

The applicant, in his pleadings, has alleged that the impugned orders are a product of malice in law and malice in fact. Nothing has been brought on record to establish any wrongful intention of the Respondent authorities or any deliberate intent to commit an injury.



In ***Abani Kanta Ray v. State of Orissa, 1995 Supp (4) SCC 165***, the Hon'ble Apex Court held as follows:-

“ It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer.

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..... The Division Bench of the Tribunal which quashed the said transfer on the ground of malice of the Chairman of the Tribunal did so against the material on record and the facts beyond controversy which borders on judicial impropriety.”

We further refer to Hon'ble Apex Court's dicta in ***Ratnagiri Gas and Power Private Limited vs. RDS Projects Ltd. & ors. (2013) 1 SCC 524*** wherein the burden of proof was placed on the one who alleges malafide. There being absolutely nothing on applicant's record to establish malafide, we conclude that the applicant has not been able to prove malafide or arbitrariness to our satisfaction as the Respondents were operating well within their guidelines.

6.6. In O.A. No. 350/00695/2018 (***Ved Prakash Mishra vs. A&N Administration***), relied upon by the Respondents, the Tribunal observed as follows:-

“9. We have already noted that the allotted tenure of Zone I is 2 years and the applicant has already served at the zone for 3 years 2

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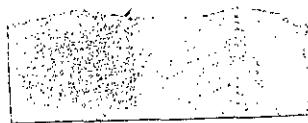
months. Therefore, he is not permitted to raise a hue and cry on the ground that the transfer is a premature one."

In this original application also, the applicant has been in Zone V & VI for 30.08 years and cannot insist that his stay which was 15 years beyond the prescribed tenure, being truncated to be moved to a zone mandated for all education service officials, is violative of policy.

7. Accordingly, we find that the applicant has not been able to establish violation of statutory provisions, arbitrariness or malafide, and, hence, in our considered view, the impugned orders do not call for judicial intervention.

8. The O.A. stands dismissed on merit. Interim orders stands vacated as per liberty granted by the Hon'ble High Court at Calcutta.

M.A. bearing No. 856/AN/2018 praying for an early hearing, filed by the respondents, is disposed of accordingly with the final orders passed in this O.A.



**(Dr. Nandita Chatterjee)**  
**Administrative Member**



**(Bidisha Banerjee)**  
**Judicial Member**

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