

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 344 OF 1999
Cuttack this the 25th day of May, 2001

Asha Tripathy

...

Applicant(s)

-VERSUS-

Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Son
(SOMNATH SON
VICE-CHAIRMAN
25.5.2001

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

...

Asha Tripathy, aged about 28 years,
Daughter of Ajaya Kishore Tripathy,
W/o. Ajay Kumar Mishra, resident of
Village - Station Bazar, Cuttack
At/Town/Dist - Cuttack

...

By the Advocates

Applicant

M/s.A.A.Das
B.Mohanty
R.Rath
P.K.Naik
T.K.Patnaik
S.Das

-VERSUS-

1. Kendriya Vidyalaya Sangathan represented through its Commissioner, 18, Industrial Area, Sahid Jeet Singh Marg, New Delhi-16
2. Deputy Commissioner (Personnel), Kendriya Vidyalaya Sangathan, 18, Industrial Area, Sahid Jeet Singh Marg, New Delhi-16
3. Chairman, Kendriya Vidyalaya Sangathan, Ministry of Human Resources Development, Sastri Bhawan, New Delhi
4. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, H.P. 7, B.D.A. Locality, Laxmisagar, Bhubaneswar, Dist-Khurda

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By the Advocates

Respondents

Mr.Ashok Mohanty

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Original Application seeking direction on the departmental respondents for issue of appointment order as Librarian in favour of the applicant, facts not in dispute are as follows:

In the Employment News Magazine of 26th - 2nd May, 1997, Kendriya Vidyalaya Sangathan published recruitment notice inviting applications for several categories of posts,

which included post of Music Teacher and Librarian (Annexure-1). For the post of Librarian, vacancies all over India were shown as 75, of which three posts come under the Bhubaneswar Region. Applicant having the eligibility had applied for the post of Librarian. By letter dated 12.8.1997, Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bhubaneswar (Respondent No. 4) intimated to the applicant to appear at the interview before the Selection Committee on 30th August, 1997, at K.V.S. Regional Office, Bhubaneswar. The applicant faced the interview. Thereafter, by notification dated 31.10.1997 (Annexure-3) issued by the Sangathan Regional Office, Bhubaneswar, applicant and another Purusottam Sahoo were declared successful for the post of Librarians and the name of the applicant was placed in the notification above Purusottam Sahoo.

2. The case of the applicant is that even though three posts were vacant for Bhubaneswar Region and even though she came out successful in the interview, without offering appointment of any such post to her, those posts were filled up by inter-regional transfers in the Region. Inspite of several approaches and representations the authorities turned a deaf ear. Such filling up of posts through inter-regional transfers, according to applicant, is bad in law. She had also opted for certain regions where the posts of Librarians are lying vacant. Yet she was not offered any posting orders. On the other hand the Sangathan issued another advertisement for filling up of the posts of different categories, including the post of Librarians under Annexure-4. Hence this application.

3. By interim order dated 30.8.1999 it was directed that one post of Librarian for which advertisement under

Annexure-4 was issued should not be filled up without the leave of this Bench.

4. The Respondents (Department) in their counter take the stand that between the date of advertisement and the approval of the selected panel there would evidently be a time gap and during the period the position of vacancies may change for various reasons, like, promotion, inter-regional transfers etc. Further, in few cases peculiar situation may arise in that by the time a select panel is approved and becomes operative, no vacancy whatsoever may be available and in such a case it would not be possible to offer appointment to the selected candidates notwithstanding their position in the select panel. Such a situation having arisen and no vacancy being available, candidates including the applicant in the select panel could not be accommodated. Further, since all the vacancies of Librarians available in Bhubaneswar have been filled up by inter regional transfers, the applicant could not be offered the post for want of vacancy. This apart, in the meanwhile, life of the panel prepared for one year had already expired and it ceased to be operative.

5. Applicant filed rejoinder stating that the version of the Department as to the non availability of vacancies is not correct. Transfers made from one Region to another Region or out of the same Region, result in change in the number of vacancies. On the other hand, on promotions there is creation of further vacancies. Promotion from the post of Librarian on the other hand, would increase the number of vacancies. As to the life of the panel, the applicant's case is that one Ajit Kr. Padhi, who was selected as Music Teacher in

response to advertisement under Annexure-1, was offered appointment even after the expiry of one and a half years, after the preparation of the panel. Further, in the select panel it was stipulated that offer/appointment would be issued as and when vacancies will arise.

Even she represented under Annexure-5 indicating that there are vacancies at Katney, Akelatra under Jabalpur Region, but without any response.

6. We have heard Shri A.A.Dash, the learned counsel for the applicant and Shri Ashok Mohanty, the learned senior counsel representing the respondents. Also perused the records.

7. Facts are not in dispute. The assertion of the applicant that three vacant post of Librarians at Bhubaneswar were filled up through inter-regional transfers, despite she and another from Bhubaneswar Region were declared successful in the interview for the posts of Librarians, had not been denied by the Respondents. On the other hand at one stage in the counter the stand of the Department though appeared to be vague, as to how these three vacant posts under Bhubaneswar Region could be filled up, the latter in the counter admitted that these have been filled up through inter-regional transfers. It is not in dispute that the applicant stood first in the Orissa zone. Taking these two instances into consideration, by order dated 13.2.2001, we directed a responsible officer of the Respondents' organisation to file an affidavit indicating therein the precise number of vacancies, as mentioned at the bottom of the recruitment notice under Annexure-1 in different stations which had been filled up by recruiting

fresh people from the market and how many of these had been filled up by inter-regional transfers; and the learned special counsel appearing for the respondents was allowed time till 13.3.2001 for filing such affidavit for our reference. But no such affidavit was filed by the respondents nor did they offer any explanation whatsoever for not filing any such affidavit. Since the respondents did not file the affidavit with detailed information as directed by us, we cannot but draw an adverse inference and agree with the contention raised from the side of the applicant that in order to raise the number of vacancies in other Regions, vacancies under Bhubaneswar Region were filled up by way of inter-regional transfers and this in turn cannot but give rise to a case of discrimination so far as successful candidates from Bhubaneswar Region are concerned and this conduct of the respondents in not offering appointment to the applicant cannot but be condemned. We are of the view that the applicant, pursuant to her success in the interview and consequently finding place in the select panel under Annexure-3 dated 31.10.1997, is entitled to receive an appointment order, posting her as Librarian, if any, in the Bhubaneswar Region or at least in Jabalpur Region, as mentioned in her representation annexed to Regiorder as Annexure-5; and not denied by the respondents in their counter during hearing.

¶. Shri Mohanty, the learned special counsel for the respondents (K.V.S.) strenuously contended that the life of the panel being valid for one year and this

application having not been filed within the period of one year, the applicant is not entitled to any reliefs prayed for. The specific averment in the rejoinder that one Ajit Kr.Padhi, who was selected as Music Teacher in response to recruitment notice vide Annexure- 1 and who found place in the select list of Music Teacher under Annexure-3 dated 31.10.1997 was given appointment as Music Teacher even after the expiry of the period of one and half years of the publication of the panel has neither been denied nor disputed during hearing. At this stage, it is pertinent to take note of the Circular/letter dated 17.6.1999 of the Sangathan (Marked as Annexure-C in O.A. 638/99, concerning to selection and appointment as Music Teacher in response to recruitment notice under Annexure-1). Though Rule-8 (2) of the Sangathan Rules with regard to appointment/promotion etc. provides that the life of a select panel prepared on the basis of direct recruitment shall be one year, but it can be extended by another one year under exceptional circumstances. When the respondents are primarily at fault in blocking the prospects of appointment of the successful candidates appearing from Bhubaneswar by inter-regional transfers in order to create more number of vacancies in other Regions, non-extension of further period of one year, i.e., upto 31.10.1999, amounts to a case of discrimination.

This Original Application was filed in July, 1999. We are, therefore, not inclined to agree with the contention raised by the Department in this regard.

9. Before we part with this case, we would like to

Observe that exactly a similar case was filed by one S.K. Bhol (O.A.No.638/99) pertaining to appointment of Music Teacher, pursuant to Employment Notice under Annexure-1. In that case, Respondents (K.V.S.) had taken identical stand as in this case, but furnished the required particulars, as were directed to be produced before this Bench. However, after hearing learned counsel for both sides, we allowed that Original Application by judgment dated 15.5.2000, directing Respondents (K.V.S.) to issue appointment order/posting order to the applicant therein within a period of 30 days from the date of receipt of copy of the order.

i. In the result, while allowing this Original Application we direct the respondents (K.V.S.) to issue appointment order/posting order in favour of the applicant within a period of 30 (thirty) days from the date of receipt of copy of this order.

ii. Original Application is allowed, but without any order as to costs.

Somnath Som.
(SOMNATH SOM)
VICE-CHIRKAN
85.5.2001

25.5.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//