

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION 502 OF 1999
Cuttack, this the 20th day of April, 2000.

SRI SADANANDA SAHOO.

....

APPLICANT.

VERSUS

UNION OF INDIA & ORS.

....

RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? *yes*
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *no*

20-4-2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 502 OF 1999
Cuttack, this the 20th day of April, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

..

SRI SADANANDA SAHOO,
Aged about 42 years,
Son of late Ratnakar Sahoo,
at present working as a Primary Teacher,
Kendriya Vidyalaya, Balasore
near Proof Colony, Indira Gandhi Marg,
Balasore, permanent resident At/Po; Baralapokhari,
Via. Charampa, District; Balasore.

: Applicant.

By legal practitioner : M/s. R. N. ACHARYA,
S. K. Chowdhury,
S. R. Kamungo,
B. K. Barik,
P. Prasad,
ADVOCATES.

- VERSUS -

1. Union of India represented through Commissioner
Headquarters, Kendriya Vidyalaya Sangathan,
New Delhi.
2. Assistant Commissioner, Kendriya Vidyalaya
Sangathan Regional Office, Bhubaneswar, Dist; Khurda.
3. Principal, Kendriya Vidyalaya, Balasore, Dist; Balasore.
4. Mrs. Gayatri Prasad,
PRT, Kendriya Vidyalaya,
Balasore.

: Respondents.

By legal practitioner : Mr. Ashok Mohanty,
Special Counsel for Res. Nos. 1 to 3.

: M/s. N. C. Mohanty,
R. Sahu-3,
P. K. Dhal,
B. B. Panda
Advocates for Res. No. 4.

....

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

In this Original Application for quashing of the order of transfer dated 8.9.1999 (Annexure-4) of the applicant from Kendriya Vidyalaya, Balasore to Kendriya Vidyalaya, AFS, Salua with immediate effect, the case of the applicant is that the transfer was effected because many teachers in various categories have been rendered automatic surplus and in view of the Departmental instructions dated 24.7.1996 Annexure-A/4 in case of automatic surplus, teachers who have been rendered surplus automatically due to the modifications of the staff strength are the ones referred to as automatically surplus. Teachers of the particular category who had the longest stay in the Vidyalaya should move out on transfer. According to the Applicant, on the basis of this instruction, Smt. Gayatri Prasad (Respondent No. 4), a teacher of Kendriya Vidyalaya, Balasore, who had completed more number of years as teacher, at Balasore than the applicant, was at first transferred from Balasore to Salua (West Bengal) by order dated 9.8.99 under Annexure-2. This order was cancelled by order dated 27.8.1999, under Annexure-3, and she was allowed to continue at Balasore on the ground that her son who is a student of B.A. second year, is totally blind and the next seniormost teacher would be treated as surplus instead of her. In view of this direction, under Annexure-3, applicant the next seniormost teacher, at Balasore was transferred.

It is the further case of the applicant that Smt. Gayatri Prasad's son is not totally blind because he is reading in FM College, Balasore where there is no facility of braille to enable the blind students to reach. Hence cancellation of her transfer order on the ground of totally blindness of her son was not justified. On the other hand, Applicant's mother being a cancer patient and needing the help and assistance of her and undergoing treatment at Acharya Harihar Regional Centre for Cancer, Cuttack, should not have been transferred when transfer of Respondent No. 4 who has longest period of service at that station than him was allowed to continue because of the blindness of her son. In other words, it is the case of the applicant that he has been discriminated in the matter of transfer by showing undue favour towards Mrs. Gayatri Prasad. Moreover, his transfer order was passed after the Election Commission notified the Parliament Election and as such the order of transfer can not be implemented. As her representation was not heeded, he has filed this Original Application.

2. Facts are not much in dispute. Stand of the Deptt. is the counter filed on 26.11.1990 is that son of the Res. No. 4 being totally blind is studying at Balasore in a blind school and the Authorities considering the sorrow plight of a lady and blind son taken the decision to continue her at Balasore and the applicant being the next seniormost in the station has been transferred and this exercise has been done only for redeployment of the teachers who have declared surplus, and there is no sanctioned post existing in Balasore Kendriya Vidyalaya. However, at a subsequent stage, the Departmental

Respondents filed a clarification memo that the Respondent No. 4's son is not studying in blind school but in a College. The Department denies that any undue favour having been shown in case of the Respondent No. 4 and the order of transfer of applicant is no way discriminatory. Though the applicant was directed to be relieved immediately in view of the Election Duty, he could not be relieved and the Election Returning Officer was requested to relieve the applicant from Election Duty and as no reply was received, the applicant could be relieved only after the election duty is over.

3. Respondent No. 4 in her counter takes the stand that her son is 100% disability due to blindness. As per the certificate dated 24.11.1995 by the Chief District Medical Officer, Balasore, her continuance at Balasore on account of the studies of her son is necessary and the Department had rightly taken this and cancelled her order of transfer.

4. This Original Application at first came up for hearing on admission on 22.9.99. A direction was issued that the applicant shall not be relieved till 29.9.99. This direction continued till 10-12-1999 when with an elaborate order, the prayer for interim relief for stay of the transfer order was dis-allowed.

5. I have heard Mr. R.N. Acharya, learned counsel for the Applicant, Mr. Ashok Mohanty, learned special counsel appearing for the Departmental Respondents and Mr. N.C. Mohanty, learned counsel for the Respondent No. 4 and have also perused the records. During hearing Mr. Acharya, learned counsel for the Applicant submitted that the interim order was disallowed and the applicant has joined in his place of transfer.

6. Law is well settled that transfer is an incident of service. In a series of decisions, the Hon'ble Apex Court held that the transfer order not passed on mala fide or in violation of any statutory and mandatory rules or without proper justification can not be interfered with. Even a transfer order passed contrary to guidelines can not be interpreted that this has been passed on mala fide grounds. Proof of malice can not be established on the basis of insinuation or vague statement for inference of malice. There must be findings of facts pleaded and established. It is entirely for the employer to decide when, where and what point of time a public servant should be transferred and courts, ordinarily, should not interfere with the orders of transfer passed on administrative grounds in ordinary course. In the case of Ms. Shilpi Bose Vrs. Union of India reported in AIR 1991 SC 532, the Hon'ble Apex Court even went to the extent of holding that when a competent authority issued the transfer order with a view to accommodate a public servant to avoid hardship, the same can not and should not be interfered with by the Courts merely because orders have been passed with the request of the employees concerned because the transfer orders are made in public interest and for administrative reasons unless made in violation of statutory and mandatory rules or on the ground of mala fide.

8 In view of the legal position, it is to be examined whether the transfer order of the applicant in order to accommodate the Res.No.4 is actuated to any malice or in violation of statutory and mandatory rules. It is seen from the certificate issued by the CDMO, Balasore dt.25.11.95 filed by the Respondent No.4 and finds mentioned in my elaborate

order dated 10.12.1999 that the dissability of Respondent No.4's son is 100%.Hence taking this factor into consideration it can not be said that the retention of Respondent No.4 at Balasore by cancellation of her transfer order earlier issued to that effect will not amount to any undue favour shown by the Department towards her. Since there is no sanction posts another teacher of that institution at Balasore has to be transferred in the exigencies of the administration and there is no dispute that this applicant who is seniormost teacher continued at Balasore.It is true that applicant's mother is a cancer patient (Vide Annexure-5 series) and which is not disputed by the Department.This does not,however,mean that he has a right not to be transferred from Balasore Kendriyavidyalaya either to Kharagpur(IIT/No.1) or Charbatia because of the malaice advanced during the hearing by the learned counsel for the Applicant, has not been specifically pleaded in his Original Application. Even otherwise from the pleadings, I am unable to consider a case of mala fide as alleged during hearing. It is true that the earlier order of transfer of Res.No.4 was cancelled on sympathetic ground which does not,necessarily mean that non-cancellation of the applicant's order of transfer would amount to discrimination.

7. The next point urged by learned counsel for the Applicant that this transfer order having been issued after the notification of Parliamentary Election issued by the Election Commission being bad in law is without any force.A copy of the concerned notification has not been furnished. Hence I am not inclined to accept the applicant's version that through this notification even transfers of teachers of Kendriya Vidyalaya have been banned during election time.

8. For the reasons discussed above, I do not see any legal justification to quash the order of transfer of the applicant from Kendriya Vidyalaya, Salua to Kendriya Vidyalaya, Salua. At the same time, it can not be overlooked that the applicant's mother is a cancer patient and is undergoing treatment at Acharya Harihara Regional Centre for Cancer Research and Treatment Society, Cuttack and the applicant has brought this fact to the notice of the Authorities in his representation, dated 14.9.1999 under Annexure- 5 series for change of place of posting/transfer. In case the same has been disposed of and rejected in the meanwhile I hope the Department will reconsider the matter in the event of applicant submitting another application on those grounds.

9. In the result, the Original application is rejected. No costs.

20-4-2000
(G.NARASIMHAM)
MEMBER(JUDICIAL)

KNM/CM.