

4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 575 OF 1999.

Cuttack, this the 3rd day of January, 2000.

BIJAYA KUMAR MISHRA.

....

APPLICANT.

-Versus-

UNION OF INDIA & OTHERS.

....

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*.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath
SCOMNATH SAH
VICE-CHAIRMAN
3.1.2000.

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.575 OF 1999.

Cuttack, this the 3rd day of January, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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SRI BIJAYA KUMAR MISHRA,
 Aged about 42 years,
 Son of Chandrasekhar Mishra,
 Drawing Teacher,
 Kendriya Vidyalaya,
 Khurda Road, Khurda-752050

....

APPLICANT

By legal practitioner : M/s. K.C. Kanungo, S. Behera, Advocates.

-Versus-

1. Commissioner, Kendriya Vidyalaya Sangathan (KVS),
 18, Institutional Area, Sahid Jeet Singh Marg,
 New Delhi.
2. Assistant Commissioner, Kendriya Vidyalaya
 Sangathan (KVS), Regional Office HP-7, BDA
 Locality, Laxmisagar, Bhubaneswar-6,
 Dist. Khurda.
3. Mrs. Madhusmita Das, W/O. Kalikinkar Mohanty,
 Drawing Teacher, Kendriya Vidyalaya,
 Paradeep, At/Po. Paradeep, Dist. Jagatsinghpur.

.. RESPONDENTS.

By legal practitioner : M/s. B. Dash, & R. N. Behera, Advocate.
 For Res. No. 3.

By legal practitioner : Mr. Ashok Mohanty, Senior Spb. Counsel.
 for Res. Nos. 1&2.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order of transfer of Respondent No.3 from Kendriya Vidyalaya, Paradeep to Kendriya Vidyalaya, No.1, Bhubaneswar. The second prayer is for a direction to Respondent No.2 to consider the transfer of the Applicant from Kendriya Vidyalaya, Khurda to Kendriya Vidyalaya, Bhubaneswar. The third prayer is for a direction to Respondent No.2 to strictly enforce their own priority list of intra-Regional Transfer, which is at Annexure-1.

2. The facts of this case, according to the applicant are that on his joining service as Drawing Teacher in 1987, he was posted at Kendriya Vidyalaya, Paradeep where he continued till February, 1992. Thereafter, he joined at Kendriya Vidyalaya, Khurda Road. He requested for transfer from Khurda to Kendriya Vidyalaya No.1, Bhubaneswar on the ground of his ~~Cardiac~~ problem. According to the guidelines formulated by the Respondents, persons seeking transfer on different personal grounds have to apply and a priority list is maintained. Accordingly, the applicant applied in time and in consideration of the guidelines, at Annexure-1, a priority list was published at Annexure-3. The application of the applicant seeking

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transfer is at Annexure-2. It is submitted that Res. No.3, who is a Drawing Teacher, at Kendriya Vidyalaya, Paradeep, also applied for transfer on the ground that her spouse is working at Bhubaneswar. Her name was also in the priority list, at Annexure-3. The applicant has stated that according to this priority list, amongst Drawing Teachers, applicant's name was at Sl. No.1 and Respondent No.3's name was at Sl. No.2. Applicant has stated that he was hoping that his case will be given priority but strangely, Respondent No.3 has been posted at Kendriya Vidyalaya No.1, Bhubaneswar and the case of the applicant has been ignored. Applicant has stated that Respondent No.3 in her petition had given three choices and her first choice was at KVS, Khurda, second at KVS, Bhubaneswar and the third at KVS Puri. It is further stated that the husband of the Respondent No.3 who was working in the Office of the Regional Provident Fund Commissioner, Orissa, Bhubaneswar, had, in the meantime, been transferred to Sub Regional Officer, Berhampur and the spouse ground no longer survives. It is further stated that in the first week of April, 99, applicant got a heart-stroke and therefore, wanted to come to Bhubaneswar as it was difficult for him to come to Bhubaneswar and Cuttack frequently for his treatment. After the transfer order, at Annexure-1, is issued, applicant

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filed a representation but without any result and that is why, he has come up in this Original Appl. with the prayers referred to earlier.

3. Respondent No.3, in her counter has stated that she applied for transfer to KVS, Bhubaneswar as her husband was working in the Office of the Regional Provident Fund Commissioner, Orissa, Bhubaneswar. After a sub Regional Office was opened at Berhampur, in order to manage the day-to-day work, the husband of Res. No.3 has been posted at Berhampur temporarily. He has also submitted a representation for his transfer back to Bhubaneswar. It is further stated that the applicant, during his posting at Khurda for eight years, had all along, been staying at Bhubaneswar and his plea that for his treatment, he has to come to Bhubaneswar, frequently, is without any basis. Respondent No.3 has also mentioned about her family difficulties and opposed the prayer of applicant about the quashing of the transfer order.

4. Respondents 1 and 2 have opposed the prayers of applicant. They have stated that according to the guidelines, annexed by the applicant, at Annexure-1, Coronary artery disease is one of the grounds for transfer. The guidelines specifically provide that Coronary artery disease where by-pass surgery has been actually done is a ground for consideration. It has been further clarified that use of surgery on the

S. J. J. M.

advise of a consultant cardiologist to correct narrowing or blockage of one or more coronary arteries is a matter to be considered. It has also been provided that Non-surgical techniques such as the use of either balloon or laser via a catheter introduced through the arterial system are excluded. Respondents have stated that accordingly applications were received from different categories of teachers seeking transfer on various grounds mentioned in the guidelines. In order to short-list and consider their cases KVS headquarters had sent necessary computer floppies with programming to all the Regional Offices with instruction to prepare a computerised priority list of Intra-Regional Transfer. Accordingly, all the applications of staff members in respect of numbered Bhubaneswar, Region which approximately 1500, were fed into the Computer and the priority list was prepared and circulated. This priority list is at Annexure-3 to the Original Application. Respondents have stated that this list was prepared by feeding all the entries made by the applicants in their application form and therefore, this was provisional and was subject to modification, if it was found at a later date that any wrong entry or wrong code number has been entered/indicated.

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Respondents have stated that in the guidelines which is at Annexure-1 to the OA for different grounds, code numbers have been given and it has been specifically mentioned that codes are just indicative of the grounds and not to be construed as the order of priority. In other words, a person coming under code No.06 can not be taken to have higher priority over a person coming under code No.08 or 09. It is further stated that according to this code and guidelines, the applicant is not entitled to come under Code No.05 because he has not undergone by-pass surgery but he has wrongly mentioned in his application that he comes under Code No.05. It has further been stated that even though applicant had not undergone by-pass surgery, he has wrongly mentioned the Code No.05 but the correct position coming to light, his priority has gone down and he has come to Sl.No.4 whereas, Res.No.3's Sl.No. has become No.1 from the earlier Sl.No.2. The revised priority list is at Annexure-B to the counter. Respondents have stated that the revised priority list has been correctly drawn up and the transfer of Respondent No.3 from KVS Paradeep to KVS No.1, Bhubaneswar has been rightly done in accordance with the revised priority list. On the above grounds, the Respondents have opposed the prayers of applicant.

5. Applicant has filed a common rejoinder to the counters filed by Respondents 1, 2 and 3. Besides

reiterating the averments made in the original Application, applicant has denied that he is staying at Bhubaneswar though posted at Khurda. It is also stated that the transfer of the Respondent No. 3's husband from Bhubaneswar to Berhampur is not a temporary transfer. It is a regular transfer and Respondent No. 3 has not produced any record in support of her contention that her husband has been assured to be brought back to Bhubaneswar shortly. It is further stated that the applicant has in fact undergone surgery and therefore, he is entitled to be considered under priority No. 05. It is also stated that the revised priority list has been issued during the pendency of this Original Application. On the above grounds, the applicant has reiterated his prayer made in the original Application.

6. We have heard Mr. K. C. Kanungo, learned Counsel for the Applicant, Mr. Ashok Mohanty, learned Senior Spl. Counsel appearing for the Respondents 1 and 2 and Mr. B. Dash, learned counsel appearing for the Respondent No. 3 and have also perused the records.

7. The first point contended by the learned counsel for the applicant is that in terms of the guidelines at Annexure-1, her case comes under category No. 05 and it has been wrongly taken by the Respondents 1 and 2 that his case comes under category No. 06 i.e. the category for diseases not covered

-8-

under category No.05. From the application made by the Applicant, at Annexure-2, it appears that he has mentioned in this application that he is suffering from heart problem and continuing his treatment. It is submitted that very soon he will be referred to the SCB Medical College, Cuttack for Angiography test. This application has been submitted on 13-5-1999. Applicant, in his further representation dated 15.7.99 at Annexure-6, has mentioned that on 2nd June, Angiography test was made and the Doctor advised him not to ride vehicle and not to move by bus as also not to climb up the steps or stairs. He has further stated that he is now under the medicine and further treatment may be surgery. The guidelines which have been noted by us earlier provide that Coronary artery disease is reckoned as a separate priority ~~1~~ alongwith Cancer, Paralytic Stroke, Renal failure and Coronary artery disease where by-pass surgery was actually done. It is not the case of the petitioner that by-pass surgery was actually done in his case. It has further been clarified in the guidelines that non-surgical techniques such as the use of either balloon or laser via a catheter introduced through the arterial system are excluded. From this it is clear that Angiography test which the applicant had undergone on 2nd July, will not cover under the definition of by-pass surgery. In view of this, it can not be held

S. J. J. M.

that the applicant's case comes under the category No.05 but as per the declaration made by him in his application, his case was fed in the computer as coming under category No.05 and he came up as No.1 in the priority list, at Annexure-3. Subsequently, on re-checking, in the revised priority list, he has come down to Sr.No.4. This has been done through a computer and therefore, the change in the priority list of the petitioner, can not be found fault with.

8. It has been submitted by the learned counsel for the applicant that Respondent No.3 in her application has wrongly mentioned that her case comes under category 13. This category is for the persons whose spouse is in Central Government or in Defence service. It has been pointed out that the husband of Respondent No.3 is in a Central autonomous body and therefore, her category, should have been rightly fixed at 14. It has been pointed out by learned Senior Special Counsel appearing for Respondents 1 and 2 that this contention is correct and in the revised priority list enclosed by the applicant, it has been wrongly stated that the spouse of the Respondent No.3 is in Def./Central Government. It is stated that even if it is taken that Respondent No.3 category is rightly 14, even then his position will not undergo any change because that is the only next category under 13 and there is no other person whose spouse is working under Defence/Central Government.

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-10-

9. We have considered the above submission of the learned Senior special counsel appearing for the Respondents 1 and 2 carefully. We find from the revised priority list enclosed by Respondents that amongst the Drawing Teachers, name of Respondent No. 3 is against Sl. No. 1 and name of one Gourahari Rout, is against Sl. No. 2. As earlier noted, in this list, the name of Respondent No. 3 has come under category 13. We also note that name of Gourahari Rout who comes under Sl. No. 2 in the priority list is coming under category 14. It is because, the Respondent No. 3 has given a wrong statement that her husband is in Central Govt. Service, her case has come up as priority No. 1. As the Departmental authorities have rightly corrected the priority position of Applicant going by the category under which he rightly comes, it is proper that the Departmental Authorities should re-determine the priority of Respondent No. 3 and Gourahari Rout whose name in the priority No. 2. From the revised priority list, it does not appear, if the spouse of Gourahari Rout is in State Govt. or in autonomous body/PSU, like the husband of Respondent No. 3. If both of them, Res. No. 3 and Gourahari Rout come under the same category 14, then in between them, priority position should be re-determined by feeding their cases to the computer. In case this results in any change in the priority of Respondent No. 3 then the Departmental Authorities should work out the revised priority list ~~between~~

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Respondent No.3 and Gourahari Raut.

10. The other aspect of the matter is that the applicant in his application dated 13.5.99, at Annexure-2 has given his three choices of posting, at KV No.1, Bhubaneswar. In other words, instead of three choices, he has given only one choice i.e. K. V. No.1, Bhubaneswar. Instructions noted at the bottom of the application form, provide that vidyalaya is applicable only for transfer within the station. Here applicant has been working at Khurda and he was asking for a change of station and therefore, it was necessary for him to give choice of three stations. We have also taken note of this aspect.

11. In consideration of the above and in the light of the above discussions, while we decline to quash the transfer of Respondent No.3 from Paradeep to KVS No.1, Bhubaneswar, we direct that the inter se priority between Respondent No.3 and Gourahari Raut should be worked out again by the Respondents and on the basis of the change priority, if any, fresh transfer orders, if necessary be worked out.

12. In the result, with the observations and directions made above, the original Application is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Jm.
(SOMNATH JOM)
3/2000
VICE-CHAIRMAN