

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 146 OF 2000
Cuttack, this the 5th day of October, 2000

Gayatri Mishra

....Applicant

Vrs.

Commissioner, Kendriya
Vidyalaya Sangathan and 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 Som
(SOMNATH SOM)
VICE-CHAIRMAN
5.10.2000

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CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....

Gayatri Mishra, aged about 45 years, daughter of late
Barodakanta Mishra, No.3/333, IRC Village, Nayapalli,
Bhubaneswar, District-Khurda

..... Applicant

Advocates for applicant - M/s A.A.Das
B.Mohanty
P.K.Nayak

Vrs.

1. Commissioner, Kendriya Vidyalaya Sangathan,
18, Institutional Area, Saheedjeet Singh Marg,
New Delhi.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan
18, Institutional Area, Saheed Jeet Singh Marg,
New Delhi.
3. Assistant Commissioner, Regional Office, H.P.7,
B.D.A. Locality, Laxmisagar, Bhubaneswar,
District-Khurda.
4. Principal, Kendriya Vidyalaya, Cuttack, Town
/Dist.Cuttack

..... Respondents

Advocate for respondents - Mr.Ashok
Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S. Som.

In this application the petitioner has
prayed for quashing the order dated 14.1.2000 at Annexure-1
rejecting her representation as being contrary to the
order dated 16.11.1999 of the Tribunal in TA No.2/99. The
second prayer is for a direction to the respondents to post
the applicant to any of the Kendriya Vidyalayas at
Bhubaneswar. The departmental respondents have filed

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counter opposing the prayers of the applicant. For the purpose of considering this petition it is not necessary to go into too many facts of the case and to refer to all the averments made by the parties in their pleadings. The undisputed facts of this case fall within a small compass and can be briefly stated. We have heard Shri J. Patnaik, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned counsel for the respondents and have gone through the records of OA No. 413 of 1999 (Mrs. Champak Ballavi Das v. Union of India and others) decided on 14.12.1999 and T A No. 2 of 1999 disposed of on 16.11.1999. The applicant has filed MA No. 554 of 2000 praying for a direction to the respondents not to take any coercive action against the applicant. The respondents have filed counter to the MA. On 12.9.2000 at the instance of the learned counsel for the petitioner it was ordered that the MA would lie over to be considered along with the OA.

J. Patnaik.
2. The undisputed facts of this case are that the applicant joined Kendriya Vidyalaya Sangathan and was posted at Kendriya Vidyalaya, F.C.I., Talcher on 17.7.1981 and was confirmed as a Primary Teacher with effect from 30.4.1984. On 8.12.1982 she was transferred from Talcher to Cuttack and while working as such she was transferred to Kendriya Vidyalaya, Kaleikunda (West Bengal) in order dated 27.7.1996. The applicant approached the Hon'ble High Court in OJC No. 8837 of 1996 questioning her transfer. In paragraph 6.16 of the OA the petitioner has quoted the order of the Hon'ble High Court in the above OJC. The Hon'ble High Court rejected the writ application with the observation that the rejection will not affect the

representation, if any, made by the petitioner to the Director of the Sangathan at Delhi. On behalf of the learned counsel for the petitioner before the Hon'ble High Court it was submitted that 15 days time may be granted to the petitioner to enable her to join her new place of posting. The Hon'ble High Court observed that they expect that the administration will not be reluctant to extend such indulgence to the petitioner. In order dated 16.8.1998 (annexure-4) the applicant was directed by respondent no.3 to report for duty at Kendriya Vidyalaya No.1, Kaleikunda by 14.8.1998, failing which it would be presumed that she is no longer interested in the service. She was also informed that her application for posting at Bhubaneswar has been considered sympathetically, but the same cannot be acceded to as there is no vacancy of Primary Teacher in any of the Kendriya Vidyalayas at Bhubaneswar and Cuttack. The applicant thereafter approached the Hon'ble High Court in another writ application which was transferred to the Tribunal and was marked as TA No.2 of 1999. In TA No.2 of 1999 the respondents in paragraph 8 of their counter stated that Kendriya Vidyalaya Sangathan Headquarters have assured that her case would be considered in the next academic session. In view of the above averment, T.A.No.2 of 1999 was disposed of in order dated 16.11.1999 with a direction to the respondents that the case of the petitioner should be considered as per the averments made in paragraph 8 of the counter of the respondents. Thereafter her representation was considered and rejected in order dated 19.1.2000. Against this order the applicant ^{had} approached the ^{^ J. Am.} Tribunal with the aforesaid prayer. The learned counsel

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for the petitioner has submitted that the plea of the respondents that there is no vacancy at Cuttack is not correct because one Sanjurani Mishra was posted at Kendriya Vidyalaya No.2, C.R.P.F., Bhubaneswar. It is further submitted that notwithstanding the above direction of the Tribunal in TA No.2/99 one Champak Ballavi Dash was adjusted as Primary Teacher at Bhubaneswar. The respondents have stated that the Tribunal in their order dated 14.12.1999 had directed to adjust the applicant against any of the two vacancies at Bhubaneswar and in pursuance of the order of the Tribunal in OA No.413 of 1999 Champak Ballavi Dash was adjusted. This does not appear to be correct because the Tribunal disposed of OA No.413 of 1999 in order dated 14.12.1999 directing consideration of the prayer of Champak Ballavi Das for adjustment in Bhubaneswar. But from the order at Annexure-1 it appears that she was adjusted in order dated 8.12.1999, i.e., prior to issue of the order of the Tribunal. In view of this, it is clear that adjustment of Champak Ballavi Das was not in pursuance of the direction of the Tribunal. This is not to say that the order of adjustment of Champak Ballavi Das is wrong because the respondents are at liberty to adjust a particular teacher in a vacancy. The respondents have also quoted the circular of Kendriya Vidyalaya Sangathan with regard to adjustment of surplus Teachers and the relevant portion of the circular has been quoted in the order at Annexure-1. This provides that the employees who have been rendered surplus may be identified and efforts should be made to adjust them against any of the vacancies existing in the same station. So far as the applicant is

Smt Das
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concerned, she has been transferred to Kaleikunda in 1996 after she has put in 14 years at Cuttack. She is in a transferable job and transfer is an incidence of service in such cases. The applicant has stated that she is a spinster and the departmental instructions provide that unmarried lady teachers should be adjusted at places of their convenience. Besides this, she has not urged any other grounds for quashing the order of her transfer to Kaleikunda. She has remained at Cuttack for fourteen years and merely because she is a spinster she cannot claim as of right that she would not go to Kaleikunda and must be posted at Bhubaneswar. In view of the above, her prayer for quashing the order of her transfer to kaleikunda is held to be without any merit and is rejected.

3. It is also to be noted that even though the order has been passed in 1996 she has not gone and joined at Kaleikunda. Before the Hon'ble High Court the petitioner's counsel wanted fifteen days time to join at Kaleikunda. It has been submitted by the learned counsel for the petitioner that at that time she suffered from illness and therefore could not join. It is difficult to accept the proposition that even after she became better, she was not in a position to join at Kaleikunda in pursuance of the submission made by her counsel before the Hon'ble High Court. The applicant has remained away from duties for more than last four years. The respondents have stated that from March 1999 she has not even applied for any leave. In view of the above circumstances, she cannot claim as of right that she must be posted in a vacancy at Bhubaneswar. This prayer is also held to be without any merit and is rejected. MA No.554 of 2000 is

J. Som

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also accordingly rejected.

4. In the result, therefore, the Original Application is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
5.10.2000
VICE-CHAIRMAN

5th day of October, 2000/AN/PS