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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 295 OF 2000
Cuttack, this the 3rd day of November, 2000

Sri Golak Behari Baral

....Applicant

Vrs.

Union of India 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
8.11.2000

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CORAM:

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

.....

Sri Golak Behari Baral,
aged about 55 years, son of late Baidyanath Baral,
2RB, 21, Road-6, Unit-IX, Bhubaneswar-751 022...Applicant

Advocates for applicant - M/s J.M.Mohanty
N.K.Das
S.N.B.Ray
K.C.Misra

Vrs.

1. Union of India, represented through Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110 016.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, HR-7, B.D.A.Housing Locality, Laxmisagar, Bhubaneswar-751 006.
3. Joint Commissioner (administratioin), Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi-110 016.

....Respondents

Advocate for respondents - Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J Som .
In this application the petitioner has prayed for quashing the order dated 12.11.1999 at Annexure-4 transferring the applicant from the post of Head Clerk, Kendriya Vidyalaya, MCL, Ib Valley Area, Brajaraj Nagar to Kendriya Vidyalaya, Jhagrakhand in Madhya Pradesh and for a direction to the respondents to post the applicant to any Kendriya Vidyalaya at or nearabout Bhubaneswar. The respondents

have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder and an affidavit reiterating his prayers. The respondents have also filed a counter to the rejoinder. For the purpose of considering this petition, it is not necessary to record all the averments made by the parties in their pleadings. These will be referred to at the time of considering the submissions made by the learned counsel for both sides. But the essential facts of the case can be briefly stated.

2. The applicant joined service under Kendriya Vidyalaya Sangathan in July 1968 and had worked in different Kendriya Vidyalayas. He will retire on 30.9.2004. While he was working as Head Clerk in Kendriya Vidyalaya-I, Bhubaneswar, he was elected as Regional Secretary of Kendriya Vidyalaya Non-Teaching Staff Association, Bhubaneswar Region. The applicant has stated that as Regional Secretary, he used to put forth the grievances of the members of the Association before the respondents and because of this, the authorities were annoyed with him and transferred him from Bhubaneswar to Kendriya Vidyalaya, BCCL, Kayalanagar, Dhanbad (Bihar). Aggrieved with the order of transfer the applicant approached the Hon'ble High Court in OJC No. 5039 of 1996 which was disposed of in order dated 19.8.1996. Though the Hon'ble High Court did not interfere in the order of transfer, their Lordships noted the submission made by Shri Ashok Mohanty, the learned counsel for the respondents before the Hon'ble High Court to the effect that Shri Mohanty submitted that a proposal had been sent to Kendriya Vidyalaya Sangathan Headquarters to upgrade Kendriya Vidyalaya, Balasore and in case that is done, a

post of Head Clerk would be created and the case of the petitioner would be duly considered for being appointed on transfer to the said Vidyalaya. The applicant has extracted the relevant portion from the order of their Lordships of the Hon'ble High Court in the above case. The applicant has further stated that in order dated 30.7.1997 he was, however, posted to Brajaraj Nagar where the climate did not suit him and he suffered from serious heart problem and represented for his transfer to Bhubaneswar where his wife, old parents, four daughters and son are residing. The applicant's father passed away on 19.5.1999 and because of this his presence in Bhubaneswar is all the more necessary. But instead of considering his representation he has been transferred to Jhagrakhand in Madhya Pradesh and his representation has also not been considered. In the context of the above he has come up in this petition with the prayers referred to earlier.

3. We have heard Shri J.M.Mohanty, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned counsel for the respondents and have also perused the records.

JJM. 4. The first ground on which the applicant has challenged his transfer order at Annexure-4 is that he is the Regional Secretary of the Union. It has been submitted by the learned counsel for the petitioner that in the circular dated 15.1.1999 of Kendriya Vidyalaya Sangathan it has been mentioned that victimisation of teachers because they happen to be office bearers of recognised Association should not be allowed. This circular is really not applicable to the petitioner's case because this relates to teachers only. The petitioner has also relied on

the circular dated 5.4.2000 at Annexure-5 in which it has been mentioned that in case of office bearers of recognised association, the proposal ^{for transfer} will require recommendation of the Assistant Commissioner and the Principal as also the Chairman of the Vidyalaya Managing Committee. But in this case no such proposal was sent for transfer of the applicant from Brajaraj Nagar to Madhya Pradesh in pursuance of which in letter dated 22.11.1999 at Annexure-4 he has been relieved from his post at Brajaraj Nagar. The respondents have pointed out that this circular at Annexure-5 is dated 5.4.2000 and the transfer order has been issued on 12.11.1999 and therefore this circular is not applicable to the case of the petitioner. In view of the above, this contention of the petitioner is held to be without any merit and is rejected.

5. The second contention of the learned counsel for the petitioner is that in OJC No. 5039 of 1996 filed by him challenging his transfer from Bhubaneswar to Dhanbad, the respondents had given a commitment that the applicant's case would be considered when an additional post of Head Clerk is created for Kendriya Vidyalaya, Balasore and even though the post was created his case was not considered. Along with his affidavit, the applicant has submitted a xerox copy of the order dated 19.8.1996 of the Hon'ble High Court and the commitment given by Shri Ashok Mohanty on behalf of the respondents has been mentioned in the order of the Hon'ble High Court. It is submitted that only in order to harass and victimise the applicant, his case was not considered. The respondents, on the other hand, have submitted in the counter to the rejoinder that in the academic session 1999-2000 the post of Head Clerk was in

fact created in Kendriya Vidyalaya, Balasore, in anticipation of enrolment of students. They have stated that post of Head Clerk is sanctioned only when students strength exceeds 1000. Subsequent to the creation it was found that enrolment position is less than 1000 and the person concerned will become surplus next year and accordingly, in letter dated 2.8.1999 at Annexure-B of the counter to the Rejoinder, the Principal moved for withdrawal of the post as the incumbent would become surplus next year. The respondents have stated that even though the post of Head Clerk was created for 1999-2000 it would have become surplus in 2000-2001 and because of this, the post was not filled up and was withdrawn and therefore the applicant's case for adjustment against the post of Head Clerk could not be considered. We are not impressed by this argument because the respondents themselves have stated that when the students strength is 1000 the post of Head Clerk is sanctioned. From the letter of the Principal at Annexure-B it appears that the students strength was 998 as on 31.7.1999, i.e., 2 less than the required 1000. In view of this and in view of the commitment made by the respondents before the Hon'ble High Court and this having been noted by the Hon'ble High Court in their order, the respondents should not have withdrawn the post and should have considered the applicant for posting him as Head Clerk in Kendriya Vidyalaya, Balasore. In case in the year 2000-2001 the post would have been surplus, then the applicant could have been transferred from Kendriya Vidyalaya, Balasore. The ground urged by the respondents for not going by their own commitment before the Hon'ble High Court is thus not

acceptable. It is also seen from the letter of the Principal that he has mentioned that once the post of Head Clerk has been sanctioned, the post of Vice-Principal should have been sanctioned as per criteria communicated in letter dated 17.12.1998. It has been further mentioned in this letter that in case there is any change in criteria of sanctioning posts of Vice-Principal and Head Clerk, which is ^{not} known to the Vidyalaya at Balasore, then this proposal should be ignored. While considering this proposal of the Principal, the respondents should have kept in mind the commitment given by them before the Hon'ble High Court and should have considered the applicant for posting him as Head Clerk, Kendriya Vidyalaya, Balasore. but as the post has already been withdrawn and it is not known if the students strength has in the meantime fallen or has increased, the applicant cannot be posted as Head Clerk in Kendriya Vidyalaya, Balasore, where there is no post. In view of the above commitment before the Hon'ble High Court, it is only proper that the respondents consider the applicant for his posting as Head Clerk in any Kendriya Vidyalaya within the State of Orissa. In case there is no vacancy in any Vidyalaya inside the State of Orissa, then the respondents should consider posting of the applicant in the next available vacancy of Head Clerk which arises in Orissa. In case there is a vacancy now, then his case should be considered and appropriate order issued within a period of 60 (sixty) days from the date of receipt of copy of this order.

6. The last point urged by the learned counsel for the petitioner is that the applicant has been

transferred from Brajaraj Nagar even though he has not completed three years there. He joined Brajaraj Nagar on 30.7.1997 and he has been transferred in the order dated 12.11.1999. It is submitted that the respondents have in a mechanical manner stated that the applicant has been transferred in public interest. But when the transfer order has been challenged, it is incumbent on the part of the respondents to explain what public interest is involved in transfer of the applicant, and the respondents cannot be allowed to take shelter behind a bland assertion that his transfer has been done in public interest. In support of his contention the learned counsel for the petitioner has relied on the following decisions:

- (i) J.N.Sarkary v. Zonal Manager, Food Corporation of India, decided by Hon'ble Andhra Pradesh High Court and reported in 1978 (1) SLR 471;
- (ii) A.K.Sur v. I.C.A.R., decided by the Hon'ble Calcutta High Court and reported in 1989 (4) SLR 586; and
- (iii) Charanji Lal v. Union of India and others, decided by Principal Bench of the Tribunal and reported in 1987(2) SLR 326.

J.Jm.
The admitted position is that the applicant has not completed three years at Brajaraj Nagar. The case of J.N.Sarkary(supra) deals with a matter of compulsory retirement in public interest. There the Hon'ble Andhra Pradesh High Court held that there was no material on record on the basis of which opinion as to public interest could be arrived at except the charges in the pending disciplinary

proceedings and therefore it was held that the order of compulsory retirement was passed solely on the basis of charges in the disciplinary proceedings which were pending at the time of compulsory retirement. It was held that in such a case the order of compulsory retirement cannot be said to be in public interest. A.K.Sur's case (supra) is also one of compulsory retirement. There the Hon'ble High Court of Calcutta referred to the decision of the Hon'ble Supreme Court in the case of Baldev Raj v. Union of India, AIR 1981 SC 70, where the Hon'ble Supreme Court had held that when an order of compulsory retirement is challenged and its validity depends on its being supported by public interest, the State must disclose the material so that the Court may be satisfied that the order is not bad for want of any material which to a reasonable man is sufficient to sustain the ground of public interest. The present case is one of transfer and therefore, unlike cases of compulsory retirement, there is no requirement of forming a specific opinion of the concerned authority with regard to existence of public interest. In Charanji Lal's case (supra) the applicant was transferred from Delhi to Hyderabad in order to accommodate someone else even though he had given up promotion some years earlier. The Tribunal held in that case that the petitioner's transfer is not in accordance with the policy enunciated by the departmental authorities. In view of our findings and direction given above, it is not necessary for us to pursue this point any further.

7. In the result, therefore, the Original Application is disposed of in terms of the order and direction above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

S. NARAYANAN
VICE-CHAIRMAN

2.11.2000