

9

*CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 429 OF 2000
Cuttack this the 9th day of November/2000

Smr. Rashmirekha Mohapatra ...

Applicant(s)

-versus-

Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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)
VICE-CHAIRMAN
11/11/2000

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.429 OF 2000

Cuttack this the 4th day of November/2000

*corrected vide
order dt. CORAM:
19.2.2001.

* 9th day

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

Smt.Rashmirekha Mohapatra, aged about 46 years
Wife of Sudhakar Mohapatra, At-Nurpur Road,
PO: Motiganj, Dist - Balasore - at present
working as Primary Teacher in Kendriya Vidyalaya,
Balasore

Applicant

By the Advocates

M/s.G.K.Mohanty
B.S.Tripathy
K.K.Rath
H.S.Deo
P.K.Panda
A.K.Beura

-VERSUS-

1. Commissioner, Kendriya Vidyalaya Sangathan
New Delhi, Sahibji Singh Marg, New Delhi
2. Asst.Commissioner, Kendriya Vidyalaya Sangathan
Regional Office At - Bhubaneswar, At:Laxmi Sagar
PO: Bhubaneswar, District - Khurda
3. Principal, Kendriya Vidyalaya, Balasore,
At/PO/Dist - Balasore

Respondents

By the Advocates

Mr.Ashok Mohanty

O R D E R

MR.SOMNATH SOM, VICE-CHAIRMAN: In this Application under
Section 19 of the Administrative Tribunals Act, 1985, the
petitioner has prayed for a direction to Principal, Kendriya
Vidyalaya, Balasore (Respondent No.3) to allow her to perform
her duties and sign the Attendance Register. Respondents have
filed their counter opposing the prayer of the applicant and
the applicant has filed rejoinder reiterating the prayer as
made in the Original Application.

2. For the purpose of considering this Application it
is not necessary to go into too many facts of this case. The
admitted position is that the petitioner is working as Primary

Teacher, Kendriya Vidyalaya, Balasore. In order dated 9.8.1999 she was transferred to Kendriya Vidyalaya, Salwa. This transfer order has been challenged by the applicant in Original Application No.474/99 which is pending before this Tribunal. As the Tribunal rejected her prayer for interim relief of staying the operation of the transfer order, the petitioner approached the Hon'ble High Court in O.J.C. No.12545/99 and their Lordships of the Hon'ble High Court in order dated 6.10.1999 were pleased to grant stay operation of the impugned order of transfer. This interim order is still continuing and the petitioner is working as Primary Teacher, Kendriya Vidyalaya, Balasore. The case of the applicant is that on 2.9.2000 she was suffering from joint pain when she was asked to accompany the Girls Kawadi Team to Bhubaneswar by a written order. The applicant sent an application dated 2.9.2000 (Annexure-1) enclosing thereto a medical certificate stating that she could not go on escort duty as she was suffering from joint pain. Admittedly 3.9.2000 was a holiday being Sunday. When the applicant came to School on 4.9.2000 and signed the Attendance Register, the Principal of the School (Respondent No.3) did not allow her to join her duty and take classes. In letter dated 4.9.2000 vide Annexure-2 she was asked to appear before the Medical Board in Kalinga Hospital, Chandrasekhapur, Bhubaneswar. On the same day a Memo was issued to her to explain within 3 days as to why disciplinary action should not be contemplated against her. The applicant has made no averment whether she had submitted any explanation in response to this Memo at Annexure-2. In the context of the above she has come up in this Application with the prayers referred to above.

Applicant has also filed a Misc. Application 474/2000

12

praying for appropriate direction to Respondent No.3 for releasing her salary for the month of September/2000.

3. Respondents in their counter have stated that the applicant was deputed in order dated 1.9.2000 (Annexure-A). From the endorsement on this letter it appears that one Class-IV staff went to the applicant's house on 1.9.2000, which was ~~on~~ Ganesh Puja day to give the copy of the order to her, but was told by her daughter that she was not at home. During his second visit the husband of the applicant indicated to the Class-IV staff that the applicant was ill and would not receive the order. The admitted position is that on 2.9.2000 the applicant sent an application vide Annexure-1 along with a medical certificate. Respondents have stated that as the applicant had given medical certificate earlier they have rightly asked her to appear before the Medical Board and because she had not appeared before the Medical Board without sufficient reasons she has not been allowed to sign the Attendance Register and perform her duties.

4. We have heard Shri K.K.Rath, the learned counsel for the applicant and Shri Ashok Mohanty, the learned senior counsel appearing for the Respondents on the Original Application as well as Misc.Application No.747/2000 and also perused the records.

5. From the above recital of facts it is clear that controversy in this case falls within a short compass. The admitted position is that the petitioner was asked to escort the Girls Kawadi Team to Bhubaneswar in order to participate in the Regional Sports Meet and the petitioner did not perform her duties. It has been submitted by the learned counsel that the order deputing the petitioner on escort duty had not been served

on her. This is of no consequence because the petitioner in her application dated 2.9.2000 has mentioned that she was not in a position to perform the escort duty. From this it is clear that she was aware that such duty has been entrusted on her. This may be the reason why she did not accept the escort order dated 1.9.2000. The second aspect of the matter is that on 4.9.2000 admittedly the petitioner came to the School and was prepared to perform her duties by taking classes. Respondents have stated that as she had given an application enclosing a medical certificate, they wanted her to give a fitness certificate before she was allowed to perform her duties. This stand of the Respondents is not sustainable, because, Respondents themselves have mentioned in the notice issued to the applicant on 4.9.2000 that the applicant did not apply for leave. It has been pointed out by the applicant that 2.9.2000 was Holiday because of Nuakhai and 3.9.2000 was admittedly Holiday because of Sunday. As the applicant had not applied for leave on medical grounds, Respondents could not have asked her to submit fitness certificate before allowing her to join. In consideration of this we hold that the applicant should have been allowed to join her duties on 4.9.2000. Further it appears that from that date till this day the applicant is not performing her duties, because according to records of the departmental authorities they have not permitted her to join the duties. As the applicant was not on medical leave the question of her joining does not arise. But it is to be observed that in the process the most important aspect which is that of providing education to the children for which both Respondent No.3 and the applicant are receiving salary have been completely ignored as in the entire pleadings in this case there is no

14
 mention as to how the duties which were being performed by the applicant were carried out when she was not being permitted to perform her duties. In view of the above we direct Respondent No.3 to permit the applicant to join her duties forthwith and allow her to take the classes.

6. But that does not end the present controversy. The admitted position is that the applicant was entrusted with a legitimate duty and she applied enclosing a medical certificate for being excused from that duties. It also appears from the reporting of the Class-IV staff that because that order dated 1.9.2000 was meant for escort duty the applicant did not received the same on the ground that she was not well. This is also *prima facie* instance of insubordination. The fact of the matter is that when the applicant in letter dated 2.9.2000 vide Annexure-1 prayed that she should not be given escort duty on the ground of her illness in support of which she had enclosed thereto a medical certificate, the departmental authorities were perfectly within their rights to find out if the medical certificate is genuine or not and for that purpose they are within their rights to direct the applicant to appear before the Medical Board, but that should not have made Respondent No.3 preventing the applicant from joining her duties. In case on the basis of the report of the Medical Board it was found that the applicant had ^{been} malingering then appropriate departmental action could have been initiated against her, but she should not have been prevented from doing her duties because education to the children is also involved in this.

7. The admitted position is that notwithstanding this order dated 4.9.2000 the petitioner did not appear before the

15

Medical Board again on the plea that her Doctor had advised her to undertake normal duties only. When the genuineness of the Doctor's certificate obtained by the applicant is being question by the Respondents it is not open to her to say that as per her doctor's advice she is not able to travel. It has also to be noted that the learned counsel in fource of hearing did not make any submission as to why the applicant is unable to travel and stated that applicant's doctor has advised her to perform the normal duties. From this it does not appear that applicant's doctor has advised her not to travel. In consideration of this we direct that the applicant must appear before the Medical Board and obtain the certificate. The Respondents shall disburse the salary and allowance of the applicant for the month of September/2000 only after the the report of the Medical Board is received and on the basis of such report.

In the result, Original Application is disposed of in terms of observations and directions made above, but without any order as to costs.

In view of disposal of Original Application, Misc. Application No. 747/2000 is disposed of accordingly.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//

Somnath Som,
(SOMNATH SOM)
VICE-CHAIRMAN
9/10/2000