

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 438 OF 2000.
Cuttack, this the 6th day of December, 2000.

Swarnaprava Mishra. Applicant.

Vrs.

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.

(D. V. R. S. G. DATTATREYULU)
MEMBER (JUDICIAL)

SONNATH SOM
VICE-CHAIRMAN

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 438 OF 2000,
Cuttack, this the 6th day of December, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. D. V. R. S. G. DATTATREYUDU, MEMBERJ).

...

SWARNAPRAVA MISHRA,
Aged about 40 years,
Daughter of Chandra Sekhar Mishra,
3-A Forest Park, Bhubaneswar,
Dist: Khurda.

...

...

...

APPLICANT.

By legal practitioner: M/s. B.K. SAHU, K.C. Sahu, R.K. Sahu, Advocates.

- VERSUS -

1. Commissioner, Kendriya Vidyalaya Sangathan,
1, Institutional Area Saheed Jet Singh Marg,
New Delhi-110 016.

2. Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
18 Institutional Area,
Saheed Jet Singh Marg,
New Delhi-110 016.

3. Assistant Commissioner, Kendriya Vidyalaya Sangathan,
Regional Office, H.P. - 7, BDA Locality, Laxmisagar,
Bhubaneswar, Dist. Khurda.

4. Principal,
Kendriya Vidyalaya Sangathan-II, CRPF Campus,
Bhubaneswar, Dist. Khurda. RESPONDENTS.

By legal practitioner : Mr. Ashok Mohanty,
Senior Special Counsel for Respondents.

SJM

....

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, who is a TGT in Sanskrit under Kendriya Vidyalaya Sangathan, has prayed for a direction that the applicant is not a surplus employee in KVS No. II Bhubaneswar, where she was serving prior to the order of transfer. The second prayer is to quash the order dated 30.3.2000 (Annexure-2) so far as the applicant is concerned transferring her from K.V.S., CRPF which is also known as KVS NO.II, Bhubaneswar to KVS, Srikakulam.

2. Respondents have filed counter opposing the prayers of the Applicant.

3. We have heard Mr. B. K. Sahu, learned counsel for the Applicant and Mr. Ashok Mohanty, learned Senior Special Counsel appearing for the Respondents and have also perused the records.

4. The admitted position is that the applicant has been working in KVS No.II, CRPF, Bhubaneswar since 1986 and is holding a transferable job. Respondents' case is that with effect from the session 2000-2001, one post of TGT, Sanskrit was reduced in the School where the applicant was working and she became surplus, as in such case the seniormost teacher available in the subject in the School has to be made surplus, she has to move out.

5. Learned counsel for the applicant has challenged the transfer of applicant on various grounds which are discussed below.

6. The first point urged by the learned counsel for the applicant is that surplus of one post in KVS NO.II, Bhubaneswar is not an automatic surplus but a created surplus. The difference between automatic surplus and created surplus has been laid down in the circular dated 23-7-1996 (Annexure-B). According to this circular, when because of modification of staff strength a post became in excess that is termed as automatic surplus. Created surplus means when a teacher beyond the sanctioned strength is posted in a School then surplus is created in that School. It is the admitted position in the present case is that the applicant is working in that School from 1986 and in 1998 one Archana Panda another TGT Sanskrit was posted to the same School against an existing vacancy. As Smt. Panda came against an existing vacancy by her posting one post did not come within the definition of created surplus. Moreover, Smt. Panda was posted in 1998 and the surplus has come about for the session 2000-2001, subsequently. After the counter is filed by the Respondents, the Respondents have also filed a detailed calculation showing that in that particular School as against the earlier two sanctioned posts of TGT, Sanskrit, currently there is only one post and therefore, one post has become surplus. In the context of the above, it can not be held that this is a created surplus and this has to be held to be a case of automatic surplus and in that case the seniormost person that is the applicant has to move out.

7. The second point urged by learned counsel for the applicant is that Annexure-D given by Respondents alongwith their memo filed after filing of counter is a manufactured document because earlier the Respondents had wrongly filed a similar calculation sheet which relates to KVS NO.I, Bhubaneswar

with which we are not concerned in the present case. In the document which was initially filed as Annexure-B and has been replaced by subsequent annexure-D filed alongwith the memo, there was no certificate of the Assistant Commissioner that the staff strength had been fixed in order dated 11-2-2000 but such a certificate has been given in the substituted Annexure-D. Because of non-existence of the certificate in the Original Annexure-D and existence of the certificate in the substituted Annexure-D it has been submitted by learned counsel for the applicant that Annexure-D is a manufactured document. We are unable to accept the proposition because Respondents have pointed out in the counter detailed calculation of number of classes in Sanskrit which are to be taken and according to them the number of classes in Sanskrit to be taken is 33 classes per week which justifies only one post. These averments of the Respondents have not been denied by the applicant by filing any rejoinder. In view of this, we hold that the contention that the substituted Annexure-D is a manufactured document is wholly without any merit and is rejected.

3. The next contention of the learned counsel for the applicant is that according to the circular dated 20.8.1999 copy of which has been given by learned counsel for the applicant at the time of hearing after serving copy on the other side it is laid down that staff strength should be recalculated and a proposal should be sent to the KVS, headquarters for giving sanctions but in the instant case for declaring one post in excess in the School where the applicant is working no approval of the KVS, Hqrs. has been obtained and this has been done by the Assistant Commissioner on his own. From a careful

reading of this circular, we find that a proposal has been asked in this circular only where the sanction is sought to be increased and not for the school where shortage of staff is called for. In view of this and the fact that there is a yardstick for taking of the classes and declaring of surplus, we do not find that there is any need for approval of the KVS, Hrs. This contention is also held to be without any merit and is rejected.

9. The next contention of the learned counsel for the applicant is that even though the applicant is a TGT in Sanskrit, she has passed MA in English and History and thereafter she has been taking classes in English and Social studies. Even after joining of Smt. Panda, in total she is taking 33 classes in a week and therefore, she should not have been declared surplus. Taking classes in English and Social Studies by a TGT Sanskrit may be a internal arrangement but that can not be taken into consideration for the purpose of computing of classes to be taken by a teacher. Under the system operated by the KVS it is expected in the interest of students that a TGT in English should be taking classes in English. This contention is therefore, held to be without any merit.

10. It is the admitted position that between the petitioner and Smt. Panda, the petitioner is senior in the school by many years and according to the circular referred to by us earlier in case of automatic surplus, the seniormost teacher should be moved out and therefore, we find no illegality in the order of transfer of the petitioner. It is submitted by learned counsel for the applicant that the husband of the petitioner is working as Rourkela and the petitioner has been

J. Jm

making representation from 1996 for her posting at Rourkela where initially there was a vacancy and subsequently the said vacancy has been filled up by a newly appointed person who belongs to Bihar. It is submitted by learned counsel for the applicant that her representation for transfer to Bandamunda is still pending. It is submitted by learned counsel for the applicant ~~that~~ ^{that} ~~and~~ ^{JJM} the person who has been posted as TGT, Sanskrit, Bandamunda, one Shri Majhi has also representation for his transfer to Bihar. In view of this, learned counsel for the applicant submits that the Departmental Authorities should be directed to consider the representation of the as also of the TGT Sanskrit in Bandamunda and in the process the applicant should be transferred to Bandamunda. This is a matter for the Departmental Authorities to consider. We note that the applicant has been transferred to Sikakulam in August, 2000 and she has already been relieved from her post in KVS No. II, Bhubaneswar and she is currently on leave. In consideration of this, we reject the prayer of applicant to quash her order of transfer to Sikakulam as also the prayer for declaring that she is not a surplus teacher in KVS No. II, Bhubaneswar. In consideration of the submissions made by learned counsel for the applicant regarding her pending representation we direct that the applicant should obey the transfer order and join at KVS, Sikakulam and only after working at Sikakulam for at least two months she should file another representation to the Departmental Authorities for her transfer to Bandamunda. Departmental Authorities are also directed to consider and dispose of such representation alongwith the representation of Sh. H. Majhi, if the same is filed and is pending within a period of sixty days from the date of receipt of the representation of the applicant and ^{15 days thereafter} intimate the result thereof to the applicant within a period of/

It is needless to say that the representation of the applicant and the pending representation if any of TGT Sanskrit at Bondamunda for his transfer to Bihar region should be considered strictly in accordance with the existing rules and guidelines.

10s With the above observations and directions the Original Application is disposed of. No costs.

(D. V. R. S. G. DATTATREYULU)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.