

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.133 OF 2001
Cuttack this the 14th day of February/02

B.B. Dixit

...

Applicant (s)

-VERSUS-

Union of India & Others ...

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *NO*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *NO*

M.R. Mohanty
14/02/2002

(M.R. MOHANTY)
MEMBER (JUDICIAL)

S.A.T. Rizvi
(S.A.T. RIZVI)
MEMBER (ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.133 OF 2001
Cuttack this the 14th day of February/2002

CORAM:

THE HON'BLE MR.S.A.T.RIZVI, MEMBER (ADMINISTRATIVE)
AND

THE HON'BLE MR.M.R.MOHANTY, MEMBER (JUDICIAL)

...

Bidhu Bhusan Dixit, aged about 45 years,
Son of Chintamani Dixit, Vill-Nuashasan,
PO-JITANGA, Via-Dolasahi, Dist-BHADRAK

...

By the Advocates

Applicant

M/s.S.K. Das
S.Swain
S.R.Subudhi
R.C.Jena

-VERSUS-

1. Commissioner, Kendriya Vidyalaya Sangathan
(Estt. IV Section), 18, Industrial Area,
Shaheed Jeet Singh Marg, New Delhi-110016

...

By the Advocates

Respondent

Mr.Ashok Mohanty

ORDER

ORAL

MR.S.A.T.RIZVI, MEMBER (ADMINISTRATIVE): After remaining posted at Gangtok from 1984 to 1988, the applicant, who is a Primary Teacher was transferred to Baripada, in which station he spent 12 years. From Baripada he was transferred to Karba in Chhatisgarh State on 10.11.2000. He has joined at Karba accordingly and has by now spent more than a year in that station. On being transferred to Karba, he had come up before this Tribunal by filing Original Application No.543/00, challenging the order of his transfer to Karba on various grounds, including the ground of his wife's posting as a Teacher under the State Government of Orissa in a location

closed to Baripada and his having School going children. After considering the matter in detail the Tribunal passed orders in the following terms.

" We direct the applicant to file such a representation within a period of seven days from to-day. In case such a representation is filed, Commissioner, K.V.S. is directed to dispose of the same within a period of 30 days from the date of receipt of such representation and intimate the result thereon to the applicant within a period of another 15 days thereafter. In case there is no vacancy of the applicant's choice as per his representation to be filed, the Commissioner, K.V.S. should consider if the applicant can be adjusted in any other place within the territory of the State of Orissa".

In pursuance of the aforesaid order dated 23.1.2001, the applicant filed a representation before the Commissioner, K.V.S. indicating therein his choice of different stations in the State of Orissa, to any of which he could be transferred. After consideration of the matter the Respondents refused to accommodate the applicant in any of the aforesaid Stations by their Memorandum dated 19.3.2001 (Annexure-A/5). Hence the present Original Application.

2. A perusal of the impugned Memorandum (Annexure-A/5) shows that the applicant's representation has been turned down on the ground of non-existence of vacancies at Balasore, Cuttack, Bhubaneswar, Charbatia, A.F.S., Salua and Kharagpur. While nothing specific has been stated by the Respondents in the impugned Memorandum in respect of other two stations, mentioned by the applicant in his representation in question, it has been stated that "however in the vacancies available at Orissa State there are many persons on priority list prepared for 2000-2001 and the same will continue in 2001-02 for request transfer. Moreover, there are eight PRTs, who

are excess staff in strength for the year 2001-2002 are to be adjusted". The ^{two} stations in respect of which no specific mention has been made in the aforesaid impugned Memorandum are F.C.I., Talcher and C.R.P.F., Bhubaneswar. By implication therefore, the respondent(s) have expressed their inability to accommodate the applicant in either of the aforesaid two stations on the ground of there being ^{redundancy of the} surplus staff in certain stations and due to the priority list which the respondents have to go by in making transfers on request basis. There is a presumption, therefore, in our judgment, that the vacancies do still exist or did exist at the aforesaid locations at the time of issuance of the impugned Memorandum dated 19.3.2001, to accommodate the applicant. That being so, it should have been possible for the respondents to accommodate the applicant against any of the posts available in those two stations. The learned counsel appearing on behalf of the applicant submits that while at present he cannot ^{be} ~~be~~ sure about the existence of ^{any} ~~any~~ vacancy in the aforesaid two locations, he has reliable information given to him by the applicant himself that as of now vacancies do exist at Keonjhar and Dhenkanal, both in the State of Orissa. In view of this, the learned counsel for the applicant submits that it should ~~be~~ still ^{be} possible for the respondents to accommodate the applicant against any of the vacancies available at Keonjhar or at Dhenkanal, if no vacancy is found to exist at F.C.I., Talcher and C.R.P.F., Bhubaneswar, in respect of which the correct position has not been brought out.

3. The learned counsel appearing on behalf of the

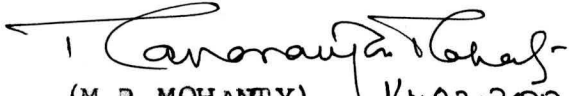
Respondent (s) submits that in-so-far as the adjustment of surplus staff is concerned, definite rules exist, which are relied upon by the respondents for adjusting the surplus staff. Likewise definite rules exist for accommodating PRTs on request basis. Having regard to these rules, the respondents have found it impossible to accommodate the applicant in any ^{of the} station in the State of Orissa. Surplus staff, for instance, according to him, has come into existence at Paradeep Port, F.C.I., Talcher, Gopalpur Cant. and Angul. These members of ^{found surplus} staff will have to be accommodated in the first instance in accordance with rules within the Bhubaneswar Region and only after the list of surplus staff has been exhausted the PRTs belonging to other categories could be considered. Similarly, on request basis, the list prepared for 2000-01 is still current and PRTs out of that list are to be accommodated first in preference to the applicant in the present Original Application, who does not figure in that list. Furthermore, according to the learned counsel for the respondents, the order passed by this Tribunal on 23.1.2000, by no means puts the respondents under an obligation to transfer the applicant to a place in the State of Orissa. The Tribunal, according to him, has simply asked for the consideration of the matter and has not actually directed the respondents to post the applicant in a location in the State of Orissa. Further, according to him, the implication is that, the respondents, in following the Tribunal's direction will abide by the Rules ^{guidelines} framed by themselves. *DN*

4. We have duly considered the various contentions raised by the parties. We have in particular carefully considered the submissions made by the learned counsel for the respondents in regard to the nature of the order passed by this Tribunal on 23.1.2000. On reading down the said order of this Tribunal, we find that by passing orders in the terms reproduced in Para-1 above, the Tribunal had actually created an obligation which had to be met by the respondents in any case. From a reading of the same order we also find that the issues based on the rules framed by the respondents were not considered by the Tribunal as they were presumably not raised before it at the time the impugned order dated 23.1.2000 was passed and even if raised, were set aside in the interest of justice and fair play in terms of the various provisions made therein. Moreover the rules in question being in the nature of guidelines cannot be said to have statutory force. The same can therefore, be relaxed depending on the merits of a case and also in compliance of Court/Tribunal's orders.

5. The Tribunal's order aforesaid has not been challenged and has accordingly become final. The respondent(s) were bound to comply with the same.

6. In the light of the foregoing, we find considerable merit in the present Original Application which, in the peculiar circumstances of this case, is allowed and is accordingly disposed of with a direction to respondent(s) to post the applicant either at Keonjhar or at Dhenkanal, the two locations indicated by the applicant in his rejoinder. If no vacancies exist at these locations as on

date, the respondent(s) will be free to consider transferring the applicant to the C.R.P.F., Bhubaneswar or else to F.C.I., Talcher. The respondent(s) will comply with the aforesaid direction within a period of one month from the date of receipt of ^a copy of this order.


(M.R. MOHANTY) 14.02.2002
MEMBER (JUDICIAL)


(S.A.T. RIZVI)
MEMBER (ADMINISTRATIVE)

B.K.SAHOO//